

**INTERIM PERMITTED GENERAL INSURANCE INTERMEDIARIES  
INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) article 4(1) of the Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (SI No 2004/3351) (“the Order”); and
  - (2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 145 (Financial promotion rules);
    - (c) section 149 (Evidential provisions);
    - (d) section 156 (General supplementary powers);
    - (e) section 157(1) (Guidance);
    - (f) section 213 (The compensation scheme); and
    - (g) section 214 (General).
- B. Article 4(2) of the Order is relevant to the exercise of the powers set out in paragraph A(2) above because it provides that sections 155 (Consultation) and 157(3) (Guidance) of the Act do not apply to the rules and guidance set out in this instrument.
- C. The provisions listed above relevant to making rules are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- D. This instrument comes into force on 14 January 2005.

**Citation**

- E. This instrument may be cited as the Interim Permitted General Insurance Intermediaries Instrument 2005.
- F. The Annex to this instrument may be cited as the Directions, rules and guidance for Interim Permitted General Insurance Intermediaries.

Made under the authority of the Board and under article 4 of the Order

Clive Briault  
Managing Director, Retail Markets  
10 January 2005

## Annex

### Directions, rules and guidance for Interim Permitted General Insurance Intermediaries

In this Annex, new provisions relevant to interim permitted general insurance intermediaries (“IPGI”) are being introduced and they are not underlined.

#### 1. Handbook and other requirements for Interim Permitted General Insurance Intermediaries

##### 1.1 Application and purpose

1.1.1 R *IPGI* applies to *interim permitted general insurance intermediaries*.

1.1.2 G The purpose of *IPGI* is:

- (1) to make *rules* relating to disclosure of their regulated status by *interim permitted general insurance intermediaries*;
- (2) to direct, in accordance with article 4(1) of the *General Insurance Intermediaries Transitional Order*, that certain provisions of the *Handbook* that would otherwise apply to *interim permitted general insurance intermediaries*:
  - (a) are not to apply; or
  - (b) are to apply to them as modified in *IPGI*; and
- (3) to give ancillary *guidance* to *interim permitted general insurance intermediaries* as to the application of the *Handbook* to them.

##### 1.2 Disclosure of interim permitted general insurance intermediary status

1.2.1 G *IPGI* 1.2 makes special provision for *interim permitted general insurance intermediaries* in place of *GEN* 1.2 (Referring to approval by the FSA). The purpose is to prevent *clients* being misled about the extent to which the *FSA* has approved a *firm's* affairs.

1.2.2 D The *FSA* directs that *GEN* 1.2 (Referring to approval by the *FSA*) does not apply to an *interim permitted general insurance intermediary*.

1.2.3 R (1) Unless required to do so under the *regulatory system*, an *interim permitted general insurance intermediary* must ensure that neither it, nor anyone acting on its behalf claims, in a public statement or to a *client*, expressly or by implication, that its affairs, or any aspect of them, have the approval of the *FSA* or that it is an *authorised person* for the purposes of the *Act*.

- (2) Paragraph (1) does not apply to statements by or on behalf of an *interim permitted general insurance intermediary* who is an *interim authorised general insurance person* that explain, in a way that is fair, clear and not misleading, that:
- (a) the *firm* is an *interim permitted general insurance intermediary*;
  - (b) the *firm's approved persons* are deemed to be approved by the *FSA* for the purposes of section 59 of the *Act* (Approval for particular arrangements) pending determination of the *firm's* application for authorisation;
  - (c) the *firm* has been given express written approval by the *FSA* in respect of a specific aspect of the *firm's* affairs.
- (3) Paragraph (1) does not apply to any statement by or on behalf of an *interim permitted general insurance intermediary* who is not an *interim authorised general insurance person* that explains, in a way that is fair, clear and not misleading, that:
- (a) the *firm* is an *authorised person*;
  - (b) as appropriate:
    - (i) the *firm* has *permission* to carry on a specific activity; or
    - (ii) the *firm* has *interim permission* to carry out a specific activity;
  - (c) as appropriate:
    - (i) one or more of the *firm's approved persons* has been approved by the *FSA* for the purposes of section 59 of the *Act* (Approval for particular arrangements); or
    - (ii) one or more of the *firm's approved persons* is deemed to be approved by the *FSA* for the purposes of section 59 of the *Act* (Approval for particular arrangements) pending determination of the *firm's* application for *permission*; or
  - (d) the *firm* has been given express written approval by the *FSA* in respect of a specific aspect of the *firm's* affairs.
- (4) Paragraph (1) applies with respect to the carrying on of both *regulated activities* and *unregulated activities*.

## Required disclosures

- 1.2.4 R (1) An *interim permitted general insurance intermediary* who is an *interim authorised general insurance person* and who, in order to comply or to provide evidence of complying with a provision (including a provision mentioned in *IPGI 1.2.6R*) of the *Handbook*, discloses that he is authorised or regulated by the *FSA*, must also disclose that he is authorised or regulated on an interim basis only.
- (2) An *interim permitted general insurance intermediary* who, in the course of carrying on *general insurance mediation activity*, discloses that he is authorised or regulated by the *FSA*, must as part of that disclosure, and with equal prominence, disclose that the *FSCS* does not apply to any *general insurance mediation activity* that he undertakes.
- 1.2.5 E (1) An *interim permitted general insurance intermediary* should, in the circumstances mentioned in *IPGI 1.2.4R*, disclose that:
- (a) he is 'interim authorised under the Financial Services and Markets Act 2000' or 'interim regulated by the Financial Services Authority' or 'regulated by the Financial Services Authority as an interim authorised person' or use words to that effect; and
- (b) 'no compensation will be available from the Financial Services Compensation Scheme in the event that we are unable to meet our obligations under our general insurance business' or use words to that effect.
- (2) Compliance with (1) may be relied on as tending to establish compliance with *IPGI 1.2.4R*.
- (3) Contravention of (1) may be relied on as tending to establish contravention of *IPGI 1.2.4R*.
- 1.2.6 R Table Non-exhaustive list of provisions about status disclosure

This table belongs to *IPGI 1.2.4R*.

Provision	Topic
<i>ICOB 4.2</i>	Status disclosure requirements
<i>ICOB 4 Ann 1G</i>	
<i>ICOB 4 Ann 2R</i>	
<i>ICOB 8.3</i>	

### 1.3 Application of the Handbook to interim permitted general insurance intermediaries

- 1.3.1 G The *General Insurance Intermediaries Transitional Order* provides broadly that *interim permitted general insurance intermediaries* are to be treated, unless otherwise provided, as *authorised persons* for the purposes of the *Act* and of any provision made under the *Act* (see paragraph 5 of the Schedule to the *General Insurance Intermediaries Transitional Order*). As a result, the *Handbook* applies to *interim permitted general insurance intermediaries* and any *regulated activity* for which they are seeking *permission* is *regulated activity* for the purposes of the *Handbook*.
- 1.3.2 G Annex 2G to *ICOB 1* contains a list of the parts of the *Handbook* and their application to *insurance intermediaries*. This annex is also relevant to *interim permitted general insurance intermediaries*, with the modifications set out in *IPGI 1.3.3G*.
- 1.3.3 G Table Modifications to *ICOB 1 Ann 2G* where the firm concerned is an interim permitted general insurance intermediary

This table belongs to *IPGI 1.3.2G*.

Part of Handbook	Extent of modification
Statements of Principle and Code of Practice for Approved Persons ( <i>APER</i> )	Under article 3 of the <i>General Insurance Intermediaries Transitional Order</i> , special provision is made for <i>approved persons</i> carrying on controlled functions for <i>interim permitted general insurance intermediaries</i> .
General provisions ( <i>GEN</i> )	<i>GEN 1.2</i> (Referring to approval by the <i>FSA</i> ) does not apply to <i>interim permitted general insurance intermediaries</i> : see <i>IPGI 1.2.2D</i> . Instead, <i>IPGI 1.2.3R</i> makes provision about <i>interim permitted general insurance intermediaries</i> referring to approval by the <i>FSA</i> or <i>authorisation</i> for the purposes of the <i>Act</i> .
Insurance: Conduct of Business ( <i>ICOB</i> )	<p>(1) This applies.</p> <p>(2) <i>IPGI 1.2.4R</i> makes special provision for required status disclosure by <i>interim permitted general insurance intermediaries</i>.</p> <p>(3) Paragraph 6 of the Schedule to the <i>General Insurance Intermediaries Transitional Order</i> provides broadly that an <i>interim permitted</i></p>

	<p><i>general insurance intermediary</i> is not authorised for the purposes of sections 21(1) (Restrictions on financial promotion) and 25(2)(a) (Contravention of section 21) unless the communication invites an agreement the making or performance of which constitutes a <i>controlled activity</i> corresponding to a <i>regulated activity</i> covered by his <i>interim general insurance permission</i>.</p>
<p>Authorisation manual (AUTH)</p>	<p>(1) Paragraph 2 of the Schedule to the <i>General Insurance Intermediaries Transitional Order</i> provides that for the purposes of section 20 (Authorised persons acting without permission) a person's <i>interim general insurance permission</i> is treated as having been given to him under Part IV of the <i>Act</i>.</p> <p>(2) Paragraph 3 of the Schedule to the <i>General Insurance Intermediaries Transitional Order</i> provides that an applicant's <i>interim general insurance permission</i> is to be disregarded for the purposes of sections 38(2) (Exemption orders), 40(2) (Application for permission), 42 (Giving permission), 43 (Imposition of requirements) and 44(1), (4) and (5) (Variation etc. at request of authorised person) of the <i>Act</i>.</p> <p>(3) Under article 3 of the <i>General Insurance Intermediaries Transitional Order</i>, special provision is made for <i>approved persons</i> carrying on controlled functions for <i>interim permitted general insurance intermediaries</i>.</p> <p>(4) The Schedule to the <i>General Insurance Intermediaries Transitional Order</i> provides broadly that <i>interim permitted</i></p>

	<p><i>general insurance intermediaries:</i></p> <p>(a) are to be treated, unless otherwise provided, as <i>authorised persons</i> for the purposes of the <i>Act</i> (see paragraph 5); and</p> <p>(b) may still be <i>appointed representatives</i> (and hence may be treated as exempt from the <i>general prohibition</i> as a result of section 39(1) for the purposes of section 42(3)(a) of the <i>Act</i> (see paragraph 7).</p>
Supervision manual ( <i>SUP</i> )	See notes (2), (3) and (4)(b) to <i>AUTH</i> which are relevant to <i>SUP</i> 6, <i>SUP</i> 7, <i>SUP</i> 10 and <i>SUP</i> 12.
Compensation sourcebook ( <i>COMP</i> )	<p>This does not apply:</p> <p>(1) to an <i>interim permitted general insurance intermediary</i> who is an <i>interim authorised general insurance person</i>; and</p> <p>(2) to an <i>interim permitted general insurance intermediary</i> who is not an <i>interim authorised general insurance person</i> in respect of his <i>general insurance mediation activities</i>.</p>

1.3.4 D The *FSA* directs that any special application or disapplication provisions in the *Handbook* are to apply to *interim permitted general insurance intermediaries* as nearly as possible as if the application for *permission* which gives rise to the *interim general insurance permission* has been granted in the terms applied for, including as if the *requirements* and *limitations* applied for (or otherwise required to give effect to the terms of the application) have already been included in that *permission*.

1.3.5 D The *FSA* directs that *COMP*:

- (1) does not apply to an *interim authorised general insurance person*;
- (2) does not apply to an *interim permitted general insurance intermediary* who is not an *interim authorised general insurance person* in respect of his *general insurance mediation activities*.

- 1.3.6 R In *COMP*, *relevant person* does not include:
- (1) an *interim authorised general insurance person*;
  - (2) in respect of his *general insurance mediation activities*, an *interim permitted general insurance intermediary* who is not an *interim authorised general insurance person*;
  - (3) an *appointed representative* of (1) or, in respect of *general insurance mediation activities* only, an *appointed representative* of (2).

1.3.7 G Where the *FSA* has given an *interim permitted general insurance intermediary* a *waiver* from a provision of the *Handbook*, the terms of that *waiver* are to be taken into account in determining the provisions of the *Handbook* that apply to that *interim permitted general insurance intermediary*.

## 2. Interpretation

### 2.1 GEN and Glossary apply

2.1.1 R The General provisions (*GEN*) of the *Handbook* and the *Glossary* made under the *Act* apply in the interpretation of *IPGI*, unless *IPGI* 1.2.2D applies.

2.1.2 R The terms in *IPGI* 2.1.3R are also defined for the purposes of *IPGI*.

2.1.3 R Terms defined for the purposes of *IPGI*

This table belongs to *IPGI* 2.1.2R.

Defined expression	Definition
<i>interim authorised general insurance person</i>	an <i>interim permitted general insurance intermediary</i> who is an <i>authorised person</i> only because he has an <i>interim general insurance permission</i> .
<i>interim general insurance permission</i>	a <i>Part IV permission</i> conferred by article 2 of the <i>General Insurance Intermediaries Transitional Order</i> .
<i>interim permitted general insurance intermediary</i>	a person who has an <i>interim general insurance permission</i> .
<i>IPGI</i>	Directions, rules and guidance for Interim Permitted General Insurance Intermediaries forming the Annex to the Interim Permitted General Insurance Intermediaries Instrument 2005 (FSA 2005/1).
<i>General Insurance Intermediaries Transitional</i>	The Financial Services and Markets Act 2000 (Transitional Provisions) (General

<i>Order</i>	Insurance Intermediaries) Order 2004 (SI 2004/3351).
<i>general insurance mediation activity</i>	(in accordance with article 1(3) of the <i>General Insurance Intermediaries Transitional Order</i> ) any <i>regulated activity</i> of the kind specified by article 21, 25, 39A or 53 of the <i>Regulated Activities Order</i> , or article 64 of that Order in so far as relevant to that activity, which is carried on in relation to a <i>contract of insurance</i> which is not a 'qualifying contract of insurance' (as defined in article 3(1) of the <i>Regulated Activities Order</i> ) or a <i>long-term care insurance contract</i> .

**GENERAL PROVISIONS (FEES FOR DESIGNATED INVESTMENT EXCHANGES) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance); and
  - (4) paragraph 17 of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 February 2005.

**Amendments to the General Provisions**

- D. The General Provisions are amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the General Provisions (Fees for Designated Investment Exchanges) Instrument 2005.

By order of the Board  
20 January 2005

## Annex

### Amendments to General Provisions

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

Transitional Provisions TP1

...

GEN Table: (2) Transitional provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8.	<u>GEN 2 Ann 2 R</u>	<u>R</u>	<u>GEN 2 Ann 2 R applies to any application received after 1 October 2004 but not determined until after 1 February 2005.</u>	<u>From 1 February 2005</u>	<u>1 February 2005</u>

...

#### ~~Definition of d~~ Designated investment exchanges

- 2.2.20 G In the *Glossary*, the definition of *designated investment exchange* lists certain investment exchanges. Further information on *designated investment exchanges*, including *guidance* on the addition of an investment exchange to the list, is set out in GEN 2 Ann 1G and the obligation to pay the application fee is set out in GEN 2 Ann 2R.

GEN 2 Annex 1G: Designated investment exchanges

G

1 Table ...

...

- 8 An application will not be considered by the FSA until the application fee has been paid. See GEN 2 Ann 2 R.

...

GEN 2 Annex 2 R : Designated investment exchanges: fees

- 1 An applicant must, on or before the date on which the application is made, pay to the *FSA* in full and without any deduction, the application fee of £50,000. (See also *GEN 2 Ann 1 G.*)

## INSURANCE REGULATORY REPORTING INSTRUMENT 2005

### 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);
  - (4) section 157 (Guidance); and
  - (5) section 340 (Appointment of auditors and actuaries).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### Commencement

- C. This instrument comes into force on 31 December 2005.

### Amendment of the Interim Prudential sourcebook for Insurers

- D. The Interim Prudential sourcebook for Insurers is amended in accordance with the Annex to this instrument.

### Citation

- E. This instrument may be cited as the Insurance Regulatory Reporting Instrument 2005.

By order of the Board  
20 January 2005

## Annex

### Amendments to the Interim Prudential sourcebook for Insurers

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is deleted or inserted, the place where the change is made is indicated and the text is not struck through or underlined.

## INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS

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...

## **Part I**

### **ACCOUNTS AND STATEMENTS**

...

#### **Interpretation**

9.2 ...

(3) In the *Accounts and Statements Rules*, any reference to *long term business* or to *general insurance business* is -

- (a) in relation to an *external insurer* ~~(other than a pure reinsurer)~~, to its entire *long-term insurance business* or to its entire *general insurance business* and (except in the case of a pure reinsurer) to any *long-term insurance business* or *general insurance business* carried on by it through a branch in the United Kingdom; and
- (b) in relation to a *UK-deposit insurer*, to its entire *long-term insurance business* or to its entire *general insurance business* and to any *long-term insurance business* or *general insurance business* carried on by it through a branch in any *EEA State*,

and accordingly any reference to, or requirement imposed in respect of, the accounts and balance sheet (including any notes, statements, reports and certificates annexed to them) relevant to *long-term insurance business* or to *general insurance business* is to, or imposes a requirement in respect of –

- (i) accounts prepared in respect of its entire *long-term insurance business* or entire *general insurance business*; and
- (ii) accounts prepared in respect of the *long-term insurance business* or the *general insurance business* carried on, in the case of an *external insurer* (other than a pure reinsurer), by the branch in the United

Kingdom and, in the case of a *UK-deposit insurer*, by the branches in question in the *EEA States* taken together.

- (4) In the *Accounts and Statements Rules* and in Chapter 12 –
- (a) any reference to a numbered Form is a reference to the Form so numbered in **Appendices 9.1 to 9.4 9.3**; ~~and~~
  - (b) references to a numbered *class of insurance business* are references to the *class* so numbered in either **Annex 11.1** or **11.2**; ~~and~~
  - (c) references to a numbered *FSA general insurance business reporting category* are references to the *FSA general insurance business reporting category* so numbered in **Annex 11.3**.

...

...

### **Balance sheet**

9.12 ...

- (6) **Form 14** must be completed by every *long-term insurer* in respect of -
- (a) its total *long-term insurance liabilities* and margins; ~~and~~
  - (b) the *long-term insurance liabilities* and margins for each *long-term insurance fund* or where *long-term insurance assets* have been appropriated in respect of a group of funds, for the group; ~~and~~
  - (c) subject to (6A), except where the information is provided by virtue of (a) or (b), each *with-profits fund*, with a supplementary note stating the amount, if any, of the increase or decrease, as the case may be, in the value of *non-linked assets*.
- (6A) Where the amount (or part of the amount) of any increase or decrease in the value of *non-linked assets* has yet to be allocated between *with-profits funds* or between one or more *with-profits funds* and other purposes, the note required by (6) must state the total amount which has yet to be aggregated:
- (a) identifying the *with-profits funds* to which the information relates; and
  - (b) describing the basis upon which increases or decreases in the value of *non-linked assets* are, or will be, allocated between the *with-profits funds* or between the *with-profits funds* and other purposes.

...

...

## Revenue account

- 9.14 The revenue account to be prepared by every *insurer* under rule 9.3 -
- (a) in the case of an *insurer* carrying on *general insurance business*, must comply with the requirements of **Appendix 9.2** and must be in **Form 20** ~~and separate accounts must be prepared in Form 20 in respect of each accounting class as well as a summary account in that Form in~~ respect of the whole of the *general insurance business* carried on by it; and
  - (b) in the case of an *insurer* carrying on *long-term insurance business*, must comply with the requirements of **Appendix 9.3** and must be in **Form 40** and -
    - (i) separate accounts must be prepared in **Form 40** in respect of:
      - (A) each *long-term insurance fund* maintained by it, and
      - (B) except where the information is provided by virtue of (A), each *with-profits fund*, with a supplementary note [code 4010] stating the amount, if any, of investment income relating to *linked assets* included at line 12; and
    - (ii) where there is more than one ~~fund for *ordinary long-term insurance business* or for *industrial assurance business*~~ Form 40 under (i) above, the *insurer* must also prepare a summary **Form 40** for ~~*ordinary long-term insurance business* or for *industrial assurance business*~~, as the case may require the total *long-term insurance business*.

## Allocation of general insurance business to risk categories

- 9.14A Every *insurer* preparing the Forms required under rules 9.15, 9.17, 9.19, 9.20 and 9.20A must allocate its *general insurance business* to one or more *risk categories*.

## Allocation of contracts of insurance covering more than one risk category

- 9.14B (1) This rule applies in any case where a *contract of insurance* falls within the description of more than one *risk category*.
- (2) If the *contract of insurance* falls, to any extent, within the description of *risk category* 274, 590 or 690, an *insurer* must allocate all the *general insurance business* represented by that *contract of insurance* to that *risk category*.
- (3) In any other case, an *insurer* must, unless (4) applies, allocate all the *general insurance business* represented by the *contract of insurance* to the single *risk*

category that, in the reasonable opinion of the insurer's governing body, best describes the risk covered by the contract of insurance.

(4) If:

- (a) the premium payable under the contract of insurance is separable into components relating to different risk categories; or
- (b) in the reasonable opinion of the insurer's governing body, allocation under (3) would be misleading;

then the insurer must apply a reasonable method to allocate the general insurance business represented by the contract of insurance amongst the appropriate risk categories and must apportion the amounts it reports in the Forms accordingly.

**Additional information on general insurance business (accounting classes and discounting) General insurance business (content of revenue account and additional information as to balance sheet)**

9.15 (1) Every insurer which carries on general insurance business must, in accordance with the requirements of **Appendix 9.2**, prepare ~~in respect of each accounting class -~~

- (a) **Form 20A** in respect of the whole of the general insurance business carried on by it;
- (b) **Form 20** in respect of each required category;
- (a) (c) **Forms 21, 22 and 23** for insurance business accounted for on an 'accident year basis' in respect of each required category; and
- (b) (d) **Forms 24 and 25** for insurance business accounted for on an 'underwriting year basis' in respect of each required category.

(2) For the purposes of ~~(1)~~ this rule and rules 9.17(1), 9.19(1) and 9.22(2), business must be taken to be accounted for on an underwriting year basis where it relates to risks -

...

...

Rule 9.16 is deleted in its entirety.

**~~Business categories for general insurance business (reinsurance treaties accepted)~~**

9.16 [deleted]

**Additional information on general insurance business (treaty reinsurance business treaties accepted)**

- 9.17 (1) Every *insurer* which carries on *general insurance business* must, ~~in relation to each *insurance business category* to which *insurance business* has been allocated for the purposes of rule 9.16,~~ in accordance with the requirements of **Appendix 9.2** prepare -
- (a) **Forms 26 and 27** for *treaty reinsurance business* ~~reported on **Forms 21, 22 and 23**~~ accounted for on an ‘accident year basis’ in respect of each *required category*; and
  - (b) **Forms 28 and 29** for *treaty reinsurance business* ~~reported on **Forms 24 and 25**~~ accounted for on an ‘underwriting year basis’ in respect of each *required category*.

Rules 9.17(2) and 9.17(3) are deleted in their entirety.

(2) [deleted]

(3) [deleted]

Rule 9.18 is deleted in its entirety.

**~~Risk groups for general insurance business~~**

9.18 [deleted]

**Additional information on general insurance business (direct and facultative business)**

- 9.19 (1) Every *insurer* which carries on *general insurance business* must, ~~with respect to the *financial year in question* and in relation to each country and each risk group (as classified by it under rule 9.18),~~ prepare in accordance with the requirements of **Appendix 9.2**, prepare -
- (a) **Forms 31 or 32** for *direct and facultative insurance business*, ~~other than *insurance business* falling within *accounting class 2*,~~ reported on **Forms 21, 22 and 23**; accounted for on an ‘accident year basis’ in respect of each *required category*; and
  - (b) **Form 324** for *direct and facultative insurance business* ~~falling within *accounting class 2*~~ reported on **Forms 21, 22 and 23**; and accounted for on an ‘underwriting year basis’ in respect of each *required category*.
  - (c) **Form 34** for *direct and facultative insurance business* reported on **Forms 24 and 25**.

Rule 9.19(2) is deleted in its entirety.

(2) [deleted]

...

~~Additional information on general insurance business (direct and facultative reconciliation business)~~ **FSA general insurance business reporting categories falling below de minimis criteria**

Paragraphs 9.20 (1) and (2) are deleted and replaced by the following paragraphs.

9.20 (1) This rule applies to any *financial year* after the first *financial year* ended on or after 31 December 2005 in any case where -

(a) for the previous *financial year*, an *insurer* was required to prepare a **Form 20 to 34** for a category of business (as set out in column 2 of paragraph 2B of **Appendix 9.2**) that was not *category number* 001 to 003, 409 or 709; and

(b) for the *financial year in question*, the 'reporting criteria' for that Form and category of business are not met.

(2) In this rule, any references to 'reporting criteria', in relation to a Form, are the reporting criteria specified for that Form in column 3 in the Table in paragraph 2B of **Appendix 9.2**.

(3) Unless paragraph (4) applies, any such business that satisfies (1) must be reported in the same category of business (as set out in column 2 of paragraph 2B of **Appendix 9.2**) in the same Form for the *financial year in question*.

(4) An *insurer* may cease to report such business on that Form in that category of business if -

(a) the *gross written premiums* in the *financial year in question* and the 'gross undiscounted provisions' at the end of that *financial year* for that category of business are each less than £0.5m; or

(b) the following conditions are met –

(i) the *financial year in question* ended on or after 31 December 2008;

(ii) the business in 1(a) has been reported on that Form for that category of business in each of the three previous *financial years*; and

(iii) the *gross written premiums* in the *financial year in question* and the 'gross undiscounted provisions' at the end of that *financial year* for that category of business are each less than 50% of the amounts

respectively specified in the 'reporting criteria' for that Form in respect of that category of business.

- (5) For the purpose of this rule, rule 9.20A and paragraph 2B of **Appendix 9.2**, **gross undiscounted provisions** are gross undiscounted reported claims outstanding plus gross undiscounted incurred but not reported claims plus gross provision for unearned premiums plus provision for unexpired risks.

**Further information on general insurance business to ensure adequate coverage in the return**

9.20A If the total of all 'gross undiscounted provisions' in all the **Forms 26 to 29, 31, 32 and 34** required under rules 9.17, 9.19 and 9.20, or included despite rule 9.20(4), is less than 80% of the *insurer's* total 'gross undiscounted provisions', the *insurer* must prepare **Forms 26 to 29, 31, 32 and 34**, as appropriate, for further categories of business (as set out in column 2 of paragraph 2B of **Appendix 9.2**) in decreasing order of size (measured in 'gross undiscounted provisions'), until the 80% criterion is met.

...

**Additional information on general insurance business (claims equalisation provisions)**

- 9.22 (1) ...
- (2) ...
- (a) ...
- (b) **Form 38** for *general insurance business* ~~business reported on **Forms 21, 22 and 23**~~ accounted for on an 'accident year basis'; and
- (c) **Form 39** for *general insurance business* ~~business reported on **Forms 24 and 25**~~ accounted for on an 'underwriting year basis'.

**Additional information on long-term insurance business**

- 9.23 Every *insurer* which carries on *long-term insurance business* must, in respect of the *financial year in question*, and in accordance with the requirements of **Appendix 9.3**, prepare –
- (a) **Forms 41 to 45** in respect of each revenue account prepared separately under rule 9.14(b)(i); ~~and~~
- (b) summary **Forms 41 to 44-45** in respect of each if a summary **Form 40** is required prepared under rule 9.14(b)(ii); and

(c) **Forms 46 to 59B** and, except in the case of an *EEA-deposit insurer*, **Form 60**.

as appropriate, together with the information specified in relation to those Forms.

...

**Valuation report on long-term insurance business**

9.31

...

(a) for the purposes of rule 9.4 other than in relation to the calculation required by rule 9.4(2)(c), a valuation report which ~~– treating ordinary long-term insurance business and industrial assurance business separately,~~ complies with the requirements of **Appendix 9.4** and contains the information specified in that Appendix; and

...

...

## Chapter 11

### DEFINITIONS

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#### PART I

#### DEFINITIONS

##### 11.1

The following definitions are deleted:

*accounting class*

*business categories*

*general insurance business class 1(p)*

The following definition is amended:

<i>home foreign business</i>	<i>general insurance business carried on <del>written</del> in the United Kingdom primarily relating to risks situated outside the United Kingdom, but excluding insurance business in <del>accounting classes 3, 4 and 5</del> category numbers 330, 340 and 350 and insurance business where the risk commences in the United Kingdom</i>
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Insert the following new definitions in the appropriate alphabetical order:

<i><u>balancing category</u></i>	<i><u>an FSA general insurance business reporting category to which any of the category numbers 409 or 709 has been allocated in column 1 of Annex 11.3</u></i>
<i><u>category number</u></i>	<i><u>the category number for the FSA return general insurance business reporting categories listed in column 1 of Annex 11.3</u></i>
<i><u>combined category</u></i>	<i><u>an FSA general insurance business reporting category to which any of the category numbers 001, 002, 003, 110, 120, 180, 220, 260, 270, 280, 330, 340, 500 or 600 has been allocated in column 1 of Annex 11.3</u></i>
<i><u>exemption category</u></i>	<i><u>an FSA general insurance business reporting category to which the category numbers 114(p) or 710(p) have been allocated in column 1 of Annex 11.3</u></i>
<i><u>FSA general insurance business reporting category</u></i>	<i><u>a category of general insurance business that consists of the effecting or carrying out of contracts of general insurance falling within the description in column 2 of Annex 11.3</u></i>

<u>miscellaneous category</u>	<u>an FSA return general insurance business reporting category to which the category numbers 400 or 700 have been allocated in column 1 of Annex 11.3</u>
<u>Product code</u>	<u>has the meaning given in paragraph 3 of the Instructions for completion of Form 47 in Appendix 9.3</u>
<u>required category</u>	<p><u>in relation to a Form in the return, a category of general insurance business set out in column 2 of the Table in Paragraph 2B of Appendix 9.2 that -</u></p> <p>(a) <u>is, or is included in, an FSA general insurance business reporting category for which the Table in Paragraph 2A of Appendix 9.2 contains a tick in the row for that FSA general insurance business reporting category and in the column for that Form; and</u></p> <p>(b) <u>either:</u></p> <p style="padding-left: 40px;">(i) <u>meets the reporting criteria specified in the entry in column 3 of that Table that corresponds to the entry in column 2 for that the category of general insurance business and the entry in column 1 for that Form, or</u></p> <p style="padding-left: 40px;">(ii) <u>is required for that Form under rule 9.20.</u></p>
<u>risk category</u>	<u>any FSA general insurance business reporting category that is not a combined category, or balancing category or exemption category</u>

...

After IPRU(INS) Chapter 11 Annex 11.2 insert the following new Annex 11.3.

## ANNEX 11.3

### DESCRIPTIONS OF FSA GENERAL INSURANCE BUSINESS REPORTING CATEGORIES

#### Part I

**Categories to which contracts of general insurance business are to be allocated for the purpose of reporting in the return**

<b>Categ -ory Num- ber</b>	<b>FSA general insurance business reporting category</b>	<b>Map to classes of business in Annex A of 73/239/EEC</b>
001	<b>Total Business</b> ( <i>category numbers 002 and 003 combined</i> ).	N/A
002	<b>Total Primary (Direct) and Facultative Business</b> ( <i>category numbers 110, 120, 160, 180, 220, 260, 270, 280, 330, 340, 350 and 400 combined</i> ).	N/A
003	<b>Total Treaty Reinsurance Accepted Business</b> ( <i>category numbers 500, 600 and 700 combined</i> ).	N/A
	<b>PRIMARY (DIRECT) and FACULTATIVE PERSONAL LINES BUSINESS</b>	
110	<b>Total primary (direct) and facultative accident &amp; health</b> ( <i>category numbers 111 to 114 combined</i> ).	
111	<b>Medical expenses</b> <i>Contracts of insurance (other than treaty reinsurance contracts) providing benefits in the nature of indemnity, with or without limit, against risks of loss to the persons insured attributable to their incurring the cost of medical treatment for sickness or infirmity or injuries sustained.</i>	1,2
112	<b>HealthCare cash plan</b> <i>Contracts of insurance (other than treaty reinsurance contracts) providing fixed pecuniary benefits against risks of the persons insured requiring health care for sickness, infirmity or injuries sustained.</i>	2
113	<b>Travel</b> <i>Contracts of insurance (other than treaty reinsurance contracts) against a combination of risks of loss to the persons insured attributable to their travelling, or to their making of travel arrangements, and which fall within classes 1, 2, 8, 9, 17 or 18 and do not fall within category number 160 (Household and domestic all risks).</i>	1,2,8,9,17,18
114	<b>Personal accident or sickness</b> <i>Contracts of insurance (other than treaty reinsurance contracts) which fall within classes 1 or 2 and which do not fall within category numbers 111 (Medical expenses), 112 (HealthCare cash plans), 113 (Travel), 114(p), 182 (Creditor).</i>	1,2
114(p)	<b>Personal accident as a result of insured travelling as a passenger</b> <i>Contracts of insurance (other than treaty reinsurance contracts) against risks of death of, or injury to, passengers which the insurer elects to allocate to category numbers 121 to 123, 221 to 223, 331 to 333 or 341 to 347, notwithstanding that they would also fall within the definition of category number 114.</i>	1

120	<b>Total primary (direct) and facultative personal motor business</b> ( <i>category numbers 121 to 123 combined</i> ).	3,10
121	<p><b>Private motor comprehensive</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of, or damage to, motor vehicles used on land and against the risks of the persons insured incurring liabilities to third parties arising out of or in connection with the use of motor vehicles on land, where the motor vehicle has more than two wheels and is not a motorcycle with side-car and:</p> <p>(a) the primary purpose of each vehicle insured on the contract is to transport nine or fewer non-fare paying persons and each motor vehicle insured on the contract is individually rated;</p> <p>(b) the primary purpose of each vehicle insured on the contract is to transport nine or fewer non-fare paying persons, the persons insured are not a body corporate or partnership, and the number of vehicles insured on the contract is three or less; or</p> <p>(c) the primary purpose of each vehicle insured on the contract is to transport ten or more non-fare paying persons, the persons insured are not a body corporate or partnership and each motor vehicle insured on the contract is individually rated.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number 114(p)</i> which the insurer elects to allocate to this category.</p>	3,10
122	<p><b>Private motor non-comprehensive</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against the risks of the persons insured incurring liabilities to third parties arising out of or in connection with the use of motor vehicles on land or against loss of or damage to motor vehicles used on land arising only from fire or theft, where the motor vehicle has more than two wheels and is not a motorcycle with side-car and:</p> <p>(a) the primary purpose of each vehicle insured on the contract is to transport nine or fewer non-fare paying persons and each motor vehicle insured in the contract is individually rated; .</p> <p>(b) the primary purpose of each vehicle insured on the contract is to transport nine or fewer non-fare paying persons, the persons insured are not a body corporate or partnership, and the number of vehicles insured on the contract is three or less; or</p> <p>(c) the primary purpose of each vehicle insured on the contract is to transport ten or more non-fare paying persons and the persons insured are not a body corporate or partnership and each motor vehicle insured on the contract is individually rated.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category numbers 114(p)</i> which the insurer elects to allocate to this category.</p>	3,10
123	<p><b>Motor cycle</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of or damage to two-wheeled motor vehicles or motor cycles with a side car used on land and or against the risks of the persons insured incurring liabilities to third parties arising out of or in connection with the use of such vehicles on land.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number 114(p)</i> which the insurer elects to allocate to this category.</p>	3,10

160	<p><b>Primary (direct) and facultative household and domestic all risks.</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of or damage to any of:</p> <ul style="list-style-type: none"> <li>(a) structure of domestic properties,</li> <li>(b) contents of domestic properties, or</li> <li>(c) contents of domestic properties and personal items.</li> </ul> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of or damage to structure of domestic properties and against risks to the persons insured incurring liabilities to third parties arising out of injuries sustained within the boundary of a domestic property.</p>	8,9
180	<p><b>Total primary (direct) and facultative personal lines financial loss business</b>  <i>(category numbers 181 to 187 combined).</i></p>	
181	<p><b>Assistance</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) which:</p> <ul style="list-style-type: none"> <li>(a) fall within <i>class 18</i> (such as contracts relating to vehicle assistance, household assistance and legal expense helpline); and</li> <li>(b) do not fall within <i>category number 113</i> (Travel).</li> </ul>	18
182	<p><b>Creditor</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against the risk that the persons insured sustain injury, suffer sickness or infirmity, suffer loss of income due to causes that may or may not be specified in the contract, where the benefits payable under the contract relate to loans, credit card balances or other debts and the contract does not fall within <i>category number 185</i> (Mortgage indemnity).</p>	1,2,16
183	<p><b>Extended warranty</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against the risks of loss to the persons insured attributable to failure of a product, where the purpose of the contract is to put the persons insured in the position as if the manufacturer's or vendor's warranty on the product is extended for a period of time or is extended in scope.</p>	16
184	<p><b>Legal expenses</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against risks of loss to the persons insured attributable to their incurring legal expenses including cost of litigation that do not fall within <i>category number 120</i>.</p>	17
185	<p><b>Mortgage indemnity</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against risks of loss to the persons insured arising from the failure of debtors of theirs to pay debts relating to the purchase of a property when due and the persons insured being unable to recover the full amount of any outstanding debt by selling the property concerned.</p>	14
186	<p><b>Pet insurance</b>  <i>Contracts of insurance</i> (other than treaty reinsurance) against risk of loss to the person insured attributable to sickness of or accidents to domestic pets.</p>	16
187	<p><b>Other personal financial loss</b>  <i>Contracts of insurance</i> (other than treaty reinsurance) against risk of loss to the person insured attributable to:</p> <ul style="list-style-type: none"> <li>(a) loss, breakdown or reduction in value of a personal item that attach to the purchase of that item, or</li> <li>(b) to an event not taking place as intended</li> </ul>	16

	where the persons insured are not a body corporate or partnership and the <i>contracts of insurance</i> do not fall within <i>category numbers</i> 113, 160 or 181 to 186.	
	<b>PRIMARY (DIRECT) and FACULTATIVE COMMERCIAL LINES BUSINESS</b>	
220	<b>Total primary (direct) and facultative commercial motor business</b> ( <i>category numbers</i> 221 to 223 combined).	3,10
221	<p><b>Fleets</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of, or damage to, motor vehicles used on land and / or against the risks of the persons insured incurring liabilities to third parties arising out of or in connection with the use of motor vehicles on land, where the motor vehicle has more than two wheels and is not a motorcycle with side-car and:</p> <p>(a) the primary purpose of the vehicle insured on the contract is to transport non-fare paying persons;</p> <p>(b) the motor vehicles insured on the contract are not individually rated (that is, the premium charged is for the contract as a whole and either the firm does not disclose or record for internal management purposes a separate premium for each vehicle insured on the contract, or the premium for the contract is not necessarily the same as the sum of the premiums that would have been charged had the firm insured the vehicles under a private motor policy); and</p> <p>(c) the contract does not fall within <i>category numbers</i> 121 (private motor comprehensive) or 122 (private motor non-comprehensive)</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number</i> 114(p) which the insurer elects to allocate to this category.</p>	3,10
222	<p><b>Commercial vehicles (non-fleet)</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of, or damage to, motor vehicles used on land and / or against the risks of the persons insured incurring liabilities to third parties arising out of or in connection with the use of motor vehicles on land, where:</p> <p>(a) the persons insured are a body corporate or partnership; and</p> <p>(b) the primary purpose of the vehicles insured on the contract is to transport ten or more persons, to transport goods or for construction.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number</i> 114(p) which the insurer elects to allocate to this category.</p>	3,10
223	<p><b>Motor other</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) which:</p> <p>(a) fall within <i>classes</i> 3 or 10; and</p> <p>(b) do not fall within <i>category numbers</i> 120, 221 or 222.</p> <p>This category includes <i>contracts of insurance</i> relating to motor trade and taxis.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number</i> 114(p) which the insurer elects to allocate to this category.</p>	3,10
260	<b>Total primary (direct) and facultative commercial lines property business</b> ( <i>category numbers</i> 261 to 263 combined).	N/A
261	<b>Commercial property (including livestock and crops but excluding energy)</b>	4,8,9

	<p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against:</p> <p>(a) loss of or damage to commercial property; or</p> <p>(b) loss of or damage to commercial property and risks that fall within the definition of <i>category number 262</i> (consequential loss), where the premium for the contract is rated on a single package basis and no separately identifiable premium for either the property loss or the consequential loss is charged or recorded for internal management purposes.</p> <p>This category does not include <i>contracts of insurance</i> that fall within <i>category number 160</i> (Household), 263 (Contractors or engineering all risks), 274 (Mixed commercial package) or 343 (Energy).</p>	
262	<p><b>Consequential loss (i.e. business interruption)</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against risks of loss to the persons insured attributable to interruptions of the business carried on by them, or to the reduction of the scope of the business so carried out, which result from perils insured against or other events (whether or not specified in the contract).</p> <p>This category does not include <i>contracts of insurance</i> that fall within <i>category number 261</i> (Commercial property).</p>	16
263	<p><b>Contractors or engineering all risks</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of or damage to property or equipment, or against the risks of the persons insured incurring liabilities to third parties, which arise from, or are attributable to:</p> <p>(a) materials and works in progress during construction,</p> <p>(b) extension or renovation work,</p> <p>(c) temporary sites,</p> <p>(d) breakdown or malfunction of or damage to plant and machinery,</p> <p>(e) use of equipment hired or owned by the persons insured, or</p> <p>(f) similar types of activities.</p> <p>This category excludes <i>contracts of insurance</i> that fall within <i>category number 274</i> (Mixed commercial package).</p>	8,9,13
270	<p><b>Total primary (direct) and facultative commercial lines liability business</b> (<i>category numbers 271 to 274</i> combined).</p>	N/A
271	<p><b>Employers liability (including the employers liability part of mixed liability packages but excluding mixed commercial packages)</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against the risks of the persons insured incurring liabilities to their employees for injury, illness or death arising out of their employment during the course of business.</p> <p>This category excludes <i>contracts of insurance</i> that fall within <i>category number 274</i> (Mixed commercial package).</p>	13
272	<p><b>Professional indemnity (including directors' and officers' liability and errors and omissions liability)</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against the risks of the persons insured incurring liabilities to third parties arising from wrongful acts (such as breach of duty, breach of trust, negligence, errors or omissions) by professionals, named individuals or businesses occurring in the course of the insured's professional activities.</p>	13
273	<p><b>Public and products liability</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against the risks of the persons insured incurring liabilities to third parties for damage to property, injury, illness or death,</p>	13

	arising in the course of the insured's business, that do not fall within <i>category numbers</i> 120 (Personal motor), 160 (Household and domestic all risks), 220 (Commercial motor), 263 (Contractors or engineering all risks), 271 (Employers liability), 272 (Professional indemnity) or 274 (Mixed commercial package).	
274	<p><b>Mixed commercial package</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against more than one of:</p> <ul style="list-style-type: none"> <li>(a) loss of or damage to property;</li> <li>(b) risks to the persons insured incurring liabilities to third parties;</li> <li>(c) risks of loss to the persons insured arising from the failure of debtors of theirs to pay their debts when due;</li> <li>(d) risks of loss to the persons insured attributable to interruptions of business carried on by them;</li> <li>(e) risks of loss to the persons insured attributable to their incurring unforeseen expenses; or</li> <li>(f) any other risk of loss to a commercial operation;</li> </ul> <p>where the risks and losses covered in the contract are rated on a single package basis and no separately identifiable premium is charged or recorded for internal management purposes for any one group of risks or losses specified in the contract.</p> <p>This category excludes <i>contracts of insurance</i> that fall with <i>category number</i> 261 (Commercial property).</p>	8,9,13,14,16,17
280	<b>Total primary (direct) and facultative commercial lines financial loss business</b> ( <i>category numbers</i> 281 to 284 combined).	
281	<p><b>Fidelity and contract guarantee</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against risks of loss to the persons insured arising from the theft or misappropriation of money or goods by employees, or attributable to failure to complete a contract on time.</p>	16
282	<p><b>Credit</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due, and which do not fall within <i>category number</i> 185 (Mortgage indemnity).</p>	14
283	<p><b>Suretyship</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) which fall within <i>class</i> 15.</p>	15
284	<p><b>Commercial contingency:</b>  <i>Contracts of insurance</i> (other than treaty reinsurance) against risk of loss to the person insured attributable to an event not taking place as intended where the persons insured are a body corporate or partnership.</p>	16
	<b>PRIMARY (DIRECT) and FACULTATIVE AVIATION, MARINE AND TRANSPORT</b>	
330	<b>Total primary (direct) and facultative aviation business</b> ( <i>category number</i> 331 to 333 combined).	N/A
331	<p><b>Aviation liability (including liability part of airline packages)</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against:</p> <ul style="list-style-type: none"> <li>(a) damage arising out of, or in connection with, the use of aircraft; or</li> <li>(b) the risks of the persons insured incurring liabilities to third parties, or carrier's</li> </ul>	11

	<p>liabilities, arising out of, or in connection with, the use of aircraft.</p> <p>This category excludes contracts that fall within <i>category numbers</i> 332 (Aviation hull) or 333 (Space and satellite) and risks relating to use of hovercraft.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number</i> 114(p) which the insurer elects to allocate to this category.</p>	
332	<p><b>Aviation hull (including hull part of airline packages)</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) loss of or damage to aircraft, or the machinery, tackle, furniture or equipment of aircraft.</p> <p>This category excludes contracts that fall within <i>category number</i> 333 (Space and satellite) and risks relating to use of hovercraft.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number</i> 114(p) which the insurer elects to allocate to this category.</p>	5
333	<p><b>Space and satellite</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) upon satellites, aircraft or the machinery, tackle, furniture or equipment of satellites or aircraft.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against:</p> <p style="padding-left: 40px;">(a) damage arising out of or in connection with the use of satellites or aircraft; or</p> <p style="padding-left: 40px;">(b) the risks of the persons insured incurring liabilities to third parties arising out of or in connection with the use of satellites or aircraft;</p> <p>where any aircraft insured in the contract is intended to transport satellites or to travel to, or be transported to, beyond the earth's atmosphere.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number</i> 114(p) which the insurer elects to allocate to this category.</p>	5,11
340	<p><b>Total primary (direct) and facultative marine business</b> (<i>category numbers</i> 341 to 347 combined).</p>	N/A
341	<p><b>Marine liability</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against damage, or against the risks of the persons insured incurring liabilities to third parties or carrier's liabilities, arising out of or in connection with the use of vessels on the sea or on inland water (including hovercraft), and which do not fall within <i>category numbers</i> 342 (Marine hull) or 347 (Yacht).</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number</i> 114(p) which the insurer elects to allocate to this category.</p>	12
342	<p><b>Marine hull</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of or damage to vessels on the sea or on inland water (including hovercraft), or upon the machinery, tackle, furniture or equipment of such vessels, which do not fall within <i>category numbers</i> 346 (War risks) or 347 (Yacht)).</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number</i> 114(p) which the insurer elects to allocate to this category.</p>	6
343	<p><b>Energy (on and off-shore)</b></p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of or damage to property, or against the risks of the persons insured incurring liabilities to third parties, arising from the undertaking of energy operations on both land and sea.</p> <p><i>Contracts of insurance</i> other than treaty reinsurance that fall within the definition of <i>category</i></p>	6,8,9,12,13

	<i>number 114(p) which the insurer elects to allocate to this category.</i>	
344	<p><b>Protection and indemnity</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against the risks of the persons insured incurring liabilities to third parties for damage to property, injury, illness or death on board vessels on the sea or inland water or at locations associated with the operation of such vessels such as docks, arising from the negligence of the owner of or individuals responsible for the vessels.</p> <p><i>Contracts of insurance</i> other than treaty reinsurance that fall within the definition of <i>category number 114(p)</i> which the insurer elects to allocate to this category.</p>	13
345	<p><b>Freight demurrage and defence</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation) arising from loss of or damage to goods during a period of transit that included, or was due to include, transport of the goods via sea or inland water.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number 114(p)</i> which the insurer elects to allocate to this category.</p>	17
346	<p><b>War risks</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of or damage to property or mass transportation vehicles arising from war, civil war, revolution, rebellion, insurrection or hostile act by a belligerent power.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number 114(p)</i> which the insurer elects to allocate to this category.</p>	6
347	<p><b>Yacht</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) upon vessels on the sea or on inland water.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) against:  (a) damage arising out of or in connection with the use of vessels on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels; or  (b) the risks of the persons insured incurring liabilities to third parties, arising out of or in connection with the use of vessels on the sea or on inland water;  where the vessels insured in the contract are not used for transporting goods or fare-paying passengers.</p> <p><i>Contracts of insurance</i> (other than treaty reinsurance contracts) that fall within the definition of <i>category number 114(p)</i> which the insurer elects to allocate to this category.</p>	6,12
350	<p><b>Primary (direct) and facultative goods in transit</b>  <i>Contracts of insurance</i> (other than treaty reinsurance contracts) against loss of, or damage to, merchandise, baggage and all other goods in transit, irrespective of the form of transport.</p>	7
400	<p><b>Miscellaneous primary (direct) and facultative business</b>  <i>Contracts of insurance</i> (other than treaty reinsurance) that, in the reasonable opinion of the insurer's governing body, do not fall within <i>category numbers 110 to 350</i> or may mislead users of the return if allocated to one of <i>category numbers 110 to 350</i>.</p>	N/A
	<b>NON-PROPORTIONAL REINSURANCE TREATY BUSINESS</b>	
500	<b>Total Non-Proportional Reinsurance Treaty Business accepted</b> ( <i>category numbers 510 to 590 combined</i> ).	N/A

510	<b>Non-proportional accident &amp; health</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within classes 1 or 2, and do not fall within category numbers 590 or 710(p).</i>	1,2
520	<b>Non-proportional motor</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within classes 3 or 10, or category number 710(p), and do not fall within category number 590.</i>	3,10
530	<b>Non-proportional aviation</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within classes 5 or 11, or category number 710(p), and do not fall within category number 590.</i>	5,11
540	<b>Non-proportional marine</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within classes 6 or 12, or category number 710(p), and do not fall within category number 590.</i>	6,12
550	<b>Non-proportional transport</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within class 7, and do not fall within category number 590.</i>	7
560	<b>Non-proportional property</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within classes 8 or 9, and do not fall within category number 590.</i>	4,8,9
570	<b>Non-Proportional liability (non-motor)</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within class 13, and do not fall within category numbers 520, 530, 540 or 590.</i>	13
580	<b>Non-proportional financial lines</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within classes 14, 15, 16, 17 or 18, and do not fall within category number 590.</i>	14,15,16,17,18
590	<b>Non-proportional aggregate cover</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties, which fall within more than one of category numbers 510 to 580, where no one of these categories accounts for more than 90% of the exposure on the contract.</i>	1 to 18
	<b>PROPORTIONAL REINSURANCE TREATY BUSINESS</b>	
600	<b>Total Proportional Reinsurance Treaty Business accepted</b> ( <i>category numbers 610 to 690 combined</i> ).	N/A
610	<b>Proportional accident &amp; health</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within classes 1 or 2 and do not fall within category numbers 690 or 710(p).</i>	1,2
620	<b>Proportional motor</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within classes 3 or 10, or category number 710(p) and do not fall within category number 690.</i>	3,10

630	<b>Proportional aviation</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within classes 5 or 11, or category number 710(p) and do not fall within category number 690.</i>	5,11
640	<b>Proportional marine</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within classes 6 or 12, or category number 710(p) and do not fall within category number 690.</i>	6,12
650	<b>Proportional transport</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within class 7 and do not fall within category number 690.</i>	7
660	<b>Proportional property</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within classes 8 or 9 and do not fall within category number 690.</i>	4,8,9
670	<b>Proportional liability (excluding motor)</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within class 13 and do not fall within category numbers 620, 630, 640 or 690.</i>	13
680	<b>Proportional financial lines</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within classes 14, 15, 16, 17 or 18 and do not fall within category number 690.</i>	14,15,16,17,18
690	<b>Proportional aggregate cover (i.e. more than one of the above)</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties, which fall within more than one of category numbers 610 to 680, where no one of these categories accounts for more than 90% of the exposure on the contract.</i>	1 to 18
700	<b>Miscellaneous treaty reinsurance accepted business</b> <i>Contracts of insurance effected or carried out under reinsurance treaties that, in the reasonable opinion of the insurer's governing body, do not fall within category numbers 500 or 600 or may mislead users of the return if allocated to one of these categories.</i>	N/A
710(p)	<b>Treaty reinsurance passenger accident</b> <i>Contracts of insurance effected or carried out under reinsurance treaties against risks of death of, or injury to, passengers which the insurer elects to allocate to category numbers 520, 530, 540, 590, 620, 630, 640 or 690 notwithstanding that they would also fall within the definition of category numbers 510 or 610.</i>	

**Part II**

**Groups of categories of *general insurance business* to which categories in Part I are to be allocated for the purpose of reporting in the *return***

Category Number	FSA general insurance business reporting category	Map to classifications in Annex A of 73/239/EEC
409	<b>Balance of all primary (direct) and facultative business</b> <i>All direct and facultative insurance business reported in a Form 20 to 25 under category number 002 that is not also reported in the same Form under category numbers 110, 120, 160, 180, 220, 260, 270, 280, 330, 340, 350, and 400.</i>	N/A
709	<b>Balance of all treaty reinsurance accepted business</b> <i>All treaty reinsurance business reported in a Form 20 to 25 under category number 003 that is not also reported in the same Form under category numbers 500, 600 and 700.</i>	N/A

## Chapter 12

### TRANSITIONAL ARRANGEMENTS

Chapter 12 as it currently exists is replaced in its entirety with the following new text, which is not underlined.

#### **Reporting of information relating to financial years prior to the financial year ending on or after 31 December 2005**

- 12.1
- (1) An *insurer* that is required to report the information in (2) in respect of any *financial year* ending on or after 31 December 2005, may report that information as set out in (3).
  - (2) The information in (1) is information that is required to be inserted in-
    - (a) column 1 to 3 or 11 and rows relating to accident years prior to 1995 of **Forms 23, 26 or 27**;
    - (b) column 1, 3 or 10 and rows relating to accident years prior to 1995 of **Forms 31 and 32**; or
    - (c) column 1 or 8 and rows relating to underwriting years prior to 1995 of **Form 34**.
  - (3) Information relating to-
    - (a) aggregate treaty business falling within the definition of *category number* 590 or 690, may be reported in *category numbers* 510 to 580 or 610 to 680;
    - (b) commercial package business falling within the definition of *category number* 274 business, may be reported in *category numbers* 261, 271 or 273;
    - (c) business that was reported under a single risk group or business category in the *return* for the *financial year* immediately preceding the first *financial year* that ended on or after 31 December 2005, may be reported in a single *risk category* if and 90% or more of the claim liabilities reported under the risk group or business category fall into that single *risk category*;
    - (d) any business covering risks relating to hovercraft which was classified under the heading 'Aviation' in the *return* for the *financial year* immediately preceding the first *financial year* that ended that ends on or after 31 December 2005, may be reported in any of *category numbers* 331 to 333 (aviation);
    - (e) any business covering liability for loss of, or damage to,

goods in transit which was classified under the heading 'Transport' in the *return* for the *financial year* immediately preceding the first *financial year* that ended on or after 31 December 2005, may be reported in *category number* 350 (transport);

- (f) any business which was classified under the heading 'Accident and Health' in the *return* for the *financial year* immediately preceding the first *financial year* that ended on or after 31 December 2005, and which would otherwise be allocated to *category number* 114(p), may be reported in *category number* 114;
- (g) any business which was classified under the heading 'Marine, Aviation or Transport Treaty' in the *return* for the *financial year* immediately preceding the first *financial year* that ended on or after 31 December 2005, and which would otherwise be allocated to *category number* 550 or 650, may be reported in *category numbers* 530, 540, 630 or 640; and
- (h) any business which was classified under the heading 'accounting class 11' in the *return* for the *financial year* immediately preceding the first *financial year* that ended on or after 31 December 2005, may be reported in *category number* 510 to 590 (non-proportional treaty reinsurance).

#### **Reporting of historical information relating to Forms 26, 27, 28, 29, 31, 32 and 34**

- 12.2
- (1) An *insurer* that is required by rule 9.17 or 9.19 to prepare any of **Forms 26, 27, 28, 29, 31, 32** or **34** in respect of the first *financial year* ending on or after 31 December 2005 must send to the *FSA* the additional information in (2).
  - (2) The additional information in (1)-
    - (a) is historical development data in respect of business reported on each relevant Form;
    - (b) must be prepared as set out in (3) to (8);
    - (c) must be submitted in the format of the **2005 Return Transitional Tables A, B, C and D** in the form laid out in rule 12.4;
    - (d) must be submitted as a computer spreadsheet file that can be accessed by Microsoft Excel; and
    - (e) must be submitted to *FSA* by electronic mail or a CD-ROM disk, in either case at the same time as the *return* to which it relates.

- (3) An *insurer* must prepare-
- (a) **2005 Return Transitional Tables A and B** in respect of each *required category* for which it is required to prepare **Form 26, 27, 28, 29, 31, 32** or **34** except where the *required category* is *category number* 400 or 700; and
  - (b) **2005 Return Transitional Table C and D** in respect of each *required category* for which it is required to prepare **Form 31** or **32** except where the *required category* is *category number* 400.
- (4) An *insurer* must show years of origin must in the first two columns of each Table where-
- (a) a year of origin is a *financial year* and the columns contain the month and year, on the Gregorian calendar, in which that *financial year* ends;
  - (b) the month and year are to be in MM and YYYY date format, where MM is a two digit month of the year (between 01 and 12) and YYYY is a calendar year;
  - (c) years of origin are entered in sequence with the latest year of origin (i.e. the first *financial year* ended on or after 31 December 2005) in row 33;
  - (d) not report more than the 30 latest years of origin are reported;
  - (e) the years of origin reported on a Table are consistent with how the *insurer* has allocated claims to accident or underwriting years on the **Forms 27, 29, 31, 32** or **34**, as the case may be, on which the same business is reported.
- (5) If an *insurer* is reporting business on a Table that is reported on a **Form 27, 31** or **32**, the year of origin must be an accident year and the entries along the rows of the Table must relate to claims that occurred in that origin year. If an *insurer* is reporting business on a Table that is reported on a **Form 29** or **34**, the year of origin must be an underwriting year and the entries along the rows of the Table must relate to claims arising from business written in that origin year.
- (6) Historical development data must be prepared in the same currency as the Form that gave rise to the requirement to prepare the Table.
- (7) In preparing any of **2005 Return Transitional Tables A, B, C** and **D**, an *insurer* must, subject to (9), complete-
- (a) all entries relating to years of origin ending between 31/12/1996 and 30/12/2006 inclusive and all entries for the "prior years" row; and
  - (b) subject to the total number of years of origin reported on a Table being no more than 30, all entries relating to:
    - (i) years of origin ending between 23/12/1993 and 30/12/1996 inclusive for business in *category*

- numbers 610, 620, 650, 660 and 680,*
- (ii) years of origin ending between 31/12/1983 and 30/12/1996 inclusive for business in *category numbers 510 to 580, 630, 640 and 670,* and
  - (iii) years of origin ending prior to 31/12/1996 for business in *category numbers 271 to 273;*
- (8) an *insurer* that does not maintain records of historical development data by a *required category* for which it is required to prepare any of **2005 Return Transitional Tables A, B, C and D**, may make a reasonable estimate of an entry required under (7) in the Table for that *required category*;
  - (9) an *insurer* may omit an entry required under (7) in a Table for a *required category* if -
    - (a) in the opinion of its *governing body*, the *insurer* does not have the information needed to complete, or make a reasonable estimate of, the entry;
    - (b) it does not use any data required for that entry when setting its provisions for claim liabilities for business in the *required category*; and
    - (c) it states in a supplementary note to the Table an explanation for the entry omitted.
  - (10) If for any year of origin the duration of any development year is not 12 months, an *insurer* must identify each such development year and state its duration in a supplementary note to the Tables (code TA02).

**Reconciliation of information reported in the return for the first financial year ended on or after 31 December 2005 to equivalent information reported in the previous return**

- 12.3 An *insurer* must carry out and send to the FSA, at the same time as it submits its *return* in respect of the first *financial year* ending on or after 31 December 2005, the following reconciliations-
- (a) the sum of the amounts reported in column 1 plus column 3 on each **Form 27** in the *return* for the first *financial year* ended on or after 31 December 2005 to the sum of the amounts reported in the column 1 plus column 3 plus column 4 on each **Form 27** in the previous *return*;
  - (b) the amounts reported in the column headed ‘Gross claims paid / In previous financial years’ on each of **Forms 31, 32 and 34** in the *return* for the first *financial year* ended on or after 31 December 2005 to the sum of the amounts reported in the column headed ‘Gross claims paid / In previous financial years’ plus the amounts reported in the column headed ‘Gross claims paid / In this financial year’ on each **Forms 31, 32 and 34** in the previous *return*;
  - (c) the amounts reported in the column headed ‘Gross claims outstanding brought forward / Reported’ on each of **Forms**

**27, 31, 32** and **34** in the *return* for the first *financial year* ended on or after 31 December 2005 to the amounts reported in the column headed 'Gross claims outstanding carried forward / Reported' on each of **Forms 27, 31, 32** and **34** in the previous *return*;

- (d) the amounts reported in the line titled 'Technical provisions / Brought forward / Undiscounted' (line 51) on **Form 28** in the *return* for the first *financial year* ended on or after 31 December 2005 to the amounts reported in the line titled 'Technical provisions / Carried forward / Undiscounted' (line 53) on **Form 28** in the previous *return*;
- (e) the amounts in the column headed 'Total number of claims settled at non-zero cost at end of the 2004 financial year' on each **Table D** to the amounts reported in the column headed 'Number of claims / Closed at some cost during this or previous financial years' (column 1) on each **Form 31** and **32** in the previous *return*.

#### **2005 Return Transitional Tables A, B, C and D**

12.4 These Tables belong to rule 12.2.

#### **Financial year ending on or after 31 December 2005**

12.5 The amendments to *IPRU(INS)* made by the Interim Prudential Sourcebook for Insurers (Regulatory Reporting) Instrument 2005 first apply to a *firm* with respect to its *financial year* ending on or after 31 December 2005.



Table A instruction 1

In columns 1 and 2 year of origin is the *financial year* ending in the month and year shown.

Table A instruction 2

In columns 1 and 2 the years of origin may be accident years or underwriting years.

In row 1 columns 1 and 2 replace "[year of origin]" with "accident" if the business reported on the Table is reported on **Forms 26, 27, 31 or 32** or "underwriting" if the business reported on the Table is reported on **Forms 28, 29 or 34**

If the years of origin in columns 1 and 2 are accident years, the gross paid claims in each of the years of development 0 to 29 and after the last reported year of development must be in respect of all claims in the *required category* that occurred in the year of origin.

If the years of origin in columns 1 and 2 are underwriting years, the gross paid claims in each of the years of development 0 to 29 and after the last reported year of development must be in respect of all policies in the *required category* written in the year of origin.

Table A instruction 3

In row 2 column 33 the gross claims paid after the last reported year of development are gross claims paid in the 2005 *financial year* in respect of all the years of origin prior to the earliest year of origin for which historic data must be reported in the Table under rule 12.2(7)

Table A instruction 4

In column 34 the total gross claims paid to end of the 2005 *financial year* for a year of origin is the sum of all incremental payments for that year of origin and should equal:

<b>Form 27</b> columns 1+3+4 for the row that matches that year of origin	for treaty, accident year;
<b>Form 31 or 32</b> columns 3+4 for the row that matches that year of origin	for direct & facultative, accident year; or
<b>Form 34</b> columns 1+2 for the row that matches that year of origin	for direct & facultative, underwriting year.

Table A instruction 5

In column 35 the total gross claims paid in the 2005 *financial year* for a year of origin is equal to the final entry on each diagonal for that year of origin and should equal:

<b>Form 27</b> column 4 for the row that matches that year of origin	for treaty, accident year;
<b>Form 28</b> line 21 for the row that matches that year of origin	for treaty, underwriting year;
<b>Forms 31 or 32</b> column 4 for the row that matches that year of origin	for direct & facultative, accident year; or
<b>Form 34</b> column 2 for the row that matches that year of origin	for direct & facultative, underwriting year.

Table A instruction 6

The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *risk category* relates.

The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**

The box marked "reporting territory" must be completed by inserting the relevant 2 character code from the list in the Table in **Appendix 9.2 Paragraph 32**.

Table A instruction 7

The number of *financial years* required may differ from the number of rows against the relevant description where for instance the *insurer* has had *financial years* that are not 12 months.



Table B instruction 1

The year of origin is the *financial year* ending in the month and year shown.

Table B instruction 2

In columns 1 and 2 the years of origin may be accident years or underwriting years.

In row 1 columns 1 and 2 replace "[year of origin]" with "accident" if the business reported on the Table is reported on **Forms 26, 27, 31 or 32** or "underwriting" if the business reported on the Table is reported on **Forms 28, 29 or 34**

If the years of origin in columns 1 and 2 are accident years, the gross paid claims at the end of each of the years of development 0 to 29 and after the last reported year of development must be in respect of all claims in the *required category* that occurred in the year of origin.

If the years of origin in columns 1 and 2 are underwriting years, the gross paid claims at the end of each of the years of development 0 to 29 and after the last reported year of development must be in respect of all policies in the *required category* written in the year of origin.

Table B instruction 3

In row 3 column 34, the gross reported outstanding claims for prior years of origin are the *insurer's* estimate of total gross reported outstanding claims at the end of the 2005 *financial year* in respect of all the years of origin prior to the earliest year of origin for which historic data must be reported in the Table under rule 12.2(7)

Table B instruction 4

In column 33 gross reported outstanding claims at end of the 2005 *financial year* for a year of origin should equal total gross reported claims at end of the 2005 *financial year* from column 33 of **Table B** less the total gross claims paid to the end of the 2005 *financial year* from column 34 of **Table A** and should also equal:

<b>Form 27</b> column 5 for the row that matches that year of origin	for Treaty, accident year;
<b>Form 29</b> line 11 for the row that matches that year of origin	for Treaty, underwriting year;
<b>Form 31</b> or <b>Form 32</b> column 5 for the row that matches that year of origin	for direct & facultative, accident year; or
<b>Form 34</b> column 3 for the row that matches that year of origin	for direct & facultative, underwriting year.

Table B instruction 5

The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *risk category* relates.

The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**

The box marked "reporting territory" must be completed by inserting the relevant 2 character code from the list in the Table in **Appendix 9.2 Paragraph 32**.

Table B instruction 6

The number of *financial years* required may differ from the number of rows against the relevant description instance where the *insurer* has had *financial years* that are not 12 months.



### **Instructions to Table C**

In these instructions "the 2005 *financial year*" means the first *financial year* ending on or after 31 December 2005.

#### Table C instruction 1

The year of origin is the *financial year* ending in the month and year shown.

#### Table C instruction 2

In columns 1 and 2 the years of origin are accident years.

In row 1 columns 1 and 2 replace "[year of origin]" with "accident".

For each year of origin, the number of claims reported in each of the years of development 0 to 29 and after the last reported year of development must be in respect of all claims in the *required category* that occurred in the year of origin.

#### Table C instruction 3

In row 3 column 33, the number of claims reported after the last year of development are all claims reported in the 2005 *financial year* in respect of all the years of origin prior to the earliest year of origin for which historic data must be reported in the Table under rule 12.2(7)

#### Table C instruction 4

The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *risk category* relates.

The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**

The box marked "reporting territory" must be completed by inserting the relevant 2 character code from the list in the Table in **Appendix 9.2 Paragraph 32**.

#### Table C instruction 5

The number of *financial years* required may differ from the number of rows against the relevant description for instance where the *insurer* has had *financial years* that are not 12 months.

Risk Category:	Category number:	Currency:	Reporting Territory:
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Number of claims settled at non-zero cost excluding any claims re-opened and not yet re-closed at the end of each development year in respect of each year of origin

On this Table the "the 2005 financial year" means the first financial year ending on or after 31 December 2005 and the "2004 financial year" means the financial year immediately preceding the 2005 financial year.

1		2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
[year of origin] ended		Year of development																													Total number of claims settled at non-zero cost at end of the 2005 financial year (= final entry of each diagonal)	Total number of reported outstanding claims as at end of the 2005 financial year	Total number of claims settled at non-zero cost at end of the 2004 financial year (= second last entry of each diagonal)		
2	Month	Year	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27				28	29
3	prior years																															see instruction 3			
4			<p>Data for years of origin prior to 31/12/1996 is only required for <i>category numbers</i> 271 to 273 (see rule 12.2(7) and instruction 6)</p>																													<p>Data for years of origin prior to 31/12/1996 only required for <i>category numbers</i> 271 to 273 (see rule 12.2(7) and instruction 6)</p>			
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**Instructions to Table D**  
 In these instructions "the 2005 financial year" means the first financial year ending on or after 31 December 2005.

The year of origin is the *financial year* ending in the month and year shown.

Table D instruction 2

The year of origin is an accident year.

In row 1 columns 1 and 2 replace "[year of origin]" with "accident".

For each year of origin, the number of claims settled at non-zero cost at the end of each of the development years 0 to 29 must be in respect of all claims in the *required category* that occurred in that year of origin.

Table D instruction 3

In row 3 column 34, the number of reported outstanding claims for prior years of origin is the number of reported outstanding claims at the end of the 2005 *financial year* in respect of all the years of origin prior to the earliest year of origin for which historic data must be reported in the Table under rule 12.2(7).

Table D instruction 4

Total number of claims settled at non-zero cost at end of the 2005 *financial year* for each year of origin should equal **Form 31** or **Form 32** column 1.

Table D instruction 5

The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *risk category* relates.

The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**

The box marked "reporting territory" must be completed by inserting the relevant 2 character code from the list in the Table in **Appendix 9.2 Paragraph 32**.

Table D instruction 6

The number of *financial years* required may differ from the number of rows against the relevant description for instance where the *insurer* has had *financial years* that are not 12 months.

Table D instruction 7

Claims settled at non-zero cost in column 35 are the figures for which the reconciliation is required in rule 12.3(e).

## Guidance

- 12.6 (1) Rule 12.2 requires *insurers* to prepare historical development data in triangular format for each 'required category of business' for which a **Form 26 to 29, 31, 32 or 34** is required in the *return* for the first *financial year* ended on or after 31 December 2005. The purpose of the rule is to enable users of the *return* to carry out independent analysis of the development of paid and incurred claims and claim numbers in the new categories. When preparing data required by this rule an *insurer* should consider the need of the user and provide the data as accurately as reasonably possible.
- (2) Under the reporting requirements of risk groups and *business categories* (i.e. the requirements that applied from 1996 to 2004), it has been common practice for users of the *return* to accumulate data from many returns to create the past claims development, usually in triangular form, for each risk group and business category. With the introduction of a new categorisation of *general insurance business*, users of the *return* will not have the past claims development for the new categories without this transitional rule.
- (3) Under rule 12.2(6), an *insurer* that is required to prepare any of Tables A to D for a *required category* may make a reasonable estimate of entries in the Table in the case where the *insurer* maintains its internal records in such a way that there is not a one-one or many-one mapping of its internal classification to the *required category*. For example, if an *insurer* is required to prepare Tables A and B for a *category number* XXX carried on in GBP and the insurer's classification of business that it uses for its internal analysis and management reporting is such that business in XXX in GBP is recorded in two of its internal classes both of which also contain business other than XXX in GBP, the insurer may make a reasonable estimate of the data needed in Table A and B for XXX in GBP from the business it has recorded in those two internal classes.
- (4) When an *insurer* does not have all the data required for Tables A to D, it should provide the data that it has available. For example an *insurer* may not hold data for all the years of origin prior to 1996 specified in the Tables, or an *insurer* may not hold data relating to some of the earlier diagonals specified in the Tables. In particular, if an *insurer's* internal classification of its claim development data is such that it would be highly burdensome to extract the data specified in Tables A to D in respect of business that falls into *category numbers* 590 or 690, it need not prepare the Tables for these *category numbers*. An *insurer* need not prepare Tables A to D for *category numbers* 400 and 700 (the *miscellaneous categories*)
- (5) Under rule 12.2(7), an *insurer* that is required to prepare any of Tables A to D for a *required category* may omit an entry for a Table if it does not have the data needed to complete the entry and does not use that data for setting provisions for claim liabilities for business in that *required category*. An *insurer* should not omit data required to be reported on the Tables if it uses that data for its internal claim reserving. For example if an *insurer* is required to prepare Table A for *category number* 570 carried on in GBP and it does not

have records of gross claims paid in development years 0 to 5 in respect of year of origin 1986 and it does not use incremental gross claims paid data to set claims provisions in respect of that business and year of origin 1986, it may omit the incremental gross claims paid in development years 0 to 5 in respect of year of origin 1986 in Table A for that *required category*.

- (6) If, for example, an *insurer* has had a 30 September *financial year* end and in, say, 2002 it decided to change to a 31 March *financial year* end, the years of origin it is required to report on a Table under 12.2(4)(a) to (c) could be any of the following unless 12.2(4)(e) requires otherwise:

Actual <i>financial year</i> end	Year of origin shown on Table	Actual <i>financial year</i> end	Year of origin shown on Table	Actual <i>financial year</i> end	Year of origin shown on Table
	A		B		C
...	...	...	...	...	...
30/09/2000	09-2000	30/09/2000	09-2000		
30/09/2001	09-2001	30/09/2001	09-2001	30/09/2000	09-2000
31/03/2002	03-2002	30/09/2002	09-2002	30/09/2001	09-2001
31/03/2003	03-2003	31/03/2003	03-2003	31/03/2003	03-2003
31/03/2004	03-2004	31/03/2004	03-2004	31/03/2004	03-2004
31/03/2005	03-2005	31/03/2005	03-2005	30/03/2005	03-2005
31/03/2006	03-2006	31/03/2006	03-2006	31/03/2006	03-2006

Under 12.2(4)(e) if, for example the business reported on the Table is reported on a **Form 31** and claims reported on that **Form 31** relating to accident years 2002 and 2003 are claims that occurred in the periods 1 October 2001 to 31 March 2002 and 1 April 2002 to 31 March 2003 respectively, the *insurer* would be required to report the years of origin under option A.

If option C applies, a calendar year (in this case 2002) would be missing from the sequence of years of origin. If the example instead had the *financial year* end changing from 31 March to 30 September in 2002, then a calendar year (in this case 2002) could appear twice in the sequence of years of origin. Thus under 12.2(4)(a) to (c) a calendar year may appear more than once or not at all in the sequence of years of origin in column 1 of a Table.

- (7) If an *insurer* is unable to submit the information required in 12.2(2) to *FSA* in a computer spreadsheet file that can be accessed by Microsoft Excel, it should request guidance from *FSA* as to the format in which to submit the information. The computer spreadsheet file that an *insurer* is required to send to the *FSA*, under 12.2(2)(d), should be the computer spreadsheet file that *FSA* makes available on its website or sends to *insurers* by electronic mail, with the relevant entries completed. An *insurer* should complete a template for each 2005 Return Transitional Tables A, B, C and D it is required to prepare. An *insurer* should submit a single computer spreadsheet file with each tab (or page) of the spreadsheet containing a single 2005 Return Transitional Table.

An *insurer* should request guidance from *FSA* as to how to send the computer spreadsheet file if it is unable to send it by electronic mail or on a CD-ROM disk.

- 12.7 (1) GEN (the part of the FSA Handbook in High Level Standards which has the title General Provisions) contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition at commencement of the *Act*. These include transitional provisions relevant to record keeping and notification rules.
- (2) *SUP* contains transitional provisions which carry forward written concessions relating to pre-commencement provisions.

# INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS

## CONTENTS

### VOLUME TWO

#### Appendices to the Rules

...

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Appendix 9.3      Long-term insurance business: revenue account and additional information (Forms 40 to ~~45~~ 60) (rules 9.14 and 9.23)

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...

**APPENDIX 9.1** (rules 9.12 and 9.13)

#### **BALANCE SHEET AND PROFIT AND LOSS ACCOUNT (FORMS 1 TO 3 AND 10 TO 19)**

...

#### **Instructions for completion of Form 14**

1. The Form must be completed for the total *long-term insurance business liabilities* and margins of the *insurer* or branch and for each fund or group of funds for which separate assets are appropriated and each *with-profits fund*. The words “total *long term insurance business assets*” or the name of the fund must be shown against the heading “Category of assets”. The corresponding code box must be completed with the same entries as were used on the corresponding Form ~~13~~ 40.

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**APPENDIX 9.2** (rules 9.14 to 9.22)

**GENERAL INSURANCE BUSINESS: REVENUE ACCOUNT AND ADDITIONAL INFORMATION (FORMS 20A and 20 TO 39)**

**Introduction**

1. All the Forms included in the part of the *return* to which this Appendix relates (Forms 20A and 20 to 39) are to be laid out as shown in this Appendix, except that the instructions to Forms need not be reproduced.

...

New paragraphs 2A, 2B and 2C are inserted after paragraph 2, the text of these new paragraphs is not underlined.

**Cases where forms are required**

- 2A Table: Forms required for the *FSA general insurance business reporting categories*:

FSA general insurance business reporting category	Form			
	F20, F21, F22, F23, F24, F25	F26, F27 F28 F29	F31 F34	F32 F34
<i>Combined categories</i>	√			
<i>Category numbers 160 and 350</i>	√		√	
<i>Risk categories with category numbers 121, 122, 123, 221, 222, 223 (i.e. direct and facultative motor)</i>				√
<i>Risk categories with category numbers below 400 other than category numbers 121, 122, 123, 221, 222, 223, 160 and 350 (i.e. all direct and facultative that is not motor, household or goods in transit and has not been allocated to a miscellaneous category)</i>			√	
<i>Risk categories with category numbers 510 to 590 and 610 to 690 (i.e. treaty reinsurance)</i>		√		
<i>Miscellaneous primary (direct) and facultative business (category number 400)</i>	√		√	
<i>Miscellaneous treaty reinsurance accepted business (category number 700)</i>	√			
<i>Balancing categories (category numbers 409, 709)</i>	√			

2B

Table: Criteria (if any) for whether a Form is required for a category of *general insurance business*. Paragraph 2C belongs to this Table.

Form	Category of business.	Reporting criteria (if any)
F20 to F25 Technical provisions and profit & loss account	Category number 001	Forms always required
	Category numbers 002,003	Either -  (a) the <i>insurer's</i> 'gross undiscounted provisions' in the category of business at the end of the <i>financial year</i> exceed zero; or  (b) the <i>insurer's gross written premiums</i> in the category of business in the <i>financial year</i> exceed zero.
	Category numbers 110, 120, 160, 180, 220, 260, 270, 280, 330, 340, 350, 400, 500, 600, 700	Either - (a) the <i>insurer's</i> 'gross undiscounted provisions' in the category of business at the end of the <i>financial year</i> exceed:  (i) £100m; or (ii) the higher of 5% of the <i>insurer's total technical provisions</i> and £1 million  or  (b) the <i>insurer's gross written premiums</i> in the category of business in the <i>financial year</i> exceed:  (i) £100m; or (ii) the higher of 5% of the <i>insurer's total gross written premiums</i> and £1 million.
	Category number 409	Some business in <i>category number</i> 002 is not reported on <b>Forms 20 to 25</b> for <i>category numbers</i> 110 to 400.
	Category number 709	Some business in <i>category number</i> 003 is not reported on <b>Forms 20 to 25</b> for <i>category numbers</i> 500, 600 and 700.

<p><b>F26 to F29</b> Results by year of origin for treaties accepted</p>	<p>Category numbers 510 to 590 and 610 to 690 denominated in any one currency.</p> <p>Category number 700</p>	<p>Either -</p> <p>(a) the <i>insurer's</i> 'gross undiscounted provisions' in the category of business at the end of the <i>financial year</i> exceed:</p> <p style="padding-left: 40px;">(i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total <i>technical provisions</i> and £1 million</p> <p>or</p> <p>(b) the <i>insurer's</i> gross written premiums in the category of business in the <i>financial year</i> exceed:</p> <p style="padding-left: 40px;">(i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total gross written premiums and £1 million.</p>
<p><b>F31, F32, F34</b> Gross results by year of origin for direct and facultative business</p>	<p>Category numbers 330 to 350 denominated in any one currency.</p> <p>Category numbers 110 to 284 denominated in any one currency carried on in any 'reporting territory'</p> <p>Category number 400</p>	<p>Either -</p> <p>(a) the <i>insurer's</i> 'gross undiscounted provisions' in the category of business at the end of the <i>financial year</i> exceed:</p> <p style="padding-left: 40px;">(i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total <i>technical provisions</i> and £1 million</p> <p>or</p> <p>(b) the <i>insurer's</i> gross written premiums in the category of business in the <i>financial year</i> exceed:</p> <p style="padding-left: 40px;">(i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total gross written premiums and £1 million.</p>

2C

For the purpose of column 2 of the Table in Paragraphs 2B and 3(1) –

- (a) a currency in which a *contract of insurance* is denominated is –
- (i) the currency in which the contract requires settlement of claims or the successor to that currency if it has been superseded, or
  - (ii) the currency in which the *insurer* records claim payments under the contract, if the contract permits settlement of claims in more

than one currency or if it is the *insurer's* internal practice to convert claim payments to that currency;

- (b) business denominated in converted sterling is to be treated as though it were denominated in a different currency from other business denominated in sterling; and
- (c) a **reporting territory** is one of -
  - (i) 'United Kingdom' if the business is carried on in the United Kingdom and is not *home foreign business*,
  - (ii) 'Home Foreign' if the business is *home foreign business*, or
  - (iii) 'Non-United Kingdom' if the business is carried on outside the United Kingdom.

### Currency

- 3. (1) Notwithstanding the provisions of 2, amounts on **Forms 26 to 29** submitted in accordance with rules 9.17, 9.20 or 9.20A and on **Forms 31, 32 and 34** submitted in accordance with rules 9.19, 9.20 or 9.20A ~~in respect of business carried on in any country other than the United Kingdom~~ must be shown in the 'currency of the country concerned' in which the business on the Form is denominated except that figures must be shown in sterling in those columns and lines which the forms indicate are always to contain figures expressed in sterling.
- (2) For every currency other than sterling in which amounts are shown on the Forms referred to in (1), an entry must be made on **Form 36** to show the rate used to convert these amounts to sterling for inclusion elsewhere in the *returns*.
- (3) Notwithstanding the provisions of 2, all amounts included in -
  - (a) ~~columns 1, 2, 3 and 11 of **Forms 20A, 20 to 25 23, 26 and 27**; and~~
  - (b) ~~columns 3 and 10 of any **Form 26 to 29, 31, or 32 or 34** prepared in sterling, respect of United Kingdom or *home foreign business*; and~~
  - (c) ~~columns 1 and 8 of any **Form 34** prepared in respect of United Kingdom or *home foreign business*;~~

must be expressed in sterling as if conversion of every ‘major currency’<sup>2</sup> had taken place at the closing middle rate on the last day for which the appropriate rate is available in the *financial year in question*.

Paragraph 3(4) is deleted in its entirety.

(4) [deleted]

(5) ...

(6) For the purpose of (1), the ~~currency of the country concerned~~, in the case of a country participating in the European Economic and Monetary Union means ~~for Forms completed in respect of a financial year ending on or after 31 December 1999, the euro (whether or not the amounts reported on those forms relate to accident or underwriting years ending on or after 31 December 1999)~~

...

Paragraphs 5 and 6 are deleted in their entirety.

5. [deleted]

**Accounting Classes FSA return general insurance business reporting categories**

6. [deleted]

In Appendix 9.2 the existing text in paragraph 7 is deleted and replaced with new text as follows:

7. (1) The following information must be stated by way of supplementary notes (codes 20Aa to 20Af) to Form 20A –

(a) (code 20Aa) in respect of each risk category to which an insurer has allocated general insurance business under rule 9.14B –

(i) the name of the risk category,

(ii) a description of the general insurance business allocated to the relevant risk category,

(iii) the rationale for the allocation decision made,

(iv) the amounts included in Form 20A under the risk category in respect of general insurance business allocated to the risk category under rule 9.14B, and

- (v) in the case of an allocation made under rule 9.14B(4), a description of the method used to make that allocation;
  - (b) (code 20Ab) the risk categories to which any contracts of insurance against risks of death of, or injury to, passengers has been allocated;
  - (c) (code 20Ac) a detailed explanation of business allocated to each of category numbers 187, 223, 400 and 700 ('Other personal financial loss', 'motor other', 'miscellaneous direct' and 'miscellaneous reinsurance' categories);
  - (d) (code 20Ad) in respect of each risk category for which the amounts reported in Form 20A contain both claims-made policies and policies which are not claims-made:
    - (i) the name of the risk category,
    - (ii) the amounts reported in Form 20A under the risk category that have arisen from claims-made policies, and
    - (iii) the amounts reported in Form 20A under the risk category that have arisen from policies which are not claims-made;
  - (e) (code 20Ae) the amounts reported in Form 20A under category number 002 ("Total primary (direct) and facultative business") that is facultative business;
  - (f) (code 20Af) the amounts reported in Form 20A under each of category numbers 113 (Travel), 274 (Mixed commercial package) and 343 (Energy) that has arisen from business falling within -
    - (i) each group of classes in Annex 11.2 Part II, and
    - (ii) classes 16, 17 and 18 combined (miscellaneous financial loss, legal expenses and assistance).
- (2) The insurer may make reasonable estimates of the amounts required under (1)(d) to (f) and 17(1)(d) of this Appendix.

Paragraph 8 is deleted in its entirety.

8. [deleted]

...

### UK and overseas business

16. (1) For each ~~accounting class~~ risk category there must be stated ~~separately for business accounted for on an accident year basis and on an underwriting year basis the following~~ by way of supplementary note (code 20Ag02) to **Form 20 20A** -
- (a) if any of the total gross written premiums and the amounts reported in Form 20A under the risk category is attributable to home foreign business or overseas business, the amount of the gross written premiums in the risk category attributable to UK and to overseas business, home foreign business, and other UK business; and
  - (b) if any of the business reported in Form 20A under the risk category is attributable to overseas business, the countries in which the business in the risk category is carried on; and the reinsurers' amount in respect of each of the amounts required to be stated under (a).
  - (c) the name of the risk category.
- (2) For the purpose of this Appendix, and (1)(a) in particular, gross written premiums must be shown or included as UK premiums if, in the case of *direct and facultative insurance business* the *contract of insurance* was effected in the United Kingdom or if, in the case of a *reinsurance* treaty, the cedant was an *insurer* having its head office in the United Kingdom or was a member of the *Society*; and overseas premiums must be construed accordingly.
- (3) In a Form 31, 32 or 34, an insurer must enter in the space alongside 'reporting territory' –
- (a) 'World wide' if the business on the Form is a subset of category numbers 330 or 340 or category number 350; or
  - (b) one of the following if the business on the Form is otherwise
    - (i) 'United Kingdom other than home foreign' for business carried on in the United Kingdom that is not home foreign business,
    - (ii) 'Home Foreign' for home foreign business, or
    - (iii) 'Overseas' for business carried on outside the United Kingdom.

...

### Transfers of general insurance business

17. (1) If during the *financial year*, policies already effected by another *insurer* have been transferred to the *insurer*, an *insurer* must state, in respect of each *risk category accounting class*, the following by way of supplementary note to **Form 23** (code 2302) and **24 20A** (code 20Ah403)-

...

- (c) any amounts included in ~~premiums and claims~~ columns 1, 2, 3 and 4 on **Form 20A** in respect of consideration for the transfer;
- (d) ~~[deleted] the amounts required to be stated under (c) analysed by risk group and business category;~~
- (e) ...
- (f) whether or not any of the *policies* has a duration longer than 12 months and, if so, the date by which all those policies will have expired.

...

- (3) (a) For each *risk category* that contains *general insurance business* for which an *insurer* is required, by rules 9.17 and 9.19, to prepare a **Form 26 to 29, 31, 32 or 34** in the *return* for the *financial year in question*, the *insurer* must, subject to (b), state the amount included in columns 2 plus 3 and the amount included in column 4 on **Form 20A** that arise from *policies* already effected by another *insurer* that have been transferred to the *insurer*, by way of supplementary note to **Form 20A** (code 20Ai).
- (b) For each *risk category* (a) only applies if the amount included in columns 2 plus 3 plus 4 on **Form 20A** that arises from transferred *policies* exceeds £10m or the higher of £1m and 10% of the amount shown in columns 2 plus 3 plus 4 on **Form 20A** for that *risk category*.

...

### Provision for unexpired risks

19. (1) The amount included for the provision for unexpired risks in **Form 22** or **25** prepared in respect of an ~~*accounting class FSA general insurance business reporting category*~~ must be determined without taking into account any surplus expected to arise on the unexpired risks falling within other ~~*accounting classes FSA general insurance business reporting categories*~~.
- (2) Where in determining the amount of the overall provision for unexpired risks (line 13 in **Form 15** less line 62 in **Form 13**) credit has been taken for any

aggregate surplus expected to arise on the unexpired risks falling in any ~~accounting class~~ FSA general insurance business reporting category, the amount of that credit must be included as a negative amount at line 19 of **Form 22** or line 23 of **Form 25**, as appropriate, for that ~~accounting class~~ category.

...

#### **Cessation of business**

21. (1) If the *insurer* has effected no ‘new contracts of insurance’ in any one or more *classes* of *general insurance business* during the *financial year*, the date on which the last ‘new contract’ of each such *class* was effected must be stated by way of a supplementary note (code 20A~~j03~~) to **Form 20A**.

...

#### **Claims management costs**

22. (1) ...
- (2) If, in respect of any ~~accounting class~~ FSA general insurance business reporting category -
- ...
- (3) If, within an ~~accounting class~~ FSA general insurance business reporting category, an *insurer* has ceased to effect ‘new contracts of insurance’ during the *financial year in question*, the basis upon which any additional costs arising as a result of such cessation have been determined or the reason for anticipating that no such additional costs will be incurred must be included in the note required by (1).

...

...

#### **Underwriting year accounting**

24. (1) With reference to the *financial year in question* and in respect of each ~~accounting class~~ FSA general insurance business reporting category, the following information must be stated by way of supplementary note (code 2402) to **Form 24** -

...

- (b) the basis for distinguishing between such business and any other business falling within the same ~~accounting class~~ FSA general

insurance business reporting category accounted for on an accident year basis;

...

(2) ...

(a) ...

(b) the basis for distinguishing between such business and other business accounted for on an underwriting year basis falling within the same ~~accounting class~~ FSA general insurance business reporting category;

(c) the normal period for which an underwriting year is left 'open' or, if that period differs for different types of business within ~~an accounting class~~ an FSA general insurance business reporting category -

...

...

...

#### **Business managed together**

25. ...

(2) ...

(a) a description of the business in respect of which the anticipated surplus arises and of the business in respect of which the deficit to be offset arises (including in the case of **Form 25** the ~~risk groups or business risk categories~~ risk categories into which such business falls); and

...

#### **Application of accounting practice**

26. (1) Amounts in respect of inwards and outward *contracts of insurance* must be classified for inclusion in **Forms 20A, 20 to 39** according to their economic substance and in accordance with generally accepted accounting practice.

(2) Where amounts in respect of an inward or outward *contract of insurance* have been excluded from the revenue account, the following must be shown by way of a supplementary note (code 20Ak04) to **Form 20A** -

...

...

**Discounting**

27. ...

(5) The following must be stated by way of supplementary note (code 3003) to **Form 30** -

(a) the ~~risk groups and~~ *business risk categories* where adjustments for discounting have been made; and

(b) in respect of each such ~~risk group or~~ *business risk category* -

...

...

Paragraph 29 is deleted in its entirety.

29. [deleted]

**Continuation sheets**

30. Continuation sheets to **Forms 31** and **34** need only be prepared in respect of ~~accounting class 7~~ *FSA general insurance business reporting categories 271 to 274*.

31. The currency country codes required for **Forms 26 to 29, 31, 32** and **34** and country codes must be in accordance with the following Table:

<b>COUNTRY</b>	<b>CODE</b>	<b><u>CURRENCY</u></b>	<b><u>CODE</u></b>
Afghanistan	QS	<u>Afghani</u>	<u>AFA</u>
Albania	CE	<u>Albanian Lek</u>	<u>ALL</u>
Algeria	KA	<u>Algerian dinar</u>	<u>DZD</u>
Andorra	CG	<u>Euro</u>	<u>EUR</u>
Angola	MT	<u>Kwanza</u>	<u>AOA</u>
Anguilla	GY	<u>East Caribbean Dollar</u>	<u>XCD</u>
Antigua And Barbuda	GP	<u>East Caribbean Dollar</u>	<u>XCD</u>
Argentina	JA	<u>Argentine Peso</u>	<u>ARP</u>
Armenia	RB	<u>Armenian dram</u>	<u>AMD</u>
Aruba	GM	<u>Aruban guilder</u>	<u>AWG</u>
Australia	EA	<u>Australian dollar</u>	<u>AUD</u>
Austria	BL	<u>Euro</u>	<u>EUR</u>

Azerbaijan	RC	<u>Azerbaijani menat</u>	<u>AZM</u>
Bahamas	GD	<u>Bahamian dollar</u>	<u>BSD</u>
Bahrain	PN	<u>Bahraini dinar</u>	<u>BHD</u>
Bangladesh	QA	<u>taka</u>	<u>BDT</u>
Barbados	GA	<u>Barbadian dollar</u>	<u>BBD</u>
Belarus	RD	<u>Belarusian ruble</u>	<u>BYR</u>
Belgium	BD	<u>Euro</u>	<u>EUR</u>
Belize	HH	<u>Belizean dollar</u>	<u>BBD</u>
Benin	LK	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Bermuda	GE	<u>Bermudan dollar</u>	<u>BMD</u>
Bhutan	QX	<u>ngultrum/Indian rupee</u>	<u>BTN/INR</u>
Bolivia	JL	<u>boliviano</u>	<u>BOB</u>
Bosnia and Herzegovina	CH	<u>marka</u>	<u>BAM</u>
Botswana	MG	<u>pula</u>	<u>BWP</u>
Brazil	JC	<u>real</u>	<u>BRL</u>
Brunei	QY	<u>Bruneian Dollar</u>	<u>BND</u>
Bulgaria	CD	<u>lev</u>	<u>BGN</u>
Burkina Faso	LL	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Burundi	MW	<u>Burundi franc</u>	<u>BIF</u>
Cambodia	QU	<u>reil</u>	<u>KHR</u>
Cameroon	MV	<u>CFA Franc (BEAC)</u>	<u>XAF</u>
Canada	FA	<u>Canadian dollar</u>	<u>CAD</u>
Cape Verde	LM	<u>Cape Verdean escudo</u>	<u>CVE</u>
Central African Republic	MY	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Chad	NA	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Channel Islands	BA	<u>British pound</u>	<u>CGB</u>
Chile	JB	<u>Chilean peso</u>	<u>CLP</u>
China (Taiwan)	QQ	<u>new Taiwan dollar</u>	<u>TWD</u>
China, Peoples Rep. Of	QJ	<u>yuan</u>	<u>CNY</u>
<u>Christmas Island</u>	ET	<u>Australian dollar</u>	<u>AUD</u>
<u>Cocos Island</u>	EU	<u>Australian dollar</u>	<u>AUD</u>
Colombia	JD	<u>Colombian peso</u>	<u>COP</u>
Comoros	MX	<u>Comoran franc</u>	<u>EMF</u>
Congo, Democratic Republic of	MM	<u>Congolese franc</u>	<u>CDF</u>
Congo (Republic of)	MU	<u>CFA franc</u>	<u>XOF</u>
<u>Cook Islands</u>	EV	<u>New Zealand dollar</u>	<u>NZD</u>
Costa Rica	HF	<u>Costa Rican colon</u>	<u>CRC</u>
Croatia	CJ	<u>kuna</u>	<u>HRK</u>
Cuba	GJ	<u>Cuban peso</u>	<u>CUP</u>
Curacao (Netherlands Antillies)	GL	<u>Netherlands Antillean guilder</u>	<u>ANG</u>
Cyprus	DA	<u>Cypriot pound</u>	<u>CYP</u>
Czech Republic	CP	<u>Czech koruna</u>	<u>CZK</u>
Denmark	BE	<u>Danish krone</u>	<u>DKK</u>
Djibouti	NB	<u>Djiboutian franc</u>	<u>DJF</u>
Dominica	GR	<u>East Caribbean Dollar</u>	<u>XCD</u>
Dominican Republic	GF	<u>Dominican peso</u>	<u>DOP</u>
Ecuador	JF	<u>U.S. Dollar</u>	<u>USD</u>
Egypt	KE	<u>Egyptian pound</u>	<u>EGP</u>
El Salvador	HB	<u>Salvadoran colon.</u>	<u>SVC</u>
England	AC	<u>British pound</u>	<u>GBP</u>

Equatorial Guinea	NC	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Eritrea	NK	<u>nakfa</u>	<u>ERN</u>
Estonia	RE	<u>kroon</u>	<u>EEK</u>
Ethiopia	MP	<u>birr</u>	<u>ETB</u>
European Currencies, Weighted Average Of	CZ	<u>European Currencies, Weighted Average Of</u>	<u>XBA</u>
European Currency Unit	CY	<u>European Currency Unit</u>	<u>XEU</u>
<u>Falkland Islands</u>	<u>AZ</u>	<u>British pound</u>	<u>GBP</u>
<u>Faro Islands</u>	<u>CT</u>	<u>Danish krone</u>	<u>DKK</u>
Fiji	EC	<u>Fijian dollar</u>	<u>FJD</u>
Finland	BR	<u>Euro</u>	<u>CY</u>
France	BF	<u>Euro</u>	<u>EUR</u>
French Guiana	JK	<u>Euro</u>	<u>EUR</u>
<u>French Polynesia</u>	<u>EY</u>	<u>CFP Franc</u>	<u>XPF</u>
Gabon	ND	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Gambia, The	LA	<u>Dalasi</u>	<u>GMD</u>
Georgia	RF	<u>lari</u>	<u>GEL</u>
Germany	BK	<u>Euro</u>	<u>EUR</u>
Ghana	LB	<u>cedi</u>	<u>GHC</u>
Gibraltar	DB	<u>British pound</u>	<u>GBP</u>
Grand Cayman Islands	GW	<u>Caymanian Dollar</u>	<u>KYD</u>
Greece	BN	<u>Euro</u>	<u>EUR</u>
Greenland	CS	<u>Danish krone</u>	<u>DKK</u>
Grenada	GQ	<u>East Caribbean Dollar</u>	<u>XCD</u>
Guam	RW	<u>US dollar</u>	<u>USD</u>
Guatemala	HD	<u>quetzal</u>	<u>GTQ</u>
Guinea	LN	<u>Guinean franc</u>	<u>GNF</u>
Guinea-Bissau	LP	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Guyana	JH	<u>Guyanese dollar</u>	<u>GYD</u>
Haiti	GK	<u>gourde</u>	<u>HTG</u>
Home Foreign- <i>United Kingdom</i>	AB		
Honduras	HC	<u>Lempira</u>	<u>HNL</u>
Hong Kong	QE	<u>Hong Kong dollar</u>	<u>HKD</u>
Hungary	CC	<u>Hungarian forint</u>	<u>HUF</u>
Iceland	BU	<u>Icelandic krona</u>	<u>ISK</u>
India	QB	<u>India rupee</u>	<u>INR</u>
Indonesia	QM	<u>India rupiah</u>	<u>IDR</u>
Iran	PB	<u>Iranian rial</u>	<u>IRR</u>
Iraq	PJ	<u>Iraqi dinar</u>	<u>IQD</u>
Irish Republic	BC	<u>Euro</u>	<u>EUR</u>
Isle Of Man	BB	<u>British pound</u>	<u>GBP</u>
Israel	PC	<u>New Israeli shekel</u>	<u>ILS</u>
Italy	BG	<u>Euro</u>	<u>EUR</u>
Ivory Coast	LH	<u>CFA franc</u>	<u>XOF</u>
Jamaica	GB	<u>Jamaican dollar</u>	<u>JMD</u>
Japan	QK	<u>yen</u>	<u>JPY</u>
Jordan	PL	<u>Jordanian dinar</u>	<u>JOD</u>
Kazakhstan	RG	<u>tenge</u>	<u>KZT</u>
Kenya	MA	<u>Kenyan shilling</u>	<u>KES</u>
Kiribati	ED	<u>Australian dollar</u>	<u>AUD</u>

Kirghizia (alternate name for Kyrgyzstan)	RV	<u>Kyrgyzstani som</u>	<u>KGS</u>
Korea, South	QR	<u>North Korean won</u>	<u>KPW</u>
Korea, North	QP	<u>South Korean won</u>	<u>KRW</u>
Kuwait	PD	<u>Kuwaiti dinar</u>	<u>KWD</u>
Kyrgyzstan	RV	<u>Kyrgyzstani som</u>	<u>KGS</u>
Laos	RT	<u>kip</u>	<u>LAK</u>
Latvia	RJ	<u>Latvian lat</u>	<u>LVL</u>
Lebanon	PE	<u>Lebanese pound</u>	<u>LBP</u>
Lesotho	MH	<u>South African Rand</u>	<u>ZAR</u>
Liberia	LG	<u>Liberian dollar</u>	<u>LRD</u>
Libya	KD	<u>Libyan dinar</u>	<u>LYD</u>
Liechtenstein	CK	<u>Swiss Franc</u>	<u>CHF</u>
Lithuania	RK	<u>litas</u>	<u>LTL</u>
Luxembourg	BH	<u>Euro</u>	<u>EUR</u>
<u>Macau</u>	<u>QD</u>	<u>pataca</u>	<u>MOP</u>
Macedonia	BZ	<u>denars</u>	<u>MKD</u>
Madagascar	MS	<u>Malagasy franc</u>	<u>MGF</u>
Malawi	MD	<u>Malawian kwacha</u>	<u>MWK</u>
Malaysia	QF	<u>ringgit</u>	<u>MYR</u>
Maldives	RU	<u>rufiyaa</u>	<u>MVR</u>
Mali	LE	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Malta	DC	<u>Maltese lira</u>	<u>MTL</u>
Marshall Islands	EM	<u>Euro</u>	<u>EUR</u>
Mauritania	LS	<u>Ouguiya</u>	<u>MRO</u>
Mauritius	ML	<u>Mauritian rupee</u>	<u>MUR</u>
Mexico	HA	<u>Mexican peso</u>	<u>MXN</u>
Micronesia	EN	<u>Euro</u>	<u>EUR</u>
Moldova	RL	<u>Moldovan leu</u>	<u>MDL</u>
Monaco	CF	<u>Euro</u>	<u>EUR</u>
Mongolia	RM	<u>todrog/tugrik</u>	<u>MNT</u>
Monserrat	GS	<u>East Caribbean Dollar</u>	<u>XCD</u>
Morocco	KB	<u>Moroccan dirham</u>	<u>MAD</u>
Mozambique	MR	<u>metical</u>	<u>MZM</u>
Myanmar	QH	<u>Myanmar kyat</u>	<u>MMK</u>
Namibia	NE	<u>Namibian dollar</u>	<u>NAD</u>
Nauru	EE	<u>Australian dollar</u>	<u>AUD</u>
Nepal	QT	<u>Nepalese rupee</u>	<u>NPR</u>
Netherlands	BJ	<u>Euro</u>	<u>CY</u>
Netherlands Antilles	GX	<u>Netherlands Antillean guilder</u>	<u>ANG</u>
<u>New Caledonia</u>	<u>EZ</u>	<u>CFP Franc</u>	<u>XPF</u>
New Zealand	EB	<u>New Zealand dollar</u>	<u>NZD</u>
Nicaragua	HE	<u>gold cordoba</u>	<u>NIO</u>
Niger	NF	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Nigeria	LC	<u>naira</u>	<u>NGN</u>
<u>Niue</u>	<u>ER</u>	<u>New Zealand dollar</u>	<u>NZD</u>
<u>Norfolk Island</u>	<u>ES</u>	<u>Australian dollar</u>	<u>AUD</u>
Northern Ireland	AF	<u>British pound</u>	<u>GBP</u>
Norway	BS	<u>Norwegian krone</u>	<u>NOK</u>
Oman	PP	<u>Omani rial</u>	<u>OMR</u>

Pakistan	QC	<u>Pakistani rupee</u>	<u>PKR</u>
Palau	EP	<u>US dollar</u>	<u>USD</u>
Panama	HG	<u>Panama dollar</u>	<u>PAD</u>
Papua New Guinea	EF	<u>kina</u>	<u>PGK</u>
Paraguay	JM	<u>guarani</u>	<u>PYG</u>
Peru	JG	<u>nuevo sol</u>	<u>PEN</u>
Philippines	QL	<u>Philippine peso</u>	<u>PHP</u>
<u>Pitcairn Islands</u>	<u>EX</u>	<u>New Zealand dollar</u>	<u>NZD</u>
Poland	BV	<u>zloty</u>	<u>PLN</u>
Portugal	BP	<u>Euro</u>	<u>EUR</u>
Puerto Rico	GG	<u>US dollar</u>	<u>USD</u>
Qatar	PG	<u>Qatari rial</u>	<u>QAR</u>
Romania	BW	<u>leu</u>	<u>ROL</u>
Russia	RN	<u>ruble</u>	<u>RUB</u>
Rwanda	NG	<u>Rwandan franc</u>	<u>RWF</u>
San Marino	CL	<u>Euro</u>	<u>EUR</u>
Sao Tome And Principle	LQ	<u>dobra</u>	<u>STD</u>
Saudi Arabia	PF	<u>riyal</u>	<u>SAR</u>
Scotland	AE	<u>British pound</u>	<u>GBP</u>
Senegal	LJ	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
<u>Serbia and Montenegro</u>	<u>CR</u>	<u>Serbian dinar</u>	<u>CSD</u>
Seychelles	NH	<u>Seychelles rupee</u>	<u>SCR</u>
Sierra Leone	LD	<u>leone</u>	<u>SLL</u>
Singapore	QG	<u>Singapore dollar</u>	<u>SGD</u>
Slovakia	CQ	<u>Slovak koruna</u>	<u>SKK</u>
Slovenia	CM	<u>tolar</u>	<u>SIT</u>
Solomon Islands	EG	<u>Solomon Islands dollar</u>	<u>SBD</u>
Somalia	MQ	<u>Somali shilling</u>	<u>SOS</u>
South Africa	MK	<u>South African Rand</u>	<u>ZAR</u>
Spain	BQ	<u>Euro</u>	<u>EUR</u>
Sri Lanka	QZ	<u>Sri Lankan rupee</u>	<u>LKR</u>
St Helena And Dependencies	NJ	<u>British pound</u>	<u>GBP</u>
St Kitts-Nevis	GT	<u>East Caribbean Dollar</u>	<u>XCD</u>
St Lucia	GV	<u>East Caribbean Dollar</u>	<u>XCD</u>
St Martin	GN	<u>Netherlands Antillean guilder /</u> <u>Euro</u>	<u>ANG / EUR</u>
St Vincent and The Grenadines	GU	<u>East Caribbean Dollar</u>	<u>XCD</u>
Sudan	MN	<u>Sudanese dinar</u>	<u>SDD</u>
Surinam	JJ	<u>Surinamese guilder</u>	<u>SRG</u>
<u>Svalbard</u>	<u>BX</u>	<u>Norwegian krone</u>	<u>NOK</u>
Swaziland	MJ	<u>Swaziland lilangeni</u>	<u>SZL</u>
Sweden	BT	<u>Swedish krona</u>	<u>SEK</u>
Switzerland	BM	<u>Swiss franc</u>	<u>CHF</u>
Syria	PK	<u>Syrian pound</u>	<u>SYP</u>
Tahiti	QV	<u>CFP Franc</u>	<u>XPF</u>
Tajikistan	RP	<u>somoni</u>	<u>TJS</u>
Tanzania	MC	<u>Tanzanian shilling</u>	<u>TZS</u>
Thailand	QN	<u>baht</u>	<u>THB</u>
Togo	LR	<u>CFA franc (BCEAO)</u>	<u>XOF</u>
Tolelau	EQ	<u>New Zealand dollar</u>	<u>NZD</u>

Tonga	EH	<u>pa'anga</u>	<u>TOP</u>
Trinidad And Tobago	GC	<u>Trinidad and Tobago dollar</u>	<u>TTD</u>
Tunisia	KC	<u>Tunisian dinar</u>	<u>TND</u>
Turkey	PA	<u>Turkish lira</u>	<u>TRL</u>
Turkmenistan	RQ	<u>Turkmen manat</u>	<u>TMM</u>
Turks & Caicos Islands	GZ	<u>US dollar</u>	<u>USD</u>
Tuvalu	EJ	<u>Australian dollar</u>	<u>AUD</u>
Uganda	MB	<u>Ugandan shillings</u>	<u>UGX</u>
Ukraine	RR	<u>hryvnia</u>	<u>UAH</u>
United Arab Emirates	PH	<u>Emirati dirham</u>	<u>AED</u>
<i>United Kingdom</i>	AA	<u>British pound</u>	<u>GBP</u>
		<u>Converted to British pound</u>	<u>XBP</u>
		<u>British pound and converted to</u>	<u>YBP</u>
		<u>British pound combined</u>	
Uruguay	JN	<u>Uruguayan peso</u>	<u>UYU</u>
USA	FB	<u>US dollar</u>	<u>USD</u>
Uzbekistan	RS	<u>Uzbekistani sum</u>	<u>UZS</u>
Vanuatu	EK	<u>vatu</u>	<u>VUV</u>
Vatican City	CN	<u>Euro</u>	<u>EUR</u>
Venezuela	JE	<u>bolivar</u>	<u>VEB</u>
Vietnam	QW	<u>dong</u>	<u>VND</u>
Virgin Islands	GH	<u>US dollar</u>	<u>USD</u>
Wales	AD	<u>British pound</u>	<u>GBP</u>
<u>Wallis and Futuna</u>	<u>EW</u>	<u>CFP Franc</u>	<u>XPF</u>
<u>Western Sahara</u>	<u>KF</u>	<u>Moroccan dirham</u>	<u>MAD</u>
<del>Western</del> Samoa	EL	<u>Samoa tala</u>	<u>WST</u>
Yemen, <del>South</del>	PM	<u>Yemeni rial</u>	<u>YER</u>
Zambia	ME	<u>Zambian kwacha</u>	<u>ZMK</u>
Zimbabwe	MF	<u>Zimbabwean dollar</u>	<u>ZWD</u>

32. The reporting territory codes required for **Forms 31, 32 and 34** must be in accordance with the following Table:

<u>Reporting territory</u>	<u>Code</u>
<u>General insurance business carried on in the United Kingdom that is not home foreign business</u>	<u>AA</u>
<u>home foreign business</u>	<u>AB</u>
<u>General insurance business carried on outside the United Kingdom</u>	<u>XX</u>
<u>World wide</u>	<u>WW</u>

## FORMS

[Forms 20A and 20 – 39 to follow]

The following amendments are made to this series of Forms and instructions:

- new **Form 20A**
- **Forms 33 and 35** are deleted.
- The majority of the remainder of the Forms and instructions are amended, underlining indicates new text and striking through indicates deleted text.

**Forms 30, 36 and 37** are not being amended and so have been omitted



New **Form 20A**, which is inserted before **Form 20**

**Form 20A**

**General insurance business – summary of business carried on**

Name of insurer

Global business/UK branch business/EEA branch

Financial year ended

	Company registration number	GL/ UK/ EEA	day	month	year	units
<b>R20A</b>						£000

<i>Category number</i>	<i>FSA return general insurance business reporting category</i>		<b>Gross Premium written in this financial year</b>	<b>Provision for undiscounted gross claims outstanding at end of this financial year</b>		<b>Provision for gross unearned premium at end of the financial year</b>
				<b>Reported</b>	<b>Incurred but not reported</b>	
			1	2	3	4
001	Total business	1				
002	Total primary (direct) and facultative business	2				
003	Total treaty reinsurance accepted business	3				
110	Total primary (direct) and facultative accident and health (category numbers 111 to 114)	4				
120	Total primary (direct) and facultative personal lines motor business (category numbers 121 to 123)	5				
160	Primary (direct) and facultative household and domestic all risks	6				
180	Total primary (direct) and facultative personal lines financial loss (category numbers 181 to 187)	7				
220	Total primary (direct) and facultative commercial motor business (category numbers 221 to 223)	8				
260	Total primary (direct) and facultative commercial lines property (category numbers 261 to 263)	9				
270	Total primary (direct) and facultative commercial lines liability business (category numbers 271 to 274)	10				
280	Total primary (direct) and facultative commercial lines financial loss (category numbers 281 to 284)	11				
330	Total primary (direct) and facultative aviation (category numbers 331 to 333)	12				

340	Total primary (direct) and facultative marine (category numbers 341 to 347)	13				
350	Total primary (direct) and facultative goods in transit	14				
400	Miscellaneous primary (direct) and facultative business	15				
500	Total non-proportional treaty reinsurance business accepted (category numbers 510 to 590)	16				
600	Total proportional treaty reinsurance business accepted (category numbers 610 to 690)	17				
700	Miscellaneous treaty reinsurance accepted business	18				
	TOTAL (lines 4 to 18)	20				
	<b>PRIMARY (DIRECT) and FACULTATIVE PERSONAL LINES BUSINESS</b>					
111	Medical insurance	21				
112	HealthCare cash plans	22				
113	Travel	23				
114	Personal accident or sickness	24				
121	Private motor – comprehensive	25				
122	Private motor – non-comprehensive	26				
123	Motor cycle	27				
160	Primary (direct) and facultative household and domestic all risks (equals line 6)	28				
181	Assistance	29				
182	Creditor	30				
183	Extended warranty	31				
184	Legal expenses	32				
185	Mortgage indemnity	33				
186	Pet insurance	34				
187	Other personal financial loss	35				
	<b>PRIMARY (DIRECT) and FACULTATIVE COMMERCIAL LINES BUSINESS</b>					
221	Fleets	41				
222	Commercial vehicles (non-fleet)	42				
223	Motor other	43				
261	Commercial property	44				
262	Consequential loss	45				
263	Contractors or engineering all risks	46				
271	Employers liability	47				
272	Professional indemnity	48				
273	Public and products liability	49				
274	Mixed commercial package	50				
281	Fidelity and contract guarantee	51				
282	Credit	52				
283	Suretyship	53				

284	Commercial contingency	54				
	PRIMARY (DIRECT) and FACULTATIVE: AVIATION, MARINE and TRANSPORT					
331	Aviation liability	61				
332	Aviation hull	62				
333	Space and satellite	63				
341	Marine liability	64				
342	Marine hull	65				
343	Energy (on and off-shore)	66				
344	Protection and indemnity	67				
345	Freight demurrage and defence	68				
346	War risks	69				
347	Yacht	70				
350	Total primary (direct) and facultative goods in transit (equals line 14)	71				
400	Miscellaneous primary (direct) and facultative business (equals line 15)	72				
	NON-PROPORTIONAL TREATY					
510	Non-proportional accident & health	81				
520	Non-proportional motor	82				
530	Non-proportional aviation	83				
540	Non-proportional marine	84				
550	Non-proportional transport	85				
560	Non-proportional property	86				
570	Non-proportional liability (non-motor)	87				
580	Non-proportional financial lines	88				
590	Non-proportional aggregate cover	89				
	PROPORTIONAL TREATY					
610	Proportional accident & health	91				
620	Proportional motor	92				
630	Proportional aviation	93				
640	Proportional marine	94				
650	Proportional transport	95				
660	Proportional property	96				
670	Proportional liability (non-motor)	97				
680	Proportional financial lines	98				
690	Proportional aggregate cover	99				
700	Miscellaneous treaty reinsurance accepted business (equals line 18)	101				
	TOTAL (lines 21 to 101)	111				

## Instructions for completion of Form 20A

1. The amount to be shown under *gross written premiums* for an *FSA general insurance business reporting category* must equate to F21. (13+14+15). (1+2) plus F24.11.11 as if **Forms 21** or **24** were required for that *FSA general insurance business reporting category*.
2. The amount to be shown under provision for gross unearned premium for an *FSA general insurance business reporting category* must equate to F21.19.2 + F25.22.12 as if **Forms 21** or **25** were required for that *FSA general insurance business reporting category*.
3. The amounts to be shown under provisions for gross claims outstanding/ reported for an *FSA general insurance business reporting category* must equate to the sum of (F27.29.5 + F29.11.12, converted to sterling if appropriate) over all currencies or the sum of (F31 or F32.30.5 + F34.30.3) over all the currencies and territories, for that *FSA general insurance business reporting category* as if **Forms 27, 29, 31, 32** or **34** were required for all business in that *FSA general insurance business reporting category*.
4. The amounts to be shown under provisions for gross claims outstanding/incurred but not reported for an *FSA general insurance business reporting category* must equate to the sum of (F27.29.6 + F29.13.12, converted to sterling if appropriate) over all currencies or the sum of (F31 or F32.30.6 + F34.30.4) over all the currencies an territories, for that *FSA general insurance business reporting category* as if **Forms 27, 29, 31, 32** or **34** were required for all business in that *FSA general insurance business reporting category*.
5. Where the unrounded value for one of the columns is zero for a particular *FSA general insurance business reporting category*, the relevant cell should be left blank.
6. Lines 1, 20 and 111 should all be the same and equal to the total *insurance business*.
7. Where line 1 column 1 is different to line 11 column 1 Form 11, the insurer must provide an explanation for the reason in a supplementary note (code 20A1)

**General insurance business : Technical account (excluding equalisation provisions)**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

FSA general insurance business reporting category

		Company registration number	GL/UK/CM	Period ended			Units	Category number		
				day	month	year		Accounting class/summary		
		R20					£000			
Items to be shown net of reinsurance				This financial year			Previous year	Source		
				1			2	Form	Line	Column
This year's underwriting (accident year accounting)	Earned premium	11						21	19	5
	Claims incurred	12						22	17	4
	Claims management costs	13						22	18	4
	Adjustment for discounting	14						22	52	4
	Increase in provision for unexpired risks	15						22	19	4
	Other technical income or charges (particulars to be specified by way of supplementary note)	16								
	Net operating expenses	17						22	42	4
	Balance of year's underwriting (11-12-13+14-15+16-17)	19								
Adjustment for prior years' underwriting (accident year accounting)	Earned premium	21						21	11	5
	Claims incurred	22						22	13	4
	Claims management costs	23						22	14	4
	Adjustment for discounting	24						22	51	4
	Other technical income or charges (particulars to be specified by way of supplementary note)	25								
	Net operating expenses	26						22	41	4
	Balance (21-22-23+24+25-26)	29								
Balance from underwriting year accounting	Per Form 24	31						24	69	99-99
	Other technical income and charges (particulars to be specified by way of supplementary note)	32								
	Total	39								
Balance of all years' underwriting (19+29+39)		49								
Allocated investment return income		51								
Transfer to non-technical account (49+51)		59								

...

**General insurance business (accident year accounting) : Analysis of premiums**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Accounting class FSA general insurance business reporting category

		Company registration number	GL/UK/CM	Period ended			Units	Accounting Class Category number
				day	month	year		
		<b>R21</b>					<b>£000</b>	
<b>Premiums receivable during the financial year</b>		Gross premiums written		Reinsurers' share		Net of reinsurance		
		Earned in previous financial years		Earned in previous financial years		Earned in previous financial years		
		<b>1</b>		<b>3</b>		<b>5</b>		
In respect of risks incepted in previous financial years		<b>11</b>						
		Earned in this financial year	Unearned at end of this financial year	Earned in this financial year	Unearned at end of this financial year	Earned in this financial year	Unearned at end of this financial year	
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	
In respect of risks incepted in previous financial years		<b>12</b>						
In respect of risks incepted in this financial year	For periods of less than 12 months	<b>13</b>						
	For periods of 12 months	<b>14</b>						
	For periods of more than 12 months	<b>15</b>						
Premiums receivable (less rebates and refunds) in previous financial years not earned in those years and brought forward to the financial year		<b>16</b>						
Total (12 to 16)		<b>19</b>						

...



### **Instructions for completion of Form 22**

1. Amounts included at lines 11 to 18 must be shown undiscounted and related adjustments for discounting must be shown at lines 31 to 39.
2. The values in column 4 are calculated as follows:  
  
for lines 11 to 18 values in columns 2+3-1;  
for lines 21 to 29 and lines 41 to 42 values in columns 1+2-3;  
for line 19, lines 31 to 39 and lines 51 to 52 values in columns 3-1.
3. Amounts shown at lines 11 to 13, lines 15 to 17 and lines 31 and 32 must exclude amounts in respect of *claims management costs*.



### Instructions for completion of Form 23

1. All figures are to be shown net of the *reinsurers'* share.
2. The accident years shown at lines 11 to 20 must correspond to the *financial year in question* and the nine *previous financial years* respectively.
3. Columns 1 to 9 must be shown before deduction for discounting.
4. All amounts shown must exclude *claims management costs*.
5. The percentage shown at column 12 must be the ratio of the columns 3+4+5+6-2 to column 2.
6. The percentage shown at column 13 must be the ratio of columns 1+3+4+5+6 to column 11.
7.  $23.29.5 + 23.29.6 = 22.13.3 + 22.17.3$ ;  $23.29.7 + 23.29.8 = 22.13.1$ ;  
 $23.29.10 = 22.31.3 - 22.32.3$ ; and  $23.29.4 = 22.13.2 + 22.17.2$ .
8. [deleted]
9. ~~[deleted] Columns 1, 11 and 13 need not be completed in respect of accident years ended before 23 December 1994.~~
10. The percentages shown at columns 12 and 13 must be expressed as percentages to one place of decimals.
11. ~~Insurance business reported on any Form 33 may be reported on this Form at line 22 and not lines 11 to 21~~ Line 22 is to be left blank.



### Instructions for completion of Form 24

1. The underwriting years shown between the columns headed "29 29" and "99 99" must correspond (in reverse order) to the *financial year in question* and the nine *previous financial years* respectively.
2. Amounts shown in lines 21 to 29 must exclude *claims management costs*.
3. ~~[deleted] For *accounting classes* 1 to 8 and 10, amounts in respect of underwriting years ended before 23 December 1993 may be included in the prior underwriting years column.~~
4. The amounts shown at lines 51 to 54 must exclude equalisation provisions.
5. The amounts shown at lines 11 to 49 must be amounts payable or *receivable* during the *financial year in question*.



### Instructions for the completion of Form 25

1. The underwriting years shown between the columns headed "29 29" and "99 99" must correspond (in reverse order) to the *financial year in question* and the nine *previous financial years*, respectively.
2. Lines 11 to 15, 19 to 21 and 29 must be completed for open years and lines 11 to 18 and 21 to 29 for closed years.
3. Line 29 must equal line 53 less 54 on Form 24.
4. Lines 11 to 15 must be shown before adjustment for *discounting*.
5. Lines 11 to 14, 16 and 17 must exclude *claims management costs*.
6. ~~[deleted] For accounting classes 1 to 8 and 10, amounts in respect of financial years ended before 23 December 1993 may be included in the prior underwriting years column.~~
7. Amounts may only be included at line 19 in so far as they arise from the offset of anticipated surpluses and deficits on *insurance business* managed together as defined by paragraph 25 of Appendix 9.2.
8. Particulars of any amounts included at line 25 on must be stated in a supplementary note (code 2505) to the form.

...

**General insurance business (accident year accounting) : Analysis of net claims and premiums by category for treaty reinsurance**

Name of insurer

Accounting-class Currency

Global business/UK branch business/EEA branch business

Currency

Financial year ended

Company registration number

GL/UK/CM

Period ended  
day month year

Monetary units

Business Category Number

Accounting Class

Currency

Risk-Category FSA general insurance business reporting category

<b>R26</b>													
------------	--	--	--	--	--	--	--	--	--	--	--	--	--

Accident year ended		Claims paid (net) during the accident year	Claims outstanding (net) as at end of the accident year	Total claims paid (net) since the end of the accident year but prior to this financial year	Claims paid (net) during this financial year	Claims outstanding carried forward		Claims outstanding brought forward		Balance for each accident year Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Deduction for discounting from claims outstanding carried forward (net)	Earned premiums (net)	Deterioration/ (surplus) of original reserve %	Claims ratio %
Month	Year					Reported (net)	Incurred but not reported (net)	Reported (net)	Incurred but not reported (net)					
		1	2	3	4	5	6	7	8	9	10	11	12	13
		11												
		12												
		13												
		14												
		15												
		16												
		17												
		18												
		19												
		20												
Prior accident years		21												
Reconciliation		22												
Total (11 to 22)		29												



## Instructions for completion of Form 26

1. All figures are to be shown net of the *reinsurers'* share.
2. The accident years shown at lines 11 to 20 must correspond to the *financial year in question* and the nine *previous financial years* respectively.
3. Columns 1 to 9 must be shown before deduction for *discounting*.
4. All amounts shown must exclude *claims management costs*.
5. The percentage shown at column 12 must be the ratio of the columns 3+4+5+6-2 to column 2.
6. The percentage shown at column 13 must be the ratio of columns 1+3+4+5+6 to column 11.
7. ~~[deleted] 27.29.5+27.29.6 = 22.11.3+22.15.3; 27.29.7+27.29.8=22.11.1; 27.29.10=22.31.3; and 27.29.4=22.11.2+22.15.2~~
8. The percentages shown at columns 12 and 13 must be expressed as percentages to one place of decimals.
9. The amounts shown in line 21 must be analysed on continuation sheets by accident year subject to instruction 10 below.
10. On the continuation sheet, for category numbers 590 and 690, the amounts in columns 2 and 4 to 10 for accident years ending prior to 31 December 1996 may be shown in the aggregate and columns 1, 3 11 to 13 need not be completed for underwriting years ending prior to 31 December 1996
110. ~~The box marked "Business category" must be completed by inserting one of the letters "a" to "h" according to which of the sub paragraphs of rule 9.16(1) describes the *business category* to which the Form relates. The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *FSA general insurance business reporting category* relates.~~
124. ~~The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**. Where the allocation or apportionment to business categories of any *reinsurance* treaties accepted which have previously been reported differs from that adopted previously, rule 9.17(3)(a) requires an explanation of the nature of the change and the reasons for it in a supplementary note (code 2603) to this form.~~
132. ~~Line 22 is to be left blank. Where the allocation or apportionment to business categories of any *reinsurance* treaties accepted differs from that adopted previously for *reinsurance* treaties relating to similar risks, rule 9.17(3)(a) requires an explanation of the nature of the change and the reasons for it in a supplementary note (code 2604) to this form.~~

**General insurance business (accident year accounting) : Analysis of gross claims and premiums by category for treaty reinsurance**

Name of insurer

Accounting class          Currency         

Global business/UK branch business/EEA branch business

Currency         

Financial year ended

Company registration number

GL/UK/CM

Period ended  
day month year

Monetary units

Business Category Number

Accounting Class

Currency

Risk Category FSA general insurance business reporting category

<b>R27</b>													
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Accident year ended		Claims paid (gross) during the accident year	Claims outstanding (gross) as at end of the accident year	Total claims paid (gross) since the end of the accident year but prior to this financial year	Claims paid (gross) during this financial year	Claims outstanding carried forward		Claims outstanding brought forward		Balance for each accident year Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Deduction for discounting from claims outstanding carried forward (gross)	Earned premiums (gross)	Deterioration/ (surplus) of original reserve %	Claims ratio %
Month	Year					Reported (gross)	Incurred but not reported (gross)	Reported (gross)	Incurred but not reported (gross)					
		1	2	3	4	5	6	7	8	9	10	11	12	13
		11												
		12												
		13												
		14												
		15												
		16												
		17												
		18												
		19												
		20												
Prior accident years		21												
Reconciliation		22												
Total (11 to 22)		29												



### Instructions for completion of Form 27

1. All figures must be shown gross of the *reinsurers'* share.
2. The accident years shown at lines 11 to 20 must correspond to the *financial year in question* and the nine *previous financial years* respectively.
3. Columns 1 to 9 are to be shown before deduction for *discounting*.
4. All amounts shown must exclude *claims management costs*.
5. The percentage shown at column 12 must be the ratio of the columns 3+4+5+6-2 to column 2.
6. The percentage shown at column 13 must be the ratio of columns 1+3+4+5+6 to column 11.
7. [deleted]
8. The percentages shown at columns 12 and 13 must be expressed as percentages to one place of decimals.
9. The amounts shown in line 21 must be analysed on continuation sheets by accident year subject to instruction 10 below.
10. On the continuation sheet, for category numbers 590 and 690, the amounts in columns 2 and 4 to 10 for accident years ending prior to 31 December 1996 may be shown in the aggregate and columns 1, 3 11 to 13 need not be completed for underwriting years ending prior to 31 December 1996
11. ~~The box marked "Business category" must be completed by inserting one of the letters "a" to "h" according to which of the sub paragraphs of rule 9.16(1) describes the *business category* to which the Form relates. The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *FSA general insurance business reporting category* relates.~~
12. The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.
13. Line 22 is to be left blank.





## Instructions for completion of Form 28

1. The underwriting years shown between the columns headed "29 29" and "99 99" must correspond (in reverse order) to the *financial year in question* and the nine *previous financial years*.
2. Amounts shown in lines 21 to 29 must exclude *claims management costs*.
3. The amounts shown at lines 51 to 54 must exclude equalisation provisions.
4. ~~[deleted] For *accounting class 10* (other than *business categories* (c) and (d) and such other categories as have been reported previously on Form 29) amounts in respect of underwriting years ended before 23 December 1993 may be included in the prior underwriting years column and (if so) instruction 5 must not apply to such amounts.~~
5. The amounts shown in the first column must be analysed on continuation sheets by underwriting year (although for category numbers 590 and 690 amounts in respect of underwriting years ended before 31 December 1996 may be shown in aggregate, for risk categories 610, 620, 650, 660 and 680 amounts in respect of underwriting years ended before 23 December 1993 may be shown in aggregate and for other business amounts in respect of underwriting years beginning prior to 1 January 1983 may be shown in aggregate).
6. ~~The box marked "Business category" must be completed by inserting one of the letters "a" to "h" according to which of the sub paragraphs of rule 9.16(1) describes the *business category* to which the Form relates. The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *FSA general insurance business reporting category* relates.~~
7. The amounts shown at lines 11 to 49 must be amounts payable or *receivable* during the *financial year in question*.
8. ~~The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**. Where the allocation or apportionment to business categories of any *reinsurance* treaties accepted which have previously been reported differs from that adopted previously, rule 9.17(3)(a) requires an explanation of the nature of the change and the reasons for it in a supplementary note (code 2803) to this form.~~
9. ~~Where the allocation or apportionment to business categories of any *reinsurance* treaties accepted differs from that adopted previously for *reinsurance* treaties relating to similar risks, rule 9.17(3)(a) requires an explanation of the nature of the change and the reasons for it in a supplementary note (code 2804) to this form.~~



General insurance business (underwriting year accounting) : Analysis of technical provisions by category for treaty reinsurance

Name of insurer

Accounting class          Currency         

Global business/UK branch business/EEA branch business

Currency

Financial year ended

Company registration number

GL/UK/CM

Period ended  
day month year

Monetary units

Business Category Number

Accounting Class

Currency

Risk-Category FSA general insurance business reporting category

R29

Underwriting year ended		MM	YY																						
Reported claims outstanding	Gross amount	11																							
	Reinsurers' share	12																							
Claims incurred but not reported	Gross amount	13																							
	Reinsurers' share	14																							
Claims management costs		15																							
Adjustment for discounting	Gross amount	16																							
	Reinsurers' share	17																							
	Claims management costs	18																							
Allocation to/(from) another category or accounting class risk category of anticipated surplus		19																							
Balance of the fund		20																							
Claims outstanding (11-12+13-14+15-16+17-18+19+20)		21																							
Provision for unearned premiums		22																							
Provision for unexpired risks		23																							
Deferred acquisition costs		24																							
Other technical provisions (particulars to be specified by way of supplementary note)		25																							
Total (21+22+23-24+25)		29																							

## Instructions for completion of Form 29

1. The underwriting years shown between the columns headed "29 29" and "99 99" must correspond (in reverse order) to the *financial year in question* and the nine *previous financial years*, respectively.
2. Lines 11 to 15, 19 to 21 and 29 must be completed for open years and lines 11 to 18 and 21 to 29 for closed years.
3. Line 29 equals line 53 less 54 on Form 28.
4. Lines 11 to 15 must be shown before adjustment for *discounting*.
5. Lines 11 to 14, 16 and 17 must exclude *claims management costs*.
6. ~~[deleted] For *accounting class 10* (other than *business categories (c)* and *(d)* and such other categories as have been reported previously on Form 29) amounts in respect of underwriting years ended before 23 December 1993 may be included in the prior underwriting years column and (if so) instruction 7 must not apply to such amounts.~~
7. The amounts shown in the first column must be analysed on continuation sheets by underwriting year (although for *category numbers 590 and 690* amounts in respect of underwriting years ended before 31 December 1996 may be shown in aggregate, for *category numbers 610, 620, 650, 660 and 680* amounts in respect of underwriting years ended before 23 December 1993 may be shown in aggregate, and for *other business* amounts in respect of underwriting years beginning prior to 1 January 1983 may be shown in aggregate).
8. ~~The box marked "Business category" must be completed by inserting one of the letters "a" to "h" according to which of the sub paragraphs of rule 9.16(1) describes the *business category* to which the Form relates. The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *FSA general insurance business reporting category* relates.~~
9. Amounts may only be included at line 19 in so far as they arise from the offset of anticipated surpluses and deficits on business managed together (as defined by paragraph 25 of Appendix 9.2).
10. The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.

...

**General insurance business (accident year accounting) : Analysis of gross claims and premiums by risk group category for direct insurance and facultative reinsurance**

Name of insurer

Accounting-class Currency

Global business/UK branch business/EEA branch business

Currency Reporting Territory

Financial year ended

Company registration number

GL/UK/CM

Period ended  
day month year

Monetary units

Currency Country

Accounting class Category number

Risk category FSA general insurance business reporting category

<b>R31</b>									
------------	--	--	--	--	--	--	--	--	--

Accident year ended			Number of claims		Gross claims paid		Gross claims outstanding carried forward		Gross claims outstanding brought forward		Balance for each accident year <small>Claims incurred (latest year) or developed (other years) during this financial year</small>  (4+5+6-7-8)	Gross earned premiums	Claims ratio %
Month	Year		Closed at some cost during this or previous financial years	Reported claims outstanding	In previous financial years	In this financial year	Reported	Incurred but not reported	Reported	Incurred but not reported			
			1	2	3	4	5	6	7	8	9	10	11
		11											
		12											
		13											
		14											
		15											
		16											
		17											
		18											
		19											
		20											
Prior accident years		21											
Total (11 to 21)		29											
Line 29 expressed in sterling		30											



### Instructions for completion of Form 31

1. All figures must be shown gross of the *reinsurers'* share and before any deduction for *discounting*.
2. The accident years at lines 11 to 20 must correspond to the *financial year in question* and the nine *previous financial years* respectively.
3. All amounts shown must exclude *claims management costs*.
4. The percentage shown at column 11 is the ratio of the sum of columns 3 to 6 to column 10.
5. [deleted]
6. The percentages shown at column 11 must be expressed as percentages to one place of decimals.
7. For ~~risk groups falling in *accounting class 7*~~ *risk categories 271 to 274* the amounts shown in line 21 must be analysed by accident year on continuation sheets subject to instructions 8 and 9 below.
8. On the continuation sheet columns 10 and 11 need not be completed in respect of accident years ended before 23 December 1994.
9. On the continuation sheet, for *category number 274*, the amounts in columns 2 and 4 to 8 for accident years ending prior to 31 December 1996 may be shown in the aggregate and columns 1 and 3 need not be completed for underwriting years ending prior to 31 December 1996.
10. Columns 1 and 2 need not be completed in respect of ~~*accounting classes 3, 4 and 5*~~ *risk categories 331 to 400*.
11. The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *FSA general insurance business reporting category* relates.
12. The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.
13. The entry alongside "reporting territory" must be the relevant 3 character code from the list in the Table in **Appendix 9.2 Paragraph 32**.

**General insurance business (accident year accounting) : Analysis of gross claims and premiums for motor vehicle direct insurance and facultative reinsurance**

Name of insurer

Currency  
Reporting Territory

Global business/UK branch business/EEA branch business

Category  
number

Financial year ended

Company  
registration  
number

GL/UK/CM

Period ended  
day month year

Monetary  
units

Country

Risk group FSA general insurance business reporting category

<b>R 32</b>							
-------------	--	--	--	--	--	--	--

Accident year ended		Number of claims		Gross claims paid		Gross claims carried forward		Gross claims brought forward		Balance on each accident year Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Gross earned premiums	Claims ratio %	Vehicle years (000's)	Claims frequency %
Month	Year	Closed at some cost during this or previous years	Reported claims outstanding	In previous financial years	In this financial year	Reported	Incurred but not reported	Reported	Incurred but not reported					
		1	2	3	4	5	6	7	8	9	10	11	12	13
		11												
		12												
		13												
		14												
		15												
		16												
		17												
		18												
		19												
		20												
Prior accident		21												
Total (11 to 21)		29												
Line 29 expressed in sterling		30												

### Instructions for completion of Form 32

1. All figures must be shown gross of the *reinsurers'* share and before any deduction for *discounting*.
2. The accident years at lines 11 to 20 must correspond to the *financial year in question* and the nine *previous financial years* respectively.
3. All amounts shown must exclude *claims management costs*.
4. The percentage shown at column 11 must be the ratio of the sum of columns 3 to 6 to column 10.
5. Columns 10 to 13 need not be completed in respect of accident years ended before 23 December 1994.
6. The number of vehicle years insured in any accident year is the aggregate of the product for each *contract of insurance* of the period (being the period during that accident year when the contract was in force) and the number of vehicles insured under the contract. Figures are to be rounded to the nearest thousand-vehicle years only after aggregating component figures.
7. The percentage shown at column 13 must be the ratio of the sum of columns 1 and 2 to the product of 1000 and column 12.
8. The percentages shown at columns 11 and 13 must be expressed as percentages to one place of decimals.
9. The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *FSA general insurance business reporting category* relates.
10. The entry alongside "currency" must be the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.
11. The entry alongside "reporting territory" must be the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 32**.

**General insurance business (underwriting year accounting) : Analysis of gross claims and premiums by risk group category for direct insurance and facultative reinsurance**

Name of insurer

Accounting class Currency

Global business/UK branch business/EEA branch business

Currency Reporting Territory

Financial year ended

Company registration number

GL/UK/CM

Period ended  
day month year

Monetary units

Currency Country

Accounting Class Category number

Risk group FSA general insurance reporting category

<b>R34</b>									
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Underwriting year ended		Gross claims paid		Gross claims outstanding carried forward		Gross claims outstanding brought forward		Balance on each underwriting year	Gross premiums written	Claims ratio %
Month	Year	In previous financial years	In this financial year	Reported	Incurred but not reported	Reported	Incurred but not reported	Claims incurred (latest year) or developed (other years) during this financial year (2+3+4-5-6)		
		1	2	3	4	5	6	7	8	9
		11								
		12								
		13								
		14								
		15								
		16								
		17								
		18								
		19								
		20								
Prior underwriting years		21								
Total (11 to 21)		29								
Line 29 expressed in sterling		30								



### Instructions for completion of Form 34

1. All figures must be shown gross of the *reinsurers'* share and before any deduction for *discounting*.
2. The underwriting years at lines 11 to 20 must correspond to the *financial year in question* and the nine *previous financial years* respectively.
3. All amounts shown must exclude *claims management costs*.
4. The percentage shown at column 9 must be the ratio of the sum of columns 1 to 4 to column 8.
5. [deleted]
6. The percentages shown at column 9 must be expressed as percentages to one place of decimals.
7. For ~~risk groups falling in *accounting class 7*~~ risk categories 271 to 274, the amounts shown in line 21 must be analysed by underwriting year on continuation sheets subject to instructions 8 and 9 below.
8. On the continuation sheet columns 8 and 9 need not be completed in respect of *financial years* ended before 23 December 1994.
9. On the continuation sheet, for *category number 274*, the amounts in columns 2 to 6 for accident years ending prior to 31 December 1996 may be shown in the aggregate and column 1 need not be completed for underwriting years ending prior to 31 December 1996.
10. The box marked "category number" must be completed by inserting the 3 digit *category number* to which the *FSA general insurance business reporting category* relates.
11. The box marked "currency" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.
12. The entry alongside "reporting territory" must be the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 32**.

...

**Equalisation provisions technical account : Accident year accounting**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

	Company registration number		GL/UK/CM		Period ended			Units
	day	month	year	day	month	year		
	<b>R38</b>							<b>£000</b>
	Business group A (property)	Business group B (business interruption)	Business group C (marine and aviation)	Business group D (nuclear)	Business group E (non-proportional treaty)			
	1	2	3	4	5			
<b>Other than credit business</b>								
Net premiums earned	11							
Claims incurred net of reinsurance	12							
Trigger claims value	13							
Abnormal loss	19							
Trigger claims ratio	72.5%	72.5%	95%	25%	100%			

**Credit business**

Net premiums earned	21	
Claims incurred net of reinsurance	22	
Claims management costs	23	
Net operating expenditure	24	
Technical surplus/(deficit) (21-22-23-24)	29	

### Instructions for completion of Form 38

1. Apart from *credit insurance business*, any *insurance business* transferred to an *insurer* by novation or under Part VII of the *Act* (or the *1982 Act*) must be accounted for in accordance with *PRU 7.5.34R*.
2. The entries at line 11 must be the part of the amount that would appear on ~~derived from~~ Form 21 at line 11, column 5 and line 19, column 5, that in whole or in part covers the *insurance business grouping*, ~~at line 11, column 5 and line 19, column 5~~ (whether or not a Form 21 for that business is required).
3. The entries at line 12 must be the part of the amount that would appear on ~~derived from~~ Form 22 at line 13 and 17 column 4, that in whole or part covers the *insurance business grouping*, ~~at line 13 and 17, column 4~~ (whether or not a Form 21 for that business is required).
4. The entries at line 13 must be line 11 (or nil if line 11 is negative) multiplied by the trigger *claims* ratio for the *insurance business grouping*.
5. For each *insurance business grouping* the entry at line 19 must be the amount, if any, by which the entry at line 12 for that *insurance business grouping* exceeds the entry at line 13. If the entry at line 12 does not exceed the entry at line 13, line 19 must be left blank.
6. The entry at line 21 must be the part of the amount that would appear on ~~derived from~~ Form 21 for ~~accounting class 8~~ combined categories 180 and 280, at line 11, column 5 and line 19, column 5 (whether or not a Form 21 for *combined categories 180 or 280* is required) that relates ~~to include~~ only to *credit insurance business* in ~~general insurance business class 14~~.
7. The entry at line 22 must be the part of the amount that would appear on ~~derived from~~ Form 22 for ~~accounting class 8~~ combined categories 180 and 280, at lines 13 and 17, column 4 (whether or not a Form 22 for *combined categories 180 or 280* is required) that relates ~~to include~~ only to *credit insurance business* in ~~general insurance business class 14~~.
8. The entry at line 23 must be the part of the amount that would appear on ~~derived from~~ Form 22 for ~~accounting class 8~~ combined categories 180 and 280, at lines 14 and 18, column 4 (whether or not a Form 23 for *combined categories 180 or 280* is required) that relates ~~to include~~ only to *credit insurance business* in ~~general insurance business class 14~~.
9. The entry at line 24 must be the part of the amount that would appear on ~~derived from~~ Form 22 for ~~accounting class 8~~ combined categories 180 and 280, at lines 19 and 29, column 4 (whether or not a Form 23 for *combined categories 180 or 280* is required) that relates ~~to include~~ only to *credit insurance business* in ~~general insurance business class 14~~.

**Equalisation provisions technical account : Underwriting year accounting**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

	Company registration number	GL/UK/CM	Period ended			Units
			day	month	year	
	<b>R39</b>					<b>£000</b>
	Business group A (property)	Business group B (business interruption)	Business group C (marine and aviation)	Business group D (nuclear)	Business group E (non-proportional treaty)	
	1	2	3	4	5	
<b>Other than credit business</b>						
Net premiums written	<b>11</b>					
Claims net of reinsurance	<b>12</b>					
Trigger claims value	<b>13</b>					
Abnormal loss	<b>19</b>					
Trigger claims ratio	72.5%	72.5%	95%	25%	100%	

**Credit business**

Net premiums written	<b>21</b>	
Claims net of reinsurance	<b>22</b>	
Claims management costs	<b>23</b>	
Net operating expenditure	<b>24</b>	
Technical surplus/(deficit) (21-22-23-24)	<b>29</b>	

### Instructions for completion of Form 39

1. Apart from *credit insurance business*, any *insurance business* transferred to an insurer by novation or under Part VII of the *Act* (or the *1982 Act*) must be accounted for in accordance with *PRU 7.5.34R*.
2. The entries at line 11 must be that part of the amount that would appear on derived from Form 24 at line 19, column 99-99, that in whole or in part covers the *insurance business grouping* (whether or not a Form 24 for that business is required), ~~at line 19, column 99-99.~~
3. The entries at line 12 must be that part of the amount that would appear on derived from column 99-99 of Forms 24 and 25 at column 99-99, that in whole or part covers the *insurance business grouping* (whether or not Forms 24 and 25 for that business is required), 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*.
4. The entries at line 13 must be line 11 (or nil if line 11 is negative) multiplied by the trigger *claims* ratio for the *insurance business grouping*.
5. For each *insurance business grouping* the entry at line 19 must be the amount, if any, by which the entry at line 12 for that *insurance business grouping* exceeds the entry at line 13. If the entry at line 12 does not exceed the entry at line 13, line 19 must be left blank.
6. The entry at line 21 must be that part of the amount that would appear on derived from Form 24 for ~~accounting class 8~~ combined categories 180 and 280, at line 19, column 99-99 (whether or not a Form 24 for combined categories 180 or 280 is required) that relates to include only to *credit insurance business* in ~~general insurance business class 14.~~
7. The entry at line 22 must be that part of the amount that would appear on derived from Form 24 for ~~accounting class 8~~ combined categories 180 and 280, at line 29, column 99-99, plus line 53, column 99-99 less line 51, column 99-99 (whether or not a Form 24 for combined categories 180 or 280 is required) that relates to include only to *credit insurance business* in ~~general insurance business class 14.~~
8. The entry at line 23 must be that part of the amount that would appear on derived from Form 24 for ~~accounting class 8~~ combined categories 180 and 280, at line 39, column 99-99 (whether or not a Form 24 for combined categories 180 or 280 is required) that relates to include only to *credit insurance business* in ~~general insurance business class 14.~~
9. The entry at line 24 must be that part of the amount that would appear on derived from Form 24 for ~~accounting class 8~~ combined categories 180 and 280, at line 49 column 99-99 (whether or not a Form 24 for combined categories 180 or 280 is required) that relates to include only to *credit insurance business* in ~~general insurance business class 14.~~

## APPENDIX 9.3 (rules 9.14 and 9.23)

### LONG-TERM INSURANCE BUSINESS REVENUE ACCOUNT AND ADDITIONAL INFORMATION (FORMS 40 TO 45 60)

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1. All the Forms included in the part of the *return* to which this Appendix relates (**Forms 40 to 45 60**) are to be laid out as shown in this Appendix, except that the instructions to Forms need not be reproduced.
2. The provisions of paragraph 1(2) and paragraphs 3 to 7 of **Appendix 9.1** must, unless otherwise provided, also apply for the purposes of this Appendix. All amounts must be shown in sterling to the nearer £1,000 except valuation unit prices in Form 55 where the currency and rounding must be that used in the valuation ~~must be shown to the same level as required under Appendix 9.4~~. Percentages must be shown to two decimal places.
- ~~3. For the purposes of this Appendix, a contract is to be regarded as a **UK contract** if, in the case of *direct or facultative reinsurance* accepted, the contract was effected in the United Kingdom or if, in the case of a *reinsurance treaty*, the *cedant* was a *insurer* having its head office in the United Kingdom or was a member of the *Society*; and **overseas contracts** is to be construed accordingly.~~
3. For the purposes of this Appendix:
  - (a) “overseas business” means *long-term insurance business* which is Overseas Life Assurance Business as defined by the Income and Corporation Taxes Act 1988;
  - (b) “regular premiums” means premiums under *contracts of insurance* which are payable at regular intervals during the *policy* year, including repeated or recurring single premiums where the level of premium is defined;
  - (c) “single premiums” means premiums under *contracts of insurance* under which there is no expectation of continuing premiums being paid at regular intervals, additional single premiums paid in respect of existing individual contracts and National Insurance rebates received from the Department of Work and Pensions;
  - (d) “UK life business” means *long-term insurance business* which is not overseas business or UK pension business;
  - (e) “UK pension business” means *long-term insurance business* which is Pension Business as defined by the Income and Corporation Taxes Act 1988.

4. (1) Where a an insurer maintains more than one *long-term insurance business fund*, there must be stated by way of a supplementary note to **Form 40** the principles and methods applied to apportioning the investment income, increase or decrease in the value of assets brought into account, expenses and taxation between the different funds.
- (2) ~~Boxes marked 'No. of Fund/Summary' must be completed by the inclusion of a discrete number to identify each fund or, if the Form relates to a part of the fund, the fund of which it is part. Where there is only one fund for *ordinary long-term insurance business* or for *industrial assurance business*, as the case may be, the number '1' must be shown in the box marked 'No. of Fund/Summary'. Where the Form is a summary Form, the number '99' must be inserted in that box. Boxes marked 'No. of Part of Fund' must show a discrete number for each part of a fund or the figure '0' if the Form is a statement of the whole fund.~~
5. Where arrangements have been made for the provision of management services to an *insurer* by another *company* (whether an *insurer* or not) which are a substantial part of the day-to-day administration of the undertaking receiving the services -
- (a) the *insurer* receiving the services must state, by way of a supplementary note to **Form 40**; and
- (b) the *company* (if an *insurer*) providing the services must state, by way of a supplementary note to **Form 40**,
- that the arrangements have been in force in the *financial year* and naming the parties to them.
6. Where neither the *mathematical reserves* nor the *gross premiums* with respect to the total overseas business exceeds £50m or 5 % of the total *mathematical reserves*, an *insurer* may treat that business -
- (a) in the case of business which would fall within 3(e) if it were business effected in the United Kingdom, as UK pension business, or
- (b) otherwise, as UK life business.

**FORMS**  
[Forms 40 – 45 60 to follow]

**Long-term insurance business: Revenue account**

**Form 40**

Name of insurer

~~Global business/UK branch business/EEA branch business~~

~~Ordinary insurance business/Industrial insurance business~~ Total business / subfund

Financial year ended

Name and number of fund/Summary

Units

[Deleted]			
Items to be shown net of reinsurance ceded		The Financial year	Previous year
		1	2
<b><u>Income</u></b>			
Earned premiums	11		
Investment income receivable before deduction of tax	12		
Increase (decrease) in the value of non-linked assets brought into account	13		
Increase (decrease) in the value of linked assets	14		
Other income	15		
<b>Total income (11 to 15)</b>	19		
<b><u>Expenditure</u></b>			
Claims incurred	21		
Expenses payable	22		
Interest payable before deduction of tax	23		
Taxation	24		
Other expenditure	25		
Transfer to (from) non technical account	26		
<b>Total expenditure (21 to 26)</b>	29		
<u>Business transfers-in</u>	<u>31</u>		
<u>Business transfers-out</u>	<u>32</u>		
Increase (decrease) in fund in financial year <del>(19 - 29)</del> (19 - 29 + 31 - 32)	39		
Fund brought forward	49		
Fund carried forward (39+49)	59		

## Instructions for completion of Form 40

1. The entry at 40.11.1 must be equal to 41.21.4 ~~the sum of 41.17.4 and 41.29.3~~, the entry at 40.21.1 must be equal to 42.46.59.43, and the entry at 40.22.1 must be equal to 43.46.441.49.3.
2. Line 13 is the amount of the increase or decrease (realised or unrealised) in the admissible value of assets (other than linked assets) or, where advantage has been taken by virtue of Rule 9.10 to apply a different value for the purposes of the Actuarial investigation under rule 9.4, the increase or decrease in that value.
3. Line 14 must include all gains and losses in respect of linked assets.
- ~~2.~~ 4. Any item of income which cannot properly be allocated to lines 11, 12, 13 or 14 must be entered ~~in~~ at line 15, and similarly, any item of expenditure which cannot properly be allocated to lines 21, 22, 23 or 24 must be entered ~~in~~ at line 25. Particulars of such items must be specified in a supplementary note [Code 4002]. Lines 15 and 25 must be used for transfers of unit management charges into or out of the fund or subfund.
- ~~3.~~ 5. Where an *insurer* decides to allocate to the *long-term insurance business* the whole or any part of investment income ~~and/or~~ net capital gains arising from assets not attributable to its *long-term insurance business*, the amounts in question must first be shown in Form 16 at lines 14 to 16, and then as a transfer in at line 26 and particulars must be specified in a supplementary note [Code 4003].
6. Interest payable must be included at line 23 and not line 22.
7. Taxation at line 24 is that attributable to the long-term insurance business including payments received in consideration of surrendering losses as group relief.
- ~~4.~~ 8. Where a transfer is made to the non-technical account, the entry at line 26 must show amounts which have been included ~~in~~ at line 47 of Form 58. The amount shown for transfers to the non-technical account (line 26) must agree with the equivalent amount disclosed at line 47 of Form 58 - see paragraph 4 of the Instructions for completion of Form 58. However, if there is a net transfer into the fund, the entry at line 26 will be negative and, by virtue of paragraph 3 of the Instructions for completion of Form 58, there will be a positive entry at line 34, lines 15 and 47 remaining blank. Transfers from or to other funds must be included in line 15 or 25, with transfers to reserves associated with a transfer of contracts from one fund to another specified in a supplementary note [Code 4004].
- ~~5.~~ 9. The entry at line 12 must exclude value re-adjustments on investments and gains on the realisation of investments, which must be shown ~~in~~ at lines 13 or 14 as appropriate.
- ~~6.~~ 10. The entry at line 11 must exclude any change in the provision for unearned premiums, even though it may be included in statutory (e.g., Companies Act) accounts.
- ~~7.~~ 11. The entry at line 21 must exclude *claims management costs*, which must be included ~~in~~ at line 22, and any change in the provision for *claims*.
12. Transfers of contracts from or to other funds or from another insurer must be included at line 31 or 32, with details specified in a supplementary note [Code 4004].
- ~~8.~~ 13. If any of the brought forward amounts differs from the corresponding carried forward amounts in the previous *return*, the reason must be stated as specified in paragraph 7 of Appendix 9.1 [Code 4001].
- ~~9.~~ 14. If the bases of conversion adopted in respect of foreign currency for income and expenditure have not already been stated in a note to Form 16, the bases should be stated in a supplementary note as specified in paragraph 5(2) of Appendix 9.1 [Code 4005].
- ~~10.~~ 15. Where an *insurer* maintains more than one *long-term insurance business fund*, the principles and methods applied to apportioning the investment income, the increase or decrease in the value of assets brought into account, expenses and taxation between the different funds must be stated in a supplementary note as specified in paragraph 4(1) of Appendix 9.3 [Code 4006].

- ~~11~~.16. Where arrangements have been in force during the *financial year* for the provision either by or to the *insurer* of management services, this fact must be stated in a supplementary note together with the name of the other party (to whom or from whom such services were provided or received) - see paragraph 5 of **Appendix 9.3**. This statement is only needed where a substantial part of the day-to-day administration of an *insurer* is undertaken by another company or vice versa. Note that where the arrangement is between two *insurers*, the directors will need to consider very carefully the form of their certificate under **Appendix 9.6**, Part I paragraph 4(e) [Code 4008].
- ~~12~~.17. Details of any *material connected-party transactions* as required under rule 9.39 must be stated in a supplementary note [Code 4009].

Form 41 (Long term insurance business: Analysis of premiums and expenses) is replaced by the following form:

**Long-term insurance business: Analysis of premiums**

**Form 41**

Name of insurer  
 Total business / subfund  
 Financial year ended  
 Units

		<b>UK Life</b>	<b>UK Pension</b>	<b>Overseas</b>	<b>Total Financial year</b>	<b>Total Previous year</b>
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Gross</b>						
Regular premiums	11					
Single premiums	12					
<b>Reinsurance - external</b>						
Regular premiums	13					
Single premiums	14					
<b>Reinsurance - intra-group</b>						
Regular premiums	15					
Single premiums	16					
<b>Net of reinsurance</b>						
Regular premiums	17					
Single premiums	18					
<b>Total</b>						
Gross	19					
Reinsurance	20					
Net	21					

### Instructions for completion of Form 41

1. ~~Lines 11, 13, 15, 17 and 19 must include all single premium amounts where there is no expectation of continuing premiums being paid at regular intervals.~~
2. ~~Lines 12, 14, 16, 18 and 20 must include premiums payable at regular intervals during the *policy* year, including repeated or recurrent single premiums where the level of premium is defined.~~
  1. Single and regular premiums must include that part of the premium which was or will be recoverable from the Inland Revenue.
  2. The entries in line 17 must equal line 11 less the sum of lines 13 and 15.  
The entries in line 18 must equal line 12 less the sum of lines 14 and 16.  
The entries at line 19 must equal the sum of lines 11 and 12.  
The entries at line 20 must equal the sum of lines 13 to 16.  
The entries at line 21 must equal line 19 less line 20.

Form 42 (Long term insurance business: Analysis of claims) is replaced by the following form:

**Long-term insurance business: Analysis of claims**

**Form 42**

Name of insurer  
 Total business / subfund  
 Financial year ended  
 Units

		<b>UK Life</b>	<b>UK Pension</b>	<b>Overseas</b>	<b>Total Financial year</b>	<b>Total Previous year</b>
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Gross</b>						
Death or disability lump sums	11					
Disability periodic payments	12					
Surrender or partial surrender	13					
Annuity payments	14					
Lump sums on maturity	15					
<b>Total</b>	16					
<b>Reinsurance - external</b>						
Death or disability lump sums	21					
Disability periodic payments	22					
Surrender or partial surrender	23					
Annuity payments	24					
Lump sums on maturity	25					
<b>Total</b>	26					
<b>Reinsurance - intra-group</b>						
Death or disability lump sums	31					
Disability periodic payments	32					
Surrender or partial surrender	33					
Annuity payments	34					
Lump sums on maturity	35					
<b>Total</b>	36					
<b>Net of reinsurance</b>						
Death or disability lump sums	41					
Disability periodic payments	42					
Surrender or partial surrender	43					
Annuity payments	44					
Lump sums on maturity	45					
<b>Total</b>	46					

### **Instruction for completion of Form 42**

1. In the case of *industrial assurance business*, *claims* incurred on survival in respect of periodical endowment benefits must be shown in line ~~45~~ 13.
  
2. Maturity payments are lump sums paid to *policy holders*. Amounts paid to another *insurer* must be included in 'surrender or partial surrender'.
  
3. The entries in line 41 must equal line 11 less the sum of lines 21 and 31.  
The entries in line 42 must equal line 12 less the sum of lines 22 and 32.  
The entries at line 43 must equal line 13 less the sum of lines 23 and 33.  
The entries at line 44 must equal line 14 less the sum of lines 24 and 34.  
The entries at line 45 must equal line 15 less the sum of lines 25 and 35.  
The entries at line 46 must equal line 16 less the sum of lines 26 and 36.

The following Form 43 (Long term insurance business: Summarised balance sheet for internal linked funds) is inserted after Form 42, Form 45 is deleted, and Form 43 and Form 44 are re-numbered as Form 44 and Form 45 respectively:

**Long-term insurance business: Analysis of expenses**

**Form 43**

Name of insurer  
 Total business / subfund  
 Financial year ended  
 Units

		<b>UK Life</b>	<b>UK Pension</b>	<b>Overseas</b>	<b>Total Financial year</b>	<b>Total Previous year</b>
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Gross</b>						
Commission - acquisition	11					
Commission - other	12					
Management - acquisition	13					
Management - maintenance	14					
Management - other	15					
<b>Total</b>	16					
<b>Reinsurance - external</b>						
Commission - acquisition	21					
Commission - other	22					
Management - acquisition	23					
Management - maintenance	24					
Management - other	25					
<b>Total</b>	26					
<b>Reinsurance - intra-group</b>						
Commission - acquisition	31					
Commission - other	32					
Management - acquisition	32					
Management - maintenance	34					
Management - other	35					
<b>Total</b>	36					
<b>Net of reinsurance</b>						
Commission - acquisition	41					
Commission - other	42					
Management - acquisition	43					
Management - maintenance	44					
Management - other	45					
<b>Total</b>	46					

## Instructions for completion of Form 43

1. ~~The basis on which the assets have been valued must be stated in a supplementary note [Code 4301].~~
  2. ~~The aggregate value of rights (gross of *variation margin*) and the aggregate amount of liabilities (gross of *variation margin*) under *derivative contracts* (or in respect of contracts or assets which have the effect of a *derivative contract*) must each be stated in a supplementary note. The corresponding figures net of *variation margin* must also be stated [Code 4302]. For this purpose, rights and liabilities must not be set off against one another unless
    - (i) ~~such rights and liabilities may be set off against each other in accordance with generally accepted accounting practice; and~~
    - (ii) ~~such set off results (in whole or in part) from the closing out of obligations under a contract.~~~~
  3. ~~Where there is a liability to repay *variation margin* and there are no arrangements for netting of amounts outstanding or the arrangements would not permit the accounting of such amounts on a net basis in accordance with generally accepted accounting practice, it must be so stated in a supplementary note [Code 4303].~~
  4. ~~The total of the net asset value in column at line 8 less the total of column 3 must equal line 59 of Form 44.~~
  5. ~~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.~~~~
1. In allocating *management expenses* to the relevant lines:
    - (a) subject to (b), costs of a non-recurring nature, such as those incurred in developing new systems or new premises, or the costs of corporate restructuring, must be reported as 'management – other';
    - (b) where they do not exceed 2% of the total *management expenses*, non-recurring costs may be included as 'management – acquisition' or 'management - maintenance';
    - (c) the costs incurred in writing new business (or in obtaining incremental (but not indexed) premiums on existing business), such as underwriting, *policy* issue, setting up (or amending) records, and the maintenance and development of the sales and marketing organisation must be reported as management – acquisition'; and
    - (d) the balancing item will be expenses related to the ongoing costs throughout the year of maintaining the business in force (including any investment management costs) which must be reported as 'management – maintenance'.
  2. Commission payable to employees of the *insurer* whose job is to sell *policies* must be included as 'management – acquisition' or 'management – maintenance'. Commission payable to employees who sell *policies* on a casual basis must be treated in the same way as that paid to *intermediaries* and to *cedents* and so must be included as 'commission – acquisition' or 'commission – other', as the case may be.

3. Expenses must be those which relate only to the *insurer's long-term insurance business*. Those relating to any other business of the *insurer* cannot, by virtue of PRU 7.6.30R, be paid out of the *long-term insurance fund* and must therefore be shown in the *general insurance business* technical account (Form 20) or the non-technical account (Form 16).
  
4. The entries in line 41 must equal line 11 less the sum of lines 21 and 31.  
The entries in line 42 must equal line 12 less the sum of lines 22 and 32.  
The entries at line 43 must equal line 13 less the sum of lines 23 and 33.  
The entries at line 44 must equal line 14 less the sum of lines 24 and 34.  
The entries at line 45 must equal line 15 less the sum of lines 25 and 35.  
The entries at line 46 must equal line 16 less the sum of lines 26 and 36.

Form 44 (old Form 43) (Long term insurance business: Summarised balance sheet for internal linked funds) is replaced by the following form:

**Long-term insurance business: Linked funds balance sheet**

**Form 44**

Name of insurer  
 Total business / subfund  
 Financial year ended  
 Units

		<b>Financial year</b>	<b>Previous year</b>
		<b>1</b>	<b>2</b>
<b>Internal linked funds (excluding cross investment)</b>			
Directly held assets (excluding collective investment schemes)	11		
Directly held assets in collective investment schemes of connected companies	12		
Directly held assets in other collective investment schemes	13		
<b>Total assets (excluding cross investment) (11+12+13)</b>	14		
Provision for tax on unrealised capital gains	15		
Secured and unsecured loans	16		
Other liabilities	17		
<b>Total net assets (14-15-16-17)</b>	18		
<b>Directly held linked assets</b>			
Value of directly held linked assets	21		
<b>Total</b>			
Value of directly held linked assets and units held (18+21)	31		
Surplus units	32		
Deficit units	33		
<b>Net unit liability (31-32+33)</b>	34		

## Instructions for completion of Form 44

1. Double counting of items arising from cross investment between *internal linked funds* must be eliminated.
- ~~2. Any item of income which cannot properly be allocated to lines 11, 12, or 13 must be entered in line 14, and similarly, any item of expenditure which cannot properly be allocated to lines 21, 22, 23, 24 or 25 must be entered in line 26. Particulars of such items must be specified in a supplementary note.~~
- ~~3. The gross value of units created must be shown in line 11. The gross value of units cancelled must be shown in line 21.~~
2. The basis on which the assets have been valued must be stated in a supplementary note [Code 4401].
3. The aggregate value of rights (gross of *variation margin*) and the aggregate amount of liabilities (gross of *variation margin*) under *derivative contracts* (or in respect of contracts or assets which have the effect of a *derivative contract*) must each be stated in a supplementary note. The corresponding figures net of *variation margin* must also be stated [Code 4402]. For this purpose, rights and liabilities must not be set off against one another unless-
  - (a) such rights and liabilities may be set off against each other in accordance with generally accepted accounting practice; and
  - (b) such set off results (in whole or in part) from the closing out of obligations under a *contract of insurance*.
4. Where there is a liability to repay *variation margin* and there are no arrangements for netting of amounts outstanding, or the arrangements would not permit the accounting of such amounts on a net basis in accordance with generally accepted accounting practice, it must be so stated in a supplementary note [Code 4403].
5. The total of the net asset value at line 18 must equal line 59 of Form 45.
6. If the surplus units exceed 1% of the net unit liability, a statement of the purpose of the surplus units must be given in a supplementary note [Code 4404].
7. A supplementary note setting out the name of the fund, the net asset value and the liquidity ratio [Code 4405] must be provided for any fund -
  - (a) whose net asset value is greater than £10m, and with respect to which there is negative liquidity (i.e., liabilities of the fund less *approved securities*, short term deposits and cash held in the fund is a negative amount) exceeding 5% of the net asset value of the fund; and
  - (b) whose net asset value is greater than £500,000, and with respect to which there is negative liquidity exceeding 50% of the net asset value of the fund.
8. 'Connected company' has the meaning given in rule 11.1.

**Long-term insurance business: Aggregate revenue account for internal linked funds**

**Form 44-45**

Name of insurer

Global business/UK branch business/EEA branch business

Ordinary insurance business/Industrial insurance business Total business / subfund

Financial year ended

Name and number of fund/Summary

Units

		<b>Financial year</b>	<b>Previous year</b>
		<b>1</b>	<b>2</b>
<b>Income</b>			
Value of total creation of units	11		
Investment income attributable to the funds before deduction of tax	12		
Increase (decrease) in the value of investments in the financial year	13		
Other income	14		
<b>Total income (11 to 14)</b>	19		
<b>Expenditure</b>			
Value of total cancellation of units	21		
Charges for management	22		
Charges in respect of tax on investment income	23		
Taxation on realised capital gains	24		
Increase (decrease) in amount set aside for tax on capital gains not yet realised	25		
Other expenditure	26		
<b>Total expenditure (21 to 26)</b>	29		
Increase (decrease) in funds in financial year (19-29)	39		
Internal linked fund brought forward	49		
Internal linked funds carried forward (39+49)	59		

## Instructions for completion of Form 45

1. ~~Column 3 must show the provisions for tax on unrealised capital gains as a percentage of the taxable unrealised capital gain. Similarly, column 4 must show the provisions for tax on realised capital gains as a percentage of the taxable realised capital gain.~~
  2. ~~The liquidity percentage shown in column 5 must be the sum of the values of *approved securities*, short term deposits and cash held by the fund, less any liabilities included in column 6 or 7 of Form 43, shown as a percentage of the net asset value in column 8 of Form 43.~~
  3. ~~Where there is more than one series of units for any *internal linked* fund the valuation price of each series of unit must be given in column 6 together with the name of that series of unit.~~
  4. ~~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.~~
1. Double counting of items arising from cross investment between *internal linked funds* must be eliminated.
  2. If any of the brought forward amounts differs from the corresponding carried forward amounts in the previous *return*, then the reason for the difference must be stated in a supplementary note as specified in paragraph 7 of Appendix 9.1 [Code 4501].
  3. Any item of income which cannot properly be allocated to lines 11, 12, or 13 must be entered at line 14, and similarly, any item of expenditure which cannot properly be allocated to lines 21, 22, 23, 24 or 25 must be entered at line 26. Particulars of such items must be specified in a supplementary note [Code 4502].
  4. The gross value of units created must be shown at line 11. The gross value of units cancelled must be shown at line 21. Each day's movements must be netted or recorded as two separate entries, one positive and one negative. The total net positive and negative movements must be recorded at lines 11 or 21 as appropriate.

Form 46 (Long term insurance business: Summary of changes in ordinary long term business) is replaced by the following form and Form 46A (Long term business: Summary of changes in industrial assurance business) is deleted:

**Long-term insurance business: Summary of new business**

**Form 46**

Name of insurer  
 Total business  
 Financial year ended  
 Units

		<b>UK Life</b>	<b>UK Pension</b>	<b>Overseas</b>	<b>Total Financial year</b>	<b>Total Previous year</b>
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Number of new policyholders / scheme members for direct insurance business</b>						
Regular premium business	11					
Single premium business	12					
<b>Total</b>	13					
<b>Amount of new regular premiums</b>						
Direct insurance business	21					
External reinsurance	22					
Intra-group reinsurance	23					
<b>Total</b>	24					
<b>Amount of new single premiums</b>						
Direct insurance business	25					
External reinsurance	26					
Intra-group reinsurance	27					
<b>Total</b>	28					

## Instructions for completion of Form 46

- ~~1. Information must be gross of *reinsurance ceded* and must be provided separately for United Kingdom *insurance business* and overseas *insurance business*, and in each case for *non-linked* and *linked contracts*.~~
  - ~~2. The box marked NL/LN must be completed by the insertion “LN” for a *linked contract*, and “NL” for a *non-linked contract*, as defined in rule 10.1.~~
  - ~~3. The figures for annual premiums must include repeated or recurrent single premiums where the level of premium is defined.~~
  - ~~4. For *hybrid linked contracts*, movements between linked and non-linked business must be shown in lines 13 and 27 as appropriate.~~
  - ~~5. Only *claims* payments which result in the termination of a contract providing cover for other insured events may be shown in line 22.~~
1. Line 11 is the sum of column 3 of Form 47.  
Line 12 is the sum of column 5 of Form 47.  
Lines 21, 22 and 23 are the sum of column 4 of Form 47 for that business.  
Lines 25, 26 and 27 are the sum of column 6 of Form 47 for that business.
  2. ‘New’ *policy holders* or scheme members are those who have effected a new individual contract or joined the scheme during the *financial year in question*.
  3. ‘New’ regular premiums and ‘new’ single premiums are premiums from new *policy holders* and scheme members, and may also include new increments on existing *policies* accepted by the *insurer*, in the *financial year in question*.

#### **Instructions for completion of Form 46A**

1. ~~Separate forms must be prepared in respect of *insurance business* carried on in the United Kingdom and in Northern Ireland but information about the numbers of *policies* in force at the beginning and at the end of the year need not be given in respect of *insurance business* carried on in Northern Ireland.~~
2. ~~The box marked UK/NI must be completed by the insertion of "UK" for *insurance business* carried on in the United Kingdom, and "NI" for *insurance business* carried on in Northern Ireland.~~
3. ~~*Policies* discontinued by return of premiums on the death of the assured must be included in line 21 and not in line 24.~~
4. ~~Paid-up *policies* which are written off must be included in line 21 in the case of whole life *policies* and line 22 in the case of endowments.~~

Form 47 (Long term insurance business: Analysis of new ordinary long term business) is replaced by the following form and Form 47A (Long term insurance business: Analysis of new industrial assurance business) is deleted:

**Long-term insurance business: Analysis of new business**

Name of insurer

Total business

Financial year ended

Units

UK Life / UK Pension / Overseas (State or Territory) / Direct Insurance Business / Reinsurance accepted external / Reinsurance accepted intra-group

Product code number	Product description	Regular premium business		Single premium business	
		Number of policyholders / scheme members	Amount of premiums	Number of policyholders / scheme members	Amount of premiums
1	2	3	4	5	6

## Instructions for completion of Form 47

1. ~~New insurance business must be shown gross of reinsurance ceded and must include increases to premiums on existing policies, and in dealing with such increases, columns 2 and 5 must be left blank.~~
2. ~~Single premium contracts must consist of those contracts under which there is no expectation of continuing premiums being paid at regular intervals. Additional single premiums paid in respect of existing individual contracts must be included.~~
3. ~~Regular premium contracts must include those contracts under which premiums are payable at regular intervals during the policy year, including repeated or recurrent single premiums where the level of premium is defined.~~
4. ~~1.~~ Information must be shown separately for each type of insurance business and ~~totalled within each section~~ in the sequence specified below:
  - (i) ~~United Kingdom direct insurance business,~~
  - (ii) ~~United Kingdom reinsurance accepted,~~
  - (iii) ~~overseas direct insurance business, and~~
  - (iv) ~~overseas reinsurance accepted~~
  - (a) UK life ('UKL');
  - (b) UK pension ('UKP'); and
  - (c) overseas ('OS').

Overseas business may, at the discretion of the insurer, be subdivided by state or territory.
5. ~~2.~~ The information must be shown separately ~~and totalled~~ within each type of *insurance business* in the sequence specified below:
  - (i) ~~life assurance and general annuity business,~~
  - (ii) ~~pension business,~~
  - (iii) ~~permanent health business, and~~
  - (iv) ~~other business~~
  - (a) direct insurance business ('DB');
  - (b) reinsurance accepted which is external to the insurance group ('RE'); and
  - (c) reinsurance accepted which is from within the insurance group ('RG').
6. ~~The information is to be further analysed and sub-totalled in the sequence specified below:~~
  - (i) ~~accumulating with profits policies,~~
  - (ii) ~~non-linked with profits policies,~~
  - (iii) ~~non-linked non profits policies,~~
  - (iv) ~~index-linked contracts, and~~
  - (v) ~~other linked contracts.~~

and where a *policy* falls within more than one of the above categories, it must be placed in the first appropriate category.

7. Within each sub-division required under 5 and 6, the appropriate types of insurance from the following list are to be shown separately:

- (i) whole life assurance,
- (ii) endowment assurance,
- (iii) pure endowment assurance,
- (iv) term assurance,
- (v) other assurance (to be specified),
- (vi) deferred annuity,
- (vii) annuity in payment,
- (viii) other annuity (to be specified),
- (ix) permanent health insurance,
- (x) capital redemption assurance,
- (xi) annuity certain,
- (xii) group pension,
- (xiii) group life,
- (xiv) group permanent health, and
- (xv) other group (to be specified).

3. Information must be further divided by product code as follows:

<b>Code</b>	<b>Product description</b>
100	Conventional whole life with-profits OB
105	Conventional whole life with-profits IB
110	Conventional whole life with-profits (ISA)
115	Conventional whole life with-profits (tax exempt)
120	Conventional endowment with-profits OB savings
125	Conventional endowment with-profits OB target cash
130	Conventional endowment with-profits IB
135	Conventional endowment with-profits (ISA)
140	Conventional endowment with-profits (tax exempt)
145	Income protection with-profits
150	Income protection with-profits (Holloway)
155	Conventional pensions endowment with-profits
160	Conventional pensions endowment with-profits - increments
165	Conventional deferred annuity with-profits
170	Conventional deferred annuity with-profits - increments
175	Group conventional deferred annuity with-profits
180	Group conventional deferred annuity with-profits - increments
185	Group conventional pensions endowment with-profits

<u>190</u>	<u>Group conventional pensions endowment with-profits - increments</u>
<u>195</u>	<u>Annuity with-profits (PLA)</u>
<u>200</u>	<u>Annuity with-profits (CPA)</u>
<u>205</u>	<u>Miscellaneous conventional with-profits</u>
<u>210</u>	<u>Additional reserves with-profits OB</u>
<u>215</u>	<u>Additional reserves with-profits IB</u>
<u>300</u>	<u>Regular premium non-profit WL/EA OB</u>
<u>305</u>	<u>Single premium non-profit WL/EA OB</u>
<u>310</u>	<u>Non-profit IB</u>
<u>315</u>	<u>Individual deposit administration non-profit</u>
<u>320</u>	<u>Group deposit administration non-profit</u>
<u>325</u>	<u>Level term assurance</u>
<u>330</u>	<u>Decreasing term assurance</u>
<u>335</u>	<u>Decreasing term assurance (rider benefits)</u>
<u>340</u>	<u>Accelerated critical illness (guaranteed premiums)</u>
<u>345</u>	<u>Accelerated critical illness (reviewable premiums)</u>
<u>350</u>	<u>Stand-alone critical illness (guaranteed premiums)</u>
<u>355</u>	<u>Stand-alone critical illness (reviewable premiums)</u>
<u>360</u>	<u>Income protection non-profit (guaranteed premiums)</u>
<u>365</u>	<u>Income protection non-profit (reviewable premiums)</u>
<u>370</u>	<u>Long-term care policy</u>
<u>375</u>	<u>Protection menu policy</u>
<u>380</u>	<u>Miscellaneous protection rider</u>
<u>385</u>	<u>Income protection claims in payment</u>
<u>390</u>	<u>Deferred annuity non-profit</u>
<u>395</u>	<u>Annuity non-profit (PLA)</u>
<u>400</u>	<u>Annuity non-profit (CPA)</u>
<u>405</u>	<u>Annuity non-profit (CPA impaired life)</u>
<u>410</u>	<u>Group Life</u>
<u>415</u>	<u>Collective Life</u>
<u>420</u>	<u>Group income protection</u>
<u>425</u>	<u>Group income protection claims in payment</u>
<u>430</u>	<u>Group critical illness</u>
<u>435</u>	<u>Miscellaneous non-profit</u>
<u>440</u>	<u>Additional reserves non-profit OB</u>
<u>445</u>	<u>Additional reserves non-profit IB</u>
<u>500</u>	<u>Life UWP single premium</u>
<u>505</u>	<u>Life UWP whole life regular premium</u>
<u>510</u>	<u>Life UWP endowment regular premium - savings</u>
<u>515</u>	<u>Life UWP endowment regular premium – target cash</u>
<u>520</u>	<u>Holloway member accounts</u>
<u>525</u>	<u>Individual pensions UWP</u>
<u>530</u>	<u>Individual pensions UWP - increments</u>
<u>535</u>	<u>Group money purchase pensions UWP</u>
<u>540</u>	<u>Group money purchase pensions UWP - increments</u>
<u>545</u>	<u>Individual deposit administration with-profits</u>
<u>550</u>	<u>Individual deposit administration with-profits - increments</u>
<u>555</u>	<u>Group deposit administration with-profits</u>
<u>560</u>	<u>Group deposit administration with-profits - increments</u>
<u>565</u>	<u>DWP National Insurance rebates UWP</u>
<u>570</u>	<u>Income drawdown UWP</u>
<u>575</u>	<u>Miscellaneous UWP</u>
<u>580</u>	<u>Term assurance rider</u>
<u>585</u>	<u>Accelerated critical illness rider</u>

590	<u>Stand-alone critical illness rider</u>
595	<u>Income protection rider</u>
600	<u>Income protection claims in payment</u>
605	<u>Miscellaneous protection rider</u>
610	<u>Additional reserves UWP</u>
700	<u>Life property linked single premium</u>
705	<u>Life property linked single premium quasi index linked</u>
710	<u>Life property linked whole life regular premium</u>
715	<u>Life property linked endowment regular premium - savings</u>
720	<u>Life property linked endowment regular premium – target cash</u>
725	<u>Individual pensions property linked</u>
730	<u>Individual pensions property linked - increments</u>
735	<u>Group money purchase pensions property linked</u>
740	<u>Group money purchase pensions property linked - increments</u>
745	<u>DWP National Insurance rebates property linked</u>
750	<u>Income drawdown property linked</u>
755	<u>Trustee investment plan</u>
760	<u>Small self administered schemes</u>
765	<u>Group managed fund</u>
770	<u>Term assurance rider</u>
775	<u>Accelerated critical illness rider</u>
780	<u>Stand-alone critical illness rider</u>
785	<u>Income protection rider</u>
790	<u>Miscellaneous protection rider</u>
795	<u>Miscellaneous property linked</u>
800	<u>Additional reserves property linked</u>
900	<u>Life index linked single premium</u>
905	<u>Index linked annuity</u>
910	<u>Miscellaneous index linked</u>
915	<u>Additional reserves index linked</u>

4. There may be more than one line for the same *product code* within a type and source of business to identify specific brands.
8. In the case of group contracts, the information must relate to new contracts and increments under existing contracts. The amount of the increment under an existing contract is the increase in the annual premium shown in Form 51, 52, 53 or 54 as appropriate, over the previous level shown in those Forms. Decreases in any year for an existing contract must be ignored.
5. For individual *policies*, columns 3 and 5 are the number of new plans, i.e. eliminating the effect of multiple policies being issued as part of the same premium, identifiable increments and rider benefits. A *policy holder* who takes out plans of the same product code during the year will contribute to column 3 or 5 for each such plan. For group scheme business, where the *insurer* has records of benefits at member level, columns 3 and 5 are the number of new members. For group scheme business, where the *insurer* has no records of benefits at member level, columns 3 and 5 must be zero. For business without such records, the number of new group schemes, divided by *product code*, must be set out in a supplementary note. Details of approximations made in determining columns 3 and 5 should be given in a note.
6. To avoid double counting, a new scheme member for a plan offering a choice of funds may be treated as contributing to column 3 or 5 for unitised with-profits business if all the premiums in the plan are invested in the *with-profits fund*. For *policies* with protection rider benefits, the entry in column 3 or 5 must be for the main benefit in the plan.
7. Details must be given in a note of approximations used to apportion between product codes.

#### **Instructions for completion of Form 47A**

1. ~~Separate forms must be prepared in respect of *insurance business* carried on in the United Kingdom and in Northern Ireland. The box marked UK/NI must be completed by the insertion “UK” for *insurance business* carried on in the United Kingdom, and “NI” for *insurance business* carried on in Northern Ireland.~~
2. ~~If any table other than those shown in columns 1 and 2 (e.g. a table providing for recurring payments) is of a significant amount, details must be given in column 3 with an appropriate heading. In the case of a table including a recurring payment, the sum assured on death before the date of the first recurring payment must be shown against ‘Sums assured’ and the amount of the recurring payment must be shown separately in brackets.~~

Form 48 (Long term insurance business: Expected income from admissible assets not held to match liabilities in respect of linked benefits) is replaced by the following form:

**Long-term insurance business: Non-linked assets**

**Form 48**

Name of insurer  
 Total business / subfund  
 Financial year ended  
 Units

		<b>Unadjusted assets</b>	<b>Economic exposure</b>	<b>Expected income from assets in column 2</b>	<b>Yield before adjustment</b>	<b>Return on assets in financial year</b>
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Assets backing non-profit liabilities and non-profit required minimum margin</b>						
Land and buildings	11					
Approved fixed interest securities	12					
Other fixed interest securities	13					
Variable interest securities	14					
UK listed equity shares	15					
Non-UK listed equity shares	16					
Unlisted equity shares	17					
Other assets	18					
<b>Total</b>	19					
<b>Assets backing with-profits liabilities</b>						
Land and buildings	21					
Approved fixed interest securities	22					
Other fixed interest securities	23					
Variable interest securities	24					
UK listed equity shares	25					
Non-UK listed equity shares	26					
Unlisted equity shares	27					
Other assets	28					
<b>Total</b>	29					
<b>Overall return on with-profits assets</b>						
Post investment costs but pre-tax	31					
Return allocated to non taxable 'asset shares'	32					
Return allocated to taxable 'asset shares'	33					

## Instructions for completion of Form 48

1. Where Form 13 is for the same fund or group of funds the entry at  
48.11.1 must equal 13.11.1  
48.12.1 must equal 13.45.1 + the appropriate part of 13.84.1  
48.13.1 must equal 13.46.1 + the appropriate part of 13.84.1  
48.14.1 must equal 13.47.1 + the appropriate part of 13.84.1  
48.15.1 must equal 13.42.1 + 13.48.1 + the appropriate part of 13.84.1  
48.16.1 must equal 13.41.1 + 13.43.1  
48.17.1 must equal 13.50.1 + the appropriate part of 13.84.1  
48.29.1 must equal 13.87.1 + 13.89.1 + 13.58.1 + 13.59.1.
  2. The word “total” or the name of the fund must be shown against the heading “Category of assets”. The corresponding code box must contain “10” for the total assets and, in the case of separate funds, code numbers corresponding to those allocated on completion of Form 13.
  3. The appropriate part of the entry at 13.84.1 to be included in lines 12 to 15 of this form must be that part which represents accrued interest on assets included in the relevant line of this form. The amounts so included in each line must be stated in a supplementary note.
1. Line 11.1 + 21.1 must equal 13.11.1.  
Line 12.1 + 22.1 must equal 13.45.1 + the relevant part of 13.84.1.  
Line 13.1 + 23.1 must equal 13.46.1 + the relevant part of 13.84.1.  
Line 14.1 + 24.1 must equal 13.42.1 + 13.47.1 + 13.48.1 + the relevant part of 13.84.1.  
Line 15.1 + 25.1 must equal the relevant part of 13.41.1.  
Line 16.1 + 26.1 must equal the relevant part of 13.41.1  
Line 17.1 + 27.1 must equal the relevant part of 13.41.1 + 13.21.1 + 13.23.1 + 13.25.1 + 13.27.1.
  2. Collective investment schemes (in line 13.43) and collective investment pools (in line 13.49) must be allocated in column 1 to line 18 or 28. In column 2 they must be allocated according to the underlying assets, but holdings of a type of asset within a collective investment scheme or pool of less than 5% of the assets for that collective investment scheme or pool may be grouped with the main type of underlying asset for that collective investment scheme or pool.
  3. Shares (lines 21, 23, 25 and 27 of Form 13) must be allocated in column 2 to lines 11, 15, 16, 21, 25 or 26 as appropriate if the undertaking is principally a holding company for equity shares or property.
  4. Where there is an obligation to purchase any of the underlying assets or they are ‘in the money’ at the relevant date, derivative contracts must be allocated in column 2 as if the underlying asset had been purchased on the relevant date.
  5. For a with-profits fund the assets backing the non-profit business must equal the amount of the non-profit mathematical reserves (lines 52, 55 and 57 of Form 50, plus the relevant part of the required minimum margin if this is backed by assets in that fund). The remaining assets must be treated as backing the with-profits business. For a fund without with-profits business all assets are to be included in lines 11-19.
  6. Where part of the with-profits business is with respect to business which falls within paragraph (1)(b) of the definition of with-profits fund and that part represents more than 10% of the total with-profits mathematical reserves, the insurer must set out in a supplementary note:
    - (a) where the insurer’s ‘asset share’ philosophy for the block of business assumes a variation of asset mix by duration of policy, the brand names of the bonus series in the block of business; and
    - (b) where the insurer’s ‘asset share’ philosophy for the block of business assumes an asset mix which is 5% more or less for any of the asset categories in lines 21 to 28 than the asset mix

derived from lines 21 to 29 of column 2, the brand names of the bonus series in, and the asset mix for, the block of business.

- ~~4.~~ 7. The expected income in column 3 must be the amounts before deduction of tax which would be received in the next *financial year* on the assumption that the assets will be held throughout the year and that the factors which affect income will remain unchanged, but account must be taken of any changes in those factors known to have occurred by the *relevant date* (in particular changes of the type ~~(a), (b), (c) or (d) denoted in rule 5.11(5)~~(1), (2), (3), (4), (5) and (6) in PRU 4.2.33R). The expected income shown in this Form must be that determined before any adjustments considered necessary because of rule ~~5.11(7)~~ PRU 4.2.41R and PRU 4.2.44R.
- ~~5.~~ 8. Where a particular asset is required to be taken into account only to a specified extent by the application of the admissibility limits, the expected income from that asset must be included only to the same extent.
- ~~6.~~ 9. The treatment of the expected income from any asset where the payment of interest is in default and the amount of interest involved must be stated in a supplementary note.
- ~~7.~~ 10. ~~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. The gross redemption yield in column 4 for fixed and variable interest securities must be calculated as in PRU 4.2.34R(2) before any allowance for tax required by PRU 4.2.29R, leaving out of account any adjustment considered necessary because of PRU 4.2.41R and PRU 4.2.46R. Where a number of assets with different gross redemption yields are held, the weighted average gross redemption yield must be calculated using as weights the value of the asset applicable for entry into column 1. Where securities may be redeemed over a period at the option of the guarantor or the issuer, they must be classified on the assumption that they will be redeemed at the latest possible date or, if it is assumed that they will be redeemed at any earlier date, a supplementary note must be provided explaining what assumption has been made. Subject to paragraphs 10 13 and 11 14, 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) PRU 4.2.33R to PRU 4.3.34R before any allowance for tax required by PRU 4.2.29R. The entry entries at 48.19.3 and 48.29.3 must be the weighted average of the yields in column 3 4, where the weight given to each asset is the value of that asset applicable for entry into column 1 2. Assets not producing income must be included in the calculation.~~
- ~~8.~~ 11. Where the yield in column ~~3~~ 4 for a type of asset shown ~~in~~ at line ~~17, 18 or 28 19 above~~ (assumed to be zero for assets in line 19) is significantly different from the weighted average of the yields for each asset of that type determined in accordance with ~~rule 5.11(6)~~ PRU 4.2.34R(2) before any allowance for tax required by PRU 4.2.29R, then the latter yield figure must be shown in a supplementary note. For this purpose, the weighted average of the yields means an average yield weighted by the value of each asset of that type as entered in column 1.
- ~~9.~~ 12. Where an entry at 13.87.1 has resulted from excess ~~exposure~~ exposure to a *counterparty* or ~~excess concentration with a number of~~ excess concentration with a number of *counterparties*, the aggregate value of the assets of the *insurer* giving rise to *exposure* to such *counterparties* must be stated in a supplementary note, together with the expected income from those assets.
- ~~10.~~ 13. To the extent that ~~rule 5.11(5A)~~ PRU 4.2.34R(2) 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)~~ PRU 4.2.33R and PRU 4.2.34R(1) will apply, before any allowance for tax required by PRU 4.2.29R) 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.~~ 14. 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~~ PRU 4.2.28R, rules 5.11(5) and (5A) PRU 4.2.33R and PRU 4.2.34R 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.

Form 49 (Long term insurance business: Analysis of admissible fixed interest and variable interest and variable yield securities not held to match liabilities in respect of linked benefits) is replaced by the following form:

**Long-term insurance business: Fixed and variable interest assets**

**Form 49**

Name of insurer  
 Total business / subfund  
 Financial year ended  
 Units

		<b>Value of assets</b>	<b>Mean term</b>	<b>Yield before adjustment</b>	<b>Yield after adjustment</b>
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>Government bonds</b>	11				
<b>Other approved fixed interest securities</b>	21				
<b>Other fixed interest securities</b>					
AAA/Aaa	31				
AA/Aa	32				
A/A	33				
BBB/Baa	34				
BB/Ba	35				
B/B	36				
CCC/Caa	37				
Other (including unrated)	38				
<b>Total other fixed interest securities</b>	39				
<b>Approved variable interest securities</b>	41				
<b>Other variable interest securities</b>	51				
<b>Total (11+21+39+41+51)</b>	61				

## Instructions for completion of Form 49

1. The word “total” or the name of the fund must be shown against the heading “Category of assets”. The corresponding code box must contain “10” for the total assets and, in the case of separate funds, code numbers corresponding to those allocated on completion of Form 13.
1. Where non-linked *fixed interest securities* (which are not *approved securities*) for the *long-term insurance fund* (48.13.2 + 48.23.2) exceed £100m, fixed and variable interest assets must be reported in Form 49.
2. ~~The gross redemption yield in columns 2 and 5 for each asset must be calculated as in rule 5.11(3), (4) and (6), leaving out of account any adjustment considered necessary because of rule 5.11(7). Where a number of assets with different gross redemption yields are held, the weighted average gross redemption yield must be calculated using as weights the value of the asset applicable for entry into columns 1 and 4 respectively.~~
3. ~~The value of higher yielding *admissible assets* to be shown in columns 3 and 6 must be the value of *admissible assets* shown in Form 13 where the gross redemption yield on those assets exceeds the gross redemption yield shown in columns 2 and 5 respectively by at least 1.5%.~~
4. ~~Where *securities* may be redeemed over a period at the option of the guarantor or the issuer, they must be classified on the assumption that they will be redeemed at the latest possible date or, if it is assumed that they will be redeemed at any earlier date, a supplementary note must be provided explaining what assumption has been made.~~
5. ~~The entries at 49.19.1, 49.19.2, 49.19.4, 49.19.5, 49.29.1, 49.29.2, 49.29.4 and 49.29.5 must be equal to the values at 48.12.1, 48.12.3, 48.14.1, 48.14.3, 48.13.1, 48.13.3, 48.15.1 and 48.15.3 respectively.~~
6. ~~The entries at 49.19.2, 49.19.5, 49.29.2 and 49.29.5 must be the weighted average of the yields in columns 2 and 5 as appropriate for lines 11 to 18 and 21 to 28 respectively, where the weight given to each yield is the value shown in columns 1 and 4 respectively.~~
2. The value of assets in column 1 should correspond to the value of assets in column 2 of Form 48.
3. The mean term in column 2 may be calculated by using the expected yearly cashflows discounted by the internal rate of return, or an alternative actuarial method. Undated stocks should be assumed to be redeemed after 40 years.
4. The gross redemption yield in column 3 must be calculated in accordance with instruction 10 to Form 48.
5. The gross redemption yield after adjustment in column 4 makes allowance for the risk adjustment required by PRU 4.2.41R and PRU 4.2.46R.
6. A note must be provided stating which rating agency has been used to provide the split by credit rating.

The following Form 50 (Long term insurance business: Summary of mathematical reserves) and the Instructions for completion of Form 50 are inserted after Form 49:

**Long-term insurance business: Summary of mathematical reserves**

**Form 50**

Name of insurer  
 Total business / subfund  
 Financial year ended  
 Units

		UK Life	UK Pension	Overseas	Total Financial year	Total Previous year
		1	2	3	4	5
<b>Gross</b>						
Form 51 - with-profits	11					
Form 51 - non-profit	12					
Form 52	13					
Form 53 - linked	14					
Form 53 - non-linked	15					
Form 54 - linked	16					
Form 54 - non-linked	17					
<b>Total</b>	18					
<b>Reinsurance - external</b>						
Form 51 - with-profits	21					
Form 51 - non-profit	22					
Form 52	23					
Form 53 – linked	24					
Form 53 - non-linked	25					
Form 54 – linked	26					
Form 54 - non-linked	27					
<b>Total</b>	28					
<b>Reinsurance - intra-group</b>						
Form 51 - with-profits	31					
Form 51 - non-profit	32					
Form 52	33					
Form 53 – linked	34					
Form 53 - non-linked	35					
Form 54 – linked	36					
Form 54 - non-linked	37					
<b>Total</b>	38					
<b>Net of reinsurance</b>						
Form 51 - with-profits	41					
Form 51 - non-profit	42					
Form 52	43					
Form 53 – linked	44					
Form 53 - non-linked	45					
Form 54 – linked	46					
Form 54 - non-linked	47					
<b>Total</b>	48					

## Instructions for completion of Form 50

1. Lines 11 to 18 are just for gross business.

Line 11 is the sum of column 9 of Form 51 for *product codes* 100-299.  
Line 12 is the sum of column 9 of Form 51 for *product codes* 300-499.  
Line 13 is the sum of column 9 of Form 52.  
Line 14 is the sum of column 7 of Form 53.  
Line 15 is the sum of column 8 of Form 53.  
Line 16 is the sum of column 7 of Form 54.  
Line 17 is the sum of column 8 of Form 54.

2. Lines 21 to 28 are just for reinsurance ceded external.

Line 21 is the sum of column 9 of Form 51 for *product codes* 100-299.  
Line 22 is the sum of column 9 of Form 51 for *product codes* 300-499.  
Line 23 is the sum of column 9 of Form 52.  
Line 24 is the sum of column 7 of Form 53.  
Line 25 is the sum of column 8 of Form 53.  
Line 26 is the sum of column 7 of Form 54.  
Line 27 is the sum of column 8 of Form 54.  
Line 28 is the sum of lines 21 to 27.

3. Lines 31 to 38 are just for reinsurance ceded intra-group.

Line 31 is the sum of column 9 of Form 51 for *product codes* 100-299.  
Line 32 is the sum of column 9 of Form 51 for *product codes* 300-499.  
Line 33 is the sum of column 9 of Form 52.  
Line 34 is the sum of column 7 of Form 53.  
Line 35 is the sum of column 8 of Form 53.  
Line 36 is the sum of column 7 of Form 54.  
Line 37 is the sum of column 8 of Form 54.  
Line 38 is the sum of lines 21 to 27.

4. Line 41 = line 11 – line 21 – line 31.  
Line 42 = line 12 – line 22 – line 32.  
Line 43 = line 13 – line 23 – line 33.  
Line 44 = line 14 – line 24 – line 34.  
Line 45 = line 15 – line 25 – line 35.  
Line 46 = line 16 – line 26 – line 36.  
Line 47 = line 17 – line 27 – line 37.  
Line 48 = line 18 – line 28 – line 38.

Form 51 (Long term insurance business: Valuation summary of non-linked contracts (other than accumulating with-profit policies)), Form 52 (Long term insurance business: Valuation summary of accumulating with-profit policies), Form 53 (Long term insurance business: Valuation summary of property linked contracts) and Form 54 (Long term insurance business: Valuation summary of index linked contracts) are replaced by the following forms:

**Long-term insurance business: Valuation summary of non-linked contracts** (other than accumulating with-profits contracts)

**Form 51**

Name of insurer

Total business / subfund

Financial year ended

Units

UK Life / UK Pension / Overseas (State or Territory) / Gross / Reinsurance ceded external / Reinsurance ceded intra-group

<b>Product code number</b>	<b>Product description</b>	<b>Number of policyholders / scheme members</b>	<b>Amount of benefit</b>	<b>Amount of annual office premiums</b>	<b>Nominal value of units</b>	<b>Discounted value of units</b>	<b>Other liabilities</b>	<b>Amount of mathematical reserves</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
					n/a	n/a	n/a	
					n/a	n/a	n/a	

**Long-term insurance business: Valuation summary of accumulating with-profits contracts**

**Form 52**

Name of insurer

Total business / subfund

Financial year ended

Units

UK Life / UK Pension / Overseas (State or Territory) / Gross / Reinsurance ceded external / Reinsurance ceded intra-group

<b>Product code number</b>	<b>Product description</b>	<b>Number of policyholders / scheme members</b>	<b>Amount of benefit</b>	<b>Amount of annual office premiums</b>	<b>Nominal value of units</b>	<b>Discounted value of units</b>	<b>Other liabilities</b>	<b>Amount of mathematical reserves</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>

**Long-term insurance business: Valuation summary of property linked contracts**

**Form 53**

Name of insurer

Total business / subfund

Financial year ended

Units

UK Life / UK Pension / Overseas (State or Territory) / Gross / Reinsurance ceded external / Reinsurance ceded intra-group

<b>Product code number</b>	<b>Product description</b>	<b>Number of policyholders / scheme members</b>	<b>Amount of benefit</b>	<b>Amount of annual office premiums</b>	<b>Nominal value of units</b>	<b>Discounted value of units</b>	<b>Other liabilities</b>	<b>Amount of mathematical reserves</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>

**Long-term insurance business: Valuation summary of index linked contracts**

**Form 54**

Name of insurer

Total business / subfund

Financial year ended

Units

UK Life / UK Pension / Overseas (State or Territory) / Gross / Reinsurance ceded external / Reinsurance ceded intra-group

<b>Product code number</b>	<b>Product description</b>	<b>Number of policyholders / scheme members</b>	<b>Amount of benefit</b>	<b>Amount of annual office premiums</b>	<b>Nominal value of units</b>	<b>Discounted value of units</b>	<b>Other liabilities</b>	<b>Amount of mathematical reserves</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>

## Instructions for completion of Forms 51, 52, 53 and 54

1. Separate valuation summaries must be completed in respect of each separate fund or part of a fund for which a surplus is determined. ~~The name of the fund or part of a fund is to be shown against the heading "Category of surplus". The corresponding code box must contain code numbers allocated sequentially beginning with code "11".~~
2. ~~Separate totals for column 5 on Form 51 and columns 5, 6, and 7 on Forms 52, 53 and 54 must be shown for sums assured, for annuities per annum and for other measures of benefit.~~
3. ~~2.~~ Information must be shown separately for each type of insurance business and ~~totalled~~ for each of the following:
  - (i) ~~United Kingdom insurance business, and~~
  - (ii) ~~overseas insurance business~~
  - (a) UK life ('UKL');
  - (b) UK pension ('UKP'); and
  - (c) overseas ('OS').

Overseas business may, at the discretion of the insurer, be subdivided by state or territory
4. ~~3.~~ Subject to 10, the ~~The~~ information must be shown ~~on separate pages and totalled~~ separately for each source of business for each type of *insurance business* in the sequence specified below:
  - (i) ~~life assurance and general annuity insurance business,~~
  - (ii) ~~pension insurance business,~~
  - (iii) ~~permanent health insurance business, and~~
  - (iv) ~~other insurance business~~
  - (a) gross insurance business ('GR');
  - (b) reinsurance ceded which is external to the insurance group ('RE'); and
  - (c) reinsurance ceded which is from within the insurance group ('RG').
4. Subject to 11, information must be further divided by product code. 'Product description' in column 2 is the narrative description beside the number of the product code in the table in paragraph 3 of the Instructions for completion of Form 47 but may, at the discretion of the insurer, include the brand name. Subdivision of pensions business into increments and DWP National Insurance rebates is not required in Forms 51-54.
5. The box marked "Type of business" must be completed by the insertion of "L&GA", "Pens", "PHI" or "Other" respectively for each of the types (i), (ii), (iii) and (iv) specified above.
6. The information is to be further analysed and sub-totalled for:
  - (i) ~~direct insurance business,~~
  - (ii) ~~reinsurance accepted, and~~
  - (iii) ~~reinsurance ceded,~~

and totals net of *reinsurance ceded* must also be shown, but where any information to be provided in accordance with (iii) duplicates any information required to be provided in accordance with 7, 8 and 9 in respect of (i) or (ii), then for the purpose of (iii), the total of the *reinsurance ceded* may be shown in respect of the duplicated information.

7. The information must be further analysed and sub-totalled within each basis of participation in profits in the sequence specified below:

- (i) *with profits policies*, and
- (ii) *non profit policies*.

8. Within each subdivision required under 4, 6 and 7 the appropriate types of insurance from the following list must be shown separately:

- (i) whole life assurance,
- (ii) endowment insurance,
- (iii) pure endowment insurance,
- (iv) term assurance,
- (v) other assurance (to be specified),
- (vi) miscellaneous assurance,
- (vii) deferred annuity,
- (viii) annuity in payment,
- (ix) other annuity (to be specified),
- (x) miscellaneous annuity,
- (xi) permanent health insurance,
- (xii) capital redemption assurance,
- (xiii) annuity certain,
- (xiv) group pension,
- (xv) group life,
- (xvi) group permanent health, and
- (xvii) other group (to be specified),

and particulars must also be shown of any supplementary provisions within *general insurance business class 1 or 2* which by virtue of the Authorisation Manuary are to be taken to be included in *long term insurance business* of any *class* (Supplementary and sickness insurance – see Form 61).

9. A further sub-division into each separate category of contract is required as follows:

Forms 51 and 52 – each category of contract which is valued on a different valuation basis;

Form 53 – each category of contract which provides different guarantees or options, and each category of unit link. For the purpose of determining the category of the unit link, all authorised unit trusts must be considered to be one category and all internal linked funds must be considered to be one category.

Form 54—each category of contract which provides different guarantees or options and each category of index. Where the link is to a proportion of an index, each different proportion must be treated as a different category.

10. Any contract which consists of a combination of different types of insurance, as described in 8, must be treated as a number of separate contracts each dealing with one of the different types of insurance so combined and the amount by which the total number of contracts shown in column 4 of any valuation summary exceeds the actual number of contracts to which that valuation summary relates must be stated in a supplementary note.
11. For *linked contracts* with both *property linked* and *index linked benefits*, each benefit must be shown on Form 53 or 54 as appropriate, and a note must be attached describing the manner in which details relating to the number of contracts and the amounts of benefits, premiums and other liabilities have been treated. Where the number of contracts is overstated in aggregate, the amount of the overstatement must be stated in a supplementary note.
12. For *linked contracts* which are also *accumulating with profits policies*, that part of the benefits which are with profits must be shown on Form 52 and the remainder of the benefits on Form 53 and/or 54 as appropriate, and a note must be attached describing the manner in which details relating to the number of contracts, and the amounts of benefits, premiums and other liabilities have been treated. Where the number of contracts is overstated in aggregate, the amount of the overstatement must be stated in a supplementary note.
13. Reserves calculated on an aggregate basis (including reserves for taxation on capital gains, for investment performance guarantees or other special reserves) or adjustments must be shown on separate lines in the *mathematical reserves* column and the particulars of such reserves or adjustments must be specified.
14. Contracts the nature of which or the method of valuation of which makes it impossible or inappropriate to give the information in the exact form required by Forms 51, 52, 53 or 54, must be shown on a separate valuation summary with appropriately modified column headings and the reason for the modification stated in a supplementary note.
- 14A. Where a net premium method of valuation is not used for contracts reported on Form 51 then, notwithstanding 14—
  - (a) columns 7 and 8 must be left blank;
  - (b) if the method used does not separately identify suitable values to be entered in columns 9 and 10, then the total amount of *mathematical reserves* must be entered in columns 9 and 12, and columns 10 and 11 must be left blank; and
  - (c) if the method used does separately identify suitable values to be entered in columns 9 and 10, then the entry in column 11 must be the amount entered in column 10 less the amount reserved for future expenses, so that the amount in column 12 equals the amount in column 9 less the amount in column 11.
15. Contracts of any description may be grouped together under any “miscellaneous” heading as long as the *mathematical reserves* for *insurance business* shown under all such headings in any one valuation summary do not exceed 5% of the total *mathematical reserves* for all *insurance business* shown in that valuation summary.
5. There may be more than one line for the same *product code* within a type and source of business to identify specific brands or *policies* with special features.
6. For individual *policies*, column 3 is the number of plans, i.e. eliminating the effect of multiple policies being issued as part of the same premium, identifiable increments and rider benefits. A *policy holder* who holds plans of the same product code taken out at different dates will contribute to column 3 for each such plan. For group scheme business, where the *insurer* has records of benefits at member level, column 3 is the number of members. For group scheme business, where the *insurer* has no records of benefits at member level, column 3 must be zero. For business without such records, the number of

group schemes, divided by the *product code*, must be set out in a supplementary note. Details of approximations made in estimating the number of policyholders from the number of contracts should be given in a note.

7. To avoid double counting, if all the premiums in the plan are invested in the *with-profits fund*, a member of a plan offering a choice of funds may be treated as contributing to column 5 for unitised with-profits business. For *policies* with protection rider benefits, the entry in column 5 must be for the main benefit in the plan.
8. Columns 6, 7 and 8 must be left blank on Form 51. The purpose of the unused columns in Form 51 is the standardisation of column headings in Forms 51-54.
9. For *linked long-term contracts* including life assurance, column 4 must be the current amount payable on death.
10. For *linked long-term contracts*, unitised *with-profits policies* and deposit administration contracts, column 6 must be the current value of the units or fund as presented to the *policy holder*. The amount in column 7 is the amount in column 6 allowing for any discounting in the valuation. The amount in column 9 is the sum of columns 7 and 8.
11. Notwithstanding 4, where neither the *mathematical reserves* nor the annual premiums with respect to products with the same product code exceed the lesser of £10m and 1% of the total *mathematical reserves*, the products be entered as the appropriate miscellaneous product code in column 1 and 2.
12. Where a product does not appear to fit into any other product code, the miscellaneous product code can be used. Details must be disclosed in a note.
13. Details must be given in a note of approximations used to apportion between product codes.

Form 55 (Long term insurance business: Analysis of units in internal linked funds and direct holdings of assets matching liabilities in respect of property linked benefits) is replaced by the following form:

**Long-term insurance business: Unit prices for internal linked funds**

**Form 55**

Name of insurer  
 Total business  
 Financial year ended  
 Units

<b>Fund name</b>	<b>Type of fund</b>	<b>Net assets</b>	<b>Main series</b>	<b>Unit mgmt charge</b>	<b>Price at previous valuation date</b>	<b>Price at current valuation date</b>	<b>Change in price during year</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>

## Instructions for completion of Form 55

1. ~~The box marked “category of surplus” must be completed in accordance with paragraph 1 of the instructions for completion of Forms 51, 52, 53 and 54.~~
2. ~~Separate forms must be prepared in respect of *internal linked funds* and directly held assets. The box marked IL/DH must be completed by the insertion of “IL” for *internal linked funds* and “DH” for directly held assets.~~
3. ~~A separate line must be used for each asset to which benefits are linked and each different type of unit of each *internal linked fund*. Columns 5, 6, 7, 8, 9 and 10 must be sub totalled for each fund link and totalled for all links.~~
4. ~~The aggregate of the total figures shown for column 8 (excluding any amount shown in column 8 pursuant to 8) and 9 in each Form prepared in respect of a separate fund or part of a fund must equal the appropriate figure shown as the total of column 12 of Form 53.~~
5. ~~For links to directly held assets, column 6 must not be used.~~
6. ~~For *internal linked funds*, the total of column 5 must equal the total of column 8 of the summarised Form 43, and the total of column 6 must equal the total of column 3 of the summarised Form 43.~~
7. ~~Where the liability shown in column 11 of Form 53 for a specific fund link is wholly *reinsured* with an *insurer*, so that the entries in columns 8 and 9 of this Form would otherwise be identical, the entries in respect of that fund link must be aggregated and shown on a separate line with the name of fund link to be shown in column 1 as “wholly *reinsured*”.~~
8. ~~Any amounts included in this analysis in accordance with paragraph 20 of Appendix 9.4, being unit liabilities in respect of *property linked benefits* deposited with the *insurer* under a *deposit back arrangement*, must, for each *internal linked fund* or directly held asset, be shown in column 8 on a separate line with the name of unit type to be shown in column 2 as “amounts deposited back”.~~
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.~~
1. Where the net assets held by the *insurer* for all the *internal linked funds* sharing the same underlying assets for pricing purposes exceed the lesser of £100m and 10% of the total *internal linked funds* (line 59 of Form 45), with the exception of share index tracker funds, any such *internal linked fund* which is in one of the categories listed in 2 must be reported in Form 55.
2. The fund types for column 2 are as follows:
  - 01 - life - stock market managed fund
  - 02 - life - balanced managed fund
  - 03 - life - defensive managed fund
  - 04 - life - other managed fund
  - 05 - life - UK equity
  - 06 - life - overseas equity
  - 07 - life - property
  - 11 - individual pension - stock market managed fund
  - 12 - individual pension - balanced managed fund
  - 13 - individual pension - defensive managed fund
  - 14 - individual pension - other managed fund
  - 15 - individual pension - UK equity
  - 16 - individual pension - overseas equity
  - 17 - individual pension - property
  - 21 - group managed fund - stock market managed fund
  - 22 - group managed fund - balanced managed fund
  - 23 - group managed fund - defensive managed fund

24 - group managed fund - other managed fund  
25 - group managed fund - UK equity  
26 - group managed fund - overseas equity  
27 - group managed fund - property.

3. The amount in column 3 is the total net assets attributable to the fund.
4. Column 4 is the name of the largest series (by unit liability).
5. Column 5 is the unit management charge for the largest series.
6. Columns 6 and 7 are the prices used to value the unit liabilities.
7. Column 8 is (column 7 – column 6) / column 6.

**Long-term insurance business: ~~Analysis of assets and liabilities matching investment liabilities in respect of index linked business~~**

**Form 56**

Name of insurer

~~Global business/UK branch business/EEA branch business~~

~~United Kingdom business/Overseas business~~ Total business / subfund

Financial year ended

Category of surplus

Units

[Deleted]			
Type of assets and liabilities	Name of index link	Value of assets or liabilities	Gross derivative value
	1	2	3
<b>Total assets</b>			<u>n/a</u>
Total liabilities			<u>n/a</u>
Net total assets			<u>n/a</u>

## Instructions for completion of Form 56

- ~~1.~~ The box marked "category of surplus" must be completed in accordance with paragraph 1 of the instructions for completion of Forms 51, 52, 53 and 54.
- ~~2.~~1. Assets and liabilities in column 2 must be listed individually except that where a group of assets of similar type is held which is intended to mirror the performance of an index, a description of the type of assets held may be given. Liabilities must be shown between round brackets and must be fully described.
- ~~3.~~2. A separate sub-total of assets and liabilities must be used for each index link and for each combination of assets and liabilities matching the *insurer's* liability under any *deposit back arrangement*. Links to different percentages of an index must be treated as different index links.
- ~~4.~~3. For each index link, the sub-totalled values in column 2 (excluding those held in respect of any *deposit back arrangement*) must match the appropriate entries in column 12 of Form 54 net of *reinsurance ceded*.
- ~~5.~~4. Assets and liabilities arising from *derivative contracts* (or contracts or assets which have the effect of a *derivative contract*) must be shown separately. Amounts must be shown net of *variation margin* in column 2 and gross of *variation margin* in column 3. Rights to recover assets transferred by way of *initial margin* must not be shown on Form 56.
- ~~6.~~5. Where there is a liability to repay *variation margin* and there are no arrangements for netting of amounts outstanding or the arrangements would not permit the accounting of such amounts on a net basis in accordance with generally accepted accounting practice, it must be so stated in a supplementary note.
- ~~7.~~6. Any provision for ~~adverse changes~~ "reasonably foreseeable adverse variations" must be determined in accordance with ~~rule 5.3~~ PRU 4.3.17R(3) and shown in a supplementary note.
7. The *insurer* must include a supplementary note of any circumstances which make the natural relationships break down (e.g., particular tax treatments).
8. Where unit liabilities are *reinsured* and deposited back with the *ceding insurer*, the amounts deposited back which are either unit liabilities in respect of *property linked benefits* or investment liabilities in respect of *index linked benefits* must be treated as though they are unit liabilities.

The 'matching rectangle' version of Form 57 is withdrawn, and the 'analysis of valuation interest rate' version becomes the only version.

**Long-term insurance business: Valuation result and distribution of surplus Form 58**

Name of insurer

Global business/UK branch business/EEA branch business

Total business / subfund

Financial year ended

Category of surplus

Units

[Deleted]			
		<b>Financial year</b>	<b>Previous year</b>
		<b><u>1</u></b>	<b><u>2</u></b>
<b>Valuation result</b>			
Fund carried forward	11		
Bonus payments made to policyholders in anticipation of a surplus	12		
<b>Transfers out of fund/parts of fund</b>			
Transfer to non-technical account	13		
Transfer to other funds / parts of funds	14		
<b>Net transfer out of funds/parts of funds (13+14)</b>	<b>15</b>		
<b>Subtotal (11+12+15) (11 to 14)</b>	<b>16 15</b>		
<b>Mathematical reserves for accumulating with profit policies</b>	<b>17</b>		
<b>Mathematical reserves for other non-linked contracts</b>	<b>18</b>		
<b>Mathematical reserves for property-linked contracts</b>	<b>19</b>		
<b>Mathematical reserves for index-linked contracts</b>	<b>20</b>		
<b>Total (17 to 20) Mathematical reserves</b>	<b>21</b>		
Surplus including contingency and other reserves held towards the solvency margin (deficiency) ( <del>16-21</del> 15-21)	29		
<b>Composition of surplus</b>			
Balance of surplus brought forward unappropriated from last valuation	31		
<b>Transfers into fund/part of fund</b>			
Transfer from non-technical account	32		
Transfer from other funds / parts of fund	33		
<b>Net transfer into fund/part of fund (32+33)</b>	<b>34</b>		
Surplus arising since the last valuation	<del>35</del> 34		
<b>Total (31+34+35)</b>	<b>39</b>		
<b>Distribution of surplus</b>			
Bonus payments made to policyholders paid in anticipation of a surplus	41		
<b>Allocated to policyholders by way of</b>			
Cash bonuses	42		
Reversionary bonuses	43		
Other bonuses	44		
Premium reductions	45		
<b>Total allocated to policyholders (41 to 45)</b>	<b>46</b>		
Net transfer out of fund / part of fund	47		
<b>Total distributed surplus (46+47)</b>	<b>48</b>		
<b>Balance of surplus (including contingency and other reserves held towards the solvency margin) Surplus carried forward unappropriated</b>	<b>49</b>		
<b>Total (48+49)</b>	<b>59</b>		

<b>Percentage of distributed surplus allocated to policyholders of fund/part of fund</b>	<b>64</b>		
Corresponding percentage at three immediately previous valuations			
Latest (year of valuation —) <u>Current year</u>	<del>62</del> <u>61</u>		
Earlier (year of valuation —) <u>Current year 1</u>	<del>63</del> <u>62</u>		
Earliest (year of valuation —) <u>Current year 2</u>	<del>64</del> <u>63</u>		
<u>Current year</u>	<u>64</u>		

## Instructions for completion of Form 58

1. Separate ~~statements~~ Forms must be completed in respect of each separate fund or part of a fund for which a surplus is determined. ~~The name of the fund or part of a fund must be shown against the heading "Category of surplus". The corresponding code box must contain code numbers allocated in accordance with paragraph 1 of the instructions for completion of Forms 51, 52, 53 and 54.~~
2. The entry at line 11 must be equal to the entry at line 59 in Form 40 for the relevant fund or part of fund.
- ~~2.~~ 3. Where interim, mortuary or terminal bonuses are determined in advance of a valuation and are paid in anticipation of surplus arising at the valuation, the amounts of such bonus actually paid in the period up to the *relevant date* must be entered ~~in~~ at lines 12 and 41. To the extent that it is the practice of the *insurer* to make special provision for the cost of such bonuses payable on future ~~claims~~ claims out of surplus arising at a valuation, such amounts must be treated as amounts allocated to *policy holders* at the valuation in question and included ~~in~~ at line 44, and the actual amounts paid must not appear at lines 12 and 41 at future valuations. An appropriate supplementary note must identify the various items where necessary.
- ~~3.~~ 4. Where *policies* have been transferred from one fund/part of fund to another, the associated transfer of reserves must not be included as a "transfer" in this Form. Where any other transfer has been made, only one positive figure must be inserted ~~in~~ at line 15 or line 34 (depending on the direction of the net transfer) leaving the other line blank. Corresponding entries must be made in either the block comprising lines 13 and 14 or the block comprising lines 32 and 33, as appropriate.
5. When the *insurer* records a transfer to the non-technical account or to another fund or part fund in a revenue account (Form 40) for a particular period, the amount of which has been derived from a valuation completed at the end of that period, that transfer must be shown at line 13 or 14 as appropriate, so that the true surplus appears in line 29.
6. Where the *insurer* decides to allocate to the *long-term insurance business* the whole or any part of the investment income or net capital gains arising from assets not attributable to its *long-term insurance business*, the allocation must be included in Form 58 as a transfer from the non-technical account. This transfer must be included at lines 13 or 32, depending on whether, for the *financial year in question*, there is an overall net transfer out of, or into, the fund (or part fund).
- ~~4.~~ 7. Where the entry ~~in~~ at line 14 or line 33 represents more than one transaction, each transfer must be separately identified in a supplementary note.
- ~~5.~~ 8. Line 61 is line 46 expressed as a percentage of line 48.
- ~~6.~~ 9. For each fund/part of fund, the entry at line ~~18~~ 21 must equal the total liabilities shown at line 48 in column ~~12~~ 4 of Form 51 50, and the entries at lines 17, 19 and 20 must equal the total liabilities shown in column ~~15~~ of Forms 52, 53 and 54 respectively.
- ~~7.~~ 10. The figure at lines 39 and 59 must equal the figure at line 29.
- ~~8.~~ 11. The figure at line 47 must equal the figure at line 15.

The following Forms 59A and 59B (Long-term insurance business: With-profits payouts) and the Instructions for completion of Forms 59A and 59B are inserted after Form 58:

**Long-term insurance business: With-profits payouts on maturity (normal retirement)**

**Form 59A**

Name of insurer

Original insurer

Date of maturity value / open market option

<b>Category of with-profits policy</b>	<b>Original term (years)</b>	<b>Maturity value / open market option</b>	<b>Terminal bonus</b>	<b>MVA</b>	<b>CWP / UWP</b>	<b>MVA permitted?</b>	<b>Death benefit</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
Endowment assurance	10						
Endowment assurance	15						
Endowment assurance	20						
Endowment assurance	25						
Regular premium pension	5						
Regular premium pension	10						
Regular premium pension	15						
Regular premium pension	20						
Single premium pension	5						
Single premium pension	10						
Single premium pension	15						
Single premium pension	20						

**Long-term insurance business: With-profits payouts on surrender**

**Form 59B**

Name of insurer  
 Original insurer  
 Date of surrender value

<b>Category of with-profits policy</b>	<b>Duration at surrender (years)</b>	<b>Surrender value</b>	<b>Terminal bonus</b>	<b>MVA</b>	<b>CWP / UWP</b>	<b>MVA permitted?</b>	<b>Death benefit</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
Endowment assurance	5						
Endowment assurance	10						
Endowment assurance	15						
Endowment assurance	20						
With-profits bond	2						
With-profits bond	3						
With-profits bond	5						
With-profits bond	10						
Single premium pension	2						
Single premium pension	3						
Single premium pension	5						
Single premium pension	10						

## Instructions for completion of Forms 59A and 59B

1. 'Original insurer' means the insurance undertaking which effected the *policy* (which may be same entity as the *insurer*).
2. Where the with-profits *mathematical reserves* relating to the business of the original insurer exceed £100m, Forms 59A and 59B must be completed for the original insurer.
3. The date of the maturity value, open market option or surrender value is the 1<sup>st</sup> of the month preceding the date that the submission of the *return* is due.
4. In Form 59A, column 3 is the maturity value for endowment assurances or the open market option for regular and single premium pension business.
5. Maturity values for endowment assurances must be based on a £50 monthly premium paid by a male non-smoker aged 30 next birthday at the date the *policy* commenced.
6. Open market options for regular premium pension must be based on a personal pension or s226 *policy* with a £200 monthly premium paid by a male aged 65 at retirement, for a selected retirement age of 65 at outset. The *insurer* must assume that the *policy* commenced on the relevant birthday date appropriate to the term of the *policy* with the final premium payable one month before retirement aged 65.
7. Open market options for single premium pensions must be based on a personal pension or s226 *policy* with a £10,000 single premium paid by a male aged 65 at retirement, for a selected retirement age of 65 at outset. The *insurer* must assume that the *policy* commenced on the relevant birthday date appropriate to the term of the *policy*.
8. Surrender values for endowment assurances must be based on a £50 monthly premium paid by a male non-smoker aged 30 next birthday with an original term of 25 years at the date the *policy* commenced.
9. Surrender values for with-profits bonds must be based on a £10,000 single premium paid by a male aged 50 at the date the *policy* commenced. The *insurer* must assume that no prior withdrawals have taken place.
10. Surrender values for single premium pensions must be based on a personal pension or s226 *policy* with a £10,000 single premium paid by a male aged 40 at the date the *policy* commenced.
11. Where the *insurer* did not effect *policies* in a particular category or the *policy* category was not open to new business (apart from increments) at the date the *policy* is assumed to have commenced, the entry in columns 3 to 8 must be 'n/a'.
12. Column 4 is the amount of terminal bonus included in column 3. If a market value (or similar) adjustment has been applied, then that amount must be shown as a negative amount in column 5.
13. Column 6 is CWP (conventional with-profits) or UWP (unitised with-profits).
14. Column 7 is Y if an MVA is permitted by the policy conditions at the date of maturity / date of surrender for that policy, otherwise N.
15. Where there is more than one version or premium rate for one of the data lines, the data shown should be for the version where there is the largest amount of business.

The original Appendix 9.4 is deleted, replaced by the following new Appendix 9.4, and now moved to follow Form 60.

## APPENDIX 9.4 (rule 9.31)

### ABSTRACT OF VALUATION REPORT

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The following information must be provided in the abstract of the report required under rule 9.31, the answers being numbered to accord with the numbers of the corresponding paragraphs of this Appendix. For the purposes of this Appendix, the “report period” means the period from the date to which the previous investigation under rule 9.4 related to the ‘valuation date’ (as defined in 1).

#### **Introduction**

1. (1) The date to which the actuarial investigation relates, namely, the **valuation date**.
- (2) The previous valuation.
- (3) The dates of any interim valuations (for the purposes of rule 9.4) carried out since the previous ‘valuation date’.

#### **Product range**

2. Any significant changes in products during the *financial year* (new products, new bonus series, products withdrawn, changes to options or guarantees under existing products), including product brand names and charging methods, but not the amounts of the charges where these form part of the product terms.

#### **Discretionary charges and benefits**

3. (1) For each product where the *insurer* has the option to apply a market value reduction (or equivalent), a statement of the period when this has been applied during the year and a summary of the policy years of entry to which it applied.
- (2) Any changes to premiums on reviewable protection policies, including for each product affected, the range of the changes (x% to y%), the amount of business affected by a change, and the amount of business where a change was permitted but did not occur at this review date.
- (3) For non-profit deposit administration benefits, the interest rate added during the year.
- (4) For service charges on linked *policies*, the percentage changes to service charges for in force *policies*.
- (5) For benefit charges on linked *policies*, any changes to benefit charges (mortality, morbidity, etc) on linked *policies*, including for each product affected the range of the changes (x% to y%), and the amount of business affected by the change.
- (6) Any changes to unit management charges or notional charges to accumulating with-profits *policies*, and the amount of business affected by the change.

- (7) For unit pricing of *internal linked funds*:
- (a) a description of the methods, and the types of unit to which each applies, used for:
    - (i) the creation and cancellation of units in *internal linked funds*, and
    - (ii) determining unit prices for the allocation of units to, and the de-allocation of units from, *policies*
 including information on:
    - (iii) the basis of the valuation of assets and how the basis is selected (for example, offer basis for net creations of units and bid basis for net cancellations), and
    - (iv) the timing of the asset valuation used in respect of such operations in relation to the time at which the operation is decided upon and effected;
  - (b) when at any one time different pricing bases apply to different *policies*, details of the circumstances which give rise to the difference; and
  - (c) where assets are units in *collective investment schemes* or similar assets, the price used and the relationship between the last opportunity to deal at that price and the time of the valuation.
- (8) For tax deductions from *internal linked funds*, the allowance and timing of withdrawal from the fund for tax on realised and unrealised gains and losses, including notional gains on unit trusts, specifying the tax rate used.
- (9) For tax provisions for *internal linked funds*, a description of the methods and the types of unit to which each applies, used to determine the provision for tax on realised and unrealised capital gains and the percentage of these gains deducted or provided for during the report period.
- (10) Wherever units of the type referred to in paragraph 5 of Part I of **Appendix 3.2** are held in an *internal linked fund*, or where *property linked benefits* are linked to such units, the rate of discount, commission or other allowance made to the *insurer* on the purchase, sale or holding of units and the extent to which the *policy holder* benefits from such discount, commission or other allowance.

#### **Valuation basis (other than for special reserves)**

4. (1) Where either the reserves or the annual premiums for a product exceed the lesser of £10m and 0.5% of the total *mathematical reserves*, the basis of the

valuation. Where a prospective method has not been used, the basis reported must be the basis used by the *insurer* to test the adequacy of the reserves.

- (2) The valuation methods used and the types of product to which each method applies, including a description of any non-standard method. See 5 to 8 for special reserves.
- (3) A table of the interest rates used, showing the product group, the rate used in from the end of the *financial year in question*, and, for products which represent a significant amount of business, the rate used from the end of the previous *financial year*. Where the valuation with respect to a product involves more than one interest rate (e.g. a rate in deferment and a rate in possession), both interest rates must be shown.
- (4) How the yield was adjusted to allow for risk for equity *shares*, property and other *fixed interest securities* to determine the risk adjusted yield in **Form 57**.
- (5) For products which represent a significant amount of business, a table of mortality bases used, showing the product group and the bases used at the end of the *financial year in question* and at the end of the previous *financial year*. If a mortality basis cannot be expressed as a flat percentage of a standard table or as a standard table subject to a flat age rating, then the mortality rates must be provided for ages 25, 35, 45 and 55. For all annuitant mortality bases, the expectation of life at age 65 and 75 for annuities in payment and the expectation of life at age 65 for current ages 45 and 55 for deferred annuities must be provided. Allowances made for future changes in mortality where not implicit in the basis, and details of any allowance made and the amount of any reserve held, for any possible detrimental impact of significant changes in the incidence of disease or developments in medical science on the mortality experience of the *insurer* assumed in the valuation of the *contracts of insurance* must be provided.
- (6) For products which represent a significant amount of business, a table of morbidity bases used, showing the product group and the bases used at the end of the *financial year in question* and at the end of the previous *financial year*. If a basis cannot be expressed as a simple modification to a standard table (e.g. flat percentage, age rating), the basis must be shown as ‘modified CMIR12’. If a basis cannot be represented as a standard table, then the morbidity rates and recovery rates must be provided for ages 25, 35, 45 and 55. Recovery rates must be provided at durations of 2 and 5 years. Allowances made for future changes in morbidity, and details of any allowance made and the amount of any reserve held, for any possible detrimental impact of significant changes in the incidence of disease or developments in medical science on the morbidity experience of the *insurer* assumed in the valuation of the *contracts of insurance* must be provided.

- (7) A table of expense bases used, showing the product group, the basis for the *financial year in question*, and the basis for the previous *financial year*. The table must show zillmer adjustments, expense assumptions for prospective methods where no further premiums are payable, expense assumptions for gross premium valuations of non-profit premium paying business and expense assumptions for non-unit liability calculations for linked business, identifying monetary amounts and the percentages of premiums. The table must show the unit growth rates for gross and net linked business before management charges and the inflation rates assumed for future expenses and future increases in *policy* charges. For non-unit liability calculations, the expense bases must be shown only for the main products (e.g. life regular premium, life single premium, pensions regular premium, and pensions single premium).
- (8) Future bonus rates for gross premium valuations of with-profits business and for valuations of unitised with-profits business.
- (9) Any other material basis assumptions not stated elsewhere (e.g. persistency).
- (10) How the valuation of liabilities allowed for *derivative contracts* (or contracts or assets having the effect of *derivative contracts*). Derivatives held in connection with options or guarantees must be included in 5. If the valuation does not correspond to the **Form 48** presentation, an explanation and reconciliation must be provided. A statement of how any out-of-the-money derivatives have been used to back liabilities must be provided.

### **Options and guarantees**

5. (1) Where the basic reserve exceeds the lesser of £10m and 1% of the total *mathematical reserves*, in accordance with the following subparagraphs, the methods and bases used for the calculation of the reserves for options and guarantees. The bases must include the assumptions for the take-up of the options and guarantees. For the purposes of 5, guarantees do not include those which have already been explicitly valued (e.g. the guaranteed sum assured on endowment contracts).
- (2) Guaranteed annuity rate options (where the ‘asset share’ or amount of benefit may be converted, at the option of the *policy holder* from cash to annuity at a guaranteed rate), including:
  - (a) a description of the method used; and
  - (b) a table showing:
    - (i) product name,
    - (ii) basic reserve,
    - (iii) spread of outstanding durations,

- (iv) guarantee reserve,
  - (v) guaranteed annuity rate (expressed as a percentage of the cash sum for a male age 65). If there are categories of business with guaranteed annuity rates differing by more than one percentage point, these categories must be shown separately,
  - (vi) whether *policy holders* may make increments to the *policy*
  - (vii) form of the annuity (e.g. yearly in arrears, single or joint life, and so on), and
  - (viii) retirement ages.
- (3) Guaranteed surrender and unit-linked maturity values, including:
- (a) a description of the method and basis used; and
  - (b) a table showing:
    - (i) product name,
    - (ii) basic reserve,
    - (iii) spread of outstanding durations,
    - (iv) guarantee reserve,
    - (v) guaranteed amount,
    - (vi) MVA free conditions,
    - (vii) in force premiums, and
    - (viii) whether *policy holders* may make increments to the *policy*.
- (4) Guaranteed insurability options, including:
- (a) a description of the method and basis used; and
  - (b) for conversion and renewal options where the total sum assured exceeds £1b, a table showing:
    - (i) product name,
    - (ii) in force premiums,
    - (iii) sum assured,

- (iv) description of the option, and
  - (v) guarantee reserve.
- (5) The nature of any other guarantees and options, including a description of the method and basis used, the amount of business (premium, sum assured or reserve), and the amount of additional reserve.

#### **Expense reserves**

6. (1) The aggregate amount of expense loadings, grossed up for taxation where appropriate, expected to arise during the 12 months from the ‘valuation date’ from implicit and explicit reserves made at the ‘valuation date’ to meet expenses in fulfilling contracts in force at the ‘valuation date’, the amounts arising from each of explicit and implicit allowances, the amount of investment expenses and the amount of any other maintenance expenses.
- (2) A brief statement of the basis of calculating implicit allowances.
- (3) Where the amount of maintenance expenses is significantly different from the maintenance expenses shown at line 14 of **Form 43**, an explanation of this.
- (4) New business expense overrun reserve, including the method and basis of calculation (whether or not a reserve is required) in respect of the expenses of continuing to transact new business during the 12 months following the ‘valuation date’ and the amount of the reserve so calculated.
- (5) The maintenance expense overrun reserve or, where an explicit reserve has not been made for meeting the expenses likely to be incurred in future in fulfilling the existing contracts on the basis of specific assumptions in regard to the relevant factors, details of the basis used to test the adequacy of the reserves to satisfy PRU 7.3.51R, in either case stating whether redundancy costs or costs of terminating management agreements have been taken into account (with or without stating the amount of such costs).

#### **Mismatching reserves**

7. (1) Subject to (2), a table of the sum of the *mathematical reserves* (other than liabilities for *property linked benefits*) and the liabilities in respect of the deposits received from *reinsurers* as shown in **Form 14**, analysed by reference to the currencies in which the liabilities are expressed to be payable, together with the value of the assets, analysed by reference to currency, which match the liabilities.
- (2) Liabilities totalling up to 2% of the total under (1) may be grouped together as ‘other currencies’, and the assets matching those liabilities are not required to be analysed by reference to currencies as long as the proportion of such liabilities which are matched by assets in the same currency is stated.

- (3) The amount of reserve for currency mismatching and a description of the method used to calculate the reserve.
- (4) A statement of the most onerous scenario under PRU 4.2.17R for assets invested in the UK and other assets that fall under PRU 4.2.17R for the purposes of calculating the resilience capital requirement in PRU 4.2.11R.
- (5) A statement of the most onerous scenario under PRU 4.2.24R for each significant territory in which assets are invested outside the UK for the purposes of calculating the resilience capital requirement in PRU 4.2.11R.
- (6) In respect of the scenarios described under (6) and (7) which produce the most onerous requirement (whether or not a resilience capital requirement is required),
  - (a) the amount of the *resilience capital requirement* if such a requirement arises,
  - (b) the change in the aggregate amount of the *long-term insurance liabilities*, and
  - (c) the aggregate amount by which the assets allocated to match such liabilities in the scenario have changed in value from the amount of those assets shown in Form 13.

### **Other special reserves**

8. For other special reserves which exceed the lesser of £10m and 0.1% of total *mathematical reserves*, the nature and amount of the reserves, including (where the reserve is greater than the lesser of £10m and 0.5% of total *mathematical reserves*) a description of the method and basis used to calculate each reserve.

### **Reinsurance**

9. (1) For *long-term insurance business ceded* on a facultative basis to a *reinsurer* who is not authorised to carry on *insurance business* in the United Kingdom at any time during the report period -
  - (a) the aggregate of premiums payable by the *insurer* to all such *reinsurers* (sub-divided according to financial years, if appropriate) and the aggregate amount deposited at the 'valuation date' under any *deposit back arrangement*; and
  - (b) the amount of any such premiums payable by the *insurer* to any *reinsurer* which is a *connected company* of the *insurer* and the aggregate amount deposited at the 'valuation date' under any *deposit back arrangement*.

- (2) Where:
- (a) the treaty is a ‘financing arrangement’;
  - (b) premiums under (f) exceed the lesser of £10m and 1% of *gross premiums*; or
  - (c) reserves under (j) exceed the lesser of £10m and 1% of total *mathematical reserves*,

a table showing for each treaty, or group of similar treaties, of *reinsurance* where the *insurer* is the *cedent* and under which business is in force at the ‘valuation date’:

- (d) the name of the *reinsurer*;
- (e) an indication of the nature and extent of the cover given under the treaty;
- (f) the premiums payable by the *insurer* under the treaty during the report period;
- (g) the amount deposited at the ‘valuation date’ in respect of the treaty under any *deposit back arrangements*;
- (h) whether the treaty is closed to new business.
- (i) the amount of any undischarged obligation of the *insurer*;
- (j) the amount of *mathematical reserves* ceded under the treaty; and
- (k) the retention by the *insurer* (e.g., x% up to £Y) for new *policies* being *reinsured*,

with a note setting out:

- (l) whether the *reinsurer* is authorised to carry on *insurance business* in the United Kingdom;
- (m) whether the *reinsurer* is a *connected company* of the *insurer*;
- (n) a description of any material contingencies, such as credit risk or legal risk, to which the treaty is subject;
- (o) 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
- (p) for each ‘financing arrangement’:

- (i) a brief description of the conditions for the discharge of any undischarged obligation of the *insurer*, and
  - (ii) 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*.
- (3) In this paragraph 9:
- (a) **financing arrangement** means any contract entered into by the *insurer*, in respect of *contracts of insurance* of the *insurer*, which has the effect of increasing the long term capital resources in line 11 of **Form 2**, and which includes terms for -
    - (i) the transfer of assets to the *insurer*, the creation of a *debt* to the *insurer* or the transfer of liabilities to *policy holders* from the *insurer* (or any combination of these), and
    - (ii) either an obligation for the *insurer* 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 such liabilities, in each case, in specified circumstances; and
  - (b) paragraphs (1), (2) and (3)(a) of rule 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.

#### **Reversionary (or annual) bonus**

10. (1) Where the *mathematical reserves* under (b) exceed the lesser of £10m and 1% of the total *mathematical reserves*, a table showing (by bonus series):
- (a) name of bonus series;
  - (b) amount of *mathematical reserves*;
  - (c) reversionary bonus rate for the *financial year in question*;
  - (d) reversionary bonus rate for the preceding *financial year*; and
  - (e) total guaranteed bonus rate for the *financial year in question* (whether in the form of a guaranteed cash benefit, guaranteed investment return or reversionary bonus).
- (2) For unitised with-profits business, the table under (1) must show the percentage increase in unit price during the year or the equivalent in bonus units added.

- (3) For super compound bonuses, the table under (1) must show both rates (e.g., 2%/3% for 2% bonus on the sum assured and 3% bonus on the existing bonus).
- (4) For bonus series where bonus rates vary (e.g., by age or term), the table must show an approximate weighted average reversionary bonus and a note must be included stating the factors by which reversionary bonus rates vary. If they vary according to premium paying status, bonus rates must be shown in separate lines.

**APPENDIX 9.5** (rule 9.32)

**GENERAL INSURANCE BUSINESS  
ADDITIONAL INFORMATION ON BUSINESS CEDED**

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For the purposes of rule 9.32, an *insurer* which carries on *general insurance business* must, in respect of the *financial year in question*, prepare a statement of the following information.

1. Subject to 2, for each *contract of insurance* entered into or modified during the *financial year in question* under which *general insurance business* has been *ceded* by the *insurer* on a non-facultative basis, the *insurer* must prepare a statement of -
    - (a) the type of business covered by reference to *risk groups or business categories*, ~~as appropriate~~, and if only part of a *risk group or business category* is covered, a description of that part;
    - ...
  - ...
  4. (1) For each *business risk category or risk group*, or part thereof, in respect of which separate non-facultative *reinsurance* cover has been obtained, the *insurer* must prepare a statement of the 'maximum net probable loss' to the *insurer* from any one *contract of insurance* effected by it and from all such contracts taken together.  
  
...
  - (3) The disclosure required by (1) must be given in respect of all *business risk categories, risk groups*, or parts thereof, of the *insurance business* carried on by the *insurer* whether or not the *insurer* has purchased any *reinsurance* cover for that *business risk category, risk group*, or part thereof, and in (2) deciding upon the *reinsurance* cover includes deciding not to obtain any *reinsurance* cover.
  5. For each ~~*accounting class combined category*~~ (other than *category numbers 500 and 600*) and *risk category with category numbers 510 to 590 and 610 to 690* and separately for contracts of facultative and non-facultative *reinsurance ceded* in respect of the *financial year in question* (as shown on **Forms 21 and 24**), the amount of the *reinsurers'* share of *gross premiums* must be stated.
-

**TREATING WITH-PROFITS POLICYHOLDERS FAIRLY  
INSTRUMENT 2005**

**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); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force as follows:
- (1) the following provisions in Annex A to this instrument come into force on 31 December 2005: COB 6.12.16G to COB 6.12.44G;
  - (2) the remainder of this instrument comes into force on 30 June 2005.

**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 Supervision manual**

- E. The Supervision manual is amended in accordance with Annex B to this instrument.

**Amendments to the Glossary**

- F. The Glossary is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Treating With-Profits Policyholders Fairly Instrument 2005.

By order of the Board  
20 January 2005

## Annex A

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

After COB TR7 (Transitional rules for depolarisation) insert the following new provisions, COB TR8 and COB TR9, which are not underlined:

Transitional provisions

...

COB TR8: Transitional rules for firms carrying with-profits business

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	<i>COB</i> 6.10.24AG; <i>COB</i> 6.10.29G; <i>COB</i> 6.10.37R; <i>COB</i> 6.12.1R to <i>COB</i> 6.12.15R; and <i>COB</i> 6.12.45R to <i>COB</i> 6.12.116G	R	The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>FSA</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005.	From 30 June 2005	30 June 2005
2.	<i>COB</i> 6.12.16G to <i>COB</i> 6.12.44G	G	The provisions listed in column (2) of this table do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>FSA</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005.	From 31 December 2005	31 December 2005

3.	Paragraphs 1 and 2	G	<p><i>COB</i> 6.12 may be contrary to, or inconsistent with, some arrangements that were formally approved by the <i>FSA</i>, a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005. The effect of <i>COB</i> TR 8 is that <i>COB</i> 6.12 does not apply to such arrangements if, and to the extent that, it is inconsistent them. A <i>firm</i> should be mindful, however, that, even if some or all of <i>COB</i> 6.12 is disapplied, the <i>firm</i> is still subject to the <i>rules</i> in the rest of the <i>Handbook</i>, including <i>Principle 6</i>.</p>	From 30 June 2005	30 June 2005
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6.10.24A G A firm's PPFM should describe the nature and extent of any shareholder commitment to support the *with-profits fund*. It should also describe when and how that commitment will take effect.

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6.10.29 G The *firm's with-profits practices* should describe, for each major class of *with-profits policy*:

...

(5) the *firm's* internal procedures for changing the current methods or the current parameters or assumptions relevant to a particular method; and

(6) the *firm's*:

(a) target range, or target ranges, that have been set and specified pursuant to *COB* 6.12.17R; and

(b) the factors that it is likely to regard as relevant under *COB*

6.12.59R.

...

- 6.10.37 **RG** The *PPFM* ~~must cover~~ should describe the *firm's* approach to smoothing the value of *with-profits policies*-, including those matters required under *COB 6.12.47R.*

...

After COB 6.11 insert the following new section, COB 6.12, which is not underlined:

6.12 Treating with-profits policyholders fairly

Application

- 6.12.1 R This section applies to a *firm* carrying on *with-profits business*.
- 6.12.2 R This section applies to an *EEA insurer*, but only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by a European Community instrument.
- 6.12.3 R This section does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.
- 6.12.4 R This section does not apply if, and to the extent that, it would affect a *with-profits policyholder's* contractual rights under, or in respect of, a *with-profits policy*.
- 6.12.5 G *COB 6.12.4R* means, for example, that this section does not affect a *with-profits policyholder's* right to a minimum amount guaranteed on death, retirement or maturity. Nor does it affect a *firm's* practice of making deductions in the calculation of surrender values for the purpose of enhancing maturity payments, if:
- (1) the *firm* has reasonably exercised its discretion to make those deductions;
  - (2) those deductions have been made in a clear, fair, lawful and consistent way, over a period of time;
  - (3) those deductions have been made in accordance with the *firm's* previous statements to policyholders (if any); and
  - (4) (as a result of (1) to (3)), the fact of those deductions, and the *firm's* right to make them, now form part of the implied terms of the *with-profits policies* affected.
- 6.12.6 G Some of this section may not be relevant to a *non-directive friendly society*. Such a *firm* is, for example, not required by *COB 6.10* to produce a *PPFM*.

## Purpose

- 6.12.7 G The *rules and guidance* in this section are intended to secure an appropriate degree of protection for actual and potential *with-profits policyholders* and to promote confidence among them.

## Introduction

- 6.12.8 G This section is directed only towards the protection of actual and potential *with-profits policyholders* and does not affect a *firm's* obligations to its other actual and potential *policyholders*.
- 6.12.9 G *Principle 6* (Customers' interests) requires a *firm* to pay due regard to the interests of its *customers* and to treat them fairly. *Principle 7* (Communications with clients) requires a *firm* to pay due regard to the information needs of its *clients* and to communicate information to them in a way that is clear, fair and not misleading. *Principle 8* (Conflicts of interest) requires a *firm* to manage conflicts of interest fairly.
- 6.12.10 G The *rules and guidance* in this section supplement the *Principles* in their application to *with-profits business* and in their application to the relationship between a *firm* and its actual and potential *with-profits policyholders*. However, compliance with the *rules and guidance* in this section will not necessarily ensure compliance with the *Principles*.
- 6.12.11 G For example, if a *firm* proposes to act in a particular way, when it considers whether its proposals will be consistent with *Principle 6* (Customers' interests), it should also consider:
- (1) whether its proposals are consistent with its contractual obligations to its *with-profits policyholders* and its wider bargain with them;
  - (2) whether its proposals would undermine, or materially reduce the value of, a *with-profits policyholder's* contractual rights;
  - (3) whether its proposals are consistent with its previous disclosures to its *with-profits policyholders* and its previous approach to the same issue;
  - (4) whether it will be acting entirely within the scope of any discretion that it may exercise and whether it will be exercising that discretion for the purpose for which it was granted or reserved; and
  - (5) any other material factor that may be relevant to the fair treatment of its *with-profits policyholders*.
- 6.12.12 G Other parts of the *Handbook* are also relevant to the fair treatment of *with-profits policyholders*, including:
- (1) *PRIN* and *SYSC*;

- (2) *PRU 2* (Capital), *PRU 4* (Market risk) and *PRU 7* (Insurance risk);
- (3) Part I of *IPRU(INS) 3* (Long-term insurance business) (Identification and application of assets and liabilities);
- (4) Part V of *IPRU(FSOC) 4* (Financial prudence) (Separation between long-term insurance business assets and other assets);
- (5) *COB 6.5* (Content of key features and important information: life policies, schemes, ISA and CTF cash deposit components and stakeholder pension schemes) and *COB 8* (Reporting to customers);
- (6) *DISP 1* (Complaint handling procedures for firms) and *DISP 3.8* (Determination by the Ombudsman); and
- (7) *ENF 20* (Unfair terms in consumer contracts).

#### General approach to operating a with-profits fund

- 6.12.13 R Subject to *COB 6.12.15R*, a *firm* must not change its *PPFM* unless that change is justified, in the reasonable opinion of the *firm's governing body*, by the need to:
- (1) respond to changes in the business or economic environment;
  - (2) protect the interests of *policyholders*; or
  - (3) change the *firm's with-profits practices* better to achieve its *with-profits principles*.
- 6.12.14 G A *firm* should:
- (1) monitor the business and economic environment continuously; and
  - (2) maintain procedures that will enable it to identify promptly, and bring to the attention of its *senior managers* or its *governing body*, all material legal, regulatory, tax and other developments that are relevant to the conduct of its *with-profits business*.
- 6.12.15 R Notwithstanding *COB 6.12.13R*, a *firm* may change its *PPFM* if that change:
- (1) is necessary to correct an error or omission in the *PPFM*; or
  - (2) would improve the clarity or presentation of the *PPFM* without materially affecting its substance; or
  - (3) is immaterial.

Amounts payable under with-profits policies : Maturity payments

- 6.12.16 G For the purposes of this section, maturity payments include all payments made on a date when the terms of a *with-profits policy* provide for a minimum guaranteed amount to be paid. A *firm* may calculate its maturity payments in a number of different ways. *COB* 6.12.17R to *COB* 6.12.37G do not require a *firm* to use a particular methodology. However, they do require a *firm* to manage its *with-profits business* with the aim that, however it calculates its maturity payments, the overwhelming majority of them fall within a target range that has been set and specified in accordance with *COB* 6.12.17R and calculated using the methodology required by, or described in, *COB* 6.12.24R to *COB* 6.12.37G.
- 6.12.17 R Except where a contractual right would require a *firm* to make a higher maturity payment, and subject to *COB* 6.12.22R, a *firm* must:
- (1) set a target range for the maturity payments that it will make on:
    - (a) all of its *with-profits policies*; or
    - (b) each group of its *with-profits policies*;
  - (2) ensure that each target range:
    - (a) is expressed as a percentage of unsmoothed asset share; and
    - (b) includes 100% of unsmoothed asset share;
  - (3) specify each target range in its *PPFM*;
  - (4) manage its *with-profits business*, and the business of each *with-profits fund*, with the aim of making a maturity payment on each *with-profits policy* that falls within the relevant target range;
  - (5) subject to *COB* 6.12.35R, make a maturity payment on each *with-profits policy* that falls within the relevant target range, whenever that is possible in the reasonable opinion of the *firm's governing body*; and
  - (6) manage its *with-profits business*, and each *with-profits fund*, with the longer term aim that it will make aggregate maturity payments, on its *with-profits policies*, of 100% of unsmoothed asset share.
- 6.12.18 G A *firm* may choose how its target range, or target ranges, are distributed around 100% of unsmoothed asset share.
- 6.12.19 G If a *firm* uses the definition of unsmoothed asset share in *COB* 6.12.24R (1)(b), it will comply with *COB* 6.12.17R(5) if it:

- (1) makes a maturity payment on the specimen *with-profits policy*, which falls within the relevant target range; and
  - (2) makes a maturity payment on each of the *with-profits policies* represented by the specimen *with-profits policy*, which, if adjusted:
    - (a) in the same proportion as the level of *premium* on that *policy* to the level of *premium* on the specimen *policy*; or
    - (b) (if it would be more appropriate) in some other proportion, would fall within the target range established in respect of the specimen *policy*.
- 6.12.20 G The *FSA* accepts that it may not be possible (for the purposes of *COB* 6.12.17R(5)) to make a payment that falls within the relevant target range in a number of circumstances, including where the *firm's* regulatory, or realistic, solvency position is strained, or it would be strained, if the *firm* made a payment within the relevant target range, and further support arrangements are not in place, for example, under an *insurance business transfer scheme* or a shareholder commitment described in the *firm's PPFM*.
- 6.12.21 G To ensure compliance with *COB* 6.12.17R(6), a *firm* should avoid favouring one group of *policies* over another. The *FSA* recognises, however, that the operation of smoothing and the payment of more, or less, than 100% of asset share at particular points in the economic cycle may mean that groups whose maturity payments are especially concentrated in a few years will see an outcome that may diverge from the 100% longer term target.
- 6.12.22 R *COB* 6.12.17R does not apply to a maturity payment that cannot reasonably be compared with a calculated asset share.
- 6.12.23 G In some circumstances, it may not be fair or reasonable to calculate or assess a maturity payment using an asset share methodology. For example, a *firm* may use a different methodology, which delivers fair value, but is inconsistent with asset shares, or it may use bonus reserve or North American distribution methods, which deliver more uniform bonus rates than an asset share methodology would produce. Similarly, some *with-profits policies* (for example, annual *premium whole life assurance policies*) may have asset shares that are very variable. In other cases, the relevant policies may have been materially altered, or the *firm* may lack the historical data required to make an asset share calculation. In those cases, a *firm* may use a more approximate methodology to set bonus rates, provided that that methodology is consistently applied and properly reflects its representations to *with-profits policyholders*.

- 6.12.24 R For the purposes of *COB* 6.12.17R:
- (1) unsmoothed asset share means:
    - (a) the unsmoothed asset share of the relevant *with-profits policy*; or
    - (b) the unsmoothed asset share of one or more specimen *with-profits policies*, which a *firm* has selected to represent a group, or all, of the *with-profits policies* effected in the same *with-profits fund*.
  - (2) a *firm* must calculate unsmoothed asset share by:
    - (a) applying the methods in *PRU* 7.4.119R to *PRU* 7.4.123R;
    - (b) including any amounts that have been added to the *policy* as the result of a distribution from an *inherited estate*; and
    - (c) subject to (d), and where the terms of the *policy* so provide, adding or subtracting an amount that reflects the experience of the *insurance business* in the relevant *with-profits fund*; but
    - (d) if a *with-profits fund* has suffered adverse experience, which results from a *firm's* failure to comply with the *rules* in this section, that adverse experience may only be taken into account if, and to the extent that, in the reasonable opinion of the *firm's governing body*, the amount referred to in (c) cannot be met from:
      - (i) the *firm's inherited estate* (if any); or
      - (ii) any assets attributable to shareholders, whether or not they are held in the relevant *with-profits fund*.
- 6.12.25 G *COB* 6.12.24R(2)(b) does not require the inclusion of amounts that have been used from an *inherited estate* to support the year-on-year smoothing of bonus declarations.
- 6.12.26 G A *firm* may choose to use the definition of unsmoothed asset share in:
- (1) *COB* 6.12.24R(1)(a) for some groups of *with-profits policies*; and
  - (2) *COB* 6.12.24R(1)(b) for other groups of *with-profits policies*.
- 6.12.27 G If a *firm* chooses to use:

- (1) both definitions of unsmoothed asset share, it should specify, in its *PPFM*, which method it will use for each group of *with-profits policies*;
  - (2) the definition of unsmoothed asset share in *COB 6.12.24R(1)(b)* for some or all of its *with-profits policies*, it should also:
    - (a) ensure that the specimen *with-profits policy*, or *with-profits policies*, selected have the same material characteristics as the *with-profits policies* they will represent, taking into account, for example, their duration and their terms and conditions; and
    - (b) explain, in its *PPFM*, that it has chosen the definition of unsmoothed asset share in *COB 6.12.24R(1)(b)* for the relevant group of *with-profits policies*, and then describe in general terms what effect that decision might have on the relevant maturity payments (if any).
- 6.12.28 G When a *firm* calculates unsmoothed asset share, for the purposes of *COB 6.12.17R* and *COB 6.12.24R(2)*, its methodology should be consistent with the *with-profits principles* and *with-profits practices* described in its *PPFM*.
- 6.12.29 G The unsmoothed asset share, calculated for the purposes of *COB 6.12.17R* and *COB 6.12.24R(2)*, may include any deductions that are made from asset share for the cost of guarantees or the use of capital, where that is consistent with the *with-profits principles* and *with-profits practices* described in the *firm's PPFM*.
- 6.12.30 R A *firm* may make a deduction from asset share for the cost of guarantees, or the use of capital, only if that is permitted by, and consistent with, a plan that has been approved by its *governing body* and described in its *PPFM*. If a *firm* makes such a deduction, it must ensure that that deduction is proportionate to, and consistent with, the costs that it is intended to meet or offset.
- 6.12.31 R If a *firm* has a plan, for the purposes of *COB 6.12.30R*, and it makes, or expects to make, deductions from asset share in reliance on that plan, it must also ensure that:
- (1) all actual and expected deductions are described, or allowed for, in its *key features* and the *projections* that it sends, or makes available, to actual and potential *with-profits policyholders*; and
  - (2) its deductions do not change unless they are justified by a review that has been carried out in response to changes in the business or economic environment or changes in the nature of the *firm's liabilities* as a result of *policyholders* exercising options in their *policies*.

- 6.12.32 G Deductions for the cost of guarantees or the use of capital could materially alter asset share, circumventing the requirements of *COB* 6.12.17R(6). Therefore *COB* 6.12.30R and *COB* 6.12.31R require that any such deductions are part of a well-formulated plan that is altered only after due consideration. The *firm* should therefore consider, and set out in its plan:
- (1) who will bear the risks associated with any guarantees given to *with-profits policyholders*; and
  - (2) the level or type of any charges that may be made to asset shares to cover the cost of bearing those risks.
- 6.12.33 G Deductions should only be changed in response to changes in the business or economic environment and not in an arbitrary way. Retrospective changes in the form of an immediate reduction in current asset shares, however so described, would not normally be consistent with a well developed plan.
- 6.12.34 G A *firm* should ensure that any charges made under the plan described in *COB* 6.12.30R and *COB* 6.12.31R are consistent with its actual investment policy and its intended investment policy.
- 6.12.35 R Notwithstanding *COB* 6.12.17R(5), a *firm* may make a maturity payment which falls outside the target range for the specimen *with-profits policy*, or *with-profits policies*, provided that it has good reason to believe that at least 90% of the maturity payments made on the *with-profits policies* in that group have fallen, or will fall, within the relevant target range.
- 6.12.36 G In *COB* 6.12.35R, maturity payment includes a proportionately adjusted amount as described in *COB* 6.12.19G(2).
- 6.12.37 G The *FSA* accepts that, in some cases, the target range established by reference to a specimen *with-profits policy* may be inappropriate for all of the *with-profits policies* in that group. That may be the case, for example, if the *premiums* paid on an individual *with-profits policy* are significantly greater than, or less than, those paid on the specimen *with-profits policy*. In those cases, the *FSA* also accepts that it might be fair, or fairer, to make a maturity payment that falls outside the specified target range. If a *firm* proposes to make a maturity payment that falls outside that target range, it should be satisfied, on reasonable grounds, that that is fair from the perspective of the particular *policyholder*, and the *firm's* other *with-profits policyholders*.

Amounts payable under with-profits policies : Surrender payments

- 6.12.38 G A *firm* may calculate its surrender payments (including transfers) in a number of different ways. COB 6.12.39R to COB 6.12.45R do not require a *firm* to use a particular methodology. However, they do require a *firm* to ensure that, however it calculates its surrender payments, the amount actually paid is, in aggregate across all similar policies, not less than that which would have been paid if the *firm* had calculated the surrender payment using the methodology in COB 6.12.39R to COB 6.12.45R.
- 6.12.39 R COB 6.12.17R to COB 6.12.35R apply to surrender payments as if a reference to maturity payment was a reference to surrender payment, except that COB 6.12.17R(6) applies, in the case of surrender payments, to the unsmoothed asset share before any deductions made in accordance with COB 6.12.40R.
- 6.12.40 R When a *firm* calculates a surrender payment using the methodology in COB 6.12.39R to COB 6.12.45R, it must not make a deduction from the appropriate percentage of unsmoothed asset share unless that deduction is necessary, in the reasonable opinion of the *firm's governing body*, to protect the interests of the *firm's remaining with-profits policyholders*.
- 6.12.41 G If a *firm* uses its own methodology to calculate surrender payments, it should take appropriate steps to check that that methodology produces a result which, in aggregate across all similar policies, is not less than the result that would be achieved if the *firm* used the methodology prescribed by COB 6.12.39R and COB 6.12.40R. The *firm* should decide what steps would best secure this outcome in its particular circumstances. It might, for example, ensure consistency by testing the surrender payments on a suitable range of specimen *with-profits policies*.
- 6.12.42 G For the purposes of COB 6.12.40R, appropriate factors that might be included in any deduction include:
- (1) the *firm's* unrecovered costs, including any financing costs incurred in effecting or carrying out the surrendered *with-profits policy* to the date of surrender, including the costs that might have been recovered if the *policy* had remained in force;
  - (2) costs that would fall on the *with-profits fund*, if the surrender value is calculated by reference to an assumed *market value* of assets which exceeds the true *market value* of those assets;
  - (3) the *firm's* costs incurred in administering the surrender; and
  - (4) a fair contribution towards the cost of any contractual benefits due on the whole, or an appropriate part, of the continuing *policies* in the *with-profits fund* which would otherwise result in higher costs falling on the continuing *with-profits policies*.

- 6.12.43 G For the purposes of *COB* 6.12.39R, a *firm* may set a target range for surrender payments where the top-end of the range is lower than the top-end of the relevant target range for maturity payments.
- 6.12.44 G If a *firm* has ceased to effect new *contracts of insurance* in a *with-profits fund*, or it expects to cease to effect new *contracts of insurance* in the near future (see *COB* 6.12.95R), and, in the reasonable opinion of the *firm's governing body*, the *firm's* circumstances require, or are then likely to require, amendments to the deductions made in reliance on *COB* 6.12.40R, the *firm* should include the changes it proposes to make in its run-off plan (see *COB* 6.12.98R).
- 6.12.45 R A *firm* must not make a market value reduction to the face value of the units of an *accumulating with-profits policy* unless:
- (1) the *market value* of the *with-profits assets* in the relevant *with-profits fund* is, or is expected to be, significantly less than the assumed value of the assets on which the face value of the units of the *policy* has been based; or
  - (2) there has been, or there is expected to be, a high volume of surrenders, relative to the liquidity of the relevant *with-profits fund*; and
- the market value reduction is no greater than is necessary to reflect the impact of (1) or (2) on the relevant surrender payment.
- 6.12.46 G For the purposes of *COB* 6.12.45R, a *firm* might reasonably expect a significant change in market values if, for example, that particular market has been moving in one direction and there is reason to believe that it will continue to do so. A *firm* might expect a high volume of surrenders if surrender volumes have been increasing, and there is reason to think that that will continue or if some unexpected and adverse event has occurred, which is relevant to the *firm* or the wider business or economic environment, which is likely to prompt a material number of surrenders.

#### Approach to smoothing

- 6.12.47 R A *firm* must specify, in its *PPFM*, the *with-profits principles* and *with-profits practices* that it will use to smooth maturity payments and surrender payments. That specification must reflect the requirements of *COB* 6.12.17R(6) and include:
- (1) the smoothing policy applied to each of the different types of *with-profits policy* effected by the *firm*, including any specimen *with-profits policies* used for the purposes of *COB* 6.12.24R (1)(b);
  - (2) the limits (if any) applied to the total cost of, or excess from, smoothing; and

- (3) any limits applied to any changes in the level of maturity payments between one period and another.

Conditions relevant to distributions

- 6.12.48 R A *firm* must:
- (1) not make a distribution from a *with-profits fund*, unless the whole of the cost of that distribution can be met without eliminating the *regulatory surplus* in that *with-profits fund*; and
  - (2) ensure that the amount distributed to *policyholders* from a *with-profits fund* is not less than the required percentage of the total amount distributed (see *COB 6.12.56R*).
- 6.12.49 R A *realistic basis life firm* must not make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, unless the whole of the cost of that distribution (including the cost of any obligations that will or may arise from the decision to make a distribution) can be met from the excess of the *realistic value of assets* over the *realistic value of liabilities* in that *with-profits fund*.
- 6.12.50 R In *COB 6.12.49R*, a distribution to a *person* who is not a *with-profits policyholder* includes a transfer of assets out of a *with-profits fund* that is not made to satisfy a liability of that fund.
- 6.12.51 R Subject to *COB 6.12.53R*, and for the purposes of *COB 6.12.48R(2)*, a *firm* must determine the amount to be distributed:
- (1) in the case of a distribution, all or part of which is in the form of a transfer of assets out of the *with-profits fund*, by determining the fair *market value* of the assets that will be transferred; and
  - (2) in the case of a distribution, all or part of which is in the form of an increase in the *regulatory value of liabilities* of the *with-profits fund*, by determining the amount by which the *regulatory value of liabilities* of the *long-term insurance fund* would increase as a result of the distribution, if (for these purposes only) the *mathematical reserves* were calculated using the long-term gilt yield, net of tax (if that is appropriate), instead of the rate of interest prescribed by *PRU 7.3.33R*.
- 6.12.52 G *COB 6.12.51R(2)* applies, in particular, to distributions that take the form of a reversionary bonus addition to conventional *with-profits policies*.
- 6.12.53 R Notwithstanding *COB 6.12.51R*, a *firm* may determine the amount to be distributed in a different way, if:
- (1) it can show that that is consistent with its established practice; and

(2) that established practice is explained in its *PPFM*.

6.12.54 R If, on a distribution, a *firm* incurs a tax liability on a transfer to shareholders, it must not attribute that tax liability to a *with-profits fund*.

6.12.55 R Notwithstanding *COB* 6.12.54R, a *firm* may attribute a tax liability to a *with-profits fund* if:

- (1) the tax liability was incurred on a transfer to shareholders;
- (2) the *firm* can show that attributing the tax liability to that *with-profits fund* is consistent with its established practice;
- (3) that established practice is explained in the *firm's PPFM*; and
- (4) that liability is not charged to asset shares.

#### Distribution ratios

6.12.56 R The required percentage referred to in *COB* 6.12.48R(2) is, for each *with-profits fund*:

- (1) the percentage (if any) required in respect of that fund by:
  - (a) the *firm's* articles of association, registered rules or other equivalent instrument; or
  - (b) a relevant order made by a court of competent jurisdiction;
- (2) if (1) does not apply, the percentage specified in the *firm's PPFM*, if that percentage reflects the *firm's* established practice;
- (3) if (1) and (2) do not apply, not less than 90 per cent.

#### Requirement relating to distribution of an excess surplus

6.12.57 R At least once a year (or, in the case of a *non-directive friendly society*, at least once in every three years), a *firm's governing body* must determine, whether the *firm's with-profits fund*, or any of the *firm's with-profits funds*, has an excess surplus.

6.12.58 R A *firm* will have an excess surplus in a *with-profits fund* if, and to the extent that:

- (1) the *regulatory surplus* in that *with-profits fund*;
- (2) the other financial resources of the *firm* that are applied to that *with-profits fund*; and
- (3) any other financial resources that are expected to be made available for the benefit of that *with-profits fund* in the event of reasonably foreseeable adverse experience;

exceed:

- (4) the amount required to meet the higher of any relevant *enhanced capital requirement* or individual capital assessment; and
- (5) the amount necessary, in the reasonable opinion of the *firm's governing body*, to:
  - (a) support the current and future *insurance business* of the *firm* or the relevant *with-profits fund*;
  - (b) maintain the financial strength of the *firm* or the relevant *with-profits fund*; or
  - (c) address any other matters relevant to *policyholders'* interests or security.

6.12.59 R A *firm* must specify, in its *PPFM*, the matters, or types of matter, that it may regard as relevant for the purposes of *COB* 6.12.58R(5)(c).

6.12.60 E (1) If a *with-profits fund* has an excess surplus, and to retain that surplus would be a breach of *Principle 6* (Customers' interests), the *firm* should:

(a) make a distribution from that *with-profits fund* (unless the conditions in *COB* 6.12.48R and *COB* 6.12.49R cannot be met); or

(b) carry out a *retribution*.

(2) Compliance with (1) may be relied on as tending to establish compliance with *Principle 6* (Customers' interests).

(3) Contravention of (1) may be relied on as tending to establish a contravention of *Principle 6* (Customers' interests).

#### Charges to a with-profits fund

6.12.61 R A *firm* must not charge a cost to a *with-profits fund* unless, in the reasonable opinion of the *firm's* senior management, the *firm* has incurred, or it will incur, that cost in the operation of that *with-profits fund*.

6.12.62 G *COB* 6.12.61R does not prevent a *firm* from charging a fair proportion of its overheads (including executive remuneration) to a *with-profits fund*.

- 6.12.63 R To ensure that costs are fairly and consistently apportioned between *with-profits funds*, and between *with-profits policyholders* and shareholders, a *firm* must establish, maintain and disclose in its *PPFM*, cost apportionment principles that will enable it to determine which costs are, or may be, charged to a *with-profits fund* and which costs are, or may be, charged to the other parts of its business or its shareholders.
- 6.12.64 R If a *firm* makes charges to a *with-profits fund* for the cost of guarantees or the use of capital, it must review those charges regularly to ensure that they are adequate, fair and lawful.
- 6.12.65 G It is for a *firm* to decide when, and how often, to review its guarantee charges, taking into account its circumstances and the wider business or economic environment.
- 6.12.66 R (1) A *firm* must not pay compensation or redress from a *with-profits fund*.
- (2) In (1), and for the purposes of *COB* 6.12.67R, compensation and redress include the costs of assessing the extent of any compensation or redress due, and the costs of considering or defending compensation or redress claims.
- 6.12.67 R Notwithstanding *COB* 6.12.66R, a *firm* may pay compensation or redress due to a *with-profits policyholder*, or former *with-profits policyholder*:
- (1) from its *inherited estate* (if any); or
- (2) from assets attributable to shareholders, whether or not they are held within a *long-term insurance fund*; or
- (3) from assets that would otherwise be attributable to asset shares, if, in the reasonable opinion of the *firm's governing body*, that compensation or redress cannot be paid from the assets in (1) or (2), or from any other source.
- 6.12.68 G *COB* 6.12.66R does not apply to ex gratia or rectification payments. A *firm* may, therefore, correct an erroneous underpayment to a *with-profits policyholder*, or former *with-profits policyholder*, using assets in a *with-profits fund*.
- 6.12.69 G For the purposes of *COB* 6.12.67R(3), a *firm's governing body* should assess whether compensation or redress can be paid from the *firm's inherited estate*, assets attributable to shareholders or any other source by reference to:
- (1) its ability to continue to meet the higher of any relevant *enhanced capital requirement* or individual capital assessment; and
- (2) any other factors relevant to *policyholders'* interests.

- 6.12.70 R A *firm* that is not a *mutual* must not charge to a *with-profits fund* any amounts paid or payable to a *skilled person* in connection with a report under section 166 of the *Act* (Reports by skilled persons) if:
- (1) the need for the report derives wholly or partly from a material failure to keep adequate records;
  - (2) the principal purpose of the report is to identify what action, if any, may be necessary as a result of the *firm's* non-compliance with its obligations under the *regulatory system*;
  - (3) the report indicates that the *firm* has, or may have, materially failed to satisfy its obligations under the *regulatory system*; or
  - (4) it is reasonable to assume that the report may be relied upon by the *FSA* in connection with its enforcement functions.
- 6.12.71 G If a report under section 166 of the *Act* (Reports by skilled persons) does not relate entirely to *insurance business* being carried on in a *with-profits fund*, a *firm* should charge a fair proportion of the overall cost of the report to the fund, but only if that would be consistent with *COB* 6.12.70R.
- 6.12.72 G If a *firm* has properly charged an amount to a *with-profits fund*, but circumstances later show that the charge should not have been made (see *COB* 6.12.70R and *COB* 6.12.71G), the *firm* should fully reimburse the *with-profits fund*.

New business

- 6.12.73 R If a *firm* proposes to effect new *contracts of insurance* in an existing *with-profits fund*, it must only do so on terms that are, in the reasonable opinion of the *firm's governing body*, unlikely to have a material adverse affect on the interests of its existing *with-profits policyholders*.
- 6.12.74 G In some circumstances, it may be difficult or impossible for a *firm* to mitigate the risk of a material adverse affect on its existing, or new, *with-profits policyholders*, unless it establishes a new bonus series or *with-profits fund*. The factors that might cause a *firm* to establish a new bonus series or *with-profits fund* include:
- (1) that the current investment outlook is not adequately reflected in existing *premium* rates. For example, a new high, or low, inflation environment, greater volatility of investment returns or a materially altered investment mix, might mean that the bonus potential for new and existing *with-profits policies* are materially different;

- (2) high acquisition costs on the new *with-profits policies*, which would place an undue burden on the financial resources of the relevant *with-profits fund* or be detrimental to existing *with-profits policyholders*;
  - (3) that the *firm* has a high level of guarantees or options in its existing *with-profits policies*, which might place an excessive burden on new *with-profits policies*, or vice versa;
  - (4) the level of charges on the new *with-profits policies*, or the pattern of their emergence, if that might create a material risk of non-compliance with COB 6.12.76R; or
  - (5) that existing *policyholders* might be disadvantaged by an adjustment to the balance of the investments held within the particular *with-profits fund*, which would result from the decision to materially increase the number of new *with-profits policies* effected by the *firm*.
- 6.12.75 G Circumstances, in which it may be appropriate to establish a new *with-profits fund*, are likely to arise when the potential risks to new or existing *with-profits policyholders* are likely to be too great for the same *with-profits fund* to provide, adequately, for the interests of the two groups of *policyholders*, even after allowing for the beneficial effects of diversification (if any). Such potential risks are likely to arise from significant differences in the terms and conditions of the new and existing *with-profits policies*, including the basis on which charges are levied and reviewed.
- 6.12.76 G When a *firm* prices the new *insurance business* that it proposes to effect in an existing *with-profits fund*, it should estimate the volume of new *insurance business* that it is likely to effect and then build in adequate margins that will allow it to recover any acquisition costs to be charged to the *with-profits fund*.
- 6.12.77 G When a *firm* sets a target volume for new *insurance business* in an existing *with-profits fund*, it should pay particular attention to the risk of disadvantage to existing *with-profits policyholders*. Those *policyholders* might be disadvantaged, for example, by the need to retain additional capital to support a rapid growth in new business, when that capital might have been distributed in the ordinary course of the *firm's* existing business.
- 6.12.78 G When a *firm* determines its strategy for new *insurance business* in an existing *with-profits fund*, it should take particular account of:
- (1) the capital support available; and

- (2) any benefits that may arise if, for example, the different types of new *insurance business* complement each other, for example, in direct financial terms or by the reduction of risk.

6.12.79 G A *firm's* underwriting policy should remain reasonably consistent over time. Existing *with-profits policyholders* should not be exposed to the risk that a significant change in underwriting standards for new *insurance business* in the same *with-profits fund* will cause deterioration in experience that was not allowed for in the *premium* rates for that new business.

Relationship of a with-profits fund with the firm and any connected persons

6.12.80 G If a *firm*, or a *connected person*, provides support to a *with-profits fund* (for example, by a contingent loan), the fund might take on more risk, for example, by investing in volatile assets. However, that would not be appropriate if the support will be repaid, leaving *policyholders* to bear all of the risks they have been exposed to. Therefore, no reliance should be placed on that support when the *firm* assesses the *with-profit fund's* financial position unless there are clear and unambiguous criteria governing any repayment obligations to the support provider. The degree of reliance placed on that support should depend on the subordination of the support to the fair treatment of *with-profits policyholders* and clarification of what fair treatment means in various circumstances. For a *realistic basis life firm* this would normally be evidenced by the liability for such support being capable, under stress, of a progressively lower valuation in the *future policy-related liabilities*.

6.12.81 G Subject to COB 6.12.80G, if assets from outside a *with-profits fund* are made available to support that fund, a *firm* should manage the fund disregarding the liability to repay those assets, at least in so far as that is necessary for its *policyholders* to be treated fairly.

6.12.82 G A *parent undertaking* should avoid creating an expectation that it will support a *subsidiary* unless formal arrangements are in place to ensure that that support will be provided, if it is required.

6.12.83 R A *firm* carrying on *with-profits business* must not:

- (1) make a loan to a *connected person* using assets in a *with-profits fund*; or
- (2) give a guarantee to, or for the benefit of, a *connected person*, where the guarantee will be backed using assets in a *with-profits fund*;

unless that loan or guarantee:

- (3) will be on commercial terms;

- (4) will, in the reasonable opinion of the *firm's* senior management, be beneficial to the *with-profits policyholders* in the relevant *with-profits fund*; and
- (5) will not, in the reasonable opinion of the *firm's* senior management, expose those *policyholders* to undue *credit* or *group* risk.

Other guidance on the conduct of with-profits business

- 6.12.84 G When a *firm* determines its investment strategy, and the acceptable level of risk within that strategy, it should take into account:
- (1) the extent of the guarantees in its *with-profits policies*;
  - (2) any representations that it has made to its *with-profits policyholders*;
  - (3) its established practice; and
  - (4) the amount of capital support available.
- 6.12.85 G A *firm* should only change its investment strategy when that is necessary or appropriate to take account of material changes in its economic circumstances or the wider economic environment, changes in *policyholder* utilisation of *policy* options or changes in the level of capital support available to the *with-profits fund* where further support arrangements are not in place under an *insurance business transfer scheme* or a shareholder commitment described in the *firm's* PPFM.
- 6.12.86 G If a *firm* is considering using *with-profits assets* to finance the purchase of another business, directly, or by or through a *connected person*, or if a *firm* is considering whether it should retain such an investment, it should consider whether the purchase or retention would be, or will remain, fair to its *with-profits policyholders*. When a *firm* makes that assessment, it should consider:
- (1) the size of the investment in relation to the *with-profits fund*;
  - (2) the expected rate of return on the investment;
  - (3) the risks associated with the investment, including liquidity risk, the capital needs of the acquired business and the difficulty of establishing fair value (if any);
  - (4) any costs that would result from divestment;
  - (5) whether an *actuary*, appointed by the *firm* under SUP 4 (Actuaries), would regard the investment as suitable for the *with-profits fund*;

- (6) whether the investment has been, or will be, disclosed to *with-profits policyholders*;
- (7) notwithstanding (6), whether a knowledgeable existing *with-profits policyholder* in that *with-profits fund* would regard it as an appropriate investment;
- (8) in the case of a proprietary *firm*, whether it would be more appropriate for the investment to be made using assets other than those in a *with-profits fund*; and
- (9) any other material factors.

6.12.87 G If the *firm* carries out *non-profit insurance business* in a *with-profits fund*, it should review the profitability of the *non-profit insurance business* regularly. When it does so, the *firm* should consider whether, for example, its charges for that business should be adjusted, if adjustment is permitted, to maintain fairness to non-profit and *with-profits policyholders*. If the *firm's* review suggests that a change should be made, but the difference between the existing arrangements and the new arrangements is not material, the *firm* may choose whether or not to make it.

6.12.88 G If a *firm* has reinsured its *with-profits insurance business* into another *insurance undertaking*, it should take reasonable steps to discharge its responsibilities to its *with-profits policyholders*, in respect of the reinsured business. Those steps should include maintaining adequate controls.

#### Major changes in with-profits funds

6.12.89 R A *firm* must not enter into a material transaction relating to a *with-profits fund* unless, in the reasonable opinion of the *firm's governing body*, the transaction is unlikely to have a material adverse effect on the interests of that *fund's* existing *with-profits policyholders*.

6.12.90 R For the purposes of COB 6.12.89R, a material transaction includes a series of related non-material transactions which, if taken together, are material.

6.12.91 G For the purposes of COB 6.12.89R and COB 6.12.90R, material transactions include:

- (1) a significant bulk outwards *reinsurance* contract;
- (2) inwards *reinsurance* of *with-profits business* from another *insurance undertaking*;
- (3) a financial engineering transaction that would materially change the profile of any surplus expected to emerge on the *with-profits fund's* existing *insurance business*; and

- (4) a significant restructuring of the *with-profits fund*, especially if it involves the creation of new *sub-funds*.
- 6.12.92 G So that it can consider whether a proposed material transaction might adversely affect the interests of its *with-profits policyholders*, a *firm* should obtain a report from an *actuary* appointed under SUP 4 (Actuaries) or another appropriate professional adviser.
- 6.12.93 G A *firm* should also consider whether a knowledgeable existing *with-profits policyholder* in that *with-profits fund* would conclude that the proposed material transaction would materially affect his interests, whether or not the transaction will be disclosed to *policyholders*.

Ceasing to effect new contracts of insurance in a with-profits fund

- 6.12.94 R A *firm* must:
- (1) inform the *FSA* and its *with-profits policyholders* within 28 days; and
  - (2) submit a run-off plan to the *FSA* as soon as reasonably practicable and, in any event, within three months,
- of first ceasing to effect new *contracts of insurance* in a *with-profits fund*.
- 6.12.95 R For the purposes of COB 6.12.94R, a *firm* will be taken to have ceased to effect new *contracts of insurance* in a *with-profits fund*:
- (1) when any decision by the *governing body* to cease to effect new *contracts of insurance* takes effect; or
  - (2) where no such decision is made, when the *firm* is no longer:
    - (a) actively seeking to effect new *contracts of insurance* in that fund; or
    - (b) effecting new *contracts of insurance* in that fund, except by increment.
- 6.12.96 G A *firm* should not avoid taking a formal decision to cease to effect new *contracts of insurance* in a *with-profits fund* in an attempt to avoid the requirements of COB 6.12.94R.
- 6.12.97 G A *firm* should contact the *FSA* to discuss whether it has, or it should be taken to have, ceased to effect new *contracts of insurance*, for the purposes of COB 6.12.94R if:
- (1) COB 6.12.95R(2) may apply;

- (2) it is no longer effecting a material volume of new *with-profits policies* in a particular *with-profits fund*, other than by *reinsurance*;
  - (3) it is effecting only new *reinsurance* business in a particular *with-profits fund*; or
  - (4) it cedes by way of *reinsurance* most of the new *with-profits policies* it continues to effect.
- 6.12.98 R The run-off plan required by *COB 6.12.94R(2)* must:
- (1) demonstrate how the *firm* will ensure a full and fair distribution of the closed *with-profits fund*, and its *inherited estate* (if any); and
  - (2) be approved by the *firm's governing body*.
- 6.12.99 G When a *firm* tells its *with-profits policyholders* that it has ceased to effect new *contracts of insurance* in a *with-profits fund*, it should also explain:
- (1) why it has done so;
  - (2) what changes it has made, or proposes to make, to the fund's investment strategy (if any);
  - (3) how closure may affect *with-profits policyholders* (including any reasonably foreseeable effect on future bonus prospects);
  - (4) the options available to *with-profits policyholders* and an indication of the potential costs associated with the exercise of each of those options; and
  - (5) any other material factors that a *policyholder* may reasonably need to be aware of before deciding how to respond to this information.
- 6.12.100 G A *firm* may not be able to provide its *with-profits policyholders* with all of the information described in *COB 6.12.99G* until it has prepared the run-off plan required by *COB 6.12.94R(2)*. In those circumstances, the *firm* should:
- (1) tell its *with-profits policyholders* that that is the case;
  - (2) explain what is missing and give a time estimate for its supply; and
  - (3) provide the missing information as soon as possible, and within the time estimate given.
- 6.12.101 G A run-off plan submitted to the *FSA* under *COB 6.12.94R(2)* should:

- (1) identify, and explain, any material differences between the *firm's* run-off plan and the relevant parts of its *PPFM*;
  - (2) identify, and explain, any actual or potential changes in the *firm's* maturity or surrender payment target ranges and its smoothing policy;
  - (3) explain how the fact of run-off affects the *firm's* investment strategy (if it does);
  - (4) explain how the *firm* anticipates capital will become available for distribution to *policyholders*;
  - (5) explain how the costs charged to the *with-profits fund* may change (if they will);
  - (6) detail any new deductions to be made from surrender payments (if any) and explain how they are consistent with *Principle 6* (Customers' interests) and *COB 6.12.39R* to *COB 6.12.45R*; and
  - (7) explain how it plans to address any additional operational risks which might flow from closure.
- 6.12.102 G The *FSA* has powers, for example, under section 165 of the *Act* (Authority's power to require information), to require a *firm* that has ceased to effect new *contracts of insurance* in a *with-profits fund* to provide information on how it will ensure a full and fair distribution of that fund and its *inherited estate* (if any). The *FSA* may use that power if a *firm's* run-off plan does not provide sufficient evidence of a full and fair distribution or appropriate arrangements for ensuring the protection of the interests and security of its *with-profits policyholders*.
- 6.12.103 G To ensure a fair distribution, in compliance with *COB 6.12.98R(1)*, a *firm* will normally have to distribute that part of the *with-profits fund* that is not required to support any continuing business, including a fair proportion of any *inherited estate* attributable to it.
- 6.12.104 G To ensure a fair and prudent distribution, a *firm* may have to distribute a lower proportion of any *inherited estate* attributable to a closed *with-profits fund* to *policyholders* whose *with-profits policies* mature in the shorter term as compared to those whose *with-profits policies* mature in the longer term.
- 6.12.105 G If *non-profit insurance business* is written in a *with-profits fund*, a *firm* should take reasonable steps to ensure that the economic value of any future profits expected to emerge on the *non-profit insurance business* is available for distribution during the lifetime of the *with-profits business*.

6.12.106 G For the purposes of *COB* 6.12.105G, where it is agreed by its *with-profits policyholders*, and subject to meeting the requirements of *COB* 6.12.73R, a *mutual* may make alternative arrangements for continuing to carry on *non-profit insurance business*; and a *non-directive friendly society* may make alternative arrangements for continuing to carry on non-insurance related business.

6.12.107 G A *firm* should discuss with the *FSA* at an early stage any significant issues it identifies relating to its proposed distribution of a closed *with-profits fund*.

Provision of information to with-profits policyholders and communicating with them fairly

6.12.108 G When a *firm* communicates information to a *customer*, *COB* 2.1.3R requires it to take reasonable steps to do so in a way that is clear, fair and not misleading. The *guidance* in the rest of this section is relevant to the application of *COB* 2.1.3R to the provision of information to *with-profits policyholders*.

With-profits policyholders' understanding of the investment

6.12.109 G When a *firm* communicates information to its *with-profits policyholders*, it should not assume that those *policyholders* have a good understanding of their *investment* or the purpose, scope and operation of the *firm's* discretion. To achieve fairness, clearer explanations may be required than for some other long-term *investments*, especially when the *firm* refers to any unusual aspects of a *with-profits policy*.

6.12.110 G It will usually be reasonable for a *firm* to assume that its *with-profits policyholders* have made reasonable efforts to understand the information that has already been given to them. However, if there is evidence that an individual *policyholder* has misunderstood the information that he has been given, or that he has misunderstood the *investment* or any of its material characteristics, a *firm* should not assume that that *with-profits policyholder* now understands the information that he has been given.

Communications to with-profits policyholders

6.12.111 G When a *firm* communicates information to its *with-profits policyholders*, that information should properly reflect the long-term nature of the *investment* and the long-term nature of the *firm's* relationship with its *with-profits policyholders*. The *firm's* communications should also be consistent with the information that it has already given to *with-profits policyholders*.

6.12.112 G To promote fairness in communications with its *with-profits policyholders*, a *firm* should:

- (1) write clearly in plain language;

- (2) use personal language (for example, 'we' and 'you') to make documents easier to understand; and
  - (3) use presentation and terminology that is consistent with the information that it has already provided.
- 6.12.113 G A *firm* should highlight the importance of key documents, indicating why it is important that *with-profits policyholders* should read and understand them.
- 6.12.114 G A *firm* should give a *with-profits policyholder* the opportunity, and reasonable time, to act on information provided to him in accordance with his circumstances, provided that that would not adversely affect the interests of other *with-profits policyholders*.

Information needs of a with-profits policyholder

- 6.12.115 G A *firm* should give a *with-profits policyholder* the information he might reasonably need to take a considered decision about (or get advice on) his *investment*, whenever that is necessary or appropriate. The information should include, where appropriate, information about any options that are available to him, and the costs or other material factors attributable to the exercise of any or all of those options.
- 6.12.116 G The information referred to in *COB* 6.12.115G includes:
- (1) information about the performance of the *with-profits policy*;
  - (2) a *projection* of the future value of the *with-profits policy*;
  - (3) information about material changes in the circumstances of the *with-profits fund*, or the *firm's* approach to managing it, which might affect the *with-profits policy* and future bonus prospects;
  - (4) information about any material changes in the *firm's* charges which might affect the *with-profits policy*; and
  - (5) information about any material changes in the information already provided, for example, at the point of sale.

## Annex B

### Amendments to the Supervision manual

In this Annex, underlining indicates new text.

4.3.16A R ...

- (4) in respect of each financial year commencing on or after 1 January 2005, make a written report addressed to the relevant classes of the *firm's with-profits policyholders*, to accompany the *firm's* annual report under COB 6.11.9R, as to whether, in his opinion and based on the information and explanations provided to him by the *firm*, and taking into account where relevant the rules and guidance in COB 6.12, the annual report and the discretion exercised by the *firm* in respect of the period covered by the report may be regarded as taking, or having taken, their interests into account in a reasonable and proportionate manner;

...

5.3.9A G In certain circumstances, COB 6.12.70R prohibits a *firm* that is not a *mutual* from charging to a *with-profits fund* any amounts paid or payable to a *skilled person* in connection with a report under section 166 of the *Act* (Reports by skilled persons).

## Annex C

### Amendments to the Glossary

In this Annex, the following new definitions are being inserted and the text is not underlined.

<i>regulatory surplus</i>	(in relation to a <i>long-term business fund</i> , or sub-fund) the excess, if any, of the <i>regulatory value of assets</i> for the <i>with-profits fund</i> over the <i>regulatory value of liabilities</i> for that fund.
<i>with-profits assets</i>	assets that match liabilities in respect of <i>with-profits insurance business</i> or represent a <i>with-profits surplus</i> .

## **WITH-PROFITS GOVERNANCE (AMENDMENT NO 2) INSTRUMENT 2005**

### **Powers exercised**

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

### **Commencement**

- C. This instrument comes into force on 31 December 2005.

### **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 With-Profits Governance (Amendment No 2) Instrument 2005.

By order of the Board  
20 January 2005

## Annex A

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is deleted, the place where the change will be made is indicated and the text is not struck through.

6.5.21 G The information required by COB 6.5.20R should include:

...

(7) ...

(b) where the *firm* is acting as an *operator* or distributor of a *regulated collective investment scheme* or *investment trust savings scheme* and elects to include within *key features* a statement that some or all of the *investments* are *IPA eligible investments*, an indication in respect of each such *investment* whether *pension scheme* members will benefit from the Stamp Duty Reserve Tax exemption available to *IPA's*;

(8) for a *life policy* or a *scheme* which is to be held within a *CTF* the information referred to in COB 6.5.40R(7); and

(9) for a *with-profits policy*, a cross-reference to the *CFPPFM* (see COB 6.10.9GG(8)).

All of the text in COB 6.9 is to be deleted in its entirety.

COB 6.9 [deleted]

6.10 Principles and Practices of Financial Management (PPFM)

Application and purpose

Application

6.10.1 R (1) The whole of this section, except COB 6.10.4AG and COB 6.10.21AR to COB 6.10.21JGKR, applies to a *firm* that:

(a) carries on *with-profits business*;

(b) is not an *EEA insurer*; and

(c) is not a *non-directive friendly society*.

(2) *COB 6.10.4AG and COB 6.10.21AR to COB 6.10.21JGKR* apply only to an *EEA insurer* that carries on *with-profits business*.

(3) ...

#### Purpose

...

6.10.3 G The *rules and guidance* in this section are intended to secure an appropriate degree of protection for *policyholders*, and potential *policyholders*, of *firms* carrying on *with-profits business* by requiring them to define and make available their *Principles and Practices of Financial Management* and to produce, for their *with-profits policyholders*, and potential *with-profits policyholders*, a consumer-friendly version of them. These *rules and guidance* in this section are also intended to enable *policyholders*, and potential *policyholders*, of *firms* carrying on *with-profits business* better to understand the way in which *firms* carry on their *with-profits business*.

...

6.10.4A G In relation to *EEA insurers*, the *rules and guidance* in this section are intended to enable *UK policyholders* properly to understand the essential elements of the *EEA insurer's* commitment under the relevant *with-profits policy*. The effect of *COB 6.10.21AR, COB 6.10.21BR and COB 6.10.21CG to COB 6.10.21KR* is that an *EEA insurer* that carries on *with-profits business* must provide its ~~UK~~*UK* *with-profits policyholders* with information equivalent in scope and content to the information that a *UK insurer* must provide in the form of its *Principles and Practices of Financial Management* and in its consumer-friendly version of them.

#### Principles and Practices of Financial Management

...

#### Obligation to provide copies

...

6.10.9 G In addition to providing copies of its *PPFM*, pursuant to *COB 6.10.8R*, ~~A~~ a *firm* should indicate in any annual statements sent to *with-profits policyholders* that copies of the *firm's PPFM*, or the *PPFM* applicable to specified *with-profits funds*, are available on request, under *COB 6.10.8R*. The *PPFM* might may also wish to be published its PPFM on its a firm's website.

#### Obligation to produce a consumer-friendly version of the PPFM

- 6.10.9A R A firm must produce a consumer-friendly version of its PPFM for its with-profits policyholders and its potential with-profits policyholders.
- 6.10.9B R A firm's CFPPFM must:
- (1) describe the most important information set out under each of the headings in its PPFM (see COB 6.10.22R);
  - (2) be expressed in clear and plain language that can be easily understood by a with-profits policyholder, or potential with-profits policyholder, who does not possess any specialist or technical knowledge;
  - (3) be provided:
    - (a) with any:
      - (i) written notice, sent to the firm's with-profits policyholders, which sets out the firm's proposed changes to its with-profits principles (see COB 6.10.12R and COB 6.10.13R);
      - (ii) annual statements sent to the firm's with-profits policyholders; and
      - (iii) key features for a with-profits policy; and
    - (b) free of charge at the point of delivery; and
  - (4) the information set out in the CFPPFM may be included in another document, including those referred to in (3).
- 6.10.9C G A firm may also provide a copy of its CFPPFM with, or as part of, any other document.
- 6.10.9D R COB 6.10.9BR(3)(a)(ii) does not apply if, and to the extent that, there has been no material change in the firm's CFPPFM since it was last supplied.
- 6.10.9E R A firm must ensure that its CFPPFM is kept up to date with its PPFM, in all material respects, as the PPFM changes over time.
- 6.10.9F R A firm must:
- (1) make its CFPPFM publicly available; and
  - (2) prominently signpost the availability of its CFPPFM on its website.
- 6.10.9G G In complying with COB 6.10.9BR(1) and (2), a firm should:
- (1) have regard to Principle 7 (Communications with clients);
  - (2) give its CFPPFM a consumer-friendly title (for example, 'How we manage our with-profits business – a guide');

- (3) include a short and clear statement at the beginning of its CFPPFM (for example, on a front cover) explaining its purpose and the importance of the information in it;
- (4) use a contents page, bold headings, bullet points and colours, whenever that will help to make the CFPPFM more accessible and more easily understood;
- (5) provide information in context, whenever that is necessary or appropriate (for example, by explaining what a *with-profits policy* is, and how it works, before describing the most important information set out under each of the headings in the *firm's PPFM*);
- (6) use, short and concise paragraphs and, whenever reasonably possible, active verbs and personal pronouns rather than passive verbs and indirect pronouns (for example, a question could be: 'How do we make our bonus decisions?');
- (7) avoid using technical, or industry specific, terms whenever that is reasonably possible (if a *firm* cannot reasonably avoid using such terms, it should explain, in plain language, what those terms mean);
- (8) refer to its CFPPFM in:
  - (a) any annual statements sent to its *with-profits policyholders*;
  - (b) its *key features* for *with-profits policies*; and
  - (c) any other material document produced by the *firm*, where such a reference would be useful or appropriate;
- (9) explain in the CFPPFM that:
  - (a) readers should refer to the *firm's PPFM* for a fuller description of the ways in which the *firm* manages its *with-profits business*; and
  - (b) copies of the *firm's PPFM*, or its relevant *PPFM*, are available on request (see COB 6.10.8R) and how copies can be obtained.

## Principles of Financial Management

...

### Requirements on EEA insurers

6.10.21A R ...

...

6.10.21C G ~~An EEA insurer should indicate in any annual statements sent to with-profits policyholders that the information provided under COB 6.10.21AR is available on request. The PPFM might also be published on an EEA insurer's website. An EEA insurer may wish to publish the information provided pursuant to COB 6.10.21AR on its website.~~

...

6.10.21K R COB 6.10.9AR, COB 6.10.9BR, COB 6.10.9DR, COB 6.10.9ER and COB 6.10.9FR apply to an EEA insurer, as if:

- (1) a reference to a firm was a reference to an EEA insurer; and
- (2) a reference to a with-profits policyholder, or a potential with-profits policyholder, was a reference to a with-profits policyholder, or a potential with-profits policyholder, who is habitually resident in the United Kingdom.

...

6.12.113 G A firm should highlight the importance of key documents, including the CFPPFM, indicating why it is important that with-profits policyholders should read and understand them.

## **Annex B**

### **Amendments to the Glossary**

In this Annex, the following new definition is being inserted and the text is not underlined.

*CFPPFM*

the consumer-friendly version of a *firm's PPFM*, which must be produced pursuant to *COB 6.10.9AR*.

**CONDUCT OF BUSINESS SOURCEBOOK (REATTRIBUTION OF  
INHERITED ESTATES) INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 30 June 2005.

**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 (Reattribution of Inherited Estates) Instrument 2005.

By order of the Board  
20 January 2005.

## Annex A

### Amendments to the Conduct of Business sourcebook

In this Annex, an entire section of text is being inserted; the place where the change will be made is indicated and the text is not underlined.

After COB 6.12 insert the following section:

#### 6.13 Process for reattribution of inherited estates

##### Application and purpose

##### Application

- 6.13.1 R (1) This section applies to a *firm* that carries on *with-profits business* and is proposing to make a *reattribution* of its *inherited estate*.
- (2) Notwithstanding (1), this section does not apply to a *firm* if, and to the extent that, it would require the *firm* to breach, or would prevent the *firm* from complying with, an order made by a court of competent jurisdiction.
- (3) If a *firm* proposes to seek an order, from a court of competent jurisdiction, that would allow or require it to act in a way that is contrary to the *rules* in this section (through, or because of, the exception in (2)), the *firm* must:
- (a) tell the *FSA* that that is what it proposes to do; and
  - (b) seek the order at the earliest opportunity.
- (4) If a *firm* wishes to take a step that would be contrary to the *rules* in this section, in anticipation of such an order, it must secure a *waiver* before it does so.

##### Purpose

- 6.13.2 G The *rules* and *guidance* in this section are intended to:
- (1) help *firms* to understand the arrangements, or the types of arrangement, that the *FSA* regards as appropriate when a *firm* makes a *reattribution* of its *inherited estate*; and
  - (2) ensure that *policyholders* are treated fairly during the *reattribution* process.

- 6.13.3 G The *FSA* accepts that the interests of *policyholders* may be protected in a number of ways, depending on the circumstances of the *firm* and the type of *retribution* that it proposes to make. In many cases, this will involve the sanctioning of an *insurance business transfer scheme* under Part VII of the *Act*, but that will not always be the case. The *rules* and *guidance* in this section are therefore intended to be sufficiently flexible to be capable of delivering the objective of ensuring that *policyholders* are treated fairly, regardless of the particular type of *retribution* and whichever legal process is used. *COB* 6.13.1R(2) also recognises that in some cases, for example, in connection with an *insurance business transfer*, the courts have the power to make procedural and other orders that may affect the application of the *rules* and *guidance* in this section.
- 6.13.4 G A *firm* may propose alternative arrangements to those set out in this section by applying for a waiver under section 148(4) of the *Act* (Modification or waiver of rules).
- 6.13.5 G Whether or not a *waiver* is required, a *firm* should consult the *FSA* about its intentions, before it begins a *retribution* process, if it wishes the *FSA* to consider whether the *firm's* detailed proposals are consistent with the *Principles for Businesses* and, in particular, *Principle 6* (Customers' interests). The *FSA* will endeavour to respond to a *firm's* proposals, including by giving *guidance* (if appropriate), within a reasonable time.
- 6.13.6 G Although the *FSA's* approval is not required before a *firm* can make a *retribution*, the *FSA* has the power, under section 45 of the *Act* (Variation etc. on the Authority's own initiative), to impose a *requirement* on a *firm's* *permission* if it appears to the *FSA* that it would be desirable to do so in order to protect the interests of consumers. If the *FSA* considers that some, or all, of a *firm's* *retribution* is inconsistent with the *Principles for Businesses*, the *FSA* may use that power to require a *firm* to modify, or to refrain from carrying out, some or all of its *retribution*.
- 6.13.7 G The way in which the *FSA* may use its power to vary a *permission* on its own initiative is explained in *SUP* 7 (Individual requirements). One ground for using the power is that the *FSA* considers it desirable to do so in order to protect the interests of *consumers*. In assessing whether there are grounds for exercising such powers in connection with a *retribution*, the *FSA* will have regard to whether or not a *firm* has acted in accordance with the *guidance* in this section and, if a *firm* has not done so, whether it has been able to demonstrate that compliance with that *guidance* would have been inappropriate or impracticable in its particular circumstances.

#### Policyholder advocate: appointment and function

- 6.13.8 R A *firm* that is seeking to make a *retribution* of its *inherited estate* must appoint a policyholder advocate to negotiate with the *firm* on behalf of relevant *with-profits policyholders*.
- 6.13.9 R The *policyholder advocate* must be nominated or approved by the *FSA* before he is appointed.

- 6.13.10 G The *FSA* is likely to nominate a *policyholder advocate* if it considers that the *retribution*, or any part of it, is likely to be complex or controversial. If the *FSA* does not nominate a person to be the *policyholder advocate*, the *firm* should nominate a suitable candidate for *FSA* approval.
- 6.13.11 G The *FSA* expects the *policyholder advocate* to be a natural person who:
- (1) is free from any conflict of interest that might be, or might appear to be, detrimental to the interests of *policyholders*; and
  - (2) has the skills and knowledge necessary to act as the *policyholder advocate* on the proposed *retribution*.
- 6.13.12 G The *FSA* may wish to have preliminary discussions with the *policyholder advocate* nominated by the *firm* to help the *FSA* to determine whether he is suitably qualified and experienced to act as the *policyholder advocate* for the proposed *retribution*. The *FSA* will consider the suitability of the nominee and inform the *firm* that nominated him whether it approves him. Since the nature of the proposed *retribution* is a factor in determining the suitability of the nominee, the *FSA* cannot approve a nominee before a broad outline of the *retribution* has been determined. If the *FSA* rejects a nominee it will normally tell him why it has done so and, if the nominee agrees, the *FSA* will also tell the *firm*.
- 6.13.13 G The *FSA* considers that it is desirable for a *firm* to include an independent element in the *policyholder advocate* selection process. That might include consulting representative groups of *policyholders* or using the services of a recruitment consultant. When considering an application for approval of a nominee to perform the *policyholder advocate* role, the *FSA* will have regard to the extent to which the *firm* has involved others in the selection process.
- 6.13.14 G The precise role of the *policyholder advocate* in any particular case will depend on the nature of the *firm* and the *retribution* proposed. A *firm* will need to discuss with the *FSA* the precise role of the *policyholder advocate* in a particular case. However, the role of the *policyholder advocate* should include:
- (1) negotiating with the *firm*, on behalf of the relevant *with-profits policyholders*, the aggregate value of the benefits to be offered to them in exchange for the rights or interests they will be asked to give up;
  - (2) commenting, to *with-profits policyholders*, on:
    - (a) the methodology used for the allocation of benefits amongst the relevant *with-profits policyholders*, or groups of *with-profits policyholders*, and the form of those benefits;
    - (b) the criteria used for determining the eligibility of the *firm's* various *with-profits policyholders*;
    - (c) the terms and conditions of the proposals (to the extent that they have a material effect on the value of the benefits to be offered, or on the bonuses that may be added to *with-profits policies*); and

- (d) the views expressed by the *independent expert* or the *retribution expert* (as the case may be), and the *actuary* appointed by the *firm* to perform the *with-profits actuary function* on the allocation of any benefits amongst the relevant *with-profits policyholders*; and
- (3) telling *with-profits policyholders*, or each group of *with-profits policyholders*, with reasons, whether the *firm's* proposals are in their interests.

Policyholder advocate: terms of appointment

- 6.13.15 R A *firm* must notify the *FSA* of the terms on which it proposes to appoint a *policyholder advocate*, whether or not the candidate was nominated by the *FSA*.
- 6.13.16 G A *firm* should include with its notification:
  - (1) a copy of its proposed contract with the *policyholder advocate*;
  - (2) a copy of its proposed terms of reference for the *policyholder advocate*;
  - (3) details of the proposed negotiation timetable and the *policyholder advocate's* budget;
  - (4) the *policyholder advocate's* confirmation that he is content with the proposed contract, terms of reference, plan and budget, if he is, or with a summary of his reservations, if he is not; and
  - (5) any other information that the *FSA* may reasonably require when it considers the proposed terms of appointment for the *policyholder advocate*.
- 6.13.17 G The *FSA* will respond to the *firm*, including by giving *guidance* (if appropriate), as soon as it has reached a view on the proposed terms of appointment.
- 6.13.18 R A *firm* must ensure that the terms of appointment for the *policyholder advocate*:
  - (1) stress the independent nature of the *policyholder advocate's* appointment and function, and are consistent with it;
  - (2) define the relationship of the *policyholder advocate* to the *firm* and its *policyholders* respectively;
  - (3) set out the arrangements under which the *policyholder advocate* is to communicate with *policyholders*;
  - (4) make provision for the resolution of any disputes between the *firm* and the *policyholder advocate*; and
  - (5) specify when and how the *policyholder advocate's* appointment may be terminated.

- 6.13.19 R A *firm* must ensure that the *policyholder advocate's* terms of appointment allow him to communicate freely and, at his discretion, in confidence with the *FSA*.
- 6.13.20 G It may be necessary, or desirable, for the *policyholder advocate* to discuss the terms of the proposed *retribution* directly with the *FSA*, or for him to be able to participate in the *FSA's* meetings with the *firm*. COB 6.13.19R is intended to ensure that the *policyholder advocate* is free to do that whenever he, or the *FSA*, regards that as necessary or appropriate.
- 6.13.21 G A *firm* may agree to include, within the terms of appointment for the *policyholder advocate*, arrangements for the *policyholder advocate* to be indemnified in respect of certain claims that may be made against him in connection with the performance of his functions. If such indemnity is given, it should not include protection against any liability arising from acts of bad faith.

#### Reattribution expert

- 6.13.22 R Where a *firm* is not otherwise required to appoint an *independent expert* to assess its *retribution* proposals, it must appoint an expert (referred to as the 'reattribution expert') to undertake an objective assessment of them, taking into account:
- (1) the nature and extent of any restructuring of the *firm's with-profits fund*;
  - (2) the benefits that will be allocated to relevant *with-profits policyholders* in exchange for the rights and interests they are being asked to give up; and
  - (3) any other factors that may be regarded as material by the *FSA* or the expert.
- 6.13.23 G Many transactions involving a *retribution* will involve an *insurance business transfer scheme* that requires court approval under Part VII of the *Act*. In those cases, the *firm* will be required to appoint an *independent expert* who has the responsibilities set out in the *Act* and SUP 18. The *independent expert's* function is to assess objectively, and then prepare a report on, the relevant *insurance business transfer scheme* for the benefit of the court, although the *firm's with-profits policyholders*, others affected by the scheme and the *FSA* will, or may, also rely on it. The *reattribution expert's* function is broadly the same and it contrasts with the role of the *policyholder advocate*, who is appointed primarily to negotiate the benefits to be given to *with-profits policyholders* in exchange for the rights and interests they are being asked to give up.
- 6.13.24 R A *firm* must not appoint a *reattribution expert* who has not been nominated or approved by the *FSA* to act as an expert in relation to the *firm's* proposed *retribution*.
- 6.13.25 R If a *firm* appoints a *reattribution expert*, it must ensure that the expert's terms of appointment allow him to communicate freely and, at his discretion, in confidence with the *FSA*.
- 6.13.26 G The *FSA* expects a *reattribution expert* to be a natural person who:

- (1) is free from any conflict of interest that might, or might appear to, undermine his independence or the quality of his report;
  - (2) has relevant knowledge, both practical and theoretical, and experience of the types of *insurance business* transacted by the *firm*; and
  - (3) is an *actuary* familiar with the role and responsibilities of an *actuary* appointed under *SUP* 4 (Actuaries).
- 6.13.27 G The general principles in *SUP* 5.4.8G, regarding the suitability of a *skilled person*, also apply to the appointment of a *retribution expert*.
- 6.13.28 G A *firm* should co-operate fully with a *retribution expert* and provide him with access to all relevant information and appropriate staff.
- 6.13.29 R (1) A *firm* that appoints a *retribution expert* must require him to prepare a report.
- (2) The report required by *COB* 6.13.29R(1) must be made available to the *FSA*, the *policyholder advocate* and the court (if it is relevant to any court proceedings).
- (3) An adequate summary of the report required by *COB* 6.13.29R(1) must also be made available to the *firm's with-profits* and other *policyholders*.
- 6.13.30 G A *retribution expert's* report, required by *COB* 6.13.29R(1), should comply with the applicable rules on expert evidence and contain the following information:
- (1) the information detailed in *SUP* 18.2.33G(1) to (10), (12) and (13), and *SUP* 18.2.39G; and
  - (2) his opinion of the likely effect of the proposals on *with-profits policyholders* or, where relevant, each relevant group of *with-profits policyholders*, having particular regard, where relevant, to the matters set out in *SUP* 18.2.36G, as if in each case, a reference to:
    - (a) the '*scheme report*' was a reference to the '*retribution expert's report*';
    - (b) the '*independent expert*' was a reference to the '*retribution expert*'; and
    - (c) the '*scheme*' was a reference to the proposal for a '*retribution*'.
- 6.13.31 G The amount of detail that it is appropriate to include in the report required by *COB* 6.13.29R(1) will depend on the complexity of the proposals, the materiality of the details themselves and the circumstances.

- 6.13.32 G Where the proposal for a *retribution* forms part of a wider proposal for restructuring, it may not be appropriate to consider the *retribution* in isolation. In those cases, the *retribution expert* should seek a sufficient explanation of the *firm's* plans to enable him to understand, and report on, the wider picture.

#### Negotiation timetable

- 6.13.33 G When a *firm* decides, in principle, to appoint a *policyholder advocate*, it should give him sufficient time to select the professional advisers he regards as necessary to enable him to perform his functions. It should also give him an opportunity to make preliminary enquiries about the *firm*, its *long-term insurance fund*, the nature of its proposals and the factual background to them.
- 6.13.34 G At an appropriate time, a *firm* should announce the appointment of the *policyholder advocate*, marking the formal start of the negotiations. In the first instance, the arrangements under which a *policyholder advocate* is appointed should require him to take such steps as he considers necessary to communicate with, and receive views from, relevant *with-profits policyholders* about the proposed *retribution*. Only when he is satisfied that he has had adequate time to communicate with relevant *with-profits policyholders* should a *policyholder advocate* expect, or be expected, to begin negotiations with a *firm*.
- 6.13.35 G The *FSA* would not normally expect the period from the announcement of the appointment of a *policyholder advocate* to the conclusion of a prospective deal to be less than three *months*.

#### Information to policyholders: the policyholder advocate and the negotiations

- 6.13.36 R A *firm* must make arrangements so that every *policyholder* that might be affected by the proposed *retribution* will receive appropriate information about the *retribution* process, and any offer that will be made to him, in a timely way.
- 6.13.37 G Relevant *with-profits policyholders* should be given clear information about the proposals, including an explanation of the wider picture, for example if the *retribution* is linked to the restructuring of a *firm*.
- 6.13.38 G When a *firm* makes information available to its *policyholders*, it should have regard to *Principle 7* (Communications with customers). It should also explain the benefits and disbenefits of its proposals, for each relevant group of *policyholders* and for the *firm* if, and to the extent that, that is appropriate in the context of the information that it will be providing at any particular time.
- 6.13.39 G The information given to *policyholders* should explain the role and background of the individuals who have been appointed to perform particular functions, including those of the *policyholder advocate* and the *independent expert* or the *retribution expert*, as the case may be.

- 6.13.40 G The information should also explain the steps in the *retribution* process, the timetable for the proposed *retribution* and any interdependencies. A *firm* should also consider the information needs of *policyholders* who will not be directly affected by the *firm's* proposals.
- 6.13.41 G A *firm* should ensure that appropriate arrangements are put in place for *policyholders* of the *firm* to have access to further information, including over the internet and through helplines. These should remain operational throughout the *retribution* process and be able to provide *policyholders* with information on demand. A *firm* should take reasonable steps to ensure that the information provided to *policyholders* is kept up-to-date.
- 6.13.42 G The *FSA* does not consider it necessary for *policyholders* to receive regular updates on the progress of negotiations between the *firm* and the *policyholder advocate* if they are completed within a relatively short timescale. However, in the case of protracted negotiations, *policyholders* should receive an update at least every six *months*, commencing with the announcement of the appointment of the *policyholder advocate* (see *COB* 6.13.34G).

Notification to policyholders: conclusion of negotiations and consent

- 6.13.43 R When a *firm* and a *policyholder advocate* complete their negotiations about the benefits that will be offered to relevant *with-profits policyholders*, in exchange for the rights and interests they will be asked to give up, the *firm* must:
- (1) tell relevant *policyholders* that the *firm* and the *policyholder advocate* have completed their negotiations;
  - (2) explain the outcome of the negotiations and, if appropriate, the *firm's* final proposals for the *retribution*; and
  - (3) give relevant *with-profits policyholders* the chance to:
    - (a) individually accept or reject those proposals; or
    - (b) (if the legal process to be followed allows the majority of *policyholders* to bind the minority) vote on whether the *firm* should go ahead with those proposals.
- 6.13.44 G A *firm* should also:
- (1) explain the essence of its proposals, including details of:
    - (a) the context or background to the proposals and how the final version has been arrived at; and
    - (b) any material changes or departures from the information that it has already supplied;

- (2) explain the effect of the negotiations on *policyholders*, including a description of any benefits they are likely to receive and the rights and interests that they are likely to be asked to give up;
  - (3) include a report from the *policyholder advocate*, which explains the basis of his negotiations with the *firm*, whether he considers that the *firm's* proposals are in the interests of relevant *with-profits policyholders*, or groups of *with-profits policyholders*, and gives reasons for the conclusions that he has reached; and
  - (4) include information about the report by the *independent expert* or the *retribution expert*, as the case may be, including a summary of the report and details of how *policyholders* can obtain a copy of the full report, if they wish to do so (see *COB 6.13.29R*).
- 6.13.45 G The *retribution* process may redefine the rights of certain parties. There are established legal processes that enable such rights to be redefined by majority vote. If a *firm* proposes a *retribution* that follows some other process, the *FSA* considers that, for that *retribution* to be fair, *policyholders* should be given the chance to decide whether or not to accept the *firm's* proposals and, if they decide not to accept, their existing rights should be protected. The *FSA* therefore expects *firms* to offer individual choice, or to follow an established legal process where the majority can bind the minority (with the sanction of the court, if applicable).
- 6.13.46 R If a *firm* chooses to make an offer to its *policyholders*, when the *firm* and the *policyholder advocate* have not been able to agree the value of the benefits to be offered to *with-profits policyholders* in return for the rights and interests they are being asked to give up, it must also explain the fact of, and reasons for, the *policyholder advocate's* disagreement.
- 6.13.47 G Where a *firm* proposes an elective process under *COB 6.13.43R(3)(a)*, and a minority do not accept the proposals in the first instance, the *FSA* would expect the *firm* to make arrangements to allow those *policyholders* a further opportunity to elect to be a party to the *retribution* at a later date.
- 6.13.48 G Where a proposal is put to the vote of *policyholders* in accordance with *COB 6.13.43R(3)(b)*:
- (1) the voting arrangements should allow relevant *with-profits policyholders* the opportunity to vote by post or, if the vote is to take place at a meeting, for those *policyholders* to be able to appoint proxies to represent their views; and
  - (2) the notice period, the closing date for votes submitted by post or, as the case may be, the time for appointing proxies should normally be at least eight weeks after the prospective deal has been announced.

- 6.13.49 R Before, or at the same time as giving notice to relevant *with-profits policyholders* of an invitation to accept the offer under *COB 6.13.43R(2)(a)* or an invitation to vote under *COB 6.13.43R(2)(b)*, a *firm* must send out details of the individual benefits to be received by each relevant *with-profits policyholder* in exchange for the rights or interests they are being asked to give up.

#### Notification to policyholders: final outcome

- 6.13.50 G A *firm* should, within a reasonable time, notify *policyholders* of the final outcome of the *retribution* process. This should normally be done after the court has considered the proposed *retribution*, if court sanction is required.
- 6.13.51 G Provided that any court hearing is due to take place within a reasonable time once the outcome of the vote is known (see *COB 6.13.43R(3)(b)*), the *FSA* does not consider it necessary for a *firm* to write individually to *policyholders* to explain the outcome of that vote. However, a *firm* should make the information publicly available, for example by putting a notice on its website, by giving details through its helpline, or by placing an advertisement in the national or regional press.

#### Limits on the need to provide information

- 6.13.52 R *COB 6.13.36R*, *COB 6.13.43R*, *COB 6.13.46R* and *COB 6.13.49R* do not require a *firm* to disclose confidential, or commercially sensitive, information nor do they require a *firm* to disclose information that relates to a third party or is irrelevant to its *retribution* proposals or arrangements.
- 6.13.53 G A *firm* will not be treated as having failed to comply with any obligation in this section to provide information if the information has been provided to relevant *with-profits policyholders* by another *person*, such as the *policyholder advocate*, the *independent expert* or the *retribution expert*.

#### General costs

- 6.13.54 G Subject to *COB 6.13.55G* to *COB 6.16.58G*, *retribution* and *insurance business transfer* costs (excluding *policyholder advocate* costs) should be met from shareholder funds. A *firm* may present alternative arrangements if it can show good reasons for doing so.

#### Policyholder advocate costs

- 6.13.55 G The *policyholder advocate's* budget, and the *policyholder advocate's* costs, should be agreed between the *firm* and the *policyholder advocate*. For these purposes, the *policyholder advocate's* costs include ancillary costs, such as the costs of professional advice and administrative and publicity costs.
- 6.13.56 G The *FSA* recognises that the treatment of costs will almost certainly affect the value of the benefits offered. The *FSA* will not normally seek to restrict the way in which *policyholder advocate* costs are divided between shareholders and *policyholders*, provided that:

- (1) the shareholder pays a reasonable proportion of them;
- (2) the arrangements are fair; and
- (3) the *policyholder advocate* confirms that he is satisfied with them.

- 6.13.57 G A *firm* may therefore agree an arrangement with the *policyholder advocate* by which relevant *with-profits policyholders* contribute to the *policyholder advocate's* costs, for example by a deduction from the aggregate value of the benefits that will become available to those *policyholders*.
- 6.13.58 G A *firm* might also propose a budget that it will fund entirely, or in part, from shareholder funds with any additional expenditure being met from funds attributable to relevant *with-profits policyholders*. Another approach would be cost sharing, so that a *firm* and relevant *with-profits policyholders* will benefit if savings are made, compared to the budget, and costs are shared if the budget is exceeded.
- 6.13.59 G If a *retribution* proposal is not successful, the *FSA* would expect the costs of the *policyholder advocate* to be met by the *person* initiating the proposal. That will usually be the shareholders of the *firm*.

## Annex B

### Amendments to the Glossary

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

*inherited estate*

~~the excess of assets maintained within a *with-profits fund* over and above the amount required to meet liabilities (including liabilities which arise from the regulatory duty to treat *customers* fairly in setting discretionary benefits) an amount representing the fair market value of the *with-profits assets* less the *realistic value of liabilities* of a *with-profits fund*.~~

*policyholder advocate*

the *person* appointed under COB 6.13.8R to negotiate with a *firm* on its proposals for making a *retribution* of its *inherited estate*.

*retribution*

the process under which a *firm* which carries on *with-profits business* seeks to redefine the rights and interests that the *with-profits policyholders* have over the *inherited estate*.

*retribution expert*

the expert appointed by a *firm* to satisfy its obligations under COB 6.13.22R.

**CONDUCT OF BUSINESS SOURCEBOOK  
(AMENDMENT NO 20) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making powers);
  - (2) section 145 (Financial promotion rules);
  - (3) section 149 (Evidential provisions); and
  - (4) section 156 (General supplementary powers).
- 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 6 April 2005.

**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 Supervision manual**

- E. The Supervision manual 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 20) Instrument 2005.

By order of the Board  
20 January 2005

## Annex A

### Amendments to the Conduct of Business sourcebook

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

...

Further information for life policies, schemes, ~~insurance or equity stocks and shares~~ ISAs, PEPs 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*:

...

(5) for ISAs with a *life policy* (insurance) or equity (stocks and shares) (equity and insurance) component and PEPs, in addition to (1), (2), (3) or (4):

(a) a description of the nature of the services which will be provided for the *private customer*;

(b) ~~[deleted]~~ for ISAs or ISA components which are stated as satisfying the *CAT standards*;

~~(i) a table comparing the ISA or ISA component with the *CAT standards*;~~

~~(ii) clarification that satisfying the *CAT standards* does not mean that the *investment* is appropriate for the *private customer* or that there is any guarantee of performance;~~

(c) ~~[deleted]~~ the fact, if applicable, that an ISA does not meet the *CAT standards* together with any relevant explanation;

...

...

6.5.42 R If *COB 6.4.13R* applies, for a *cash deposit ISA*, the *private customer* must be given the following information (in accordance with *COB 6.4.13R*) and, in relation to a *distance contract* with a *retail customer*, all the contractual terms and conditions and the information in *COB App 1* in place of *key features*:

(1) [deleted]

~~(a) for the *cash deposit ISA* which is stated as satisfying the *CAT*~~

~~standards, a comparison with the CAT standards; or~~

- (b) ~~if the cash deposit ISA is not stated as satisfying the CAT standards, a statement making this clear, together with, if desired, any relevant information;~~

(2) ...

...

6.7.16 R Table Notes to cancellable contracts and exceptions - life  
This table belongs to COB 6.7.15R

Notes to COB 6.7.15R	
1.	Recurring single <i>premium life policy</i> : Under certain conditions, only the first <i>premium</i> in what might be a series of <i>premiums</i> ( <del>for example, in the case of a mini-ISA insurance component</del> ) attracts cancellation rights under COB 6.7.7R(1). The conditions are:
	...
...	

## Annex B

### Amendments to the Supervision manual

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

...

16.8.4 R In this section, and Forms 1R(2) to (4) in *SUP* 16 Annex 6R:

...

(8) [deleted] 'insurance ISA' means the insurance component of an *ISA* (mini or maxi);

...

...

16.8.21 R The *firm* must, if a persistency report reports on;

...

(4) an *income withdrawal* ~~or insurance ISA~~, not include the policy under any other relevant category in Forms 1R(1) and 1R(3).

...

...

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (USE OF FINANCIAL DERIVATIVE INSTRUMENTS FOR UCITS) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 140 (Restriction on managers of authorised unit trust schemes);
    - (c) section 156 (General supplementary powers);
    - (d) section 157(1) (Guidance);
    - (e) section 242 (Applications for authorisation of unit trust schemes);
    - (f) section 247 (Trust schemes rules); and
    - (g) section 248 (Scheme particulars rules); and
  - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations (SI 2001/1228).
- B. The provisions of or under the Act relevant to the 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 2005.

**Amendments to the Collective Investment Schemes sourcebook**

- D. The Collective Investment Schemes sourcebook is amended in accordance with Annex A to this instrument.

**Amendments to the New Collective Investment Schemes sourcebook**

- E. The New Collective Investment Schemes sourcebook is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Use of Financial Derivative Instruments for UCITS) Instrument 2005.

By order of the Board  
20 January 2005

## Annex A

### Amendments to the Collective Investment Schemes sourcebook

In this Annex underlining indicates new text (except where a website address is to be inserted) and striking through indicates deleted text.

Spread: general

5.2.13 R ...

- (12) For the purpose of calculating the limits in (7) and (10), the exposure in respect of an *OTC derivative* may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (13).
- (13) The conditions referred to in (12) are that the collateral:
- (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
  - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
  - (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
  - (d) can be fully enforced by the *UCITS scheme* at any time.
- (14) For the purpose of calculating the limits in (7) and (10), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
- (a) comply with the conditions set out in Section 3 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the *Banking Consolidation Directive*; and
  - (b) are based on legally binding agreements.
- (15) In applying this rule, all *derivatives* transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:
- (a) it is backed by an appropriate performance guarantee; and
  - (b) it is characterised by a daily mark-to-market valuation of the *derivative* positions and an at least daily margining.

Guidance on spread: general

- 5.2.13A G (1) CIS 5.2.13R(12) to (15) reflect the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (in this Section referred to as “the Commission Recommendation on the use of financial derivative instruments”). This Recommendation may be accessed via [http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l\\_199/l\\_19920040607en00240029.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_199/l_19920040607en00240029.pdf).
- (2) The attention of *authorised fund managers* is specifically drawn to condition (d) in CIS 5.2.13R(13) under which the collateral has to be legally enforceable at any time. It is the FSA’s view that it is advisable for an *authorised fund manager* to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. *Depositaries* will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under CIS 7.5.3R(2) (Duties of the ACD and depository: investment and borrowing powers) or CIS 7.10.3R(2) (Duties of the manager and trustee: investment and borrowing powers), as appropriate.

...

Permitted transactions (derivatives and forwards)

- 5.2.22 R ...
- (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* provided that a sale is not to be considered as uncovered if the conditions in CIS 5.2.24R(3) (Requirement to cover sales) are satisfied.

...

...

Requirement to cover sales

- 5.2.24 R ...
- (3) Paragraph (1) does not apply where:
- (a) the risks of the underlying financial instrument of a *derivative* can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or

(b) the authorised fund manager or the depositary has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes:

(i) cash;

(ii) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or

(iii) other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant).

(4) In the asset classes referred to in (3), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven business days at a price closely corresponding to the current valuation of the financial instrument on its own market.

Guidance on requirement to cover sales

5.2.24A G CIS 5.2.24R(3) to (4) reflect the provisions of Article 7 of the Commission Recommendation on the use of financial derivative instruments.

...

Risk management process

5.2.27 G ...

(6) Firms carrying out the risk management process should note the methodologies set out in Article 3 (Appropriately calibrated standards to measure market risk) of the Commission Recommendation on the use of financial derivative instruments.

(7) In assessing the risk of OTC derivatives, firms should note the methodologies set out in Article 5.3 (Invitation to use the standards laid down in Directive 2000/12/EC as a first reference) of the Commission Recommendation on the use of financial derivative instruments.

...

Cover for transactions in derivatives and forward transactions

5.3.3 R ...

(5) The total global exposure relating to derivatives held in a UCITS scheme may not exceed the net value of the scheme property (Article 2(1) of the Commission Recommendation 2004/383/EC).

## Annex B

### Amendments to the New Collective Investment Schemes sourcebook

In this Annex underlining indicates new text (except where a website address is to be inserted) and striking through indicates deleted text.

Spread: general

5.2.11 R ...

- (11) For the purpose of calculating the limits in (7) and (10), the exposure in respect of an *OTC derivative* may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (12).
- (12) The conditions referred to in (11) are that the collateral:
- (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
  - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
  - (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
  - (d) can be fully enforced by the *UCITS scheme* at any time.
- (13) For the purpose of calculating the limits in (7) and (10), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
- (a) comply with the conditions set out in Section 3 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the *Banking Consolidation Directive*; and
  - (b) are based on legally binding agreements.
- (14) In applying this rule, all *derivatives* transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:
- (a) it is backed by an appropriate performance guarantee; and
  - (b) it is characterised by a daily mark-to-market valuation of the *derivative* positions and an at least daily margining.

Guidance on spread: general

- 5.2.11A G (1) *COLL 5.2.11R(11) to (14) reflect the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (in this Section referred to as “the Commission Recommendation on the use of financial derivative instruments”). This Recommendation may be accessed via [http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l\\_199/l\\_19920040607en00240029.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_199/l_19920040607en00240029.pdf).*
- (2) The attention of *authorised fund managers* is specifically drawn to condition (d) in *COLL 5.2.11R(12)* under which the collateral has to be legally enforceable at any time. It is the *FSA*’s view that it is advisable for an *authorised fund manager* to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. *Depositaries* will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under *COLL 6.6.4R* (General duties of the depositary).

...

Permitted transactions (derivatives and forwards)

- 5.2.20 R ...
- (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* provided that a sale is not to be considered as uncovered if the conditions in *COLL 5.2.22R(3)* (Requirement to cover sales) are satisfied.

...

...

Requirement to cover sales

- 5.2.22 R ...
- (3) Paragraph (1) does not apply where:
- (a) the risks of the underlying financial instrument of a *derivative* can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or
- (b) the *authorised fund manager* or the *depositary* has the right to settle the *derivative* in cash, and cover exists within the *scheme property* which falls within one of the following asset classes:

- (i) cash;
  - (ii) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or
  - (iii) other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant).
- (4) In the asset classes referred to in (3), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven *business days* at a price closely corresponding to the current valuation of the financial instrument on its own market.

Guidance on requirement to cover sales

5.2.22A G COLL 5.2.22R(3) to (4) reflect the provisions of Article 7 of the Commission Recommendation on the use of financial derivative instruments.

...

Risk Management process

5.2.25 G ...

(6) Firms carrying out the risk management process should note the methodologies set out in Article 3 (Appropriately calibrated standards to measure market risk) of the Commission Recommendation on the use of financial derivative instruments.

(7) In assessing the risk of OTC derivatives, firms should note the methodologies set out in Article 5.3 (Invitation to use the standards laid down in Directive 2000/12/EC as a first reference) of the Commission Recommendation on the use of financial derivative instruments.

...

Cover for transactions in derivatives and forward transactions

5.3.3 R ...

(5) The ~~total~~ global exposure relating to derivatives held in a UCITS scheme may not exceed the net value of the scheme property (Article 2(1) of the Commission Recommendation 2004/383/EC).

## HANDBOOK ADMINISTRATION INSTRUMENT 2005

### Powers exercised

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

### Commencement

- C. This instrument comes into force as follows:
- (1) Annex K (changes to SUP) comes into force on 1 March 2005;
  - (2) Annexes A to J and Annexes L to S come into force on 1 April 2005.

### Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex B
General Provisions (GEN)	Annex C
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex D
Conduct of Business sourcebook (COB)	Annex E
Client Assets sourcebook (CASS)	Annex F
Market Conduct sourcebook (MAR)	Annex G
Training and Competence sourcebook (TC)	Annex H
Money Laundering sourcebook (ML)	Annex I
Authorisation manual (AUTH)	Annex J

(1)	(2)
Supervision manual (SUP)	Annex K
Enforcement manual (ENF)	Annex L
Dispute Resolution: Complaints (DISP)	Annex M
Compensation sourcebook (COMP)	Annex N
Collective Investment Schemes sourcebook (CIS)	Annex O
Credit Unions sourcebook (CRED)	Annex P
Electronic Commerce Directive sourcebook (ECO)	Annex Q
Lloyd's sourcebook (LLD)	Annex R
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex S

**Citation**

E. This instrument may be cited as the Handbook Administration Instrument 2005.

By order of the Board  
17 February 2005

## Annex A

### Amendments to the Glossary of definitions

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

Amend or add, in the correct alphabetical position, the following definitions.

<i>commencement day</i>	the <i>day</i> on which section 19 of the <i>Act</i> (The general prohibition) comes into force, <u>being 1 December 2001.</u>
<u><i>credit unions day</i></u>	<u>1 July 2002.</u>
<i>EEA firm</i>	(in accordance with paragraph 5 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) any of the following, if it does not have its relevant office in the <i>United Kingdom</i> :  (a) ...  ...  (d) an undertaking pursuing the activity of direct insurance (within the meaning of article 1 <del>2</del> of the <i>First Life Directive Consolidated Life Directive</i> (No. 2002/83/EC) or of Article 1 of the <i>First Non-Life Directive</i> (No. 73/239/EEC)) which has received authorisation under <u>Article 4 of the <i>Consolidated Life Directive</i> or <del>Article 6 of the <i>First Non-Life Directive</i></del> from its <i>Home State regulator</i>;</u>
	(e) ...  ...

## **Annex B**

### **Amendments to the Statements of Principle and Code of Practice for Approved Persons**

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

3.1.1 G ... The description of conduct, the factors and related provisions are identified in the text by the letter 'E' as explained in ~~paragraph 25~~ chapter 6 of the Reader's Guide.

...

## Annex C

### Amendments to the General Provisions

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### Transitional Provisions applying across the Handbook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
23	Every <i>rule</i> in the <i>Handbook</i> made by the <i>FSA</i>	R	[delete existing text] <u>Expired</u>	<del>From 20 December 2001 until 30 April 2003</del>	<del>Various dates</del>
24	Paragraph 23 and <i>guidance</i> in the <i>Handbook</i> other than in: <i>COND</i> ; <i>APER</i> ; <i>FIT</i> ; <i>AUTH</i> ; <i>PROF</i> ; <i>MAR 1</i>	G	[delete existing text] <u>Expired</u>	<del>From 20 December 2001 until 30 April 2003</del>	<del>Various dates</del>

#### Transitional provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>GEN 2.2.7R</i>	R	<del><i>GEN 2.2.7R</i> has effect as if it started with the words "Unless the context indicates otherwise,".</del> <u>Expired</u>	<del>From 21 June 2001 until six months after commencement</del>	<del>21 June 2001</del>
2	<i>GEN 4.3.1R</i>	R	With respect to <i>designated investment business</i> , a <i>firm</i> is not required to comply with	<del>From 1 March 2003 until 30 September 2004</del>	<del>1 March 2003</del>

(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
			<del>GEN 4.3.1R until 1 October 2004; firms are permitted at any time during the transitional period to comply with the letter disclosure requirements in GEN 4.3.1R.</del> Expired		
3	GEN 4.3.1R	R	<del>With respect to any regulated activity other than designated investment business, a firm is not required to comply with GEN 4.3.1R until 1 March 2004; firms are permitted at any time during the transitional period to comply with the letter disclosure requirements in GEN 4.3.1R.</del> Expired	<del>From 1 March 2003 until 29 February 2004</del>	<del>1 March 2003</del>
4	GEN 4.4.1R	R	<del>GEN 4.4.1R does not apply to a firm with respect to the carrying on of any regulated activity other than designated investment business.</del> Expired	<del>From 1 March 2003 until 29 February 2004</del>	<del>1 March 2003</del>
...					

## Annex D

### Amendments to the Interim Prudential sourcebook for Investment Businesses

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

Interim prudential requirements for former IMRO firms

Chapter 5: Financial Resources

...

Appendix 1 (Interpretation)

Glossary of terms for Chapter 5 (former IMRO firms)

*Term*

*Meaning*

...

*EEA firm*

(in accordance with paragraph 5 of Schedule 3 to the Act (EEA Passport Rights)): means any of the following, if it does not have its head office in the *United Kingdom*:

(a) ...

...

(d) an undertaking pursuing the activity of direct insurance (within the meaning of Article ~~4~~2 of the ~~First Life Directive (No. 79/267/EEC)~~ Consolidated Life Directive (No. 2002/83/EC) or of Article 1 of the First Non-Life Directive (No. 73/239/EEC) which has received authorisation under Article 4 of the Consolidated Life Directive or Article 6 of the First Non-Life Directive from its *Home State regulator*.

...

Chapter 13: Financial Resource Requirements for Personal Investment Firms

...

Appendix 13(1) Defined terms for chapter 13

...

*EEA firm*

(in accordance with paragraph 5 of Schedule 3 to the Act (EEA Passport Rights)) any of the following, if it does not have its head office in the *United Kingdom*:

(a) ...

...

- (d) an undertaking pursuing the activity of direct insurance (within the meaning of Article 12 of the *First Life Directive*, Consolidated Life Directive (No. 2002/83/EC) or of Article 1 of the *First Non-Life Directive*) which has received authorisation under Article 4 of the Consolidated Life Directive or Article 6 of the First Non-Life Directive from its *Home State regulator*.

...

## Annex E

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted or replaced, the place where the change will be made is indicated and the text is not struck through or underlined.

The existing COB TR1 and TR2 become a new COB TP1 as shown.

Transitional provisions TP1

~~COB TR1~~ Transitional Rules for pre-N2 and ex-Section 43 firms at N2

...

COB TR1

(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				
...					
1.5	<i>ETP1</i>	G	[delete existing text] <u>Expired</u>	<del>commencement to 30 June 2002</del>	<del>commencement</del>
1.6	<i>ETP3</i>	R	[delete existing text] <u>Expired</u>	[delete existing text]	[delete existing text]
1.7	<i>ETP3</i>	G	[delete existing text] <u>Expired</u>	<del>commencement to 30 June 2002</del>	<del>commencement</del>
1.8	<i>ETP4</i>	R	[delete existing text] <u>Expired</u>	<del>commencement to until 30 November</del>	<del>commencement</del>
1.9	<i>ETP4</i>	G	[delete	<del>commencement</del>	<del>commencement</del>

(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
			existing text] <u>Expired</u>	<del>until 30 November 2002</del>	
1.10	<i>ETP5</i>	R	[delete existing text] <u>Expired</u>	<del>commencement until 30 June 2002</del>	<i>commencement</i>
1.11	<i>ETP6</i>	R	[delete existing text] <u>Expired</u>	<del>commencement until 30 June 2002</del>	<i>commencement</i>
...					
1.13	<i>ETP8</i>	R	[delete existing text] <u>Expired</u>	<del>(pre-N2 firms): commencement until 30 June 2002; (ex-section 43 firms): commencement until 30 November 2002</del>	<i>commencement</i>
1.14	<i>ETP8</i>	G	[delete existing text] <u>Expired</u>	<del>(pre-N2 firms): commencement until 30 June 2002; (ex-section 43 firms): commencement until 30 November 2002</del>	<i>commencement</i>
...					
1.16	<i>ETP9</i>	G	...	<del>commencement to</del> <u>until 30 June 2002</u> <del>a</del> date yet to be specified	<i>commencement</i>
2	Technical timing provisions				
2.1	<i>TTP1</i>	R	[delete existing text] <u>Expired</u>	<del>commencement to</del> expiry of the relevant period	<i>commencement</i>
2.2	<i>TTP2</i>	R	[delete	<del>commencement to</del>	<i>commencement</i>

(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
			existing text] <u>Expired</u>	<del>expiry of the relevant period</del>	
2.3	<i>TTP3</i>	R	[delete existing text] <u>Expired</u>	<del>commencement to expiry of the relevant period</del>	<i>commencement</i>
2.4	<i>TTP1, TTP and TTP3</i>	G	[delete existing text] <u>Expired</u>	<del>commencement to expiry of the relevant period</del>	<i>commencement</i>
...					

COB TR2: Rules benefiting from transitional relief (pre-N2 and ex-section 43 firms) G  
This Table belongs to COB TR1.1 to COB TR 3.10

Replace the existing COB TR2 table with the following table:

COB Rule	Rule Heading	Label	
		ETP	TSP
Chapter 1 Applications and general provisions			
1.3 General application: what?			
1.3.1R		ETP9	
Chapter 2 Rules which apply to all firms conducting designated investment business			
2.2 Inducements and soft commission			
2.2.8R	Requirements when using a soft commission agreement	ETP1	TSP2
2.2.12R	Allowable benefits provided under a soft commission agreement	ETP1	
2.2.16R	Prior disclosure	ETP1	
Chapter 3 Financial promotion (whole chapter)		ETP1	TSP7
3.6 Confirmation of compliance			
3.6.1R	Confirmation of compliance	ETP1	TSP1

COB Rule	Rule Heading	Label	
		ETP	TSP
3.6.3R	Withdrawing confirmation	ETP1	TSP1
3.6.5R	Communicating a financial promotion where another firm has confirmed compliance	ETP1	TSP1
Chapter 4 Accepting customers			
4.2 Terms of business and client agreements with customers (whole section)		ETP1	TSP2
Chapter 5 Advising and selling			
5.2 Know your customer			
5.2.5R	Requirement to know your customer	ETP1	TSP3
5.2.9R	Record keeping: personal and financial circumstances	ETP1	TSP3
5.2.10R	Record keeping: execution-only pension opt-outs and pension transfers	ETP1	TSP3
5.3 Suitability			TSP4
5.3.5R	Requirement for suitability generally	ETP1	
5.3.14R	Requirement for a suitability letter: other specific requirements	ETP1	
5.3.19R	Exceptions from requirement to provide a suitability letter	ETP1	
5.3.20R	Suitability of broker funds	ETP1	
5.3.21R	Suitability of pension transfers and opt-outs	ETP1	
5.3.22R		ETP1	
5.3.23R		ETP1	
5.3.24R		ETP1	
5.3.25R		ETP1	
5.3.26R		ETP1	
5.3.27R		ETP1	
5.3.28R	Suitability of personal pension schemes: promotions to employees	ETP1	
5.4 Customers' understanding of risk			TSP4
5.4.3R	Requirement for risk warnings	ETP1	TSP4
5.7 Disclosure of charges, remuneration and commission			
5.7.3R	Disclosure of charges	ETP1	
5.7.5R	Disclosure of commission (or equivalent) for	ETP1	

COB Rule	Rule Heading	Label	
		ETP	TSP
	packaged products		
5.7.9R	Exceptions to the disclosure for packaged products	ETP1	
5.7.10R		ETP1	
5.7.15R		ETP1	
Chapter 6 Product disclosure and the customers' right to cancel or withdraw (whole chapter)		ETP1	TSP7
6.7 Cancellation and withdrawal (whole section)		ETP1	TSP6
6.9 With-profits guides (whole section)			
Chapter 8 Reporting to customers			
8.1 Confirmation of transactions			
8.1.3R	Requirement to confirm a transaction	ETP1	
8.1.6R	Exceptions to the requirement to despatch a confirmation	ETP1	
8.1.7R		ETP1	
8.1.8R		ETP1	
8.1.11R	When a confirmation may omit certain information	ETP1	
8.1.12R	When a transaction is treated as executed	ETP1	
8.1.14R	Record keeping requirements	ETP1	
8.2 Periodic statements			
8.2.4R	Requirement for a periodic statement	ETP1	
8.2.6R	Exceptions from the requirement to provide a periodic statement	ETP1	
8.2.9R	Record keeping requirements	ETP1	
Chapter 10 Operators of collective investment schemes			
10.3 Modification of the allocation rule			
10.3.1R		ETP1	
10.4 Suitability of the portfolio of an unregulated collective investment scheme			
10.4.3R		ETP1	
10.6 Scheme documents for an unregulated collective investment scheme			
10.6.2R	Provision of scheme documents to private customers	ETP1	TSP5

COB Rule	Rule Heading	Label ETP	TSP
10.6.5R			TSP5
10.7 Periodic statements for an unregulated collective investment scheme (whole section)		ETP1	

The existing COB TR3 becomes a new COB TP2 as shown.

Transitional provisions TP2

Client classification transitional provisions at N2

COB Table TR3 Client Classification Provisions

...

The existing COB TR4 and TR5 become a new COB TP3 as shown.

Transitional provisions TP3

~~COB TR4~~ Transitional Rules for ex-RPB firms

...

COB Table TR4 – COB Transitional Provisions (for ex-RPB firms)

(1)	(2) Material to which the transitional provision applies: The <i>COB</i> provisions in Table <i>COB</i> TR 5 with the label 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	[delete existing text] <u>Expired</u>	<del><i>commencement to 30 November 2002</i></del>	<del><i>commencement</i></del>
...					
1.4	<i>ETP2</i>	R	[delete existing text]	<del><i>commencement to 30 November</i></del>	<del><i>commencement</i></del>

(1)	(2) Material to which the transitional provision applies: The <i>COB</i> provisions in Table <i>COB</i> TR 5 with the label indicated	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<u>Expired</u>	<del>2002</del>	
1.5	<i>ETP2</i>	G	[delete existing text] <u>Expired</u>	<del><i>commencement to 30 November 2002</i></del>	<i>commencement</i>
1.6	<i>ETP3</i>	R	[delete existing text] <u>Expired</u>	<del><i>commencement to 30 November 2002</i></del>	<i>commencement</i>
1.7	<i>ETP3</i>	G	[delete existing text] <u>Expired</u>	<del><i>commencement to 30 November 2002</i></del>	
2.0	Technical Timing provisions				
2.1	<i>TTP1</i>	R	[delete existing text] <u>Expired</u>	<del><i>commencement to 30 November 2002</i></del>	<i>commencement</i>
2.2	<i>TTP1</i>	G	[delete existing text] <u>Expired</u>	<del><i>commencement to 30 November 2002</i></del>	<i>commencement</i>

COB Table TR5 COB rules benefiting from transitional relief for ex-RPB firms  
This Table belongs to COB TR4 1.1R to COB TR4 4.1R

...

The existing COB (second) TR5 becomes a new COB TP4 (and references to this as TR5 are deleted) as shown:

Transitional provisions TP4

Miscellaneous transitional provisions applying to all firms

~~Table COB TR5 Miscellaneous transitional provisions applying to all firms~~

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>COB 6.5.40R(3)(k)</i> and (l)	R	[delete existing text] <u>Expired</u>	<del>From 1 August 2002 to 1 February 2003</del>	<del>1 August 2002</del>
2	<i>COB 6.5.18R</i> and <i>COB 6.6</i>	R	[delete existing text] <u>Expired</u>	From 1 November 2002 to 5 April 2003	1 November 2002
3	<i>COB 6.8.26R</i> and <i>COB 6.8.28R</i>	R	[delete existing text] <u>Expired</u>	<del>From 19 January 2003</del>	<del>19 January 2003</del>
4	<i>COB 3.8.4R(3)</i> , <i>3.9.7R(1)</i> , <i>3.13.4R</i>	R	[delete existing text] <u>Expired</u>	<del>From 1 March 2003 to 30 September 2004</del>	<del>1 March 2003</del>
...					
11	<i>COB 5.4.4E(6)</i>	R	Risk warnings for listed securities involving gearing  <del>A firm, which acts as a discretionary investment manager for a private customer on 1 January 2004 will not contravene this evidential provision if it provides the relevant risk warning to those customers no later than when it provides a statement in accordance with <i>COB 8.2.4R</i> provided that this is done no later than 9 months after this rule comes into force.</del> <u>Expired</u>	<del>1 January 2004</del>	<del>30 September 2004</del>
12	<i>COB 3.9.31G(3)</i>	G	[delete existing text] <u>Expired</u>	<del>From 20 February</del>	<del>20 February</del>

(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
				2004 until 16 July 2004	2004
...					
<u>14</u>	<u>COB 6.11.9R</u>	R	...	...	...

The existing COB TR6 becomes a new COB TP5 (and references to this as TR6 are deleted) as shown as shown:

Transitional provisions TP5

Distance Marketing Directive transitional rules (applicable to all firms)

~~COB TR6~~

...

The existing COB TR7 becomes a new COB TP6 (and references to this as TR7 are deleted) as shown as shown:

Transitional provisions TP6

Transitional rules for depolarisation (applicable to all firms)

~~Table COB TR7 Transitional Rules for carrying on with profits business~~

...

The existing COB TR8 becomes a new COB TP7 (and references to this as TR7 are deleted) as shown as shown:

Transitional provisions TP7

Transitional rules for carrying on with-profits business

~~Table COB-TR8 Transitional rules for carrying on with profits business~~

COB 3 Financial promotion

...

Income withdrawal

3.9.29 R ...

Child trust funds

3.9.30 R ...

Structured capital at risk products

3.9.31 R ...

## Annex F

### Amendments to the Client Assets sourcebook

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

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
2	Every rule in the <i>Handbook</i>	R	<del>If a <i>firm</i> or its auditors make reference to a provision in <i>COB 9</i> in a document, record, report or return, the <i>FSA</i> will take this as a reference to the equivalent provision in <i>CASS 2</i> to <i>CASS 4</i>.</del> <u>Expired</u>	<del>1 January 2004 for 12 months</del>	<del>1 January 2004</del>
		G	<del>As a result of 2, <i>firms</i> will not have to replace their <i>terms of business</i> or <i>client agreements</i> immediately on the introduction of <i>CASS</i>.</del> <u>Expired</u>		
<u>2A</u>		G	If a <i>waiver</i> granted before 1 January 2004 refers to a provision in <i>COB 9</i> it will continue to be effective in relation to the equivalent provision in <i>CASS</i> .		

## Annex G

### Amendments to the Market Conduct sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

Transitional provisions TP1 – table MAR 2

(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>MAR 2</i>	R	[delete existing text] <u>Expired</u>	<del><i>commencement until the end of the stabilising period for the offer</i></del>	<del><i>commencement</i></del>

## Annex H

### Amendments to the Training and Competence sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### 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
...					
4	<i>TC 2.5.1R(1) and (2)</i>	R	<del>A firm which, immediately before commencement, was required to comply with specific training and competence requirements imposed by its previous regulator, may, in respect of the individuals employed before commencement, comply with the requirements of TC 2.5.1R(1) and (2) by ensuring that those individuals pass the appropriate examinations within the time limits imposed by its previous regulator.</del> <u>Expired</u>	From commencement	<i>Commencement</i>
5	<i>TC 2</i>	R	...	...	...
<u>6A</u>		G	General transitional provisions <del>GEN contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition at commencement.</del>	From commencement	<i>Commencement</i>

(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
			<del>These include transitional provisions relevant to record keeping.</del> <u>Expired</u>		
<u>6B</u>	<i>TC</i>	G	[delete existing text] <u>Expired</u>	From <del>commencement</del> for 12 months	<i>Commencement</i>
<u>6C</u>	<i>Rules and guidance ...</i>	G	[delete existing text] <u>Expired</u>		
7	...				

2.1.4 R Table Activities to which *TC2* applies.

	Activity	Extent of Application
<i>Employees engaging in:</i>	Advising and Dealing  a. ... ... Advising (without dealing) p. <i>advising a customer</i> on a: ... ii. <del>a</del> <i>regulated lifetime mortgage contract.</i>	In relation to <i>designated investment business</i> a. ...

...  
2.4 Attaining competence

...  
2.4.3 G In *TC* 2.4.2R ~~(2)~~(1)(b) an adequate level of application of knowledge and skills includes:

...

## Annex I

### Amendments to the Money Laundering sourcebook

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

#### 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>	<i>ML</i>	G	<p>General transitional provisions</p> <p><del><i>GEN</i> contains some technical transitional provisions that apply throughout the <i>Handbook</i> and which are designed to ensure a smooth transition at <i>commencement</i>. These include transitional provisions relevant to record keeping.</del> <u>Expired</u></p>	From <del><i>commencement</i></del>	<del><i>commencement</i></del>

1.1.1 R (1) This sourcebook applies to every relevant *firm* (see *ML* 1.1.2R) with respect to its relevant *regulated activities* (see *ML* 1.1.4R), but there are special provisions in ~~*ML* 8.1R and *ML* 8.2R~~ for *sole traders* with no *employees* and *authorised professional firms*.

...

1.1.3 G The scope of this sourcebook is very wide. It includes all *firms* except:

(1) ...

(2) those within the exception for *firms* carrying on any *insurance mediation activity* in relation to a *general insurance contract* or *pure protection contract* (see *ML* 1.1.4R (1A)) or any *mortgage mediation activity* (see *ML* 1.1.4R(5)); in this respect, the chapter follows ~~{articles 2(3)(h) and 2(3)(i) }~~ of the ~~{ }~~ ~~[to be added when 2003 Money Laundering Regulations 2003 (SI 2003/3075) are in final form]~~.

...

## Annex J

### Amendments to the Authorisation manual

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

- 1.3.3 G (1) A Reader's Guide gives an introduction to the *Handbook* and is a key navigational aid for *Handbook* users. The guide explains the format, layout and workings of the *Handbook*, including the status and definitions of its components such as directions, *rules* and *guidance* (~~see paragraphs 18 to 31 of the Guide~~).
- (2) We recommend that readers consult this Guide before or while reading *AUTH*. ~~In particular, readers may find it helpful to refer to the sections of the Guide that explain structure (paragraphs 3 to 13 of the Guide), the status of provisions (paragraphs 14 to 27 of the Guide) and cross-references (paragraphs 40 to 42 of the Guide).~~
- ...
- 1.3.6 G *AUTH* uses words and phrases that have specific meanings in the *Handbook* or in legislation; these may be different from, or more precise than, their usual dictionary meanings. Defined terms used in the text of the *Handbook* are shown in italics (~~see paragraph 43 of the Reader's Guide~~). For the meanings of defined terms used in *AUTH*, see the *Glossary* (either the extracts at the end of *AUTH* or the consolidated *Glossary* ~~near the end of the *Handbook*~~). It is essential that readers refer to these definitions.
- 1.3.7 G *AUTH* 1.3.9G summarises *AUTH*. Readers should note that in a cross-reference, as explained in Chapter 6 paragraph 40 of the Reader's Guide, the code letters of the manual or sourcebook immediately precede the chapter number. For example, *AUTH* 1 is the first chapter of the Authorisation manual.
- ...
- 1.5.4 G ~~A table of contents of the *Handbook* is at the end of the Reader's Guide.~~  
[deleted]
- ...
- 1.8.5 G The *FSA* will review its *guidance* from time to time and may need to amend or withdraw published or written *guidance* in the light of changing circumstances, developing business practices, or case law. For the status of guidance issued by the *FSA*, see Chapter 6 of paragraphs 25 to 28 in the Reader's Guide.
- ...
- AUTH* 4 R Authorisation fees payable ~~in relation to the period from 1st April 2002 to~~  
Annex 1 ~~31st March 2003~~
- ...

## Annex K

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

**Part 1:**

Transitional provisions applying to the Supervision manual only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
...					
2	<i>SUP 3.9 and SUP 3.10</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for two years	<i>Commencement</i>
3	<i>SUP 3.9.4R</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for one year	<i>Commencement</i>
3A	<i>SUP 3.10</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for six months	<i>Commencement</i>
3B	<i>SUP 3.10.6R, SUP 3.10.7R</i>	G	[delete existing text] <u>Expired</u>	<del>From commencement</del> for six months	<i>Commencement</i>
3C	<i>SUP 3.10</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for thirteen months	<i>Commencement</i>
...					
6	<i>SUP 8.6.1R</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for one month	<i>Commencement</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
8	<i>SUP</i> 10.13.6R	R	[delete existing text] <u>Expired</u>	<del>From</del> <i>commencement</i> for one month	<i>Commencement</i>
9	<i>SUP</i> 12.5.5R, <i>SUP</i> 12.5.7R	R	[delete existing text] <u>Expired</u>	<del>From</del> <i>commencement</i> for 12 months	<i>Commencement</i>
...					
10	<i>SUP</i> 16.4.5R <i>SUP</i> 16.5.5R	R	[delete existing text] <u>Expired</u>	<del>From</del> <i>commencement</i> for four months	<i>Commencement</i>
...					
11	<i>SUP</i> 16.6, <i>SUP</i> 16.7, <i>SUP</i> 16.8	R	[delete existing text] <u>Expired</u>	<del>From</del> <i>commencement</i> for two years	<i>Commencement</i>
12	<i>SUP</i> 16.7.7R; <i>SUP</i> 16.7.9R, <i>SUP</i> 16.7.11R, <i>SUP</i> 16.7.16R, <i>SUP</i> 16.7.24R, <i>SUP</i> 16.7.26R, <i>SUP</i> 16.7.35R, <i>SUP</i> 16.7.44R, <i>SUP</i> 16.7.46R, <i>SUP</i> 16.7.48R, <i>SUP</i> 16.7.57R	R	[delete existing text] <u>Expired</u>	<del>From</del> <i>commencement</i> for one year	<i>Commencement</i>
...					
15A	Rules in <i>SUP</i> 20	R	[delete existing text] <u>Expired</u>	<del>From</del> 1 December 2002 to 31 December 2003	<del>Various</del> dates
15B	Transitional rule <i>SUP</i> 15A	G	[delete existing text] <u>Expired</u>	<del>From</del> 1 December 2002 to 31 December 2003	1 December 2002

(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
...					

Transitional provisions relating to written concessions

...

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	<i>Rules in: <del>COB, IPRU, MAR 2, SUP 16.6 and 16.7, TC</del></i>	...	...	<i>If the <del>rule</del> in column (2) appears in <del>IPRU or in SUP 16.6 or SUP 16.7,</del> from commencement until <del>that rule</del> is revoked. <del>Otherwise, from commencement for 12 months.</del></i>	...
2	<i>Rules in: <del>COB, IPRU, MAR 2, SUP 16.6 and 16.7, TC</del></i>	...	...	<i>If the <del>rule</del> in column (2) appears in <del>IPRU or in SUP 16.6 or SUP 16.7,</del> from commencement until <del>that rule</del> is revoked. <del>Otherwise, from commencement for 12 months.</del></i>	...
3	<i>Rules in: <del>COB, IPRU, MAR 2, SUP 16.6 and</del></i>	...	...	<i>If the <del>rule</del> in column (2) appears in <del>IPRU</del></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
	<u>16.7, TC</u>			<del>or in SUP 16.6 or SUP 16.7, from commencement until that rule is revoked. Otherwise, from commencement for 12 months.</del>	
4	<i>Rules in: COB, IPRU, MAR 2, SUP 16.6 and 16.7, TC</i>	...	...	If the <i>rule</i> in column (2) appears in <i>IPRU</i> or in <i>SUP 16.6</i> or <i>SUP 16.7</i> , from commencement until that <i>rule</i> is revoked. Otherwise, from commencement for 12 months.	...

...

6.4.5 D (2) ...

- (a) given to a member of, or addressed for the attention of, the ~~Resignation~~ Cancellations Team at the *FSA*; and

...

...

6.4.6 G (1) ~~SUP 6.4.5R(2)(a) provides that the application for cancellation of *Part IV permission* must be sent to the Resignation Team in the *FSA's* Corporate Authorisation department which performs a central administrative function. The *firm's* usual supervisory contact at the *FSA* will, however, be responsible for all day-to-day contact with the *firm* and assessing the application. In addition to applying for cancellation of *Part IV permission* in accordance with SUP 6.4.5D, a *firm* may discuss prospective cancellations with its usual supervisory contact at the *FSA*.~~

- (2) To contact the ~~Corporate Authorisation Resignation Cancellations~~ team:
- (a) telephone on 020 7676 ~~4000~~ 1102; fax on 020 ~~6767-1099~~ 7066 9701; or
  - (b) write to: ~~Corporate Authorisation Resignation Cancellations~~ Team, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS; or
  - (c) email [corporate.authorisation@fsa.gov.uk](mailto:corporate.authorisation@fsa.gov.uk)

6.4.7 G When it receives this an application is received, the FSA Corporate Authorisation Resignation Team will send the *firm* a written acknowledgement. ~~This acknowledgement will explain the cancellation process and detail the information required as part of the application (examples of which are given in SUP 6.4.8G to SUP 6.4.17G).~~ The *firm* will be required to provide information which, in the opinion of the *FSA*, is necessary for it to determine whether to grant or refuse the application for cancellation of *Part IV permission*. The ~~Corporate Authorisation Resignation Cancellations~~ Team will work with the *firm's* usual supervisory contact at the *FSA* during this process.

...

10.12.6 G Application forms must always be completed fully and honestly. Further notes on how to complete the form are contained in each form. If forms are not completed fully and honestly, applications will be delayed and, in some cases, possibly rejected. A *person* who provides information to the *FSA* that is false or misleading may commit a criminal offence. ~~As a general guide, disclosure is required in the application form in respect of:~~

- (1) ~~previous employment history going back ten years and with reasons for leaving;~~
- (2) ~~outstanding county court judgements, bankruptcies and arrangements with creditors; and~~
- (3) ~~previous disciplinary actions by a regulatory body.~~

...

11.3.14 G The *FSA* is obliged to consult regulatory authorities in other *EEA States* before approving the change in *control* or giving a *warning notice* where the Financial and Services Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001 (SI 2001/2509, as amended) apply. In summary, these regulations require the *FSA* to consult with the home state regulator of an *ISD investment firm*, a *BCD credit institution*, an *EEA insurer*, an *EEA UCITS management company* or the *parent undertaking of any of these*, where that *firm* has acquired or proposes to acquire *control* of certain *UK domestic firms* such that the acquiring *firm* would become the

parent undertaking of the relevant UK domestic firm. These regulations also impose certain consultation obligations on the FSA in respect of financial conglomerates.∴

- (1) (a) the "target" ~~UK domestic firm is an investment firm;~~
- (b) ~~the controller or proposed controller is an ISD investment firm or the parent undertaking of an ISD investment firm;~~ and
- (c) as a result of the acquisition or proposed acquisition, the ~~controller or proposed controller would become the parent undertaking of the UK domestic firm;~~ or
- (2) (a) the "target" ~~UK domestic firm has permission to accept deposits;~~
- (b) ~~the controller or proposed controller is a BCD credit institution or the parent undertaking of a BCD credit institution;~~ and
- (c) as a result of the acquisition or proposed acquisition, the ~~controller or proposed controller would become the parent undertaking of the UK domestic firm.~~

...

13.1.4 G ~~SUP 13 Appendix 3 Ann X [to be issued later]~~ contains guidance on the Single Market Directives.

...

13.3.1 G Guidance on what constitutes a branch is given in ~~SUP 13 Appendix 3 Ann X [to be issued later].~~

...

13.4.1 G Guidance on where a cross border services is provided is given in ~~SUP 13 Ann X Appendix 3G[to be issued later].~~

...

R Requisite and relevant details Specified information: Cross Border Services

Annex 3

1 Table

Type of firm	<u>Requisite / relevant details</u> Specified information
	<u>Requisite Details</u>
1 <i>Investment firm</i>	(a) <del>€</del> Details of the programme of operations, stating in particular the service or services the <i>UK firm</i> intends to provide.
2 <i>UCITS management company</i>	(a) The information required under 1 above, <del>plus</del> ; <u>and</u> (b) the <i>EEA State</i> within the territory of which the <i>UCITS management company</i> plans to <del>establish a branch operate</del> ; <u>Relevant details (regulation 17)</u>
3 <i>Insurance Undertaking (note 1)</i>	(a) <del>€</del> The <i>EEA State</i> in which the EEA activities are carried on, or are to be carried on; (b) ... (c) if the <i>firm</i> covers, or intends to cover, relevant motor vehicle risks (note 12): (i) the name and address of the claims representative (note 23); and (ii) details of the <del>firm's</del> <i>firm's</i> membership of the national bureau and the national guarantee fund in the <i>EEA State</i> concerned (if required by the <i>EEA State</i> concerned as part of the <u>consent notice</u> ); and (d) if the <del>insurer</del> <i>insurer</i> covers, or intends to cover, health insurance, the technical bases used, or to be used, for calculating premiums in respect of such risks;.
<u>Note 1: See regulation 17 of the <i>EEA Passport Rights Regulations</i>.</u>	
<u>Note 2: In this table, the reference to 'relevant motor risks' has the meaning given to <i>motor vehicle liability</i> in Schedule 1 to the <i>Regulated Activities Order</i>.</u>	
<u>Note 3: In this table, the reference to 'claims representative' has the meaning given to it in the <i>EEA Passport Rights Regulations</i>.</u>	

...

## SUP 16 Annex 21R

### 1. GENERAL REPORTING FIELDS

...

Data reporting field	Code (where applicable)	Guidance
<u>Transaction reference number</u>	<u>Up to 25 digits</u>	<u>A unique reference, internal to the reporting <i>firm</i> such as the policy number, account number, application number etc.</u>
FSA reference number of product provider	6 digit number	...
...		

### 2. SPECIFIC REPORTING FIELDS

#### (a) Retail Investments

Data reporting field	Illustrative code (where applicable)	Notes
...		
<u>Date policy in force</u>	<u>DD/MM/YYYY</u>	<u>This should be the date the policy is put 'in force'. This may also be the on risk date, the go live date, or the issue of contract date. It is for firms to determine which date to report.</u>

#### (b) Pure protection contracts

Data reporting field	Illustrative code (where applicable)	Notes
...		
<u>Date policy in force</u>	<u>DD/MM/YYYY</u>	<u>This should be the date the policy is put 'in force'. This may also be the on risk date, the go live date, or the issue of contract date. It is for firms to determine which date to report.</u>

(c) Mortgages

...

Data reporting field	Illustrative code (where applicable)	Notes
...		
County Court Judgements (CCJs)  Value	Numeric £	<p>Applies where borrower/s has one or more CCJ's within the last three years – either satisfied or unsatisfied –with a total value greater than £500.</p> <p><u>In the case of joint applications, CCJ's should be reported against the appropriate borrower (i.e. borrower 1 or 2 or both). However, if your systems do not allow you report this information against both borrowers, you can report all CCJ data in the borrower 1 reporting field.</u></p>
Impaired credit history	<p>A = arrears</p> <p>V = IVA</p> <p>B = Bankruptcy</p>	<p>Use code/s to indicate applicable credit history</p> <p>A = applies to secured loans and unsecured loans where the borrower/s has arrears on a previous (or current) mortgage or other secured loan within the <b>last 2 years</b> where the cumulative amount overdue at any point reached three or more monthly payments or</p> <p>V = applies where the borrower/s have been subject to an Involuntary arrangement (IVA) at any time within the <b>last 3 years</b></p> <p>B = applies where the borrower/s have been subject to a bankruptcy order at any time within the <b>last 3 years</b></p> <p><u>In the case of joint applications, impaired credit data should be reported against the appropriate borrower (i.e. borrower 1 or 2 or both). However, if your systems do not allow you report this information against both borrowers, you can report all impaired credit data in the borrower 1 reporting field.</u></p>

...

## Annex L

### Amendments to the Enforcement manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### 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	<i>ENF 13</i> Ann 1G	G	[delete existing text] <u>Expired</u>	Until the <del>FSA</del> has fully invoiced the <i>firm</i> in respect of its annual fee for the period <del>1 April 2002 to 31 March 2003</del>	<i>commencement</i>
...					
3	<i>ENF 13.5,</i> <i>ENF 13</i> Ann 1G	G	[delete existing text] <u>Expired</u>	From <del>1 October 2002</del>	<i>commencement</i> but applying to <i>credit unions</i> from <del>credit unions day</del>

## Annex M

### Amendments to the Dispute Resolution: Complaints sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### Transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	<i>DISP</i> 1.2.15G	R	[delete existing text] <u>Expired</u>	<i>Commencement</i> <del>to 30 June 2002</del>	<i>Commencement</i>
2	<i>DISP</i> 1.5.4R - <i>DISP</i> 1.5.7R	R	[delete existing text] <u>Expired</u>	<del>01.4.02– 31.10.02</del>	01.4.02
3	<i>DISP</i> 1.5.4R - <i>DISP</i> 1.5.7R	G	[delete existing text] <u>Expired</u>	<del>01.4.02– 31.10.02</del>	01.4.02
...					
9	<i>DISP</i> 5.5.1R	R	[delete existing text] <u>Expired</u>	<del>01.3.02– 31.5.02</del>	Not yet made
...					

## Annex N

### Amendments to the Compensation sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### Transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
...					
2	<i>COMP</i> 13.5 and <i>COMP</i> 13.6R	R	[delete existing text] <u>Expired</u>	<i>Commencement</i> to 31 March 2004	<i>commencement</i>
3	<i>COMP</i> 13.4.6R and <i>COMP</i> 13.6.7R	R	[delete existing text] <u>Expired</u>	<i>Commencement</i> to 31 March 2002	<i>commencement</i>
4	<i>COMP</i> 13.5.8R	R	[delete existing text] <u>Expired</u>	<i>Commencement</i> to 31 March 2002	<i>commencement</i>
...					
9	<i>COMP</i> 13.6.8R	R	[delete existing text] <u>Expired</u>	1 January 2004 to 1 January 2005	<i>commencement</i>

## Annex O

### Amendments to the Collective Investments Schemes sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### 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	<i>CIS</i>	R	[delete existing text] <u>Expired</u>	<i>Commencement</i>	<i>Commencement</i>
2	<i>CIS 2</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for 12 months until date of revision (whichever is earlier)	<i>Commencement</i>
3	<i>CIS</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for 12 months	<i>Commencement</i>
4	<i>CIS 2</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for 12 months until date of revision (whichever is earlier)	<i>Commencement</i>
...					
6	<i>CIS 2.2.2R(6)</i>	R	[delete existing text] <u>Expired</u>	<del>From commencement</del> for 12 months until date of revision (whichever is	<i>Commencement</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
				earlier)	
7	<i>CIS</i> 5.2.10R(2)	R	[delete existing text] <u>Expired</u>	From <i>commencement</i> for 12 months until date of revision (whichever is earlier)	<i>Commencement</i>
8	<i>CIS</i> 5.4.4R(5)	R	[delete existing text] <u>Expired</u>	From <i>commencement</i> for 12 months until date of revision (whichever is earlier)	<i>Commencement</i>
9	<i>CIS</i> 9.2.7	R	[delete existing text] <u>Expired</u>	From <i>commencement</i> for 12 months until date of revision (whichever is earlier)	<i>Commencement</i>
10	<i>CIS</i> 10.3 and <i>CIS</i> 10.4	R	[delete existing text] <u>Expired</u>	From <i>commencement</i> for 12 months	<i>Commencement</i>
11	<i>CIS</i>	G	[delete existing text] <u>Expired</u>	From <i>commencement</i>	<i>Commencement</i>
12	<i>CIS</i> 3.5.2R(18)	R	[delete existing text] <u>Expired</u>	From 1 August 2002 for 6 months	1 August 2002
...					
13A	<i>CIS</i> 3.5.2R(19)	R	[delete existing text] <u>Expired</u>	From 1 October 2002 for four months	1 October 2002

(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	<i>CIS</i> 3.2.2R(3) and <i>CIS</i> 3.5.2R(10-14) and <i>CIS</i> 5 and <i>CIS</i> 10.4.2R(16)	R	(1) ...	from 1/11/02 until 12/02/07	1/11/02
			(2) [delete existing text] <u>Expired</u>	<del>from 1/11/02 until 12/02/04</del>	<del>1/11/02</del>
...					
23	<i>CIS</i> 10.1.4G(2), <i>CIS</i> 10.3.3R(1)(a), <i>CIS</i> 10.3.4R(1)(a), <i>CIS</i> 10.3.6R(3), <i>CIS</i> 10.4.8R(1) and <i>CIS</i> 10.4.9R(2)(a)	R and G	[delete existing text] <u>Expired</u>	<del>From 1 February 2004 for 12 months</del>	<del>From commencement but amended as at 1 February 2004</del>

## Annex P

### Amendments to the Credit Unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### 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
...					
3	<i>CRED 15.5, CRED 15 Ann 3G</i>	G	[delete existing text] <u>Expired</u>	<del>from 1 October 2002</del>	<i>credit unions day</i>
...					

## Annex Q

### Amendments to the Electronic Commerce Directive sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### 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 <i>rule</i> (including <i>evidential provision</i> ) in <i>ECO</i>	R	[delete existing text] <u>Expired</u>	<del>21 August 2002 to 20 November 2002</del>	<del>21 August 2002</del>
...					

## Annex R

### Amendments to the Lloyds sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### Transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
...					
2	<i>LLD 7.4.1G</i>	G	[delete existing text] <u>Expired</u>	<del>From commencement until the end of the following December or June whichever is earlier</del>	<i>Commencement</i>
...					
4	<i>LLD 13.2.2R and LLD 9 to LLD 15</i>	R	[delete existing text] <u>Expired</u>	<del>Commencement to 31.12.2002</del>	<i>Commencement</i>
5	<i>LLD 15.9R to LLD 15.11R</i>	R	[delete existing text] <u>Expired</u>	<del>Commencement to 31.12.2001</del>	<i>Commencement</i>
6	<i>LLD</i>	G	[delete existing text] <u>Expired</u>	<del>From commencement</del>	<i>Commencement</i>
...					

## Annex S

### Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### Transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	<i>REC 3 and REC 6</i>	R	[delete existing text] <u>Expired</u>	<del>Commencement</del> until one year after <del>commencement</del>	<del>Commencement</del>
2	<i>REC 3</i>	R	[delete existing text] <u>Expired</u>	<del>Commencement</del> until one year after <del>commencement</del>	<del>Commencement</del>
3	<i>REC 3</i>	R	[delete existing text] <u>Expired</u>	<del>Commencement</del> until one year after <del>commencement</del>	<del>Commencement</del>
4	<i>REC 6.6.3</i>	G	[delete existing text] <u>Expired</u>	<del>Commencement</del> until one year after <del>commencement</del>	<del>Commencement</del>
5	<i>REC 6.7.5</i>	R	[delete existing text] <u>Expired</u>	<del>Commencement</del> until one year after <del>commencement</del>	<del>Commencement</del>

**TRAINING AND COMPETENCE SOURCEBOOK  
(MONEY MARKET INSTRUMENT ACTIVITY) INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 April 2005.

**Amendments to the Glossary of definitions**

- D. The Glossary is amended in accordance with Annex A to this instrument.

**Amendments to the Training and Competence sourcebook**

- E. The Training and Competence sourcebook is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Training and Competence Sourcebook (Money Market Instrument Activity) Instrument 2005.

By order of the Board  
17 February 2005

## Annex A

### Amendments to the Glossary of definitions

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

Insert the following new definition in the correct alphabetical position:

- money market instrument activity* an activity in respect of a transaction:
- (a) which involves any of the following *investments* and is not regulated by the rules of a *recognised investment exchange*:
- (i) a *debenture* which is issued on terms requiring repayment not later than five years from the date of issue;
  - (ii) any *government and public security* which is issued on terms requiring repayment not later than one year or, if issued by a local authority in the *United Kingdom*, five years from the date of issue; or
  - (iii) a *warrant* which entitles the holder to subscribe for an *investment* within (a)(i) or (a)(ii);
- (b) which involves any of the following *investments* and is not made on a *recognised investment exchange* or expressed to be so made:
- (i) a *certificate representing certain securities or rights to or interests in investments* relating, in either case, to an *investment* within (a)(i) or (a)(ii);
  - (ii) an *option* relating to:
    - (A) an instrument in (a)(i) or (a)(ii); or
    - (B) currency of the *United Kingdom* or of any other country or territory; or
    - (C) gold or silver;
  - (iii) a *future* for the sale of:
    - (A) an instrument in (a)(i) or (a)(ii); or
    - (B) currency of the *United Kingdom* or of any other country or territory; or
    - (C) gold or silver;

- (iv) a *contract for differences* by reference to fluctuations in:
  - (A) the value or price of any instrument within any of (a)(i) to (a)(iii) or (b)(i) to (b)(iii); or
  - (B) currency of the *United Kingdom* or of any other country or territory; or
  - (C) the rate of interest on loans in any such currency or any index of such rates; or
- (v) an *option* to acquire or dispose of an instrument within (b)(ii), (b)(iii) or (b)(iv); or
- (c) where one of the parties agrees to *sell* or transfer a *debenture* or *government and public security* and by the same or a collateral agreement that party agrees, or acquires an option, to buy back or re-acquire that *investment* or an equivalent amount of a similar *investment* within twelve *months* of the sale or transfer.

For the purposes of (c) *investments* are regarded as similar if they entitle their holders to the same rights against the same *persons* as to capital and interest and the same remedies for the enforcement of those rights.

## Annex B

### Amendments to the Training and Competence sourcebook

In this Annex, underlining indicates new text.

2.1.4 R Table: activities to which TC 2 applies.

	Activity	Extent of application
1. <i>Employees</i> engaging in:	Advising and dealing (a) <i>advising on investments</i> ...	...  (b) if the activity is carried on with or for an <i>intermediate customer</i> or a <i>market counterparty</i> ; <u>(i) for a <i>money market instrument activity</i>, TC 2 is disappplied as a whole; or</u> <u>(ii) otherwise, only TC 2.4, 2.5, 2.6 and 2.8 apply.</u> ...
...		

**INTEGRATED REGULATORY REPORTING (MINOR AMENDMENTS)  
INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force as follows:
- (1) Annex A comes into force on 1 March 2005;
  - (2) Annexes B and C come into force on 1 April 2005.

**Amendments to the Supervision manual**

- D. The Supervision manual is amended in accordance with Annexes A and B to this instrument.

**Amendments to the Dispute Resolution: Complaints sourcebook**

- E. The Dispute Resolution: Complaints sourcebook is amended in accordance with Annex C.

**Citation**

- F. This instrument may be cited as the Integrated Regulatory Reporting (Minor Amendments) Instrument 2005.

By order of the Board  
17 February 2005

## Annex A

### Amendments to the Supervision manual

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

- 16.7.33 R (1) Any report in *SUP* 16.7.23R to *SUP* 16.7.30R submitted to the *FSA* by a *securities and futures firm* must be signed by two authorised signatories satisfying the requirements of *SUP* 16.7.33R (2), except for:
- (a) the audited accounts of a subsidiary of the *firm* and the *firm's* audited annual financial statements; ~~and~~
  - (b) other reports where the *firm* is a *sole trader*, when only one authorised signatory is required- ; and
  - (c) reports submitted in accordance with (3).
- ...
- (4) Reports in (3) must be submitted to the *FSA* in accordance with the methods permitted by FiRSt 5 software. All other reports... using pre-printed labels provided by the *FSA* for this purpose.

## Annex B

### Further amendments to the Supervision manual

In this Annex underlining, and where indicated, highlighting indicates new text and striking through indicates deleted text. Where text is deleted, any corresponding response boxes are also deleted.

15.6.2 G *SUP* 15.6.1R applies also in relation to *rules* outside this chapter, and even if they are not *notification rules*. Examples of *rules* and chapters to which *SUP* 5.6.1R is relevant, are:

...

(4) *SUP* 17 (Transaction reporting); ~~and~~

(5) any *notification rule* (see Schedule 2 which contains a consolidated summary of such *rules*); ~~and~~,

(6) *DISP* 1.5 (Record keeping and reporting).

...

16.1.3 R Table Application of different sections of *SUP* 16

(1) Sections	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
--------------	---	-----------------------------------

...

*SUP* 16.7

...

*Authorised professional firm* (note)

*SUP* 16.7.54R and *SUP* 16.7.54AR

...

A *firm* not subject to other reporting requirements in *SUP* 16.7.1G – *SUP* 16.7.75R (nor to reporting requirements in *IPRU(INS)* or *IPRU(FSOC)*):

...

(1) with *permission* to carry on one or more of:  
(a) *insurance mediation activity*; or  
(b) *mortgage mediation activity*; or  
(c) *mortgage lending*;  
or



(b2) which is a *personal investment firm*;

16.7.77 R ... Table Reports from a firm not subject to other reporting requirements in  
SUP 16.7.1- SUP 16.7.75R

...

...

SUP 16 Ann18A R Retail Mediation Activities Return ('*RMAR*')

What is the *firm's regulated business revenue* in the most recent  
*financial year*?

In the following page of the *RMAR* new text is both highlighted and underlined.

**SECTION E: PII Self-Certification**

Is the firm exempt from the PII requirements in respect of any regulated activities? (tick as appropriate)

Mortgage advising/arranging	Non-inv insurance advising/arranging/dealing/assisting	Retail investment advising/arranging
RR0358	RR0359	RR0360

If not exempt, has the firm renewed its PII cover since the last reporting date?

RR0362	RR0363	RR0364
--------	--------	--------

Please complete the following fields as appropriate, in relation to each applicable PII policy:

What activities are covered by the policy?

Mortgage advising/arranging	RR0371
Non-inv insurance advising/arranging/dealing/assisting	RR0372
Retail investment advising/arranging	RR0373
Is the cover compliant?	RR0374
Annual premium	RR0375
Limit of Indemnity - single claim/aggregate	RR0376
Policy excess	RR0377

Amount of additional capital required for increased excess(es) (where applicable, total amount for all PII policies)

RR0383

**Personal investment firms only:**

Total amount of additional own funds required for policy exclusion(s)

RR0384

Total of additional own funds required

RR0386

Total of readily realisable own funds

RR0387

Excess/deficit of readily realisable own funds

RR0388

	<u>business type</u>	<u>amount</u>
Increased excess(es) for specific business types	RR0378	RR0378a
Policy exclusion(s) for specific business types	RR0379	
Renewal date	RR0380	
Insurer name	RR0381	

Does the firm have any other PII policies?

RR0389

SUP 16 Ann18B G Notes for completion of the Retail Mediation Activities Return ('RMAR')

Application of RMAR sections

...

EEA Firms

9. In accordance with the relevant directives, *incoming EEA firms* are not subject to all reporting requirements. In broad terms, this means that *incoming EEA firms* carrying on ~~insurance mediation~~ regulated activities by way of *cross border services* only are not required to complete the RMAR. ~~The same applies to incoming EEA firms providing cross border services only.~~

...

NOTES FOR COMPLETION OF THE RMAR

...

Section B: Profit & Loss Account

...	
Regulated business revenue	This is the total of the <i>firm's</i> income during the reporting period in relation to its relevant <i>regulated activities</i> ...
<u>Income from other regulated activities</u>	<u>You should record here any income from other regulated activities outside the scope of the RMAR.</u>

...

Section E: guide for completion of individual fields

...	
<del>Have any of the data items below changed since the last reporting date (or since you last notified the FSA of any changes)?</del>	<del>The purpose of this question is to ensure that <i>firms</i> do not have to fill in the same information for each period when the information only changes annually.</del>  <del>If the <i>firm</i> is reporting for the first time, you should enter 'yes' here and complete the data fields below. You should only enter 'n/a' if the <i>firm</i> is exempt from the PII requirements in respect of all of the <i>regulated activities</i> within the scope of the RMAR.</del>
...	
Increased excess(es) for specific business types	If the prescribed excess limit is exceeded in respect of a type or types of business, the <u>type(s) of business to which the increased excess applies</u> and the <u>amount(s) of the increased excess</u> should be stated here. <del>The type(s) of business to which the increased excess applies should be selected from the drop-down box.</del>  (Some of the <u>typical</u> business types in the <u>drop-down box</u> include pensions, endowments, FSAVCs, splits/zeroes, precipice bonds, income drawdown, <i>lifetime mortgages</i> , <u>discretionary management</u> , <del>other</del> )
Policy exclusion(s) for specific business types	If there are any exclusions in the <i>firm's</i> PII policy, the business type(s) to which they relate should be <u>entered here</u>

	selected from the drop-down box. (Some of the <u>typical</u> business types in the drop-down box include pensions, endowments, FSAVCs, splits/zeroes, precipice bonds, income drawdown, lifetime mortgages, discretionary management, <del>other</del> )
--	---

...

#### Section F: guide for completion of individual fields

...	
If not, have there been changes to your controllers <u>or to the percentage of shares or voting power in the firm held by any of them</u> since the FSA was last informed?	See, generally, <i>SUP</i> 11.4.

...

#### Section G: guide for completion of individual fields

...	
Number of staff that give advice	'Advice' is given where the sale of a product is based on a recommendation given to the <i>customer</i> on the merits of a particular product ...
<u>Number of staff that give advice (Full time equivalent)</u>	<u>This should be the same data as above, but expressed in 'full time equivalent' terms, e.g. if the <i>firm</i> has 20 part time staff that work 50% of normal hours, the figure would be 10.</u>

...

#### Section H: guide for completion of individual fields

...	
Types of advertising: please tick all that apply, <del>or confirm here that there have been no changes since the last reporting date</del>	<del>The purpose of this question is so that <i>firms</i> do not have to fill in the same information each quarter when it has not changed.</del>  If the <i>firm</i> is reporting for the first time, you should leave this field blank and complete the data fields below.

...

#### Section I: guide for completion of individual fields

...	
Please indicate in column A each product type where the firm has advised or arranged transactions for retail customers during the reporting period	You should <u>indicate state 'yes'</u> in column A for each relevant product.
Please indicate in column B where the firm's <del>retail</del> <u>business for retail customers</u> in the product type formed more than 40% by premium of all of its non-investment insurance activities.	You should <u>indicate state 'yes'</u> in column B for each relevant product, based on an estimate of the percentage of business. If you think the product might account for more than 40% of business but are not sure, you should <u>indicate that it does state 'yes'</u> .
...	
Of this business, please indicate in column C the products where retail	You should <u>indicate state 'yes'</u> in column C for each product in which transactions have been passed up a chain.

sales were passed up a chain and in column D where this business is significant (see notes above)	If this business is significant (see definition above) for one or more product types, this should be indicated in column D.
Please also indicate in column E where the firm has dealt directly with the retail customer within the chain	<i>Firms</i> should also indicate in column E the product types for which they transact business in a chain, but directly with the <i>customer</i> .
...	
Of the total of these sales, please indicate in column F the products where the firm dealt as agent, and in column G where this business is significant (see notes above)	You should <u>indicate</u> <del>state 'yes'</del> in column F for each product in which the <i>firm</i> has dealt as agent, and also in column G for each product type where this business is significant.

...

## Annex C

### Amendments to the Dispute Resolution: Complaints sourcebook

In this Annex underlining, and where indicated, highlighting indicates new text and striking through indicates deleted text. However, where entire sections of text are being deleted and replaced with new text, that is not shown as struck through or underlined; the places where such changes will be made are indicated.

1.5.4 R A *firm* must provide the *FSA* , twice a year, with a report in the format set out in *DISP* 1 Ann 1R which contains (for the relevant reporting period) information about:

...

(3) the total number of complaints subject to *DISP* 1.4 - *DISP* 1.6:

(a) ...

(b) ...; ~~and~~

(c) outstanding at the beginning of the reporting period; and

(d) outstanding at the end of the reporting period; and

(4) ...

...

1.5.12 G ...

#### Complete reporting

1.5.13 R A *firm* must submit reports required under this chapter to the *FSA* containing all the information required.

1.5.14 G *SUP* 15.6 refers to and contains requirements regarding the steps that *firms* must take to ensure that information provided to the *FSA* is accurate and complete. Those requirements apply to reports required to be submitted under this chapter.

...

DISP 1 Ann 1R: Complaints return form

The existing Annex is deleted and is replaced in its entirety with the following (the version made by this instrument supersedes the version amended by the Electronic Reporting Requirements and Standing Data Instrument 2004 (FSA 2004/30)).

**COMPLAINTS RETURN**

**(DISP 1 Ann 1R)**

Illustration of the reporting requirements regarding complaints, referred to in *DISP* 1.5.4R

**NIL RETURN DECLARATION**

A Nil Return may only be declared where:

a) no complaints were received during the reporting period,

AND

b) no complaints were outstanding at the beginning of the period.

We wish to declare a Nil Return

Yes /  No

**RETURN DETAILS REQUIRED**

Include Private Individual Complaints  
(click if applicable)

Include Small Business Complaints  
(click if applicable)

## Private Individual Complaints

	Overcharging	Delays	Other admin	Misleading advice	Failure to carry out instructions	Poor customer service	Misleading advertising	Disputes over sums/amounts	Switching/churning	Breach of contract	Arrears handling	Other	Total
FSAVC													
Personal Pension													
Stakeholder Pension													
Mortgage Endowment													
Other Endowment													
Whole of Life													
Permanent Health													
Term Assurance													
PEP/ISA													
Cash Deposit ISA													
Investment Trust													
Unit Trust/OEIC													
Investment Bond													
Share/Derivative													
Other Regulated Investments													
Current Account													
Deposit/Savings													
Credit Card													
Lifetime Mortgage													
Flexible Mortgage													
Impaired Credit Mortgage													
Self Cert Mortgage													
Other Regulated Mortgage													
Other unregulated loan secured on land													
Other loans													
Standard Annuity													
Investment based Annuity													
Income Withdrawal Product													
Income Protection													
Long Term Care													
Private Medical Insurance													
Critical Illness													
Motor													
Property													
Other GI/Pure protection													
Other													
Total													

## Small Business Complaints

	Overcharging	Delays	Other admin	Misleading advice	Failure to carry out instructions	Poor customer service	Misleading advertising	Disputes over sums/amounts	Switching/churning	Breach of contract	Arrears handling	Other	Total
FSAVC													
Personal Pension													
Stakeholder Pension													
Mortgage Endowment													
Other Endowment													
Whole of Life													
Permanent Health													
Term Assurance													
PEP/ISA													
Cash Deposit ISA													
Investment Trust													
Unit Trust/OEIC													
Investment Bond													
Share/Derivative													
Other Regulated Investments													
Current Account													
Deposit/Savings													
Credit Card													
Lifetime Mortgage													
Flexible Mortgage													
Impaired Credit Mortgage													
Self Cert Mortgage													
Other Regulated Mortgage													
Other unregulated loan secured on land													
Other loans													
Standard Annuity													
Investment based Annuity													
Income Withdrawal Product													
Income Protection													
Long Term Care													
Private Medical Insurance													
Critical Illness													
Motor													
Property													
Other GI/Pure protection													
Other													
Total													

**COMPLAINTS CLOSED DURING REPORTING PERIOD**

Number of complaints closed within 4 weeks

Number of complaints closed between 4 and 8 weeks

Number of complaints closed after more than 8 weeks

**COMPLAINTS OUTSTANDING**

Number of complaints outstanding as at reporting period start date

Number of complaints outstanding as at reporting period end date

**COMPLAINTS MANAGEMENT**

Number of complaints upheld by the firm in the period

Total amount of redress paid to consumers in the period

Number of complaints referred to, and accepted by, the FOS in the period

## NOTES ON THE COMPLETION OF THIS RETURN

### Complaints Helptext

This is the return referred to in *DISP* 1.5.4R and only complaints subject to *DISP* 1.4 - *DISP* 1.6 should be included in this return.

### Nil returns

If no complaints of any kind have been received during the reporting period and no complaints were outstanding at the beginning of the period, the *firm* may submit a NIL RETURN by clicking on the relevant box.

### Complaints contact details

Details of a contact point for complaints must be provided in accordance with *DISP* 1.5.11R 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. This information was previously supplied as part of the complaints return but now no longer forms part of the return. This information will be captured by the Firm's Online System. Please check that the details for your complaints contact are correct in the Firm's Online System and update if necessary.

### Private individual complaint returns

This section relates to records of complaints, subject to *DISP* 1.4 – *DISP* 1.6, received from private individuals. *Firms* should report all complaints received during the reporting period, even where the complaint has not been, or is unlikely to be upheld by the *firm*. If a *firm* has received private individual complaints then it should click on the box marked "include private individual complaints".

*Firms* should report complaints received in the single category that best reflects the main cause of dissatisfaction (whether financial loss, material distress or material inconvenience) as described by the complainant.

*DISP* 2.4.3R provides further definition of an *eligible complainant*.

*Firms* should enter the total number of private individual complaints in the box marked "Grand Total Number of Complaints made by private individuals".

Select the type of product from the drop down list. You will need to create a new line for each different product you wish to report for. Enter the number of complaints for each product according to the category of complaint. Zeroes must be entered where no complaints have been received under that category of complaint.

Enter a total for each product type on the right hand side of each row and for each category of complaint at the bottom of each column. Then complete the total number of complaints made by private individuals box in the "total" box in bottom right hand corner of the table. Check that this total is the same as the "Grand total number of complaints made by private individuals" entered at the start of section.

## Small business complaint returns

This section relates to records of complaints subject to *DISP* 1.4 - 1.6 received from eligible complainants as defined in *DISP* 2.4.3R other than private individuals. This section should include complaints from:

- Small business *customers* (with an annual turnover of less than £1 million a year);
- Charities (with an annual income of less than £1 million); and
- Trustees of a trust (with net assets of less than £1 million).

*Firms* should report all complaints received during the reporting period, even where the complaint has not been, or is unlikely to be upheld by the firm. If a *firm* has received small business complaints then they should click on the box marked "include small business complaints".

*Firms* should report complaints received in the single category that best reflects the main cause of dissatisfaction (whether financial loss, material distress or material inconvenience) as described by the complainant.

*Firms* should enter the total number of small business complaints in the box marked "Grand Total Number of Complaints made by small businesses".

Select the type of product from the drop down list. You will need to create a new line for each different product you wish to report for. Enter the number of complaints for each product according to the category of complaint. Zeroes must be entered where no complaints have been received under that category of complaint.

Enter a total for each product type on the right hand side of each row and for each category of complaint at the bottom of each column. Then complete the total number of complaints made by small businesses box in the "total" box in bottom right hand corner of the table. Check that this total is the same as the "Grand total number of complaints made by small businesses" entered at the start of section.

## Complaints closed during the reporting period

Indicate the number of complaints subject to *DISP* 1.4 – *DISP* 1.6 closed during the reporting period within the timescales shown. See *DISP* 1.5.7R for the *rules* governing when a complaint is considered to be closed.

## Complaints outstanding

Give the number 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.

## Uphold rates and redress

The *firm* must indicate the total number of complaints upheld in the customer's favour. The *firm* must also state the total amount of redress paid to its *customers* within the reporting period (this includes payments made to *customers* that have had their complaints rejected or partially upheld as well as complaints that have been fully upheld). See *DISP* 1.5.5G.

## **FOS**

The *firm* must state how many of its complaints (private and small business) it knows to have been referred to the Financial Ombudsman Service within the reporting period.

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK  
(PUBLICATION OF PRICES OF UNITS) INSTRUMENT 2005**

**Powers Exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 140 (Restriction on managers of authorised unit trust schemes);
    - (c) section 156 (General supplementary powers);
    - (d) section 157 (Guidance);
    - (e) section 238(5) (Restrictions on promotion);
    - (f) section 242 (Applications for authorisation of unit trust schemes);
    - (g) section 247 (Trust schemes rules); and
    - (h) section 248 (Scheme particulars rules); and
  - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations (SI 2001/1228).
- B. The provisions of or under the Act relevant to the 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 2005.

**Amendments 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 Sourcebook (Publication of Prices of Units) Instrument 2005.

By order of the Board  
17 February 2005

## Annex

### Amendments to the Collective Investment Schemes sourcebook

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

...

3.5.2 R Table Contents of the prospectus  
This table belongs to CIS 3.5.2R

...	
16	Sale and redemption of units Details as to:
...	
(9)	<del>when and in which UK national newspaper</del> <u>where and at what frequency</u> the most recent <u>prices</u> will be published;
...	

...

#### Publication of prices

4.4.8 R (1) Where the *authorised fund manager* holds itself out as willing:

- (a) to *sell* or redeem *units* of any *class*; or
- (b) to *issue* or cancel *units* of any *class* under CIS 4.5.3R (Issues and cancellations through the authorised fund manager);

it must make public the *prices* of *units* of each of those *classes* in an appropriate manner.

...

(3) ~~[deleted] The *prices* to be made public under (1) must be published in at least one national newspaper in the United Kingdom, except for any class of *units* marketed predominantly outside the United Kingdom.~~

...

#### Manner of price publication

4.4.9 G (1) In determining the appropriate manner of making *prices* public under CIS 4.4.8 R(1), the *authorised fund manager* should ensure that:

- (a) a *unitholder* or potential *unitholder* can obtain the *prices* at a reasonable cost;
- (b) *prices* are available at reasonable times;
- (c) publication is consistent with the manner and frequency at which the *units* are sold;

- (d) the manner of publication is disclosed in the *prospectus*; and
  - (e) *prices* are published in a consistent manner.
- (2) Examples of what might be deemed appropriate include:
- (a) publication in a national newspaper;
  - (b) supply through an advertised local rate or freephone telephone number;
  - (c) publication on the internet;
  - (d) inclusion in a database of *prices* which is publicly available;  
or
  - (e) communication to all existing *unitholders*.
- (3) The *authorised fund manager* should make previous *prices* available to any *unitholder* or potential *unitholder*.

...

#### Publication of prices

- 15.4.14 R (1) Where the *manager* holds itself out as willing:
- (a) to *sell* or redeem *units* of any *class*; or
  - (b) to *issue* or cancel *units* of any *class* under CIS 15.5.3R (Issues and cancellations through the manager);
- it must make public the maximum *sale* and minimum *redemption prices* of those *units* and the current *preliminary charge* (if there is one) in an appropriate manner.

...

- (3) ~~[deleted] The prices to be made public under (1) must be published in at least one national newspaper in the *United Kingdom*, except for any *class* of *units* that is marketed predominantly outside of the *United Kingdom*.~~

...

...

#### Manner of price publication

- 15.4.15 G (1) In determining the appropriate manner of making *sale* and *redemption prices* and the current *preliminary charge* (if there is one) (in this provision referred to together as “prices”) public under CIS 15.4.14R(1), the *manager* should ensure that:
- (a) a *unitholder* or potential *unitholder* can obtain the prices at a reasonable cost;
  - (b) prices are available at reasonable times;
  - (c) publication is consistent with the manner and frequency at which the *units* are sold;
  - (d) the manner of publication is disclosed in the *prospectus*; and

- (e) prices are published in a consistent manner.
- (2) Examples of what might be deemed appropriate include:
- (a) publication in a national newspaper;
  - (b) supply through an advertised local rate or freephone telephone number;
  - (c) publication on the internet;
  - (d) inclusion in a database of prices which is publicly available;  
or
  - (e) communication to all existing *unitholders*.
- (3) The *manager* should make previous prices available to any *unitholder* or potential *unitholder*.

**INTERIM PRUDENTIAL SOURCEBOOK FOR BANKS (INTEREST RATE  
POSITION RISK AMENDMENT) INSTRUMENT 2005**

**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. (1) Annexes A and C to this instrument come into force on 1 April 2005.
- (2) Annex B comes into force as follows:
- (a) (in the case of a firm that has taken advantage of the transitional provision in paragraph 1 of chapter TRANS of IPRU(BANK)) it comes into force on 1 April 2005;
  - (b) (in the case of a firm that may take advantage of that transitional provision in the future) it comes into force at such time as Annex C of the Interim Prudential Sourcebook for Banks (Market Risk) Instrument 2004 (FSA 2004/41) comes into force as respects that firm; and
  - (c) (insofar as it has not already come into force under (a) or (b)) it comes into force on 1 July 2005.

**Amendments to the Interim Prudential sourcebook for Banks**

- C. The Interim Prudential sourcebook for Banks (IPRU(BANK)) is amended in accordance with the Annexes to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Banks (Interest Rate Position Risk Amendment) Instrument 2005.

By order of the Board  
17 March 2005

## Annex A

### Amendments to the Interim Prudential sourcebook for Banks

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

Amend IPRU(BANK), Volume 1, Chapter TI, Section 4 paragraph 8 as follows:

4.3 Calculation - the Duration Method.

...

8 ...

(d) ...

Zone	Modified Duration	Assumed move in rates
1	1 month or less	1.00%
	1-3 months	1.00%
	3-6 months	1.00%
	6-12 months	1.00%
2	1-1.9 years	0.90%
	1.9-2.8 years	<del>0.80%</del> <u>0.85%</u>
	2.8-3.6 years	<del>0.75%</del> <u>0.85%</u>
3	3.6-4.3 years	0.75%
	4.3-5.7 years	0.70%
	5.7-7.3 years	<del>0.65%</del> <u>0.70%</u>
	7.3-9.3 years	<del>0.60%</del> <u>0.70%</u>
	9.3-10.6 years	<del>0.60%</del> <u>0.70%</u>
	10.6-12 years	<del>0.60%</del> <u>0.70%</u>
	12-20 years	<del>0.60%</del> <u>0.70%</u>
> 20 years	<del>0.60%</del> <u>0.70%</u>	

## Annex B

### Amendments to the Interim Prudential sourcebook for Banks

In this Annex, underlining indicates new text and striking through indicates deleted text. The text shown is as amended by the Interim Prudential Sourcebook for Banks (Market Risk) Instrument 2004 (FSA 2004/41).

Amend IPRU(BANK), Volume 1, Chapter TI, paragraph 61 as inserted by the Interim Prudential Sourcebook for Banks (Market Risk) Instrument 2004 (FSA 2004/41) as follows:

61 G Table: Assumed interest rate change in the duration method (see 60G).

Zone	Modified Duration	Assumed interest rate change (percentage points)
1	$0 \leq 1$ months	1.00
	$> 1 \leq 3$ months	1.00
	$> 3 \leq 6$ months	1.00
	$> 6 \leq 12$ months	1.00
2	$> 1.0 \leq 1.9$ years	0.90
	$> 1.9 \leq 2.8$ years	<del>0.80</del> <u>0.85</u>
	$> 2.8 \leq 3.6$ years	<del>0.75</del> <u>0.85</u>
3	$> 3.6 \leq 4.3$ years	0.75
	$> 4.3 \leq 5.7$ years	0.70
	$> 5.7 \leq 7.3$ years	<del>0.65</del> <u>0.70</u>
	$> 7.3 \leq 9.3$ years	<del>0.60</del> <u>0.70</u>
	$> 9.3 \leq 10.6$ years	<del>0.60</del> <u>0.70</u>
	$> 10.6 \leq 12$ years	<del>0.60</del> <u>0.70</u>
	$> 12.0 \leq 20$ years	<del>0.60</del> <u>0.70</u>
	$> 20$ years	<del>0.60</del> <u>0.70</u>

## Annex C

### Amendments to the Interim Prudential sourcebook for Banks

In this Annex, underlining indicates new text.

Amend IPRU(BANK), Volume 1, Chapter TRANS, as follows:

(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	The provisions of <i>IPRU(BANK)</i> added by the Interim Prudential Sourcebook for Banks (Market Risk) Instrument 2004 ( <u>as amended by the Interim Prudential Sourcebook for Banks (Interest Rate Position Risk Amendment) Instrument 2005</u> )	G	...	...	The material in the Interim Prudential Sourcebook for Banks (Market Risk) Instrument 2004 ( <u>as amended by the Interim Prudential Sourcebook for Banks (Interest Rate Position Risk Amendment) Instrument 2005</u> ) comes into force for all <i>banks</i> on 1 July 2005.

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 21)  
INSTRUMENT 2005**

**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 April 2005.

**Amendments to the Conduct of Business sourcebook**

- C. The Conduct of Business sourcebook (COB) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 21) Instrument 2005.

By order of the Board  
17 March 2005

## Annex

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text.

#### Guidance on the exemptions

3.2.7G (1) ...

- (2) (a) A table summarising some of the main exemptions contained in the *Financial Promotion Order*, and therefore relevant to *COB 3.2.5R(2)*, is in *COB 3 Ann 1*. *Guidance* on certain exemptions is contained in *AUTH App 1* (Financial promotion and related activities).
- (b) A firm is required to comply with the rules in *COB 3* in relation to a financial promotion communicated by its appointed representative even though the financial promotion does not require approval because of the exemption in article 16 of the *Financial Promotion Order* (Exempt persons).
- (3) ...

**MARKET ABUSE DIRECTIVE INSTRUMENT 2005****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 118(8) (Market abuse);
    - (b) section 119 (The code);
    - (b) section 120 (Provisions included in the Authority’s code by reference to the City Code);
    - (c) section 138 (General rule-making power);
    - (d) section 144 (Price stabilising rules);
    - (e) section 147 (Control of information rules);
    - (f) section 149 (Evidential provisions);
    - (g) section 156 (General supplementary powers); and
    - (h) section 157(1) (Guidance); and
  - (2) the other rule-making powers referred to in Schedule 4 to the General Provisions.
- 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 July 2005.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2):

(1)	(2)
Glossary of definitions	Annex A
Market Conduct sourcebook (MAR) (MAR 1)	Annex B
Market Conduct sourcebook (MAR) (MAR 2)	Annex C
Conduct of Business sourcebook (COB)	Annex D
Supervision manual (SUP)	Annex E
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex F

## **Notes**

- E. (1) In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.
- (2) Although European Union legislation is reproduced in this instrument, only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

## **Citation**

- F. This instrument may be cited as the Market Abuse Directive Instrument 2005.

By order of the Board  
17 March 2005

Amended by Addendum  
18 August 2005

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Where entirely new definitions are inserted, or where definitions are deleted, these are not shown underlined or struck through.

Insert the following new definitions in the appropriate alphabetical positions

- accepted market practice* (as defined in section 130A(3) of the *Act*) practices that are reasonably expected in the financial market or markets in question and are accepted by the *FSA* or, in the case of a market situated in another *EEA State*, the competent authority of that *EEA State* within the meaning of the *Market Abuse Directive*.
- allotment* (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) the process or processes by which the number of *relevant securities* to be received by investors who have previously subscribed or applied for them is determined.
- ancillary stabilisation* (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) the exercise of an *overallotment facility* or of a *greenshoe option* by *investment firms* or *credit institutions*, in the context of a *significant distribution* of *relevant securities*, exclusively for facilitating *stabilisation* activity.
- adequate public disclosure* (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) disclosure made in accordance with the procedure laid down in Articles 102(1) and 103 of the *Consolidated Admissions and Reporting Directive*.
- associated instrument* (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) any of the following *financial instruments* (including those which are not admitted to trading on a *regulated market*, or for which a request for admission to trading on such a market has not been made, provided that the relevant competent authorities have agreed to standards of transparency for transactions in such *financial instruments*):
- (a) contracts or rights to subscribe for, acquire or dispose of *relevant securities*;
  - (b) financial derivatives on *relevant securities*;
  - (c) where the *relevant securities* are convertible or exchangeable debt instruments, the securities into which such convertible or exchangeable debt instruments may be converted or exchanged;
  - (d) instruments which are issued or guaranteed by the *issuer* or guarantor of the *relevant securities* and whose market price is likely to materially influence the price of the *relevant securities*, or vice versa; and

- (e) where the *relevant securities* are *securities* equivalent to *shares*, the *shares* represented by those *securities* (and any other *securities* equivalent to those *shares*).

*Buy-back and Stabilisation Regulation*

Commission Regulation (EC) of 22 December 2003 implementing the *Market Abuse Directive* as regards exemptions for buy-back programmes and stabilisation of financial instruments (No 2273/2003).

*buy-back programme*

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) trading in own shares in accordance with Articles 19 to 24 of the *PLC Safeguards Directive*.

*Consolidated Admissions and Reporting Directive*

Directive of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities (No 2001/34/EC).

*financial instrument*

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

- (a) transferable securities as defined in the *ISD*;
- (b) units in collective investment undertakings,
- (c) money-market instruments;
- (d) financial-futures contracts, including equivalent cash-settled instruments;
- (e) forward interest-rate agreements;
- (f) interest-rate, currency and equity swaps;
- (g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;
- (h) derivatives on commodities; and
- (i) any other instrument admitted to trading on a *regulated market* in an *EEA State* or for which a request for admission to trading on such a market has been made.

*greenshoe option*

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) an option granted by the *offeror* in favour of the *investment firm(s)* or *credit institution(s)* involved in the *offer* for the purpose of covering *overallocments*, under the terms of which such firm(s) or institution(s) may purchase up to a certain amount of *relevant securities* at the offer

*inside  
information*

price for a certain period of time after the *offer* of the relevant securities.

(as defined in section 118C of the *Act*):

- (1) in relation to *qualifying investments*, or *related investments*, which are not commodity derivatives, *inside information* is information of a precise nature which:
  - (a) is not generally available,
  - (b) relates, directly or indirectly, to one or more issuers of the *qualifying investments* or to one or more of the *qualifying investments*, and
  - (c) would, if generally available, be likely to have a significant effect on the price of the *qualifying investments* or on the price of *related investments*.
- (2) in relation to *qualifying investments*, or *related investments*, which are commodity derivatives, *inside information* is information of a precise nature which:
  - (a) is not generally available,
  - (b) relates, directly or indirectly, to one or more such derivatives, and
  - (c) users of markets in which the derivatives are traded would expect to receive in accordance with *accepted market practices* on those markets.
- (3) in relation to a person charged with the execution of orders concerning any *qualifying investments* or *related investments*, *inside information* includes information conveyed by a client and related to the client's pending orders which:
  - (a) is of a precise nature;
  - (b) is not generally available;
  - (c) relates, directly or indirectly, to one or more issuers of *qualifying investments* or to one or more *qualifying investments*; and
  - (d) would, if generally available, be likely to have a significant effect on the price of those *qualifying investments* or the price of *related investments*;
- (4) information is precise if it:
  - (a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has

occurred or may reasonably be expected to occur; and

- (b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of *qualifying investments* or *related investments*;
- (5) information would be likely to have a significant effect on price if and only if it is information of that kind which a reasonable investor would be likely to use as part of the basis of his investment decisions;
- (6) for the purposes of (2)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information relating directly or indirectly to one or more such derivatives in accordance with any *accepted market practices*, which is:
  - (a) routinely made available to the users of those markets; or
  - (b) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market;
- (7) information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of *market abuse*, as being generally available to them.

*insider*

(as defined in section 118B of the Act) a *person* who has *inside information*:

- (a) as a result of his membership of the administrative, management or supervisory bodies of an *issuer* of *qualifying investments*;
- (b) as a result of his holding in the capital of an *issuer* of *qualifying investments*;
- (c) as a result of having access to the information through the exercise of his employment, profession or duties;
- (d) as a result of his criminal activities; or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is *inside information*.

*market abuse*  
(*dissemination*)

the *behaviour* described in section 118(7) of the Act, which is the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a *qualifying investment* by a *person* who knew or could reasonably be expected to have known that the information was false or misleading.

<i>market abuse (distortion)</i>	<p>the <i>behaviour</i> described in section 118(8) of the <i>Act</i> which satisfies the condition in section 118(8)(b) and is <i>behaviour</i> (not falling within sections 118(5), (6) or (7)) which:</p> <ul style="list-style-type: none"> <li>(a) would be, or would be likely to be, regarded by a <i>regular user</i> of the market as behaviour that would distort, or would be likely to distort, the market in a <i>qualifying investment</i>; and</li> <li>(b) is likely to be regarded by a <i>regular user</i> of the market as a failure on the part of the <i>person</i> concerned to observe the standard of <i>behaviour</i> reasonably expected of a <i>person</i> in his position in relation to the market.</li> </ul>
<i>market abuse (improper disclosure)</i>	<p>the <i>behaviour</i> described in section 118(3) of the <i>Act</i>, which is an <i>insider</i> disclosing <i>inside information</i> to another <i>person</i> otherwise than in the proper course of the exercise of employment, profession or duties.</p>
<i>market abuse (insider dealing)</i>	<p>the <i>behaviour</i> described in section 118(2) of the <i>Act</i>, which is an <i>insider dealing</i>, or attempting to <i>deal</i>, in a <i>qualifying investment</i> or <i>related investment</i> on the basis of <i>inside information</i> relating to the <i>investment</i> in question.</p>
<i>market abuse (manipulating devices)</i>	<p>the <i>behaviour</i> described in section 118(6) of the <i>Act</i>, which is effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.</p>
<i>market abuse (manipulating transactions)</i>	<p>the <i>behaviour</i> described in section 118(5) of the <i>Act</i>, which is <i>behaviour</i> effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with <i>accepted market practices</i> on the relevant market) which:</p> <ul style="list-style-type: none"> <li>(a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price, one or more <i>qualifying investments</i>; or</li> <li>(b) secure the price of one or more such investments at an abnormal or artificial level.</li> </ul>
<i>market abuse (misleading behaviour)</i>	<p>the <i>behaviour</i> described in section 118(8) of the <i>Act</i> which satisfies the condition in section 118(8)(a) and is <i>behaviour</i> (not falling within sections 118(5), (6) or (7)) which:</p> <ul style="list-style-type: none"> <li>(a) is likely to give a <i>regular user</i> of the market a false or misleading impression as to the supply of, demand for or price or value of, <i>qualifying investments</i>, and</li> <li>(b) is likely to be regarded by a <i>regular user</i> of the market as a failure on the part of the <i>person</i> concerned to observe the standard of <i>behaviour</i> reasonably expected of a <i>person</i> in his position in</li> </ul>

relation to the market.

*market abuse  
(misuse of  
information)*

the *behaviour* described in section 118(4) of the *Act*, which is *behaviour* (not falling within sections 118 (2) or (3) of the *Act*):

- (a) based on information which is not generally available to those using the market but which, if available to a *regular user* of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in *qualifying investments* should be effected; and
- (b) 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 his position in relation to the market.

*Market Abuse  
Directive*

Directive of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (No 2003/6/EC).

*overallotment  
facility*

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) a clause in the underwriting agreement or lead management agreement which permits acceptance of subscriptions or offers to purchase a greater number of *relevant securities* than originally offered.

*Part 6 rules*

(as defined in section 73A of the *Act*) *rules* made for the purposes of Part VI of the *Act*.

*person  
discharging  
managerial  
responsibilities*

(in accordance with section 96B(1) of the *Act*):

- (a) a *director* of an *issuer*:
  - (i) registered in the *United Kingdom* that has requested or approved admission of its *shares* to trading on a *regulated market*; or
  - (ii) not registered in the *United Kingdom* or any other *EEA State* but has requested or approved admission of its shares to trading on a *regulated market* and who is required to file annual information in relation to shares in the *United Kingdom* in accordance with Article 10 of the *Prospectus Directive*; or
- (b) a senior executive of such an *issuer* who:
  - (i) has regular access to *inside information* relating, directly or indirectly, to the *issuer*; and
  - (ii) has power to make managerial decisions affecting the future development and business prospects of the *issuer*.

<i>PLC Safeguards Directive</i>	the Second Council Directive of 13 December 1976 on coordination of safeguards for the protection of the interests of members and others in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (No 77/91/EEC).
<i>regulatory information service or RIS</i>	a Regulatory Information Service that is approved by the <i>FSA</i> as meeting the Primary Information Provider criteria and that is on the list of Regulatory Information Services maintained by the <i>FSA</i> .
<i>related investment</i>	(as defined in section 130A(3) of the <i>Act</i> ) in relation to a <i>qualifying investment</i> , means an investment whose price or value depends on the price or value of the <i>qualifying investment</i> .
<i>research recommendation</i>	research or other information: <ul style="list-style-type: none"> <li>(a) concerning one or several <i>financial instruments</i> admitted to trading on <i>regulated markets</i>, or in relation to which an application for admission to trading has been made, or <i>issuers</i> of such <i>financial instruments</i>;</li> <li>(b) intended for distribution so that it is, or is likely to become, accessible by a large number of <i>persons</i>, or for the public, but not including: <ul style="list-style-type: none"> <li>(i) an informal short-term investment personal recommendation expressed to <i>clients</i>, which originates from inside the sales or trading department, and which is not likely to become publicly available or available to a large number of persons; or</li> <li>(ii) advice given by a <i>firm</i> to a <i>body corporate</i> in the context of a <i>takeover bid</i> and disclosed only as a result of compliance with a legal or regulatory obligation, including rule 3 of the <i>Takeover Code</i> or its equivalents outside the <i>UK</i>; and</li> </ul> </li> <li>(c) which: <ul style="list-style-type: none"> <li>(i) explicitly or implicitly, recommends or suggests an investment strategy; or</li> <li>(ii) directly or indirectly, expresses a particular investment recommendation; or</li> <li>(iii) expresses an opinion as to the present or future value or price of such instruments.</li> </ul> </li> </ul>
<i>significant distribution</i>	(as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i> ) an initial or secondary <i>offer</i> of <i>relevant securities</i> , publicly announced and distinct from ordinary trading both in terms of the amount in value of the <i>securities</i> offered and the selling methods employed.
<i>stabilisation</i>	(in <i>MAR 2</i> ) (as defined in Article 2 of the <i>Buy-back and Stabilisation</i>

*Regulation*) any purchase or offer to purchase *relevant securities*, or any transaction in *associated instruments* equivalent thereto, by *investment firms* or *credit institutions*, which is undertaken in the context of a *significant distribution* of such *relevant securities* exclusively for supporting the market price of these *relevant securities* for a predetermined period of time, due to a selling pressure in such securities.

*time-scheduled buy-back programme*

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) a *buy-back programme* where the dates and quantities of *securities* to be traded during the time period of the programme are set out at the time of the public disclosure of the *buy-back programme*.

*trading information*

information of the following kinds:

- (1) that *investments* of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation; or
- (2) that *investments* of a particular kind have not been or are not to be acquired or disposed of; or
- (3) the quantity of *investments* acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation; or
- (4) the price (or range of prices) at which *investments* have been or are to be acquired or disposed of or the price (or range of prices) at which *investments* whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of; or
- (5) the identity of the *persons* involved or likely to be involved in any capacity in an acquisition or disposal.

Delete the current definition of ‘market abuse’ and replace it with the following:

*market abuse*

(in accordance with section 118 of the Act (Market abuse)) behaviour (whether by one person alone or by two or more persons jointly or in concert) which:

- (a) occurs in relation to qualifying investments traded or admitted to trading on a prescribed market or in respect of which a request for admission to trading on such a market has been made; and
- (b) falls within any one or more of the types of behaviour set out in sections 118(2) to (8) of the Act.

Amend the following definitions in the Glossary as shown:

<i>dealing</i>	<p>(1) <u>(other than in MAR 1 (The Code of Market Conduct))</u> (in accordance with paragraph 2 of Schedule 2 to the <i>Act</i> (Regulated activities)) buying, selling, subscribing for or underwriting <i>investments</i> or offering or agreeing to do so, either as a <i>principal</i> or as an agent, including, in the case of an <i>investment</i> which is a <i>contract of insurance</i>, carrying out the contract.</p> <p>(2) <u>(in MAR 1) (as defined as in section 130A(3) of the Act), in relation to an investment, means acquiring or disposing of the investment whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the investment, and entering into and bringing to an end a contract creating it.</u></p>
<i>offer</i>	<p>(1) (in MAR 1 (The Code of Market Conduct)) an offer as defined in the <i>Takeover Code</i></p> <p>(2) <u>(in MAR 2 (Buy-backs and Stabilisation) an offer or invitation to make an offer and (except in MAR 2.2.3R, MAR 2.4.2R(5) and MAR 2.8.2R(1)(c)) an issue.</u></p>
<i>offeror</i>	<p>(1) (in MAR 1 (The Code of Market Conduct)) an offeror as defined in the <i>Takeover Code</i>.</p> <p>(2) <u>(in MAR 2 (Buy-backs and Stabilisation)) (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the prior holders of, or the entity issuing, the <i>relevant securities</i>).</u></p>
<i>offer price</i>	<p>(1) <del>(except in MAR 2 (Price stabilising rules))</del> the price at which a <i>person</i> could purchase a <i>unit</i> in a <i>dual-priced AUT</i> or a <i>security</i></p> <p>(2) <del>(in MAR 2)</del> the specified price at which the <i>relevant security</i> is offered without deducting any <i>selling concession</i> or <i>commission</i>.</p>
<i>prescribed market</i>	a market which has been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> <del>(see MAR 1.11.2G (Prescribed markets and qualifying investments))</del> .
<i>price stabilising rules</i>	the <i>rules</i> made under section 144 of the <i>Act</i> , and appearing in MAR 2.1 to MAR 2.45, together with any provisions available for their interpretation.
<i>qualifying investment</i>	An <i>investment</i> which has been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> <del>(see MAR 1 (Prescribed markets and qualifying investments))</del>
<i>regular user</i>	(as defined in section 130A(3) <del>118(10)</del> of the <i>Act</i> (Market Abuse)) a <i>person</i> who is, in relation to a particular market, a reasonable <i>person</i> who regularly deals on that market in <i>investments</i> of the kind in question.
<i>relevant investment</i>	(1) <u>(in COB, in relation to <i>investment research</i>, a <i>research recommendation</i> or a <i>public appearance</i>), a <i>designated investment</i> that is the subject of that <i>research, recommendation</i> or <i>appearance</i>.</u>

- (2) otherwise (in accordance with Article 3(1) of the *Regulated Activities Order* (Interpretation)):
- (a) a *contractually based investment*;
  - (b) a *pure protection contract*;
  - (c) a *general insurance contract*;
  - (d) rights to or interests in an *investment* falling within (a).
- relevant issuer* (1a) (in relation to a *designated investment* that is the subject of *investment research*, a *research recommendation* or a *public appearance*) the *issuer* of that *designated investment*; or
- (2b) (in relation to a *related designated investment* that is the subject of *investment research* or a *public appearance*) either the *issuer* of the *related designated investment* or the *issuer* of a *designated investment* that might reasonably be expected directly to affect the value of the *related designated investment*.
- relevant security* (1) (in MAR 2, when used with reference to the *Buy-back and Stabilisation Regulation*) a security subject to an offer falling within MAR 2.1.3R(1) and (3). (in accordance with Article 2(6) of the Buy-back and Stabilisation Regulation) shares, debentures, government and public securities, warrants and certificates representing certain securities which are admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made, and which are the subject of a significant distribution.
- (2) (otherwise in MAR 2) shares, debentures, government and public securities, warrants and certificates representing certain securities.

Delete the following definitions from the *Glossary*; the text is not shown struck through:

*ancillary action*

*associated security*

*introductory period*

*offer for cash*

*relevant product*

*stabilising action*

*stabilising manager*

*stabilising period*

*stabilising price*

## Annex B

### Amendments to the Market Conduct sourcebook (MAR 1)

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

Delete the existing text in MAR, Chapter 1 and replace with the following text:

1. The Code of Market Conduct
  - 1.1 Application and interpretation
    - Application and purpose
      - 1.1.1 G This chapter (which contains the *Code of Market Conduct*) applies to all *persons* seeking guidance on the *market abuse* regime.
      - 1.1.2 G This chapter provides assistance in determining whether or not *behaviour* amounts to *market abuse*. It also forms part of the *UK's* implementation of the *Market Abuse Directive* (including its EU implementing legislation, that is Directive 2003/124/EC, Directive 2003/125/EC, Regulation 2273/2003 and Directive 2004/72/EC). It is therefore likely to be helpful to *persons* who:
        - (1) want to avoid engaging in *market abuse* or to avoid requiring or encouraging another to do so; or
        - (2) want to determine whether they are required by *SUP* 15.10 (Reporting suspicious transactions (market abuse)) to report a transaction to the *FSA* as a suspicious one.
      - 1.1.3 G The *FSA's* statement of policy about the imposition and amount of penalties in cases of *market abuse* (required by section 124 of the *Act*) is in *ENF* 14.
    - Using MAR 1
      - 1.1.4 G
        - (1) Assistance in the interpretation of *MAR* 1 (and the remainder of the *Handbook*) is given in the Readers' Guide to the *Handbook* and in *GEN* 2 (Interpreting the Handbook). This includes an explanation of the status of the types of provision used (see in particular chapter six of the Readers' Guide to the *Handbook*).
        - (2) Provisions designated with "C" indicate *behaviour* which conclusively, for the purposes of the *Act*, does not amount to *market abuse* (see section 122(1) of the *Act*).
      - 1.1.5 G Part VIII of the *Act*, and in particular section 118, specifies seven types of *behaviour* which can amount to *market abuse*. This chapter considers the general concepts relevant to *market abuse*, then each type of behaviour in turn and then describes exceptions to *market abuse* which are of general application. In doing so, it sets out the relevant provisions of the *Code of*

*Market Conduct*, that is:

- (1) descriptions of *behaviour* that, in the opinion of the *FSA*, do or do not amount to *market abuse* (see section 119(2)(a) and (b) and section 122 of the *Act*);
- (2) descriptions of *behaviour* that are or are not *accepted market practices* in relation to one or more identified markets (see section 119(2)(d) and (e) and section 122(1) of the *Act* (subject to the *behaviour* being for legitimate reasons)); and
- (3) factors that, in the opinion of the *FSA*, are to be taken into account in determining whether or not *behaviour* amounts to *market abuse* (see section 119(2)(c) and section 122(2) of the *Act*).

1.1.6 G The *Code* does not exhaustively describe all types of *behaviour* that may or may not amount to *market abuse*. In particular, the descriptions of *behaviour* which, in the opinion of the *FSA*, amount to *market abuse* should be read in the light of:

- (1) the elements specified by the *Act* as making up the relevant type of *market abuse*; and
- (2) any relevant descriptions of *behaviour* which, in the opinion of the *FSA*, do not amount to *market abuse*.

1.1.7 G Likewise, the *Code* does not exhaustively describe all the factors to be taken into account in determining whether *behaviour* amounts to *market abuse*. If factors are described, they are not to be taken as conclusive indications, unless specified as such, and the absence of a factor mentioned does not, of itself, amount to a contrary indication.

1.1.8 G For the avoidance of doubt, it should be noted that any reference in the *Code* to "profit" refers also to potential profits, avoidance of loss or potential avoidance of loss.

1.2 Market Abuse: general

1.2.1 G Provisions in this section are relevant to more than one of the types of *behaviour* which may amount to *market abuse*.

1.2.2 UK Table: section 118(1) of the Act

"For the purposes of this Act, [*market abuse*] is [*behaviour*] (whether by one person alone or by two or more persons jointly or in concert) which—

(a) occurs in relation to:

(i) [*qualifying investments*] admitted to trading on a [*prescribed market*], or

(ii) [*qualifying investments*] in respect of which a request for admission to trading on such a market has been made, or

(iii) in the case of subsections (2) and (3), investments which are [*related investments*] in relation to such [*qualifying investments*], and

(b) falls within any one or more of the types of [*behaviour*] set out in subsections (2) to (8).

1.2.3 G Section 118(1)(a) of the *Act* does not require the *person* engaging in the *behaviour* in question to have intended to commit *market abuse*.

1.2.4 G Statements in this chapter to the effect that *behaviour* will amount to *market abuse* assume that the test in section 118(1)(a) of the *Act* has also been met.

Prescribed markets and qualifying investments: "in relation to": factors to be taken into account

1.2.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* prior to a request for admission to trading or the admission to or the commencement of trading satisfies section 118(1)(a) of the *Act*, and are indications that it does:

(1) if it is in relation to *qualifying investments* in respect of which a request for admission to trading on a *prescribed market* is subsequently made; and

(2) if it continues to have an effect once an application has been made for the *qualifying investment* to be admitted for trading, or it has been admitted to trading on a *prescribed market*, respectively.

1.2.6 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not refraining from action amounts to *behaviour* which satisfies section 118(1)(a) of the *Act* and are indications that it does:

- (1) if the *person* concerned has failed to discharge a legal or regulatory obligation (for example to make a particular disclosure) by refraining from acting; or
- (2) if the *person* concerned has created a reasonable expectation of him acting in a particular manner, as a result of his representations (by word or conduct), in circumstances which give rise to a duty or obligation to inform those to whom he made the representations that they have ceased to be correct, and he has not done so.

Insiders: factors to be taken into account

1.2.7 UK Table: section 118B of the *Act*

"For the purposes of [*market abuse*] an [*insider*] is any person who has [*inside information*] -

- (a) as a result of his membership of the administrative, management or supervisory bodies of an [*issuer*] of [*qualifying investments*],
- (b) as a result of his holding in the capital of an [*issuer*] of [*qualifying investments*],
- (c) as a result of having access to the information through the exercise of his employment, profession or duties,
- (d) as a result of his criminal activities, or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is [*inside information*]."

1.2.8 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person* could reasonably be expected to know that information in his possession is *inside information* and therefore whether he is an *insider* under section 118B(e) of the *Act*, and indicate that the *person* is an *insider*:

- (1) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that the *person* from whom he received it is an *insider*; and
- (2) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that it is *inside information*.

1.2.9 G For the purposes of the other categories of *insider* specified by section 118B(a) to (d), the *person* concerned does not need to know that the information concerned is *inside information*.

Inside information: factors to be taken into account

1.2.10 UK Table: section 118C(2) and (3) of the *Act*

"... [*inside information*] is information of a precise nature which -

(a) is not generally available; ..."

1.2.11 G The phrase "precise nature" is defined in section 118C(5) of the *Act*. This phrase is also relevant to section 118C(4) of the *Act*.

1.2.12 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not information is generally available, and are indications that it is (and therefore not *inside information*):

- (1) whether the information has been disclosed to a *prescribed market* through a *regulatory information service* or otherwise in accordance with the rules of that market;
- (2) whether the information is contained in records which are open to inspection by the public;
- (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public;
- (4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; and
- (5) the extent to which the information can be obtained by analysing or developing other information which is generally available. [**Note:** Recital 31 *Market Abuse Directive*]

1.2.13 E (1) In relation to the factors in *MAR* 1.2.12E it is not relevant that the information is only generally available outside the *UK*.

(2) In relation to the factors in *MAR* 1.2.12E (1), (3), (4) and (5) it is not relevant that the observation or analysis is only achievable by a *person* with above average financial resources, expertise or competence.

1.2.14 G For example, if a passenger on a train passing a burning factory calls his broker and tells him to *sell shares* in the factory's owner, the passenger will be acting on information which is generally available, since it is information which has been obtained by legitimate means through observation of a public event.

1.2.15 UK Table: section 118C(4) of the *Act*

"In relation to a person charged with the execution of orders ... [*inside*

*information*] includes information conveyed by a client and related to the client's pending orders ..."

- 1.2.16 E In the opinion of the *FSA*, a factor which indicates that there is a pending order for a client is, if a *person* is approached by another in relation to a transaction, and:
- (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
  - (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

Inside information: commodity derivatives

- 1.2.17 G The *Act* (and the *Market Abuse Directive*) recognise that there are differences in the nature of information which is important to commodity derivatives markets and that which is important to other markets. In particular, *inside information* is limited by reference to what the market participants expect to receive information about.

- 1.2.18 UK Table: section 118C(3) of the *Act*

"In relation to [*qualifying investments*] or [*related investments*] which are commodity derivatives, [*inside information*] is information of a precise nature which ... (c) users of markets in which the derivatives are traded would expect to receive in accordance with any accepted market practices on those markets."

- 1.2.19 UK Table: section 118C(7) of the *Act*

"For the purposes of subsection (3)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information ... which is –

- (i) routinely made available to the users of those markets, or
- (ii) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market."

The regular user

- 1.2.20 G In section 118 of the *Act*, the *regular user* decides:
- (1) whether information that is not generally available would or would be likely to be relevant when deciding the terms on which transactions in *qualifying investments* or *related investments* should be effected (section 118(4)(a) of the *Act*); and
  - (2) whether *behaviour*:

- (a) based on information meeting the criteria in section 118(4)(a) is below the expected standard (section 118(4)(b)); or
- (b) creates or is likely to create a false or misleading impression or distorts the market (section 118(8)); or
- (c) which creates or is likely to create a false or misleading impression or distorts the market is below the expected standard (section 118(8)).

1.2.21 G The *regular user* is a hypothetical reasonable *person* who regularly deals on the market and in the investments of the kind in question. The presence of the *regular user* imports an objective element into the elements listed in MAR 1.2.15G while retaining some subjective features of the markets for the investments in question.

Requiring or encouraging

1.2.22 UK Table: section 123(1)(b) of the Act

"If [the FSA] is satisfied that a person ("A") - ...

(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in [*behaviour*], which if engaged in by A, would amount to [*market abuse*],

it may impose on him a penalty of such amount as it considers appropriate.

1.2.23 G The following are examples of *behaviour* that might fall within the scope of section 123(1)(b):

- (1) a director of a company, while in possession of *inside information*, instructs an employee of that company to *deal in qualifying investments* or *related investments* in respect of which the information is *inside information*;
- (2) a *person* recommends or advises a friend to engage in *behaviour* which, if he himself engaged in it, would amount to *market abuse*.

1.3 Market abuse (insider dealing)

1.3.1 UK Table: section 118(2) of the *Act*

"The first type of [*behaviour*] is where an [*insider*] [*deals*], or attempts to [*deal*], in a [*qualifying investment*] or [*related investment*] on the basis of [*inside information*] relating to the investment in question."

Descriptions of behaviour that amount to market abuse (insider dealing)

- 1.3.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (insider dealing)*:
- (1) *dealing* on the basis of *inside information* which is not *trading information*;
  - (2) front running/pre-positioning – that is, a transaction for a *person's* own benefit, on the basis of and ahead of an order which he is to carry out with or for another (in respect of which information concerning the order is *inside information*), which takes advantage of the anticipated impact of the order on the market price;
  - (3) in the context of a takeover, an *offeror* or potential *offeror* entering into a transaction in a *qualifying investment*, on the basis of *inside information* concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target *company's shares* (for example, a *spread bet* on the target *company's share price*); and
  - (4) in the context of a takeover, a *person* who acts for the *offeror* or potential *offeror* *dealing* for his own benefit in a *qualifying investments* or *related investments* on the basis of information concerning the proposed bid which is *inside information*.

Factors to be taken into account: "on the basis of"

- 1.3.3 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is "on the basis of" *inside information*, and are each indications that it is not:
- (1) if the decision to *deal* or attempt to *deal* was made before the *person*

possessed the relevant *inside information*; or

(2) if the *person* concerned is *dealing* to satisfy a legal or regulatory obligation which came into being before he possessed the relevant *inside information*; or

(3) if a *person* is an *organisation*, if none of the individuals in possession of the *inside information*:

(a) had any involvement in the decision to *deal*; or

(b) behaved in such a way as to influence, directly or indirectly, the decision to engage in the *dealing*; or

(c) had any contact with those who were involved in the decision to engage in the *dealing* whereby the information could have been transmitted.

1.3.4 E In the opinion of the *FSA*, if the *inside information* is the reason for, or a material influence on, the decision to *deal* or attempt to *deal*, that indicates that the *person's behaviour* is "on the basis of" *inside information*.

1.3.5 E In the opinion of the *FSA*, if the *inside information* is held behind an effective *Chinese wall*, or similarly effective arrangements, from the individuals who are involved in or who influence the decision to *deal*, that indicates that the decision to *deal* by an *organisation* is not "on the basis of" *inside information*.

Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: legitimate business of market makers etc:

1.3.6 C A *person* will form an intention to *buy* or *sell* a *qualifying investment* or a *related investment* before doing so. His carrying out of his own intention is not in itself *market abuse (insider dealing)*. [**Note:** Recital 30 *Market Abuse Directive*]

1.3.7 C For market makers and *persons* that may lawfully *deal* in *qualifying investments* or *related investments* on their own account, pursuing their legitimate business of such *dealing* (including entering into an agreement for the underwriting of an issue of *financial instruments*) will not in itself amount to *market abuse (insider dealing)*. [**Note:** Recital 18 *Market Abuse Directive*]

1.3.8 G *MAR* 1.3.7C applies even if the *person* concerned in fact possesses *trading information* which is *inside information*.

1.3.9 E In the opinion of the *FSA*, if the *inside information* is not limited to *trading information*, (except in relation to an agreement for the underwriting of an issue of *financial instruments*) that indicates that the *behaviour* is not in pursuit of legitimate business.

1.3.10 E In the opinion of the *FSA*, the following factors are to be taken into account

in determining whether or not a *person's behaviour* is in pursuit of legitimate business, and are indications that it is:

- (1) the extent to which the relevant trading by the *person* is carried out in order to hedge a risk, and in particular the extent to which it neutralises and responds to a risk arising out of the *person's* legitimate business; or
- (2) whether, in the case of a transaction on the basis of *inside information* about a client's transaction which has been executed, the reason for it being *inside information* is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or exchange obligations; or
- (3) whether, if the relevant trading by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it; or
- (4) the extent to which the *person's behaviour* was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.

- 1.3.11 E In the opinion of the *FSA*, if the *person* acted in contravention of a relevant legal, regulatory or exchange obligation, that is a factor to be taken into account in determining whether or not a *person's behaviour* is in pursuit of legitimate business, and is an indication that it is not.

Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: execution of client orders

- 1.3.12 C The dutiful carrying out of, or arranging for the dutiful carrying out of, an order on behalf of another (including as portfolio manager) will not in itself amount to *market abuse (insider dealing)* by the *person* carrying out that order. [**Note:** Recital 18 *Market Abuse Directive*]
- 1.3.13 G *MAR* 1.3.12C applies whether or not the *person* carrying out the order or the *person* for whom he is acting in fact possesses *inside information*. Also, a *person* that carries out an order on behalf of another will not, merely as a result of that action, be considered to have any *inside information* held by that other *person*.
- 1.3.14 E In the opinion of the *FSA*, if the *inside information* is not limited to *trading information*, that indicates that the *behaviour* is not dutiful carrying out of an order on behalf of a client.
- 1.3.15 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is dutiful execution of an

order on behalf of another, and are indications that it is:

- (1) whether the *person* has complied with the applicable provisions of *COB* or *MAR* 3, or their equivalents in the relevant jurisdiction; or
- (2) whether the *person* has agreed with its client it will act in a particular way when carrying out, or arranging the carrying out of, the order; or
- (3) whether the *person's behaviour* was with a view to facilitating or ensuring the effective carrying out of the order; or
- (4) the extent to which the *person's behaviour* was reasonable by the proper standards of conduct of the market concerned and (if relevant) proportional to the risk undertaken by him; or
- (5) whether, if the relevant trading by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it.

- 1.3.16 G Some steps which a *person* takes as a result of carrying out a client transaction may be within the scope of *MAR* 1.3.6C to *MAR* 1.3.11E rather than being part of dutiful execution.

Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: takeover and merger activity

- 1.3.17 C *Behaviour*, based on *inside information* relating to another *company*, in the context of a public takeover bid or merger for the purpose of gaining control of that *company* or proposing a merger with that *company*, does not of itself amount to *market abuse (insider dealing)* [**Note:** see Recital 29 *Market Abuse Directive*], including:

- (1) seeking from holders of *securities*, issued by the target, irrevocable undertakings or expressions of support to accept an *offer* to acquire those *securities* (or not to accept such an *offer*);
- (2) making arrangements in connection with an issue of *securities* that are to be offered as consideration for the takeover or merger *offer* or to be issued in order to fund the takeover or merger *offer*, including making arrangements for the underwriting or placing of those *securities* and any associated hedging arrangements by underwriters or placees which are proportionate to the risks assumed; and
- (3) making arrangements to offer cash as consideration for the takeover or merger *offer* as an alternative to *securities* consideration.

- 1.3.18 G There are two categories of *inside information* relevant to *MAR* 1.3.17C:

- (1) information that an *offeror* or potential *offeror* is going to make, or is

considering making, an offer for the target;

- (2) information that that an *offeror* or potential *offeror* may obtain through due diligence.

1.3.19 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is for the purpose of him gaining control of the target *company* or him proposing a merger with that *company*, and are indications that it is:

- (1) whether the transactions concerned are in the target *company's shares*; or
- (2) whether the transactions concerned are for the sole purpose of gaining that control or effecting that merger.

Examples of market abuse (insider dealing)

1.3.20 G The following examples of *market abuse (insider dealing)* concern the definition of *inside information* relating to *financial instruments* other than *commodity derivatives*.

- (1) X, a director at B PLC has lunch with a friend, Y. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading. Y enters into a spread bet priced or valued by reference to the share price of B PLC based on his expectation that the price in B PLC will increase once the take over offer is announced.
- (2) An employee at B PLC obtains the information that B PLC has just lost a significant contract with its main customer. Before the information is announced over the *regulatory information service* the employee, whilst being under no obligation to do so, sells his shares in B PLC based on the information about the loss of the contract.

1.3.21 G The following example of *market abuse (insider dealing)* concerns the definition of *inside information* relating to commodity derivatives.

Before the official publication of LME stock levels, a metals trader learns (from an *insider*) that there has been a significant decrease in the level of LME aluminium stocks. This information is routinely made available to users of that *prescribed market*. The trader buys a substantial number of *futures* in that metal on the LME, based upon his knowledge of the significant decrease in aluminium stock levels.

1.3.22 G The following example of *market abuse (insider dealing)* concerns the definition of *inside information* relating to pending client orders.

A dealer on the trading desk of a *firm dealing* in oil derivatives accepts a very large order from a *client* to acquire a long position in oil futures deliverable in a particular *month*. Before executing the order, the dealer trades for the *firm* and on his personal account by taking a long position in

those oil futures, based on the expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his *client's* order. Both trades will be *market abuse (insider dealing)*.

- 1.3.23 G The following connected examples of *market abuse (insider dealing)* concerns the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.
- (1) A *person* deals, on a *prescribed market*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
  - (2) A *person* deals, in a commodity futures contract traded on a *prescribed market*, based on the same information, provided that the information is required to be disclosed under the rules of the relevant commodity futures market.

#### 1.4 Market abuse (improper disclosure)

##### 1.4.1 UK Table: section 118(3) of the *Act*

"The second [type of *behaviour*] is where:  
an [*insider*]  
discloses  
[*inside information*]  
to another person  
otherwise than in the proper course of the exercise of his employment,  
profession or duties."

Descriptions of behaviour that amount to market abuse (improper disclosure)

- 1.4.2 E The following *behaviours* are, in the opinion of the FSA, *market abuse (improper disclosure)*:
- (1) disclosure of *inside information* by the *director* of an *issuer* to another in a social context; and
  - (2) selective briefing of analysts by *directors* of *issuers* or others who are *persons discharging managerial responsibilities*.

Descriptions of behaviour that does not amount to market abuse (improper disclosure)

- 1.4.3 C Disclosure of *inside information* will not amount to *market abuse (improper disclosure)*, if it is made:
- (1) to a government department, the Bank of England, the Competition Commission, the *Takeover Panel* or any other *regulatory body* or authority for the purposes of fulfilling a legal or regulatory obligation; or
  - (2) otherwise to such a body in connection with the performance of the functions of that body.

- 1.4.4 C Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) will not amount to *market abuse (improper disclosure)*.

Factors to be taken into account in determining whether or not behaviour amounts to market abuse (improper disclosure)

- 1.4.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:
- (1) whether the disclosure is permitted by the rules of a *prescribed market*, of the *FSA* or the *Takeover Code*; or
  - (2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the *person* to whom the disclosure is made and is:
    - (a) reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or
    - (b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or *takeover bid*; or
    - (c) reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or places of *securities*); or
    - (d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*; or
    - (e) in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf.

Examples of market abuse (improper disclosure)

- 1.4.6 G The following is an example of *market abuse (improper disclosure)*:

X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.

- 1.4.7 G The following is an example of encouraging another to engage in *market abuse (improper disclosure)*:

X, an analyst employed by an investment bank, telephones the finance director at B PLC and presses for details of the profit and loss account from the latest unpublished management accounts of B PLC.

- 1.5 Market abuse (misuse of information)

- 1.5.1 UK Table: section 118(4) of the *Act*:

"The third [type of *behaviour*] is where the [*behaviour*] (not [amounting to *market abuse (insider dealing)* or *market abuse (improper disclosure)*])-

- (a) is based on information

which is not generally available to those using the market

but which, if available to a [*regular user*] of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in [*qualifying investments*] should be effected; and

- (b) is 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 his position in relation to the market."

Descriptions of behaviour that amount to market abuse (misuse of information)

- 1.5.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (misuse of information)*:

- (1) *dealing* or *arranging deals* in *qualifying investments* based on *relevant information*, which is not generally available and relates to matters which a *regular user* would reasonably expect to be disclosed to users of the particular *prescribed market*, but which does not amount to *market abuse (insider dealing)* (whether because the *dealing* relates to a *qualifying investment* to which section 118(2) does not apply or because the *relevant information* is not *inside information*); and

- (2) a *director* giving *relevant information*, which is not generally available and relates to matters which a *regular user* would

reasonably expect to be disclosed to users of the particular *prescribed market*, to another otherwise than in the proper course of the exercise of his employment or duties, in a way which does not amount to *market abuse (improper disclosure)* (whether because the *relevant information* is not *inside information* or for some other reason).

- 1.5.3 G The following *behaviours* are, in the opinion of the *FSA*, capable of amounting to *market abuse (misuse of information)*:
- (1) *dealing* in a *qualifying investment* based on *relevant information*, which is not generally available and is not *inside information*;
  - (2) *behaviour*, other than *dealing* in a *qualifying investment* or a *related investment*, that is based on *relevant information* which is not generally available and is not *inside information*; and
  - (3) entering into a transaction, which is not a *qualifying investment* or a *related investment*, based on *relevant information* which is not generally available and is not *inside information*.

Factors to be taken into account: "generally available"

- 1.5.4 E The factors taken into account in deciding whether or not information is generally available for the purposes of the definition of *inside information* (see *MAR 1.2.12E – MAR 1.2.13E*) will also be relevant when considering whether or not *behaviour* amounts to *market abuse (misuse of information)*.

Factors to be taken into account: "based on"

- 1.5.5 E The factors taken into account in deciding whether or not a *person's behaviour* is "on the basis of" *inside information* (see *MAR 1.3.3E – MAR 1.3.5E*) will also be relevant when considering whether or not *behaviour* is "based on" *relevant information* which is not generally available to those using the market.

Factors to be taken into account: "relevant information"

- 1.5.6 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *regular user* would regard information as *relevant information*, and are indications that he would:
- (1) the extent to which the information is reliable, including how near the *person* providing the information is, or appears to be, to the original source of that information and the reliability of that source; or
  - (2) if the information differs from information which is generally available and can therefore be said to be new or fresh information; or
  - (3) in the case of information relating to possible future developments which are not currently required to be disclosed but which, if they

occur, will lead to a disclosure or announcement being made whether the information provides, with reasonable certainty, grounds to conclude that the possible future developments will, in fact, occur; or

- (4) if there is no other material information which is already generally available to inform users of the market.

Factors to be taken into account: standards of behaviour

1.5.7 E In the opinion of the *FSA*, the following factors are to be taken into account when considering whether a *regular user* would reasonably expect the *relevant information* to be disclosed to users of the particular *prescribed market*, or to be announced, and accordingly whether *behaviour* is likely to be regarded by a *regular user* as failing to meet the expected standard and are indications that he would:

- (1) if the *relevant information* has to be disclosed in accordance with any legal or regulatory requirement, such as:
  - (a) information which is required to be disseminated under the *Takeover Code* or *SARs* (or their equivalents in the relevant jurisdiction) on, or in relation to, *qualifying investments*; or
  - (b) information which is required to be disseminated under the *Part 6 rules* (or their equivalents in the relevant jurisdiction); or
  - (c) information required to be disclosed by an *issuer* under the laws, rules or regulations applying to the *prescribed market* on which its issued *qualifying investments* are traded or admitted to trading; or
- (2) if the *relevant information* is routinely the subject of a public announcement although not subject to any formal disclosure requirement, such as:
  - (a) information which is to be the subject of official announcement by governments, central monetary or fiscal authorities or a *regulatory body* (financial or otherwise, including exchanges); or
  - (b) changes to published credit ratings of *issuers* of *qualifying investments*; or
  - (c) changes to the constituents of a *securities* index, where the *securities* are *qualifying investments*; or
- (3) if *behaviour* is based on information relating to possible future developments, if it is reasonable to believe that the information in question will subsequently become of a type within (1) or (2).

Descriptions of behaviour that does not amount to market abuse (misuse of information)

- 1.5.8 G *Behaviour* falling within the description of *behaviour* which amounts to *market abuse (insider dealing)* or *market abuse (improper disclosure)* is not *market abuse (misuse of information)*.
- 1.5.9 C *Behaviour* falling within the descriptions of *behaviour* that do not amount to *market abuse (insider dealing)* (MAR 1.3.6C, MAR 1.3.7C, MAR 1.3.12C and MAR 1.3.17C), or that would fall within those descriptions, if the references in those descriptions to *inside information* included a reference to *relevant information*, also do not amount to *market abuse (misuse of information)*.

Examples of market abuse (misuse of information)

- 1.5.10 E The following *behaviour* may amount to *market abuse (misuse of information)*:
- (1) X, a director at B PLC, has lunch with a friend, Y. X tells Y that his company has received a takeover offer. Y places a fixed odds bet with a bookmaker that B PLC will be the subject of a bid within a week, based on his expectation that the take over offer will be announced over the next few days.
  - (2) Informal, non-contractual icing of *qualifying investments* by the manager of a proposed issue of convertible or exchangeable bonds, which are to be the subject of a public marketing effort, with a view to subsequent borrowing by it of those *qualifying investments* based on *relevant information* about the forthcoming issue:
    - (a) which is not generally available; and
    - (b) which a *regular user* would reasonably expect to be disclosed to users of the relevant *prescribed market*;where this has the effect of withdrawing those *qualifying investments* from the lending market in order to lend it to the issue manager in such a way that other market participants are disadvantaged.
  - (3) An employee of B PLC is aware of contractual negotiations between B PLC and a customer. Transactions with that customer have generated over 10% of B PLC's turnover in each of the last five financial years. The employee knows that the customer has threatened to take its business elsewhere, and that the negotiations, while ongoing, are not proceeding well. The employee, whilst being under no obligation to do so, sells his shares in B PLC based on his assessment that it is reasonably likely that the customer will take his business elsewhere.

1.6 Market abuse (manipulating transactions)

1.6.1 UK Table: section 118(5) of the *Act*

"The fourth [type of *behaviour*] ... consists of effecting transactions or orders to trade

(otherwise than for legitimate reasons and in conformity with [*accepted market practices*] on the relevant market)

which –

- (a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of one or more [*qualifying investments*] or
- (b) secure the price or one or more such investments at an abnormal or artificial level."

Descriptions of behaviour that amount to market abuse (manipulating transactions): false or misleading impressions

1.6.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (manipulating transactions)* of a type involving false or misleading impressions:

- (1) *buying or selling qualifying investments* at the close of the market with the effect of misleading investors who act on the basis of closing prices, other than for legitimate reasons; [**Note:** Article 1.2(c) *Market Abuse Directive*]
- (2) wash trades – that is, a sale or purchase of a *qualifying investment* where there is no change in beneficial interest or market risk, or where the transfer of beneficial interest or market risk is only between parties acting in concert or collusion, other than for legitimate reasons;
- (3) painting the tape – that is, entering into a series of transactions that are shown on a public display for the purpose of giving the impression of activity or price movement in a *qualifying investment*; and
- (4) entering orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, and withdrawing them before they are executed, in order to give a misleading impression that there is demand for or supply of the *qualifying investment* at that price.

1.6.3 G For the avoidance of doubt a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving the provision of collateral, do

not constitute a wash trade under MAR 1.6.2E(2).

Descriptions of behaviour that amount to market abuse (manipulating transactions): price positioning

- 1.6.4 E The following *behaviours* are, in the opinion of the FSA, *market abuse (manipulating transactions)* involving securing the price of a *qualifying investment*:
- (1) transactions or orders to trade by a *person*, or *persons* acting in collusion, that secure a dominant position over the supply of or demand for a *qualifying investment* and which have the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions, other than for legitimate reasons; [**Note:** Article 1.2(c) *Market Abuse Directive*]
  - (2) transactions where both buy and sell orders are entered at, or nearly at, the same time, with the same price and quantity by the same party, or different but colluding parties, other than for legitimate reasons, unless the transactions are legitimate trades carried out in accordance with the rules of the relevant trading platform (such as crossing trades);
  - (3) entering small orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, in order to move the price of the *qualifying investment*, other than for legitimate reasons;
  - (4) an abusive squeeze – that is, a situation in which a *person*:
    - (a) has a significant influence over the supply of, or demand for, or delivery mechanisms for a *qualifying investment* or *related investment* or the underlying product of a derivative contract;
    - (b) has a position (directly or indirectly) in an *investment* under which quantities of the *qualifying investment*, *related investment*, or product in question are deliverable; and
    - (c) engages in *behaviour* with the purpose of positioning at a distorted level the price at which others have to deliver, take delivery or defer delivery to satisfy their obligations in relation to a *qualifying investment* (the purpose need not be the sole purpose of entering into the transaction or transactions, but must be an actuating purpose);
  - (5) parties, who have been allocated *qualifying investments* in a primary offering, colluding to purchase further tranches of those *qualifying investments* when trading begins, in order to force the price of the *qualifying investments* to an artificial level and generate interest from other investors, and then sell the *qualifying investments*;
  - (6) transactions or orders to trade employed so as to create obstacles to

the price falling below a certain level, in order to avoid negative consequences for the *issuer*, for example a downgrading of its credit rating; and

- (7) trading on one market or trading platform with a view to improperly influencing the price of the same or a related *qualifying investment* that is traded on another *prescribed market*.

Factors to be taken into account: "legitimate reasons"

- 1.6.5 E In the opinion of the *FSA* the following factors are to be taken into account when considering whether *behaviour* is for "legitimate reasons", and are indications that it is not:
- (1) if the *person* has an actuating purpose behind the transaction to induce others to trade in, or to position or move the price of, a *qualifying investment*;
  - (2) if the *person* has another, illegitimate, reason behind the transactions or order to trade; [**Note:** Recital 20 *Market Abuse Directive*]
  - (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.
- 1.6.6 E In the opinion of the *FSA* the following factors are to be taken into account when considering whether *behaviour* is for "legitimate reasons", and are indications that it is:
- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
  - (2) if the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently;
  - (3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and
  - (4) if the transaction complied with the rules of the relevant *prescribed markets* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).
- 1.6.7 G It is unlikely that the *behaviour* of market users when trading at times and in sizes most beneficial to them (whether for the purpose of long term investment objectives, risk management or short term speculation) and seeking the maximum profit from their dealings will of itself amount to distortion. Such *behaviour*, generally speaking, improves the liquidity and efficiency of markets.
- 1.6.8 G It is unlikely that prices in the market which are trading outside their normal range will necessarily be indicative that someone has engaged in behaviour with the purpose of positioning prices at a distorted level. High or low prices

relative to a trading range can be the result of the proper interplay of supply and demand.

Factors to be taken into account: behaviour giving a false or misleading impression

- 1.6.9 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* amounts to *market abuse (manipulating transactions)*: [**Note:** Article 4 2003/124/EC]
- (1) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* concerned, in particular when these activities lead to a significant change in the price of the *qualifying investment*;
  - (2) the extent to which orders to trade given or transactions undertaken by *persons* with a significant buying or selling position in a *qualifying investment* lead to significant changes in the price of the *qualifying investment* or related derivative or underlying asset admitted to trading on a *regulated market*;
  - (3) whether transactions undertaken lead to no change in beneficial ownership of a *qualifying investment* admitted to trading on a *regulated market*;
  - (4) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* concerned, and might be associated with significant changes in the price of a *qualifying investment* admitted to trading on a *regulated market*;
  - (5) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
  - (6) the extent to which orders to trade given change the representation of the best bid or offer prices in a *financial instrument* admitted to trading on a *regulated market*, or more generally the representation of the order book available to market participants, and are removed before they are executed; and
  - (7) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

Factors to be taken into account: behaviour securing an abnormal or artificial price level

- 1.6.10 E In the opinion of the *FSA*, the following factors are to be taken into account

in determining whether or not a *person's behaviour* amounts to *market abuse (manipulating transactions)*:

- (1) the extent to which the *person* had a direct or indirect interest in the price or value of the *qualifying investment* or *related investment*;
- (2) the extent to which price, rate or *option* volatility movements, and the volatility of these factors for the *investment* in question, are outside their normal intra-day, daily, weekly or monthly range; and
- (3) whether a *person* has successively and consistently increased or decreased his bid, offer or the price he has paid for a *qualifying investment* or *related investment*.

Factors to be taken into account: abusive squeezes

- 1.6.11 E In the opinion of the *FSA*, the following factors are to be taken into account when determining whether a *person* has engaged in an abusive squeeze:
- (1) the extent to which a *person* is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so; for example, *behaviour* is less likely to amount to an abusive squeeze if a *person* is willing to lend the *investment* in question;
  - (2) the extent to which the *person's* activity causes, or risks causing, settlement default by other market users on a multilateral basis and not just a bilateral basis. The more widespread the risk of multilateral settlement default, the more likely that an abusive squeeze has been effected;
  - (3) the extent to which prices under the delivery mechanisms of the market diverge from the prices for delivery of the *investment* or its equivalent outside those mechanisms. The greater the divergence beyond that to be reasonably expected, the more likely that an abusive squeeze has been effected; and
  - (4) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which borrowing rates are unusually expensive or inexpensive.
- 1.6.12 G Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this is not of itself abusive. In addition, having a significant influence over the supply of, or demand for, or delivery mechanisms for an investment, for example, through ownership, borrowing or reserving the investment in question, is not of itself abusive.
- 1.6.13 G The effects of an abusive squeeze are likely to be influenced by the extent to which other market users have failed to protect their own interests or fulfil their obligations in a manner consistent with the standards of behaviour to be expected of them in that market. Market users can be expected to settle their obligations and not to put themselves in a position where, to do so, they

have to rely on holders of long positions lending when they may not be inclined to do so and may be under no obligation to do so.

Descriptions of behaviour that do not amount to market abuse (manipulating transactions): accepted market practices

1.6.14 E The following are accepted by the *FSA* as *accepted market practices* for the purposes of *market abuse (manipulating transactions)*:

- (1) The practices set out in the London Metal Exchange's document "Market Aberrations: The Way Forward" published in October 1998 which govern the behaviour expected of long position holders (see *MAR 1 Annex 2G*).

Examples of market abuse (manipulating transactions)

1.6.15 E The following are examples of behaviour that may amount to *market abuse (manipulating transactions)*:

- (1) a trader simultaneously *buys* and *sells* the same *qualifying investment* (that is, trades with himself) to give the appearance of a legitimate transfer of title or risk (or both) at a price outside the normal trading range for the *qualifying investment*. The price of the *qualifying investment* is relevant to the calculation of the settlement value of an option. He does this while holding a position in the *option*. His purpose is to position the price of the *qualifying investment* at a false, misleading, abnormal or artificial level, making him a profit or avoiding a loss from the *option*;
- (2) a trader *buys* a large volume of *commodity futures*, which are *qualifying investments*, (whose price will be relevant to the calculation of the settlement value of a *derivatives* position he holds) just before the close of trading. His purpose is to position the price of the *commodity futures* at a false, misleading, abnormal or artificial level so as to make a profit from his *derivatives* position;
- (3) a trader holds a short position that will show a profit if a particular *qualifying investment*, which is currently a component of an index, falls out of that index. The question of whether the *qualifying investment* will fall out of the index depends on the closing price of the *qualifying investment*. He places a large *sell* order in this *qualifying investment* just before the close of trading. His purpose is to position the price of the *qualifying investment* at a false, misleading, abnormal or artificial level so that the *qualifying investment* will drop out of the index so as to make a profit; and
- (4) a fund manager's quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower. He places a large order to *buy* relatively illiquid *shares*, which are also components of his portfolio, to be executed at or just before the close. His purpose is to position the price of the *shares* at

a false, misleading, abnormal or artificial level.

1.6.16 E The following is an example of an abusive squeeze:

A trader with a long position in bond *futures buys* or borrows a large amount of the cheapest to deliver bonds and either refuses to re-lend these bonds or will only lend them to parties he believes will not re-lend to the market. His purpose is to position the price at which those with short positions have to deliver to satisfy their obligations at a materially higher level, making him a profit from his original position.

1.7 Market abuse (manipulating devices)

1.7.1 UK Table: section 118(6) of the *Act*

"The fifth [type of *behaviour*] ... consists of effecting transactions or orders to trade

which employ fictitious devices or any other form of deception or contrivance."

Descriptions of behaviour that amount to market abuse (manipulating devices)

1.7.2 E The following *behaviours* are, in the opinion of the FSA, *market abuse (manipulating devices)*:

- (1) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a *qualifying investment* (or indirectly about its *issuer*) while having previously taken positions on that *qualifying investment* and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way; [**Note:** Article 1.2 *Market Abuse Directive*]
- (2) a transaction or series of transactions that are designed to conceal the ownership of a *qualifying investment*, so that disclosure requirements are circumvented by the holding of the *qualifying investment* in the name of a colluding party, such that disclosures are misleading in respect of the true underlying holding. These transactions are often structured so that market risk remains with the seller. This does not include nominee holdings;
- (3) pump and dump – that is, taking a long position in a *qualifying investment* and then disseminating misleading positive information about the *qualifying investment* with a view to increasing its price;
- (4) trash and cash – that is, taking a short position in a *qualifying*

*investment* and then disseminating misleading negative information about the *qualifying investment*, with a view to driving down its price.

Factors to be taken into account in determining whether or not behaviour amounts to market abuse (manipulating devices)

- 1.7.3 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a fictitious device or other form of deception or contrivance has been used, and are indications that it has:
- (1) if orders to trade given or transactions undertaken in *qualifying investments* by *persons* are preceded or followed by dissemination of false or misleading information by the same *persons* or *persons* linked to them;
  - (2) if orders to trade are given or transactions are undertaken in *qualifying investments* by *persons* before or after the same *persons* or *persons* linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest. [**Note:** Article 5 2003/124/EC]

1.8 Market abuse (dissemination)

1.8.1 U Table: section 118(7) of the *Act*  
K

" The sixth [type of *behaviour*] ... consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a [*qualifying investment*] by a person who knew or could reasonably be expected to have known that the information was false or misleading."

1.8.2 U Table: section 118A(4) of the *Act*  
K

"For the purposes of section 118(7), the dissemination of information by a person acting in the capacity of a journalist is to be assessed taking into account the codes governing their profession unless he derives, directly or indirectly, any advantage or profits from the dissemination of the information."

Descriptions of behaviour that amount to market abuse (dissemination)

- 1.8.3 E The following *behaviours* are, in the opinion of the FSA, *market abuse (dissemination)*:
- (1) knowingly or recklessly spreading false or misleading information about a *qualifying investment* through the media, including in particular through an *RIS* or similar information channel;
  - (2) undertaking a course of conduct in order to give a false or misleading impression about a *qualifying investment*.

Factors to be taken into account in determining whether or not behaviour amounts to market abuse (dissemination)

- 1.8.4 E In the opinion of the *FSA*, if a normal and reasonable *person* would know or should have known in all the circumstances that the information was false or misleading, that indicates that the *person* disseminating the information knew or could reasonably be expected to have known that it was false or misleading.

- 1.8.5 E In the opinion of the *FSA*, if the individuals responsible for dissemination of information within an organisation could only know that the information was false or misleading if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements, that indicates that the *person* disseminating did not know and could not reasonably be expected to have known that the information was false or misleading.

Examples of market abuse (dissemination)

- 1.8.6 E The following are examples of *behaviour* which may amount to *market abuse (dissemination)*:
- (1) a *person* posts information on an Internet bulletin board or chat room which contains false or misleading statements about the takeover of a *company* whose *shares* are *qualifying investments* and the *person* knows that the information is false or misleading;
  - (2) a *person* responsible for the content of information submitted to a *regulatory information service* submits information which is false or misleading as to *qualifying investments* and that *person* is reckless as to whether the information is false or misleading.

1.9 Market abuse (misleading behaviour) & market abuse (distortion)

1.9.1 E Table: section 118(8) of the *Act*:

" The seventh [type of *behaviour*] is where the [*behaviour*] (not [amounting to *market abuse (manipulating transactions)*, *market abuse (manipulating devices)*, or *market abuse (dissemination)*])

- (a) is likely to give, a [*regular user*] of the market a false or misleading impression as to the supply of, demand for or price or value of, [*qualifying investments*] [*market abuse (misleading behaviour)*]; or
- (b) would be, or would be to likely to be, regarded by a [*regular user*] of the market as [*behaviour*] that would distort, or would be likely to distort, the market in such an investment [*market abuse (distortion)*]

and ...is 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 his position in relation to the market

Descriptions of behaviour that amount to market abuse (misleading behaviour) under section 118(8)(a) or market abuse (distortion) under section 118(8)(b)

1.9.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (misleading behaviour)* if they give, or are likely to give, a *regular user* of the market a false or misleading impression:

- (1) the movement of physical *commodity* stocks, which might create a misleading impression as to the supply of, or demand for, or price or value of, a *commodity* or the deliverable into a *commodity futures* contract; and
- (2) the movement of an empty cargo ship, which might create a false or misleading impression as to the supply of, or the demand for, or the price or value of a *commodity* or the deliverable into a *commodity futures* contract.

Descriptions of behaviour that does not amount to market abuse (distortion)

1.9.3 C *Behaviour* that complies with the requirements imposed on long position holders in the London Metal Exchange's document "Market Aberrations: The Way Forward" published in October 1998 will not amount to *market abuse (distortion)*.

Factors to be taken into account: false or misleading impressions

1.9.4 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* is likely to give a *regular user* a

false or misleading impression as to the supply of or the demand for or as to the price or value of one or more *qualifying investments* or *related investments*:

- (1) the experience and knowledge of the users of the market in question;
- (2) the structure of the market, including its reporting, notification and transparency requirements;
- (3) the legal and regulatory requirements of the market concerned;
- (4) the identity and position of the *person* responsible for the *behaviour* which has been observed (if known); and
- (5) the extent and nature of the visibility or disclosure of the *person's* activity.

Factors to be taken into account: standards of behaviour

1.9.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* that creates a false or misleading impression as to, or distorts the market for, a *qualifying investment*, has also failed to meet the standard expected by a *regular user*:

- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
- (2) if the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently; or
- (3) the characteristics of the market in question, including the users and applicable rules and codes of conduct (including, if relevant, any statutory or regulatory obligation to disclose a holding or position, such as under section 198 of the Companies Act 1985);
- (4) the position of the *person* in question and the standards reasonably to be expected of him in light of his experience, skill and knowledge;
- (5) if the transaction complied with the rules of the relevant *prescribed markets* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions); and
- (6) if an *organisation* has created a false or misleading impression, whether the individuals responsible could only know they were likely to create a false or misleading impression if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements.

## 1.10 Statutory exceptions

Behaviour that does not amount to market abuse (general): buy-back programmes and stabilisation

- 1.10.1 G (1) *Behaviour* which conforms with articles 3 to 6 of the *Buy-back and Stabilisation Regulation* (see *MAR 1 Ann 1*) will not amount to *market abuse*.
- (2) See *MAR 2* in relation to *stabilisation*.
- (3) *Buy-back programmes* which are not within the scope of the *Buy-back and Stabilisation Regulation* are not, in themselves, *market abuse*.

FSA rules

- 1.10.2 G There are no *rules* which permit or require a *person* to behave in a way which amounts to *market abuse*. Some *rules* contain a provision to the effect that *behaviour* conforming with that *rule* does not amount to *market abuse*:
- (1) *COB 2.4.4R(1)* (Chinese walls) (see *COB 2.4.4R(4)*); and
- (2) those parts of the *Part 6 rules* which relate to the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information (see in particular the *Disclosure Rules*).

Takeover Code and SARs

- 1.10.3 G There are no rules in the *Takeover Code* or the *SARs*, which permit or require a *person* to behave in a way which amounts to *market abuse*.
- 1.10.4 C *Behaviour* conforming with any of the rules of the *Takeover Code* or *SARs* about the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, does not, of itself, amount to *market abuse*, if:
- (1) the rule is one of those specified in the table in *MAR 1.10.5C*;
- (2) the *behaviour* is expressly required or expressly permitted by the rule in question (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the relevant rule for these purposes); and
- (3) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to that rule.
- 1.10.5 C Table: Provisions of the *Takeover Code* or *SARs* conformity with which will not, of itself, amount to *market abuse* (This table belongs to *MAR 1.10.4C*):

<i>Takeover Code</i> provisions:	
Disclosure of information which is not generally available	1(a) 2.1 plus notes, 2.5, 2.6, 2.9 plus notes 8 19.7 20.1, 20.2, 20.3 28.4 37.3(b) and 37.4(a)
Standards of care	2.8 first sentence and note 4 19.1, 19.5 second sentence and note 2, 19.8 23 plus notes 28.1
Timing of announcements, documentation and dealings	2.2, 2.4(b) 5.4 6.2(b) 7.1 11.1 note 6 only 17.1 21.2 30 31.6(c), 31.9 33 (in so far as it refers 31.6(c) and 31.9 only) 38.5
Content of announcements	2.4 (a) and (b) 19.3
<i>SAR</i> provisions:	
Timing of disclosure	3 4.1(a) and (e), 4.3, 4.4
Content of announcements	4.2

1.10.6 C *Behaviour* conforming with Rule 4.2 of the *Takeover Code* (in relation to restrictions on *dealings* by *offerors* and concert parties) does not, of itself, amount to *market abuse*, if:

- (1) the *behaviour* is expressly required or expressly permitted by that rule (the notes for the time being associated with the rules identified

in the *Takeover Code* are treated as part of the rule for these purposes); and

- (2) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to the rule.

## MAR 1 Annex 1

### MAR 1 Ann 1

- 1.1 Provisions of the *Buy-back and Stabilisation Regulation* relating to *buy-back programmes*
- 1.1.1 G The effect of article 8 of the *Market Abuse Directive* and section 118A(5)(b) of the *Act* is that behaviour which conforms with the buy-back provisions in the *Buy-back and Stabilisation Regulation* will not amount to *market abuse*.
- 1.1.2 G As the *Buy-back and Stabilisation Regulation* is not directed at the protection of shareholder interests, *issuers* will also need to consult both the Companies Act 1985 and the *Part 6 rules* for the shareholder protection requirements applying to a proposed buy-back.
- 1.1.3 EU Table: Article 3 of the *Buy-back and Stabilisation Regulation*

#### Article 3

##### Objectives of buy-back programmes

In order to benefit from the exemption provided for in Article 8 of [*the Market Abuse Directive*], a [*buy-back programme*] must comply with Articles 4, 5 and 6 of this Regulation and the sole purpose of that [*buy-back programme*] must be to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:

- (a) debt financial instruments exchangeable into equity instruments;
- (b) employee share option programmes or other allocations of shares to employees of the issuer or of an associate company.

- 1.1.4 EU Table: Relevant Recitals (Article 3) from the *Buy-back and Stabilisation Regulation*

#### Recital 3

... the exemptions created by this Regulation only cover behaviour directly related to the purpose of the buy-back and stabilisation activities. Behaviour which is not directly related to the purpose of the buy-back and stabilisation activities shall therefore be considered as any other action covered by [*the Market Abuse Directive*] and may be the object of administrative measures or sanctions, if the competent authority establishes that the action in question constitutes market abuse.

- 1.1.5 EU Table: Article 4 of the *Buy-back and Stabilisation Regulation*

#### Article 4

##### Conditions for *buy-back programmes* and disclosure

1. The [*buy-back programme*] must comply with the conditions laid down by Article 19(1) of [*the PLC Safeguards Directive*].

2. Prior to the start of trading, full details of the programme approved in accordance with Article 19(1) of [the *PLC Safeguards Directive*] must be [adequately disclosed to the public] in Member States in which an issuer has requested admission of its shares to trading on a [regulated market].

Those details must include the objective of the programme as referred to in Article 3, the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which authorisation for the programme has been given.

Subsequent changes to the programme must be subject to [adequate public disclosure] in Member States.

3. The issuer must have in place the mechanisms ensuring that it fulfils trade reporting obligations to the competent authority of the [regulated market] on which the shares have been admitted to trading. These mechanisms must record each transaction related to [buy-back programmes], including the information specified in Article 20(1) of the [ISD].
4. The issuer must publicly disclose details of all transactions as referred to in paragraph 3 no later than the end of the seventh daily market session following the date of execution of such transactions.

- 1.1.6 G The information specified in article 20(1) of the *ISD* is the names and numbers of the instruments bought or sold, the dates and times of the transactions, the transaction prices and means of identifying the investment firms concerned.
- 1.1.7 G Article 19(1) of the *PLC Safeguards Directive* is implemented in Great Britain by section 166 of the Companies Act 1985.
- 1.1.8 G The *FSA* accepts disclosure through a *regulatory information service* as *adequate public disclosure*.
- 1.1.9 EU Table: Article 5 of the *Buy-back and Stabilisation Regulation*

#### Article 5

##### Conditions for trading

1. In so far as prices are concerned, the issuer must not, when executing trades under a [buy-back programme], purchase shares at a price higher than the higher of the price of the last independent trade and the highest current independent bid on the trading venues where the purchase is carried out.

If the trading venue is not a [regulated market], the price of the last independent trade or the highest current independent bid taken in reference shall be the one of the [regulated market] of the Member State in which the purchase is carried out.

Where the issuer carries out the purchase of own shares through derivative financial instruments, the exercise price of those derivative financial instruments shall not be above the higher of the price of the last independent trade and the highest current independent bid.

2. In so far as volume is concerned, the issuer must not purchase more than 25% of the average daily volume of the shares in any one day on the [regulated market] on which the purchase is carried out.

The average daily volume figure must be based on the average daily volume traded in the month preceding the month of public disclosure of that programme and fixed on that basis for the authorised period of the programme.

Where the programme makes no reference to that volume, the average daily volume figure must be based on the average daily volume traded in the 20 trading days preceding the date of purchase.

3. For the purposes of paragraph 2, in cases of extreme low liquidity on the relevant market, the issuer may exceed the 25 % limit, provided that the following conditions are met:
  - (a) the issuer informs the competent authority of the relevant market, in advance, of its intention to deviate from the 25 % limit;
  - (b) the issuer [makes an *adequate public disclosure* of] the fact that it may deviate from the 25 % limit;
  - (c) the issuer does not exceed 50 % of the average daily volume.

1.1.10 EU Table: Relevant recitals (Article 5) from the *Buy-back and Stabilisation Regulation*

#### Recital 9

In order to prevent market abuse the daily volume of trading in own shares in buy-back programmes shall be limited. However, some flexibility is necessary in order to respond to given market conditions such as a low level of transactions.

#### Recital 10

Particular attention has to be paid to the selling of own shares during the life of a [*buy-back programme*] to the possible existence of closed periods within issuers during which transactions are prohibited and to the fact that an issuer may have legitimate reasons to delay public disclosure of inside information.

1.1.11 G Whether a case of extreme low liquidity exists for the purposes of article 5(3) will depend on the circumstance of each case. *Issuers* and their advisers may wish to approach the *FSA* and seek further individual *guidance* on cases that come within article 5(3).

1.1.12 EU Table: Article 6 of the *Buy-back and Stabilisation Regulation*

#### Article 6

##### Restrictions

1. In order to benefit from the exemption provided by Article 8 of [*the Market Abuse Directive*], the issuer shall not, during its participation in a [*buy-back programme*], engage in the following trading:
  - (a) selling of own shares during the life of the programme;
  - (b) trading during a period which, under the law of the Member State in which trading takes place, is a closed period;
  - (c) trading where the issuer has decided to delay the public disclosure of inside information in accordance with Article 6(2) of [*the Market Abuse Directive*].

2. Paragraph 1(a) shall not apply if the issuer is an [*investment firm*] or [*credit institution*] and has established effective information barriers (Chinese Walls) subject to supervision by the competent authority, between those responsible for the handling of [*inside information*] related directly or indirectly to the issuer and those responsible for any decision relating to the trading of own shares (including the trading of own shares on behalf of clients), when trading in own shares on the basis of such any decision.

Paragraphs 1(b) and (c) shall not apply if the issuer is an [*investment firm*] or [*credit institution*] and has established effective information barriers (Chinese Walls) subject to supervision by the competent authority, between those responsible for the handling of inside information related directly or indirectly to the issuer (including trading decisions under the "buy-back" programme) and those responsible for the trading of own shares on behalf of clients, when trading in own shares on behalf of those clients.

3. Paragraph 1 shall not apply if:

- (a) the issuer has in place a [*time-scheduled buy-back programme*]; or
- (b) the buy-back programme is lead-managed by an [*investment firm*] or a [*credit institution*] which makes its trading decisions in relation to the issuer's shares independently of, and without influence by, the issuer with regard to the timing of the purchases.

1.1.13 G For the purposes of article 6(1)(b) of the *Buy Back and Stabilisation Regulation*, a close period in the *United Kingdom* is the period during which purchases or early redemptions by a company of its own securities may not be made under the *Part 6 Rules*.

1.1.14 G Article 6(2) of the *Market Abuse Directive*, referred to in article 6(1)(c) of the *Buy Back and Stabilisation Regulation*, is implemented in the *United Kingdom* by the *Disclosure Rules*.

MAR 1 Annex 2 G

MAR 1 Ann 2G

Accepted Market Practices

Table: Part 1 - General

1. G An *accepted market practice* features in section 118 in the following ways:
  - (1) it is an element in deciding what is *inside information* in the commodity markets (and see *MAR 1.2.17G* to *MAR 1.2.19UK*);
  - (2) it provides a defence for *market abuse (manipulating transactions)*.
2. G The *FSA* will take the following non- exhaustive factors into account when assessing whether to accept a particular market practice:
  - (1) the level of transparency of the relevant market practice to the whole market;
  - (2) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand (taking into account the impact of the relevant market practice against the main market parameters, such as the specific market conditions before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price);
  - (3) the degree to which the relevant market practice has an impact on market liquidity and efficiency;
  - (4) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;
  - (5) the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant *financial instrument* within the whole Community;
  - (6) the outcome of any investigation of the relevant market practice by any competent authority or other authority mentioned in Article 12(1) of the *Market Abuse Directive*, in particular whether the relevant market practice breached rules or regulations designed to prevent *market abuse*, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the Community; and
  - (7) the structural characteristics of the relevant market including whether it is regulated or not, the types of *financial instruments* traded and the type of market participants, including the extent of retail investors participation in the relevant market.

Table: Part 2 – Accepted Market Practices: Market aberrations on the London Metal Exchange

Description of the AMP:

Behaviour conforming with the London Metal Exchange Document "Market Aberrations: the Way Forward" published in October 1998, which governs the behaviour expected of long position holders in this market.

Rationale for why the practice would constitute manipulation

Behaviour which gives rise to the application of the London Metal Exchange Document "Market Aberrations: the Way Forward" published in October 1998 may involve transactions or orders to trade which:

- (i) give or are likely to give, false or misleading signals as to the supply of or demand for or price of *financial instruments*
- (ii) secure, by a persons or persons acting in collaboration, the price of one or several *financial instruments* at an abnormal or artificial level.

List of Factors

The following factors were taken into account by the *FSA* when assessing behaviour conforming with the London Metal Exchange Document "Market Aberrations: the Way Forward" as an accepted market practice:

*The level of transparency (to the rest of the market) of the practice in question*

The Metal Market Aberrations Regime has been published to the market by the Exchange on which it applies. The transparency criterion is therefore met. Those who have long positions at or above the thresholds specified in the Market Aberrations Regime are required to advertise to the market that they will be prepared to lend stock.

*The need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand*

The Metal Market Aberrations Regime is designed to facilitate the operation of supply and demand on the market by avoiding abusive squeezes or other circumstances which could result in or involve distortion of the market for the investment in question.

*The impact on market liquidity and efficiency*

The practice has a positive effect on market liquidity and efficiency as it facilitates the orderly operation of a market in which a participant has a dominant long position.

*The degree to which the practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by the practice*

The practice in the London Metal Exchange Document "Market Aberrations: the Way Forward" was developed taking into account the trading mechanism of the LME. The behaviour required of long position holders under the London Metal Exchange Document "Market Aberrations: the Way Forward", is monitored by the LME compliance department on a daily basis using public and confidential regulatory information available to it. The LME compliance department takes into account the trading mechanism of the LME when performing this task. Procedures exist for escalating any concerns about market circumstances to a Special Committee that is able to intervene in order to enable market participants to react properly and in a timely manner to any new market situations created by the practices.

*The risk inherent in the practice for the integrity of directly or indirectly related markets in the financial instrument, including any market in the financial instrument which exists on an exchange (or other trading venue) and related markets in directly related financial instruments.*

The practices in the London Metal Exchange Document "Market Aberrations: the Way Forward" were developed to maintain the integrity of the markets in *financial instruments* traded in the LME. The practices have been shown to be an aid in maintaining the integrity of those markets.

*The outcome of any investigation of the practice by any regulatory body, including the extent to which a practice breaches existing rules or regulations designed to prevent market manipulation on the market in question or on directly or indirectly related markets in the EU.*

The FSA supports the regime outlined in the London Metal Exchange Document "Market Aberrations: the Way Forward" and, under the previous Code of Market Conduct applying to trading on the LME, provided a safe harbour for behaviour in conformity with the practices outlined in the document.

*The structure characteristics of the market in question including whether it is a regulated or OTC market, the type(s) of financial instrument traded on the market and the type of market participants, including the extent of retail participation in the market;*

The London Metal Exchange is a commodity derivatives market which has Recognised Investment Exchange status in the UK. It is a professional market with minimal retail involvement.

### Overriding Principles

The FSA had regard to the following overriding principles to ensure that the practices outlined in the London Metal Exchange Document "Market Aberrations: the Way Forward" do not undermine market integrity, while fostering innovation and the continued dynamic development of financial markets:

- new or emerging market practices were not be assumed to be unacceptable simply because they had not been previously described as acceptable by the FSA;
- the need to safeguard the operation of market forces and the interplay of proper supply and demand;

- the need for market participants to operate fairly and efficiently without interfering in normal market activity.

Conditions relating to legitimate reasons and proper execution.

The regime in the London Metal Exchange Document "Market Aberrations: the Way Forward" specifies the behaviour required in the circumstances where it is triggered and conduct in conformity with the regime is for legitimate reasons.

## Annex C

### Amendments to the Market Conduct sourcebook (MAR 2)

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

Delete the existing text in MAR, Chapter 2 and replace with the following text:

- 2. Stabilisation
- 2.1 Application and Purpose
  - Application
  - 2.1.1 R This chapter applies to every *firm*.
  - 2.1.2 G This chapter is available to every *person* who wishes to show that he acted in conformity with:
    - (1) the *Buy-back and Stabilisation Regulation*, in accordance with section 118A(5)(b) of the *Act*; or
    - (2) *rules*, in accordance with section 118A(5)(a) of the *Act*; or
    - (3) the *price stabilising rules*, for the purposes of paragraph 5(1) of Schedule 1 to the Criminal Justice Act 1993 (Insider Dealing); or
    - (4) the *price stabilising rules*, for the purposes of section 397(4) or (5)(b) of the *Act* (Misleading statements and practices).
  - 2.1.3 R This chapter:
    - (1) so far as it provides a defence for any *person*, has the same territorial application as the provision which is alleged to have been contravened; and
    - (2) in its application to a *firm* for purposes other than those falling within (1), applies to the *firm's* business carried on from an establishment in the *United Kingdom*.
  - Purpose
  - 2.1.4 G The purpose of this chapter is to describe the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse* under the *Buy-back and Stabilisation Regulation* (see *MAR 2.2* and *2.3*), and to specify by rules the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse (misuse of information)*, *market abuse (misleading behaviour)* or *market abuse (distortion)* (see *MAR 2.2* and *2.4*), or for the criminal offences referred to in *MAR 2.1.2G(3)* and (4) (*MAR 2.3 – 2.5*).
  - 2.1.5 G *Stabilisation* transactions mainly have the effect of providing support for the price of an offering of *relevant securities* during a limited time period if they come under selling pressure, thus alleviating sales pressure generated by short term investors and maintaining an orderly market in the *relevant securities*. This is in the interest of those investors having subscribed or purchased those *relevant securities* in the context of a *significant distribution*, and of *issuers*. In this way, *stabilisation* can contribute to greater confidence of investors and *issuers* in the financial markets. [Note: Recital 11 of the *Buy-back and Stabilisation Regulation*]

2.1.6 G *Stabilisation* activity may be carried out either on or off a *regulated market* and may be carried out by use of *financial instruments* other than those admitted or to be admitted to the *regulated market* which may influence the price of the instrument admitted or to be admitted to trading on a *regulated market*. [**Note:** Recital 12 *Buy-back and Stabilisation Regulation*]

2.2 Stabilisation: general

Permitted stabilisation

2.2.1 R *Stabilisation* or *ancillary stabilisation* may be carried out by a *firm* in relation to a *significant distribution of securities*, if:

(1) they are *relevant securities* that have been admitted to trading on a *regulated market* or a request for their admission to trading on such a market has been made, and the *stabilisation* is carried out in accordance with the *Buy-back and Stabilisation Regulation* (see *MAR 2.3*); or

(2) the *securities* are not within (1) and they:

(a) have been admitted to trading on a market, exchange or other institution included in *MAR 2 Ann 1R*; or

(b) a request for their admission to trading on such a market, exchange or institution has been made; or

(c) are or may be traded under the rules of the International Securities Markets Association; and

the *stabilisation* or *ancillary stabilisation* is carried out in accordance with the provisions in *MAR 2.4*.

2.2.2 G *Relevant securities* include *financial instruments* that become fungible after an initial period because they are substantially the same, although they have different initial dividend or interest payment rights. [**Note:** Recital 13 *Buy-back and Stabilisation Regulation*.]

Scope of stabilisation "safe harbours" for market abuse

2.2.3 R For the purposes of section 118A(5)(a) of the *Act*, *behaviour* (whether by a *firm* or not) conforming with the *MAR 2.2.1R(2)* does not amount to *market abuse*.

2.2.4 G The effect of article 8 of the *Market Abuse Directive* and section 118A(5)(b) of the *Act* is that *behaviour* by any *person* which conforms with the *stabilisation* provisions in the *Buy-back and Stabilisation Regulation* (see *MAR 2.3*) will not amount to *market abuse*.

2.2.5 G However, the mere fact that *stabilisation* does not conform with the *stabilisation* provisions in the *Buy-back and Stabilisation Regulation* (see *MAR 2.3*) or with *MAR 2.2.1R(2)* will not of itself mean that the *behaviour* constitutes *market abuse*. [**Note:** Recital 2 *Buy-back and Stabilisation Regulation*]

Block trades

- 2.2.6 G In relation to *stabilisation*, block trades are not considered as a *significant distribution of relevant securities* as they are strictly private transactions. [Note: Recital 14 *Buy-back and Stabilisation Regulation*]
- Behaviour not related to stabilisation
- 2.2.7 G On the other hand, the exemptions created by the *Buy-back and Stabilisation Regulation* only cover *behaviour* directly related to the purpose of *stabilisation* activities. *Behaviour* which is not directly related to the purpose of *stabilisation* activities is therefore considered in the same way as any other action covered by the *Market Abuse Directive* and may result in sanctions, if the competent authority establishes that the action in question constitutes *market abuse*. [Note: Recital 3 *Buy-back and Stabilisation Regulation*]
- 2.2.8 G In order to avoid confusion of market participants, *stabilisation* activity should be carried out by taking into account the market conditions and the offering price of the *relevant security* and transactions to liquidate positions established as a result of *stabilisation* activity should be undertaken to minimise market impact having due regard to prevailing market conditions. [Note: Recital 18 *Buy-back and Stabilisation Regulation*]
- Rights of action for damages
- 2.2.9 R A contravention of the *rules* in *MAR 2* does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

### 2.3 Stabilisation under the Buy-back and Stabilisation Regulation

#### Conditions for stabilisation: general

- 2.3.1 EU Table: Article 7 of the *Buy-back and Stabilisation Regulation*

#### Article 7

#### Conditions for stabilisation

In order to benefit from the exemption provided for in Article 8 of [the *Market Abuse Directive*], [*stabilisation*] of a [*financial instrument*] must be carried out in accordance with Articles 8, 9 and 10 of this Regulation [see *MAR 2.3.4EU*, *MAR 2.3.5EU* and *MAR 2.3.6EU*].

- 2.3.2 G Article 8 of the *Market Abuse Directive* is implemented in the *United Kingdom* in section 118A(5)(b) of the *Act*.
- 2.3.3 R For the purposes of article 2(8) of the *Buy-back and Stabilisation Regulation* the standards of transparency of the markets, exchanges and institutions referred to in *MAR 2.2.1 R (2)* are considered by the *FSA* to be adequate.
- Time related conditions for stabilisation
- 2.3.4 EU Table: Article 8 of the *Buy-back and Stabilisation Regulation*

## Article 8

### Time related conditions for stabilisation

1. [*Stabilisation*] shall be carried out only for a limited time period.
2. In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of an initial offer publicly announced, start on the date of commencement of trading of the [*relevant securities*] on the [*regulated market*] and end no later than 30 calendar days thereafter.

Where the initial offer publicly announced takes place in a Member State that permits trading prior to the commencement of trading on a [*regulated market*], the time period referred to in paragraph 1 shall start on the date of [*adequate public disclosure*] of the final price of the [*relevant securities*] and end no later than 30 calendar days thereafter, provided that any such trading is carried out in compliance with the rules, if any, of the [*regulated market*] on which the [*relevant securities*] are to be admitted to trading, including any rules concerning public disclosure and trade reporting.

3. In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of a secondary offer, start on the date of [*adequate public disclosure*] of the final price of the [*relevant securities*] and end no later than 30 calendar days after the date of [*allotment*].
4. In respect of bonds and other forms of securitised debt (which are not convertible or exchangeable into shares or into other securities equivalent to shares), the time period referred to in paragraph 1 shall start on the date of [*adequate public disclosure*] of the terms of the offer of the [*relevant securities*] (i.e. including the spread to the benchmark, if any, once it has been fixed) and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of [*allotment*] of the [*relevant securities*].
5. In respect of securitised debt convertible or exchangeable into *shares* or into other securities equivalent to shares, the time period referred to in paragraph 1 shall start on the date of [*adequate public disclosure*] of the final terms of the offer of the [*relevant securities*] and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of [*allotment*] of the [*relevant securities*].

### Disclosure and reporting conditions for stabilisation

2.3.5 EU Table: Article 9 of the *Buy-back and Stabilisation Regulation*

## Article 9

### Disclosure and reporting conditions for stabilisation

1. The following information shall be [*adequately publicly disclosed*] by issuers, [*offerors*], or entities undertaking the [*stabilisation*] acting, or not, on behalf of such persons, before the opening of the offer period of the [*relevant securities*]:
  - (a) the fact that [*stabilisation*] may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;
  - (b) the fact that [*stabilisation*] transactions are aimed to support the market price of the [*relevant securities*];
  - (c) the beginning and end of the period during which [*stabilisation*] may occur;
  - (d) the identity of the [*stabilisation*] manager, unless this is not known at the time of publication in which case it must be publicly disclosed before any [*stabilisation*] activity begins;
  - (e) the existence and maximum size of any [*overallotment facility*] or [*greenshoe option*], the exercise period of the [*greenshoe option*] and any conditions for the use of the [*overallotment facility*] or exercise of the [*greenshoe option*].

The application of the provisions of this paragraph shall be suspended for offers under the scope of application of the measures implementing [the *Prospectus Directive*], from the date of application of these measures.

2. Without prejudice to Article 12(1)(c) of [the *Market Abuse Directive*], the details of all [*stabilisation*] transactions must be notified by issuers, [*offerors*], or entities undertaking the [*stabilisation*] acting, or not, on behalf of such persons, to the competent authority of the relevant market no later than the end of the seventh daily market session following the date of execution of such transactions.
3. Within one week of the end of the [*stabilisation*] period, the following information must be adequately disclosed to the public by issuers, [*offerors*], or entities undertaking the [*stabilisation*] acting, or not, on behalf of such persons:
  - (a) whether or not [*stabilisation*] was undertaken;
  - (b) the date at which [*stabilisation*] started;
  - (c) the date at which [*stabilisation*] last occurred;
  - (d) the price range within which [*stabilisation*] was carried out, for each of the dates during which [*stabilisation*] transactions were carried out.
4. Issuers, [*offerors*], or entities undertaking the [*stabilisation*], acting or not, on behalf of such persons, must record each [*stabilisation*] order or transaction with, as a minimum, the information specified in Article 20(1) of [the *ISD*] extended to *financial instruments* other than those admitted or going to be admitted to the *regulated market*.

5. Where several [*investment firms*] or [*credit institutions*] undertake the [*stabilisation*] acting, or not, on behalf of the issuer or [*offeror*], one of those persons shall act as central point of inquiry for any request from the competent authority of the *regulated market* on which the [*relevant securities*] have been admitted to trading.

- 2.3.6 G The *FSA* accepts as *adequate public disclosure*:
- (1) disclosure through a *regulatory information service* or otherwise in accordance with *Part 6 rules*; or
  - (2) the equivalent disclosure mechanism required to be used in relation to the relevant *regulated market*.
- 2.3.7 G Market integrity requires the *adequate public disclosure* of *stabilisation* activity by *issuers* or by entities undertaking *stabilisation*, acting or not on behalf of these *issuers*. Methods used for *adequate public disclosure* of such information should be efficient and can take into account market practices accepted by competent authorities. [**Note:** Recital 16 *Buy-back and Stabilisation Regulation*]
- 2.3.8 G There should be adequate coordination in place between all *investment firms* and *credit institutions* undertaking *stabilisation*. During *stabilisation*, one *investment firm* or *credit institution* shall act as a central point of inquiry for any regulatory intervention by the competent authority in each *Member State* concerned. [**Note:** Recital 17 *Buy-back and Stabilisation Regulation*]
- 2.3.9 G For the purposes of article 9(2) of the *Buy-back and Stabilisation Regulation*, the *FSA* is the competent authority of those markets listed as *regulated markets* at [http://www.fsa.gov.uk/register-res/html/prof\\_exchanges\\_fram.html](http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html). Persons undertaking *stabilisation* will be taken to have notified the *FSA* for the purposes of article 9(2) if they email details of all their *stabilisation* transactions to [stabilisation@fsa.gov.uk](mailto:stabilisation@fsa.gov.uk) clearly identifying the offer being *stabilised* and the contact details for the *persons* undertaking the *stabilisation*.

Specific price conditions

- 2.3.10 EU Table: Article 10 of the *Buy-back and Stabilisation Regulation*

Article 10

Specific price conditions

1. In the case of an offer of shares or other securities equivalent to shares, [*stabilisation*] of the [*relevant securities*] shall not in any circumstances be executed above the offering price.
2. In the case of an offer of securitised debt convertible or exchangeable into instruments as referred to in paragraph 1, [*stabilisation*] of those instruments shall not in any circumstances be executed above the market price of those instruments at the time of the public disclosure of the final terms of the new offer.

Conditions for ancillary stabilisation

- 2.3.11 EU Table: Article 11 of the *Buy-back and Stabilisation Regulation*

Article 11

Conditions for ancillary stabilisation

In order to benefit from the exemption provided for in Article 8 of [the *Market Abuse Directive*], [*ancillary stabilisation*] must be undertaken in accordance with Article 9 of this Regulation and with the following:

- (a) [*relevant securities*] may be overallocated only during the subscription period and at the offer price;
- (b) a position resulting from the exercise of an [*overallocation facility*] by an [*investment firm*] or [*credit institution*] which is not covered by the [*greenshoe option*] may not exceed 5 % of the original offer;
- (c) the [*greenshoe option*] may be exercised by the beneficiaries of such an option only where [*relevant securities*] have been overallocated;
- (d) the [*greenshoe option*] may not amount to more than 15% of the original offer;
- (e) the exercise period of the [*greenshoe option*] must be the same as the [*stabilisation*] period required under Article 8;
- (f) the exercise of the [*greenshoe option*] must be disclosed to the public promptly, together with all appropriate details, including in particular the date of exercise and the number and nature of [*relevant securities*] involved.

2.3.12 G *Overallocation facilities* and *greenshoe options* are closely related to stabilisation, by providing resources and hedging for *stabilisation* activity. [Note: Recital 19 *Buy-back and Stabilisation Regulation*]

2.3.13 G Particular attention should be paid to the exercise of an *overallocation facility* by an *investment firm* or a *credit institution* for the purpose of *stabilisation* when it results in a position uncovered by the *greenshoe option*. [Note: Recital 20 *Buy-back and Stabilisation Regulation*.]

2.4 Stabilisation when the Buy-back and Stabilisation Regulation does not apply

2.4.1 R To comply with *MAR 2.2.1R(2)* a *firm* must comply with the provisions in articles 8, 9, 10 and 11 of the *Buy-back and Stabilisation Regulation* (see *MAR 2.3*) subject to the modifications set out in the remainder of this section.

2.4.2 R For the purposes of the application of article 2(6) of the *Buy-back and Stabilisation Regulation* to this section, references to "*relevant securities*" are to be taken as references to *securities* which are within *MAR 2.2.1R(2)*.

2.4.3 R For the purposes of the application of article 2(8) of the *Buy-back and Stabilisation Regulation* to this section, the requirement for the competent authority to agree to the standards of transparency does not apply.

2.4.4 R Article 8 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:

- (1) the references to "*adequate public disclosure*" are to be taken as including any public announcement which provides adequate disclosure of the fact that *stabilisation* may take place in relation to the offer, for example:

- (a) in the case of a screen-based announcement, wording such as "stabilisation/FSA"; or
  - (b) in the case of a final offering circular or prospectus, wording such as "In connection with this [issue][offer], [name of *stabilisation* manager] [or any *person* acting for him] may over-allot or effect transactions with a view to supporting the market price of [description of *relevant securities* and any *associated investments*] at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there may be no obligation on [name of *stabilisation* manager] [or any agent of his] to do this. Such stabilising, if commenced, may be discontinued at any time, and must be brought to an end after a limited period."; and
- (2) a *person* is taken to comply the requirements of article 9(1) of the *Buy-back and Stabilisation Regulation* for these purposes if a public announcement before the opening of the offer period indicates (in whatever terms) the fact that *stabilisation* may take place so long as any preliminary or final offering circular (or prospectus) contains the information specified in that article (other than information on the maximum size of any over-allotment facility).
- 2.4.5 R Article 9 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:
- (1) the references to "*adequate public disclosure*" are to be taken as including any public announcement which complies with *MAR 2.4.4R*;
  - (2) article 9(2) does not apply;
  - (3) article 9(3) does not apply; and
  - (4) in article 9(4) the phrase "order or" does not apply.
- 2.4.6 R Article 10 of the *Buy-back and Stabilisation Regulation* is modified so that the reference to "public disclosure" is to be taken as including any public announcement which complies with *MAR 2.4.4R*.
- 2.4.7 R Article 11 of the *Buy-back and Stabilisation Regulation* is subject to the following modifications:
- (1) the reference to "disclosure to the public" is to be taken as including any public announcement which complies with *MAR 2.4.4R*; and
  - (2) article 11(b) and (d) do not apply.

2.5 The Price Stabilising Rules: overseas provisions

- 2.5.1 R (1) A person who in any place outside the *United Kingdom* acts or engages in conduct:
- (a) for the purposes of *stabilising* the price of *investments*;
  - (b) in conformity with the provisions specified in (2), (3) or (4); and
  - (c) in relation to an offer which is governed by the law of a country (or a state or territory in a country) so specified;
- is to be treated for the purposes of section 397(5)(b) of the *Act* (misleading statements and practices) as acting or engaging in conduct for that purpose and in conformity with the *price stabilising rules*.
- (2) In relation to the United States of America, the specified provisions are:
- (a) Regulation M made by the Securities and Exchange Commission (17 CFR 242, # 100-105).
- (3) In relation to Japan, the specified provisions are
- (a) The Securities and Exchange Law of Japan, (Law No 25, April 13 1948), Article 159, paragraphs 3 and 4;
  - (b) Cabinet Orders for the Enforcement of the Securities and Exchange Law of Japan (Cabinet Order 321, September 30, 1965), Articles 20 to 26;
  - (c) Ministerial Ordinance concerning the Registration of Stabilisation Trading (Ordinance of the Ministry of Finance No 43, June 14, 1971);
  - (d) Ministerial Ordinance concerning rules and otherwise governing the soundness of securities companies (Ordinance of the Ministry of Finance, No 60, November 5, 1965), Article 2.
- (4) In relation to Hong Kong, the specified provisions are
- (a) The Securities and Futures (Price Stabilizing) Rules, Cap. 571 W made by the Hong Kong Securities and Futures Commission.
- (5) The provisions in (2), (3) and (4) are specified as they have effect from time to time, so long as this paragraph has effect.
- 2.5.2 R A *person* who is treated under *MAR 2.5.1R(1)* as acting or engaging in conduct in conformity with the *price stabilising rules* is also to be treated to an equivalent extent as so acting or engaging for the purposes of:
- (1) *MAR 2.2.1R(2)* and *MAR 2.2.2R*, provided that the *investments* concerned are not admitted to trading on a *regulated market* and there has been no request for admission to trading on a *regulated market*;
  - (2) Part XIV (Disciplinary measures); and
  - (3) Part XXV (Injunctions and Restitution) of the *Act*.

MAR 2 Annex 1R\*

- 1 R MAR 2 Ann 1R  
R
- 1 List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2))

<i>Any specified market which is not a regulated market</i>
<i>Any recognised overseas investment exchange</i>
American Stock Exchange (AMEX)
Australian Stock Exchange
Bolsa Mexicana de Valores
Canadian Venture Exchange
Hong Kong Stock Exchange
Johannesburg Stock Exchange
Korea Stock Exchange
Midwest Stock Exchange
Montreal Stock Exchange
New York Stock Exchange (NYSE)
New Zealand Stock Exchange
Osaka Securities Exchange (OSE)
Pacific Stock Exchange
Philadelphia Stock Exchange
Singapore Exchange Securities Trading Limited
Tokyo Stock Exchange (TSE)
Toronto Stock Exchange

\*See Addendum 18 August 2005

## Annex D

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

...

- 1.2.1 R ...
- (2) for a *UCITS qualifier* and a *service company* that does not operate an *ATS*, only *COB 1.9* (Application to electronic commerce activity providers), ~~and~~ *COB 3* (Financial promotion), *COB 7.17* (Investment research recommendations: required disclosures) and any provision of *COB* incorporated into *COB 1.9* or *COB 3* by reference, apply;
- (2A) for a *service company* that operates an *ATS*, only *COB 1.9* and *COB 3*, any provision of *COB* incorporated into *COB 1.9* or *COB 3* by reference, *COB 7.17* (Investment research recommendations: required disclosures) and, in relation to the operation of the *ATS*, *COB 4.2* (Terms of business), apply;

...

- 1.2.5 G ...
- (2) ...; ~~and~~
- (3) ...; and
- (4) *COB 7.17* which relates to disclosures required to be made in relation to investment research recommendations as a result of the *Market Abuse Directive*.

...

- 1.6.2 R Table: Stock lending activity.  
This table belongs to *COB 1.6.1R*.

<i>COB</i>	Subject
...	...
7.13	...
<u>...</u>	
<u>7.16</u>	<u>Investment research</u>

<u>7.17</u>	<u>Investment research recommendations: required disclosures</u>
-------------	--

...

- 1.6.4 R Table: Corporate finance business.  
This table belongs to COB 1.6.3R.

COB	Subject
...	...
7.16	...
<u>7.17</u>	<u>Investment research recommendations: required disclosures</u>

...

- 1.6.7 R Table: Provisions applied to oil market activity and energy market activity.  
This table belongs to COB 1.6.6R.

COB	Subject
...	...
7.15	...
<u>7.16</u>	<u>Investment research</u>
<u>7.17</u>	<u>Investment research recommendations: required disclosures</u>

...

After COB 7.16 insert the following new section, COB 7.17:

- 7.17 Investment research recommendations: required disclosures  
Application
- 7.17.1 R (1) This section applies to a *firm* that prepares or disseminates *research recommendations*.
- (2) This section does not apply to the extent that the Investment Recommendation (Media) Regulations 2005 apply to a *firm*.
- (3) If a *firm* is a *media firm* subject to equivalent appropriate regulation only COB 7.17.2G, COB 7.17.3G, COB 7.17.5R, COB 7.17.16R and COB 7.17.17R apply. [Note: Articles 2(4), 3(4), 5(5) 2003/125/EC]

7.17.2 G Appropriate regulatory or self-regulatory arrangements are sufficient to meet the condition in *COB 7.17.1R(2)*. Examples include those listed in regulation 3(5) of the Investment Recommendation (Media) Regulations 2005, that is the Code of Practice issued by the Press Complaints Commission, the Producers' Guidelines issued by the British Broadcasting Corporation, and any code published by the Office of Communications pursuant to section 324 of the Communications Act 2003.

Purpose

7.17.3 G The purpose of this section is to implement the provisions of the *Market Abuse Directive* about the disclosures to be made in and about *research recommendations*.

Use of Chinese walls

7.17.4 G The following obligations to disclose information do not require those producing *research recommendations* to breach effective information barriers put in place to prevent and avoid conflicts of interest. [**Note:** Recital 7 2003/125/EC]

Fair presentation and disclosure

7.17.5 R A *firm* must take reasonable care:

- (1) to ensure that a *research recommendation* produced or disseminated by it is fairly presented; and
- (2) to disclose its interests or indicate conflicts of interest concerning *relevant investments*. [**Note:** Article 6(5) *Market Abuse Directive*]

Identity of producers of recommendations

- 7.17.6 R (1) A *firm* must, in a *research recommendation* produced by it:
- (a) disclose clearly and prominently the identity of the person responsible for its production, and in particular:
    - (i) the name and job title of the individual who prepared the *research recommendation*; and
    - (ii) the name of the *firm*; and
  - (b) include the relevant status disclosure specified in *GEN 4 Ann 1R*.
- (2) The requirements in (1) may be met for non-written *research recommendations* by referring to a place where the disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the *firm*. [**Note:** Article 2 2003/125/EC]

General standard for fair presentation of recommendations

- 7.17.7 R (1) A *firm* must take reasonable care to ensure that:
- (a) facts in a *research recommendation* are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;
  - (b) its sources for a *research recommendation* are reliable or if there is any doubt as to whether a source is reliable, this is clearly indicated;

- (c) all projections, forecasts and price targets in a *research recommendation* are clearly labelled as such and the material assumptions made in producing or using them are indicated; and
  - (d) the substance of its *research recommendations* can be substantiated as reasonable, upon request by the *FSA*.
- (2) The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they would be disproportionate.
  - (3) A *firm* must make and retain sufficient records to disclose the basis of the substantiation required in (1)(d). [**Note:** Article 3 2003/125/EC]

Additional obligations in relation to fair presentation of recommendations

- 7.17.8 R (1) In addition a *firm* must take reasonable care to ensure that, in a *research recommendation*, at least:
- (a) all substantially material sources are indicated, including, if appropriate, the *issuer*, and in particular the *research recommendation* indicates whether the *research recommendation* has been disclosed to that *issuer* and amended following this disclosure before its dissemination;
  - (b) any basis of valuation or methodology used to evaluate a *security*, a *derivative* or an *issuer*, or to set a price target for a *security* or a *derivative*, is adequately summarised;
  - (c) the meaning of any recommendation made, such as "buy", "sell" or "hold", which may include the time horizon of the *security* or *derivative* to which the *research recommendation* relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;
  - (d) reference is made to the planned frequency, if any, of updates of the *research recommendation* and to any major changes in the coverage policy previously announced;
  - (e) the date at which the *research recommendation* was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any *security* or *derivative* price mentioned; and
  - (f) if the substance of a *research recommendation* differs from the substance of an earlier *research recommendation*, concerning the same *security*, *derivative* or *issuer* issued during the 12-month period immediately preceding its release, this change and the date of the earlier *research recommendation* are indicated clearly and prominently.
- (2) If the requirements in (1)(a), (b) or (c) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where the required information can be directly and easily accessed by the public (such as a hyperlink to that information on an appropriate internet site of the *firm*) provided that there has been no change in the methodology or basis of valuation used.

- (3) In the case of a non-written *research recommendations*, the requirements of (1) do not apply to the extent that they would be disproportionate. [Note: Article 4 2003/125/EC]

7.17.9 G The disclosures required under (1)(e) and (f) may, if the *firm* so chooses, be made by graphical means (for example by use of a line graph).

General standard for disclosure of interests and conflicts of interest

7.17.10 R (1) A *firm* must disclose, in a *research recommendation*:

- (a) all of its relationships and circumstances that may reasonably be expected to impair the objectivity of the *research recommendation*, in particular a significant financial interest in any *relevant investment* which is the subject of the *research recommendation*, or a significant conflict of interest with respect to a *relevant issuer*; and
- (b) relationships and circumstances, of the sort referred to in (a), of each legal or natural person working for the *firm* who was involved in preparing the substance of the *research recommendation*, including, in particular, for a *firm* which is an *investment firm*, disclosure of whether his remuneration is tied to investment banking transactions performed by the *firm* or any *affiliated company*.
- (2) If the *firm* is a legal person, the information to be disclosed in accordance with (1) must at least include the following:
- (a) any interests or conflicts of interest of the *firm* or of an *affiliated company* that are accessible, or reasonably expected to be accessible, to the persons involved in the preparation of the substance of the *research recommendation*; and
- (b) any interests or conflicts of interest of the *firm* or of *affiliated companies* known to *persons* who, although not involved in the preparation of the substance of the *research recommendation*, had or could reasonably be expected to have access to the substance of the *research recommendation* prior to its dissemination, other than *persons* whose only access to the *research recommendation* is to ensure compliance with relevant regulatory or statutory obligations, including the disclosures required under *COB 7.17*.
- (3) If the disclosures required under (1) and (2) would be disproportionate in relation to the length of the *research recommendation* distributed, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosures can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*).
- (4) The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they are disproportionate. [Note: Article 5 2003/125/EC]

Additional obligations for producers of research recommendations in relation to disclosure of interests or conflicts of interest

- 7.17.11 R (1) A *research recommendation* produced by a *firm* must disclose clearly and prominently the following information on its interests and conflicts of interest:
- (a) major shareholdings that exist between it or any *affiliated company* on the one hand and the *relevant issuer* on the other hand, including at least:
    - (i) shareholdings exceeding 5 % of the total issued share capital in the *relevant issuer* held by the *firm* or any *affiliated company*, or
    - (ii) shareholdings exceeding 5 % of the total issued share capital of the *firm* or any *affiliated company* held by the *relevant issuer*;
  - (b) any other financial interests held by the *firm* or any *affiliated company* in relation to the *relevant issuer* which are significant in relation to the *research recommendation*;
  - (c) if applicable, a statement that the *firm* or any *affiliated company* is a *market maker* or liquidity provider in the *securities* of the *relevant issuer* or in any related *derivatives*;
  - (d) if applicable, a statement that the *firm* or any *affiliated company* has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of *securities* of the *relevant issuer* or in any related *derivatives*;
  - (e) if applicable, a statement that the *firm* or any *affiliated company* is party to any other agreement with the *relevant issuer* relating to the provision of investment banking services, provided that:
    - (i) this would not entail the disclosure of any confidential commercial information; and
    - (ii) the agreement has been in effect over the previous 12 months or has given rise during the same period to a payment or to the promise of payment; and
  - (f) if applicable, a statement that the *firm* or any *affiliated company* is party to an agreement with the *relevant issuer* relating to the production of the *research recommendation*.
- (2) A *firm* must disclose, in general terms, in the *research recommendation* the effective organisational and administrative arrangements set up within the *firm* for the prevention and avoidance of conflicts of interest with respect to *research recommendations*, including information barriers.
- (3) In the case of an *investment firm* or a *credit institution*, if a legal or natural person working for the *firm* who is involved in the preparation of a *research recommendation*, receives or purchases *shares* of the *relevant issuer* prior to a public offering of those *shares*, the price at which the *shares* were acquired and the date of acquisition must also be disclosed in the *research recommendation*.
- (4) A *firm*, which is an *investment firm* or a *credit institution*, must publish the following information on a quarterly basis, and must disclose it in its *research recommendations*:

- (a) the proportion of all *research recommendations* published during the relevant quarter that are "buy", "hold", "sell" or equivalent terms; and
  - (b) the proportion of *relevant investments* in each of these categories, issued by *issuers* to which the *firm* supplied material investment banking services during the previous 12 months.
- (5) If the requirements under (1) to (4) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosure can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*, or, if relevant, to the document published under *COB 7.16.5R(2)*).
- (6) In the case of non-written *research recommendations*, the requirements of (1) do not apply to the extent that they are disproportionate. [**Note:** Article 6 2003/125/EC]

7.17.12 G Nothing in *COB 7.17.11R(1)(a)* prevents a *firm* from choosing to disclose significant shareholdings above a lower threshold (for example, 1%) than is required by *COB 7.17.11R(1)(a)*.

7.17.13 G *COB 7.17.11R(1)(a)* and (b) only requires a *firm* to aggregate its shareholdings with those of *affiliated companies* if they act in concert in relation to those shareholdings.

7.17.14 G In relation to companies limited by shares and incorporated in Great Britain, the most meaningful measure of "total issued share capital" is likely to be the concept of "paid up and issued share capital" under the Companies Act 1985.

7.17.15 G The *FSA* considers that it is important for the proportions published in compliance with *COB 7.17.11R(4)* to be consistent and meaningful to the recipients of the *research recommendations*. Accordingly for non-equity material, the relevant categories should be meaningful to the recipients in terms of the course of action being recommended.

#### Identity of disseminators of recommendations

7.17.16 R If a *firm* disseminates a *research recommendation* produced by a third party, the *research recommendation* must identify the *firm* clearly and prominently. [**Note:** Article 7 2003/125/EC]

#### General standard for dissemination of third party recommendations

7.17.17 R (1) If a *research recommendation* produced by a third party is substantially altered before dissemination by a *firm*:

- (a) the disseminated material must clearly describe that alteration in detail; and
- (b) if the substantial alteration consists of a change of the direction of the recommendation (such as changing a "buy" recommendation into a "hold" or "sell" recommendation or vice versa), the requirements laid down in *COB 7.17.6R* to *COB 7.17.12G* on producers must be met by the *firm*, to the extent of the substantial alteration.

- (2) A *firm* which disseminates a substantially altered *research recommendation* must have a formal written policy so that the persons receiving the information may be directed to where they can have access to the identity of the producer of the *research recommendation*, the *research recommendation* itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.
- (3) If a *firm* disseminates a summary of a *research recommendation* produced by a third party, it must:
  - (a) ensure that the summary is fair, clear and not misleading;
  - (b) identify the source *research recommendation*; and
  - (c) identify where (to the extent that they are publicly available) the third party's disclosures relating to the source *research recommendation* can be directly and easily accessed by the public.
- (4) Paragraphs (1) and (2) do not apply to news reporting on *research recommendations* produced by a third party where the substance of the *research recommendation* is not altered. [Note: Article 8 2003/125/EC]

Additional obligations for investment firms and credit institutions disseminating third party recommendations

7.17.18 R If a *firm*, which is an *investment firm* or a *credit institution*, disseminates a *research recommendation* produced by a third party:

- (1) the relevant status disclosure specified in *GEN 4 Ann 1R* for the *firm* must be clearly and prominently indicated on the disseminated material;
- (2) if the producer of the *research recommendation* has not already disseminated it, the requirements in *COB 7.17.11R* must be met by the *firm* as if it had produced the *research recommendation* itself; and
- (3) if the *firm* has substantially altered the *research recommendation*, the requirements laid down in *COB 7.17.5R* to *COB 7.17.11R* must be met by the *firm* as if it had produced the *research recommendation* itself. [Note: Article 9 2003/125/EC]

In Schedule 1, insert the following:

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>COB 7.17.7R(3)</u>	<u>Substantiation of a <i>research recommendation</i></u>	<u>The basis of substantiation of a <i>research recommendation</i></u>	<u>When producing the <i>research recommendation</i></u>	

## Annex E

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

15.1.1 G This chapter applies to every *firm* except that only SUP 15.10 applies to an ICVC or a UCITS qualifier.

...

15.2.2 G This chapter sets out:

...

(3) ... those regulators; ~~and~~

(4) ... not only accurate but also complete; and

(5) material (in SUP 15.10 (Notification of suspicious transactions (market abuse))) to implement the provisions of the Market Abuse Directive for the reporting of transactions about which there is reasonable suspicion of market abuse.

...

After SUP 15.9 insert the following new section, SUP 15.10:

15.10 Reporting suspicious transactions (market abuse)

Application: where

15.10.1 R This section applies in relation to activities carried on from an establishment maintained by the *firm* or its *appointed representative* in the *United Kingdom*.  
[Note: Article 7 2004/72/EC]

Notification of suspicious transactions: general

15.10.2 R A *firm* which *arranges* or *executes* a transaction with or for a *client* in a *qualifying investment* admitted to trading on a *prescribed market* and which has reasonable grounds to suspect that the transaction might constitute *market abuse* must notify the *FSA* without delay. [Note: Article 6(9) *Market Abuse Directive*]

Notification of suspicious transactions: investment firms and credit institutions

15.10.3 R A *firm*, that is an *investment firm* or a *credit institution*, must decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves *market abuse*, taking into account the elements constituting *market abuse*.  
[Note: Articles 1(3) and 7 2004/72/EC]

- 15.10.4 G (1) Notification of suspicious transactions to the *FSA* requires sufficient indications (which may not be apparent until after the transaction has taken place) that the transaction might constitute *market abuse*. In particular a *firm* will need to be able to explain the basis for its suspicion when notifying the *FSA* (see *SUP* 15.10.6 R). Certain transactions by themselves may seem completely devoid of anything suspicious, but might deliver such indications of possible *market abuse*, when seen in perspective with other transactions, certain behaviour or other information (though *firms* are not expected to breach effective information barriers put in place to prevent and avoid conflicts of interest so as actively to seek to detect suspicious transactions). [Note: Recital 9 2004/72/EC]
- (2) Assistance in identifying the elements constituting *market abuse* may be derived from the *Code of Market Conduct (MAR 1)*, and some example indications of *market abuse* are set out in *SUP* 15 Ann 5 G. A fuller set of example indications is published by the Committee of European Securities Regulators (CESR).

Timeframe for notification: investment firms and credit institutions

- 15.10.5 R If an *investment firm* or a *credit institution* becomes aware of a fact or information that gives reasonable ground for suspicion concerning a transaction, it must make its notification under this section without delay. [Note: Article 8 2004/72/EC]

Content of notification: investment firms and credit institutions

- 15.10.6 R (1) If an *investment firm* or a *credit institution* is obliged to make a notification to the *FSA* under this section, it must transmit to the *FSA* the following information:
- (a) a description of the transaction, including the type of order (such as limit order, market order or other characteristics of the order) and the type of trading market (such as block trade); and
  - (b) the reasons for suspicion that the transaction might constitute *market abuse*.
- (2) In addition the following information must be provided to the *FSA* as soon as it becomes available:
- (a) the means for identification of the *persons* on behalf of whom the transaction has been carried out, and of other *persons* involved in the relevant transaction;
  - (b) the capacity in which the *firm* operates (such as for own account or on behalf of third parties); and
  - (c) any other information which may have significance in reviewing the suspicious transaction. [Note: Article 9 2004/72/EC]

Means of notification: investment firms and credit institutions

- 15.10.7 R An *investment firm* or a *credit institution* making a notification to the *FSA* under this section may do so:

- (1) by mail to:  
Market Conduct Team  
25 The North Colonnade  
Canary Wharf  
London E14 5HS; or
- (2) by electronic mail to market.abuse@fsa.gov.uk;
- (3) by facsimile to the Market Conduct Team on 020 7066 1099; or
- (4) by telephone to the market abuse helpline 020 7066 4900. [**Note:** Article 10 2004/72/EC]

- 15.10.8 G (1) If a notification is made by telephone, the *FSA* may subsequently request confirmation of the notification in writing. [**Note:** Article 10 2004/72/EC]
- (2) When making a notification in writing it may be convenient to use the form for suspicious transaction reports provided on the *FSA*'s website. This form follows the common standard approved by CESR.

Liability and professional secrecy: investment firms and credit institutions

- 15.10.9 R (1) An *investment firm* or a *credit institution* which notifies the *FSA* under this section must not inform any other *person*, in particular the *persons* on behalf of whom the transaction has been carried out or parties related to those persons, of this notification, except in accordance with an obligation imposed by or under statute.
- (2) Notwithstanding any other provision of the *Handbook* a notification in good faith under this section to the *FSA* does not constitute a breach of any restriction on disclosure of information imposed by the *Handbook*. [**Note:** Article 11 2004/72/EC]

**Note:** Section 131A of the *Act* sets out additional protections from liability for a *person* who makes a notification to the *FSA* under this section (or who passes the relevant information to someone designated by his employer to do so).

SUP 15 Ann 1R: Application of SUP 15 to incoming EEA firms and incoming Treaty firms

1 ...

2 Table: Application of SUP 15 to an incoming EEA firm or an incoming Treaty firm which does not have a top-up permission

Applicable sections	Application
...	
<i>SUP</i> 15.8 ...	...
<u><i>SUP</i> 15.10 Reporting suspicious transactions (market abuse)</u>	<u>Applies in relation to activities carried on from an establishment maintained by the firm or its appointed representative in the United Kingdom. [<b>Note:</b> Article 7 2004/72/EC]</u>

...

After SUP 15 Annex 4 R, insert:

1 G SUP 15 Ann 5G

G

1 Indications of Possible Suspicious Transactions

1. The following examples of indications are intended to be a starting point for consideration of whether a transaction is suspicious. They are neither conclusive nor comprehensive.

#### Possible Signals of Insider Dealing

2. A client opens an account and immediately gives an order to conduct a significant transaction or, in the case of a wholesale client, an unexpectedly large or unusual order, in a particular security – especially if the client is insistent that the order is carried out very urgently or must be conducted before a particular time specified by the client.
3. A transaction is significantly out of line with the client's previous investment behaviour (e.g. type of security; amount invested; size of order; time security held).
4. A client specifically requests immediate execution of an order regardless of the price at which the order would be executed (assuming more than a mere placing of 'at market' order by the client).
5. There is unusual trading in the shares of a company before the announcement of price sensitive information relating to the company.
6. An employee's own account transaction is timed just before clients' transactions and related orders in the same financial instrument.

#### Possible signals of Market Manipulation

7. An order will, because of its size in relation to the market in that security, clearly have a significant impact on the supply of or demand for or the price or value of the security, especially an order of this kind to be executed near to a reference point during the trading day – e.g. near the close.
8. A transaction appears to be seeking to modify the valuation of a position while not decreasing/increasing the size of that position.
9. A transaction appears to be seeking to bypass the trading safeguards of the market (e.g. as regards volume limits; bid/offer spread parameters; etc).

## Annex F

### **Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook**

In this Annex, underlining indicates new text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

Delete the provisions REC 2.12.3D and REC 2.12.13G in their entirety.

2.12.3 D [deleted]

...

2.12.13 G [deleted]

## ADDENDUM

### MARKET ABUSE DIRECTIVE INSTRUMENT 2005

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

Annex C of this instrument is amended as follows:

#### MAR 2 Annex 1R

- 1 R MAR 2 Ann 1R  
R  
1 List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2))

Any <del>specified</del> <u>prescribed</u> market which is not a <i>regulated market</i>
Any <i>recognised overseas investment exchange</i>
American Stock Exchange (AMEX)
Australian Stock Exchange
Bolsa Mexicana de Valores
Canadian Venture Exchange
Hong Kong Stock Exchange
Johannesburg Stock Exchange
Korea Stock Exchange
Midwest Stock Exchange
Montreal Stock Exchange
New York Stock Exchange (NYSE)
New Zealand Stock Exchange
Osaka Securities Exchange (OSE)
Pacific Stock Exchange
Philadelphia Stock Exchange
Singapore Exchange Securities Trading Limited
Tokyo Stock Exchange (TSE)
Toronto Stock Exchange

Addendum  
18 August 2005

## MARKET ABUSE DIRECTIVE (DISCLOSURE RULES) INSTRUMENT 2005

### 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 73A (Part 6 rules);
  - (2) section 96A (Disclosure of information requirements);
  - (3) section 96C (Suspension of trading);
  - (4) section 101 (Listing rules: general provisions); and
  - (5) section 157(1) (Guidance).

### Commencement

- B. This instrument comes into force on 1 July 2005.

### Amendments to the Handbook

- C. (1) Annex B to this instrument inserts into the Handbook new chapters in the new Disclosure Rules sourcebook (DR).
- (2) The Glossary of definitions is amended in accordance with Annex A.

### Notes

- D. In Annex B to this instrument, the "notes" (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

### Citation

- E. This instrument may be cited as the Market Abuse Directive (Disclosure Rules) Instrument 2005

By order of the Board  
17 March 2005

## Annex A

### Amendments to the Glossary

In this Annex, underlining indicates new text and striking through indicates deleted text. Where new definitions are being inserted the text is not underlined.

Insert the following new definitions in the appropriate alphabetical position in the Glossary:

<i>disclosure rules</i>	(in accordance with section 73A(3) of the Act) <i>rules</i> relating to the disclosure of information in respect of <i>financial instruments</i> which have been <i>admitted to trading</i> on a <i>regulated market</i> or for which a request for <i>admission to trading</i> on such a market has been made.
<i>DR</i>	the Disclosure Rules sourcebook.
<i>equity share</i>	<i>shares</i> comprised in a <i>company's equity share capital</i> .
<i>equity share capital</i>	(for a <i>company</i> ), its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.
<i>insider list</i>	a list, as required by <i>DR 2.8.1R</i> , of <i>persons</i> with access to <i>inside information</i> .
<i>non-EEA State</i>	a country or state that is not an <i>EEA State</i> .
<i>OECD state guaranteed issuer</i>	an <i>issuer of debt securities</i> whose obligations in relation to those <i>securities</i> have been guaranteed by a member state of the <i>OECD</i> .
<i>overseas</i>	outside the <i>United Kingdom</i>
<i>preference share</i>	a <i>share</i> conferring preference as to income or return of capital which is not convertible into an <i>equity share</i> and does not form part of the <i>equity share capital</i> of a <i>company</i> .
<i>Prospectus Directive</i>	the Directive of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (No 2003/71/EC).
<i>public international body</i>	the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Council of Europe Resettlement Fund, the European Atomic Energy Community, the European Bank for Reconstruction and Development, the European Coal and Steel Community, the European Company for the Financing of Railroad Stock, the European Economic Community, the European Investment Bank, the Inter-American

Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Monetary Fund and the Nordic Investment Bank.

<i>public sector issuer</i>	states and their regional and local authorities, <i>state monopolies</i> , <i>state finance organisations</i> , <i>public international bodies</i> , statutory bodies and <i>OECD state guaranteed issuers</i> .
<i>state finance organisation</i>	a legal person other than a <i>company</i> : <ul style="list-style-type: none"><li>(a) which is a national of an <i>EEA state</i>;</li><li>(b) which is set up by or pursuant to a special law;</li><li>(c) whose activities are governed by that law and consist solely of raising funds under state control through the issue of <i>debt securities</i>;</li><li>(d) which is financed by means of the resources they have raised and resources provided by the <i>EEA state</i>; and</li><li>(e) the <i>debt securities</i> issued by it are considered by the law of the relevant <i>EEA state</i> as securities issued or guaranteed by that state.</li></ul>
<i>state monopoly</i>	a <i>company</i> or other legal person which is a national of an <i>EEA state</i> and which: <ul style="list-style-type: none"><li>(a) in carrying on its business benefits from a monopoly right granted by an <i>EEA state</i>; and</li><li>(b) is set up by or pursuant to a special law or whose borrowings are unconditionally and irrevocably guaranteed by an <i>EEA state</i> or one of the federated states of an <i>EEA state</i>.</li></ul>
<i>treasury shares</i>	qualifying shares to which sections 162A to 162G of the Companies Act 1985 apply.

Amend the following definitions as shown:

<i>admission to trading</i>	<ul style="list-style-type: none"><li>(1) <u>(in DR) admission to trading on a regulated market</u>;</li><li>(2) <u>(elsewhere in the Handbook)</u> (in relation to an <i>investment</i> and an exchange) the process by which the exchange permits members of the exchange to enter into transactions in that <i>investment</i> under and subject to the rules of the exchange.</li></ul>
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*debt securities* (in DR) debentures, debenture stock, loan stock, bonds, certificates of deposit or any other instrument creating or acknowledging indebtedness.

(elsewhere in the Handbook) any of the following:

- (a) a *debenture*;
- (b) a *government and public security*;
- (c) a *warrant* which confers a right in respect of an investment in (a) or (b).

*connected person* (1) ...

...

(4) (in DR, in relation to a *person discharging managerial responsibilities* within an *issuer*)(as defined in section 96B(2) of the Act):

- (a) a "connected person" within the meaning of section 346 of the Companies Act 1985 (reading that section as if any reference to a director of a company were a reference to a *person discharging managerial responsibilities* within an *issuer*);
- (b) a relative of a *person discharging managerial responsibilities* within an *issuer*, who, on the date of the transaction in question has shared the same household as that person for at least 12 months;
- (c) a *body corporate* in which –
  - (i) a *person discharging managerial responsibilities* within an *issuer*, or
  - (ii) any *person* connected with him by virtue of subsection (a) or (b),

is a director or a senior executive who has the power to make management decisions affecting the future development and business prospects of that *body corporate*.

*director* (1) (except in *COLL, DR* and *CIS*) (in relation to any of the following ...

...

- (3) (in DR)(in accordance with section 417(1)(a) of the Act) a person occupying in relation to it the position of a director (by whatever name called) and, in relation to an issuer which is not a *body corporate*, a person with corresponding powers and duties.
- inside information*
- (1) (except in DR)(as defined in section 118C of the Act): ...
- (2) (in DR) inside information in (1) but replacing references to *qualifying investments* with references to *financial instruments*.
- issuer*
- (except in *CIS* and *DR*)
- (1) (in relation to any *security*) (other than a *unit* in a *collective investment scheme*) the person by whom ...
- ...
- (in DR)
- (5) any company or other legal person or undertaking (including a *public sector issuer*), any class of whose *financial instruments*:
- (a) have been admitted to trading on a regulated market; or
- (b) are the subject of an application for admission to trading on a regulated market;
- other than issuers who have not requested or approved admission of their *financial instruments* to trading on a regulated market.
- share*
- (1) (except in *CIS* and *DR*) the investment ...
- (2) ...
- (3) (in DR)(in accordance with section 744 of the Companies Act 1985) a share in the share capital of a company, and includes:
- (a) stock (except where a distinction between shares and stock is express or implied); and
- (b) preference shares.

## Annex B

### Disclosure Rules sourcebook

In this Annex, chapters of the new Disclosure Rules sourcebook are being inserted and the text is not underlined.

#### 1 Introduction

##### 1.1 Application and purpose

##### 1.1.1 R The *disclosure rules* apply as follows:

- (1) *DR 1 and DR 2 apply to an issuer whose financial instruments are admitted to trading on a regulated market in the United Kingdom or for which a request for admission to trading on a regulated market in the United Kingdom has been made;*
- (2) *DR 3 applies to an issuer that is incorporated in the United Kingdom:*
  - (a) *whose financial instruments are admitted to trading on a regulated market; or*
  - (b) *for whose financial instruments a request for admission to trading on a regulated market in the United Kingdom has been made;*
- (3) *the following apply to persons discharging managerial responsibilities, including directors, and connected persons:*
  - (a) *DR 1.1. and DR 1.2;*
  - (b) *DR 1.3.1R – DR 1.3.2G and DR 1.3.8R;*
  - (c) *DR 1.4;*
  - (d) *DR 1.5.3G; and*
  - (e) *DR 3; and*
- (4) *DR 3 applies to a non-EEA state issuer which is required to file, with the FSA, annual information in relation to shares in accordance with Article 10 of the Prospectus Directive.*

##### Purpose

##### 1.1.2 G The purpose of the *disclosure rules* is to implement:

- (1) *Article 6 of the Market Abuse Directive;*

- (2) Articles 2 and 3 of Commission Directive 2003/124/EC; and
- (3) Articles 5 and 6 of Commission Directive 2004/72/EC.

FSA performing functions as competent authority

- 1.1.3 G In relation to the *disclosure rules*, the *FSA* is exercising its functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Other relevant parts of Handbook

**Note:** Other parts of the *Handbook* that may also be relevant to *persons* to whom the *disclosure rules* apply include *DEC* (the Decision making manual), Chapter 9 of *SUP* (the Supervision manual) and Chapter 21 of *ENF* (the Enforcement manual).

**Note:** A list of *regulated markets* can be found on the *FSA* website at the following address: [http://www.fsa.gov.uk/register-res/html/prof\\_exchanges\\_fram.html](http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html)

## 1.2 Modifying rules and consulting the FSA

Modifying or dispensing with rules

- 1.2.1 R (1) The *FSA* may dispense with, or modify, the *disclosure rules* in such cases and by reference to such circumstances as it considers appropriate (subject to the terms of directives and the *Act*).
- (2) A dispensation or modification may be either unconditional or subject to specified conditions.
- (3) If an *issuer*, *person discharging managerial responsibilities* or a *connected person* has applied for, or been granted, a dispensation or modification, it must notify the *FSA* immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.
- (4) The *FSA* may revoke or modify a dispensation or modification.
- 1.2.2 R (1) An application to the *FSA* to dispense with or modify, a *disclosure rule* must be in writing.
- (2) The application must:
- (a) contain a clear explanation of why the dispensation or modification is requested;
  - (b) include details of any special requirements, for example, the date by which the dispensation or modification is required;

- (c) contain all relevant information that should reasonably be brought to the *FSA's* attention;
- (d) contain any statement or information that is required by the *disclosure rules* to be included for a specific type of dispensation or modification; and
- (e) include copies of all documents relevant to the application.

1.2.3 G An application to dispense with or modify a *disclosure rule* should ordinarily be made at least five *business days* before the proposed dispensation or modification is to take effect.

#### Early consultation with FSA

- 1.2.4 G An *issuer, person discharging managerial responsibilities or connected person* should consult with the *FSA* at the earliest possible stage if they:
- (1) are in doubt about how the *disclosure rules* apply in a particular situation; or
  - (2) consider that it may be necessary for the *FSA* to dispense with or modify a *disclosure rule*.

#### Address for correspondence

**Note:** The *FSA's* address for correspondence in relation to the *disclosure rules* is:

Company Monitoring Team  
 Markets Division  
 The Financial Services Authority  
 25 The North Colonnade  
 Canary Wharf  
 London E14 5HS

Fax: 020 7066 8368

### 1.3 Information gathering and publication

#### Information gathering

- 1.3.1 R An *issuer, person discharging managerial responsibilities or connected person* must provide to the *FSA* as soon as possible following a request:
- (1) any information that the *FSA* considers appropriate to protect investors or ensure the smooth operation of the market; and

- (2) any other information or explanation that the *FSA* may require to verify whether the *disclosure rules* are being and have been complied with.

- 1.3.2 G In gathering information under *DR 1.3.1R*, the *FSA* may contact the *issuer*, *person discharging managerial responsibilities*, *connected person* or their adviser directly. Telephone calls to and from the *FSA* may be recorded for regulatory purposes. The *FSA* may also require the *issuer*, *person discharging managerial responsibilities*, *connected person* or their advisers to provide information in writing.

FSA may require the publication of information

- 1.3.3 R (1) The *FSA* may, at any time, require an *issuer* to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market.
- (2) If an *issuer* fails to comply with a requirement under paragraph (1) the *FSA* may itself publish the information (after giving the *issuer* an opportunity to make representations as to why it should not be published).

Misleading information not to be published

- 1.3.4 R An *issuer* must take all reasonable care to ensure that any information it notifies to a *RIS* is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.
- 1.3.5 R An *issuer* must not combine, in a manner likely to be misleading, a *RIS* announcement with the marketing of its activities. [**Note:** Article 2(1) 2003/124/EC]

Notification when a *RIS* is not open for business

- 1.3.6 R If an *issuer* is required to notify information to a *RIS* at a time when a *RIS* is not open for business, it must distribute the information as soon as possible to:
- (1) not less than two national newspapers in the *United Kingdom*;
  - (2) two newswire services operating in the *United Kingdom*; and
  - (3) a *RIS* for release as soon as it opens.

- 1.3.7 G The fact that a *RIS* is not open for business is not, in itself, sufficient grounds for delaying the disclosure or distribution of *inside information*.

English language

1.3.8 R A notification to a *RIS* that is required under the *disclosure rules* must be in English.

#### 1.4 Suspension of trading

1.4.1 R The *FSA* may require the suspension of trading of a *financial instrument* with effect from such time as it may determine if there are reasonable grounds to suspect non-compliance with the *disclosure rules*.

1.4.2 R If trading of an *issuer's financial instruments* is suspended, the *issuer*, any *persons discharging managerial responsibilities* and any *connected person* must continue to comply with all applicable *disclosure rules*.

1.4.3 R If the *FSA* has required the suspension of trading of any *financial instruments*, it may impose such conditions on the procedure for lifting the suspension as it considers appropriate.

1.4.4 G Examples of when the *FSA* may require the suspension of trading of a *financial instrument* include:

- (1) if an issuer fails to make a *RIS* announcement as required by the *disclosure rules* within the applicable time-limits which the *FSA* considers could affect the interests of investors or affect the smooth operation of the market; or
- (2) if there is or there may be a leak of *inside information* and the *issuer* is unwilling or unable to issue an appropriate *RIS* announcement within a reasonable period of time.

1.4.5 G The decision-making procedures to be followed by the *FSA* when it:

- (1) requires the suspension of trading of a *financial instrument*; or
- (2) refuses an application by an *issuer* to lift a suspension made under section 96C;

are set out in *DEC*.

#### 1.5 Fees, market abuse safe harbours and sanctions

##### Fees

1.5.1 R An *issuer* must pay the fees set out in *DR App 2R* to the *FSA* when they are due.

##### Market abuse safe harbours

1.5.2 R Pursuant to section 118A(5) of the *Act*, behaviour conforming with the *disclosure rules* specified below does not amount to market abuse under section 118(1) of the *Act*:

- (1) *DR 1.3.4R* (Misleading information not to be published);
- (2) *DR 1.3.6R* (Notification when a *RIS* is not open for business);
- (3) *DR 2.2.1R* (Requirement to disclose *inside information*); and
- (4) *DR 2.5.1R* (Delaying disclosure).

#### Sanctions

- 1.5.3 G (1) If the *FSA* considers that an *issuer*, a *person discharging managerial responsibilities* or a *connected person* has breached any of the *disclosure rules* it may, subject to the provisions of the *Act*, impose on that *person* a financial penalty or publish a statement censuring that *person*.
- (2) If the *FSA* considers that a former *director* was knowingly concerned in a breach by an *issuer* it may, subject to the provisions of the *Act*, impose on that *person* a financial penalty.

## 2 Disclosure and control of inside information by issuers

### 2.1 Introduction and purpose

#### Introduction

- 2.1.1 G *An issuer* should be aware that matters that fall within the scope of this chapter may also fall within the scope of:
- (1) the market abuse regime set out in section 118 of the *Act*;
  - (2) section 397 of the *Act* relating to misleading statements and practices;
  - (3) Part V of the Criminal Justice Act 1993 relating to insider dealing; and
  - (4) the *Takeover Code*.
- 2.1.2 R If an *issuer* is involved in a matter which also falls within the scope of the *Takeover Code* it must nevertheless comply with its obligations under this chapter.

#### Purpose

- 2.1.3 G The purpose of this chapter is to:

- (1) promote prompt and fair disclosure of relevant information to the market; and [**Note:** Recital 24 *Market Abuse Directive*]
- (2) set out specific circumstances when an *issuer* can delay public disclosure of *inside information* and requirements to ensure that such information is kept confidential in order to protect investors and prevent insider dealing. [**Note:** Recital 5 2003/124/EC]

## 2.2 Disclosure of inside information

### Requirement to disclose inside information

- 2.2.1 R An *issuer* must notify a *RIS* as soon as possible of any *inside information* which directly concerns the *issuer* unless *DR 2.5.1R* applies. [**Note:** Article 6(1) *Market Abuse Directive*]
- 2.2.2 R An *issuer* will be deemed to have complied with *DR 2.2.1R* where, upon the coming into existence of a set of circumstances or the occurrence of an event, albeit not yet formalised, the *issuer* notified a *RIS* as soon as was possible. [**Note:** Article 2(2) 2003/124/EC]

### Identifying inside information

- 2.2.3 G Information is *inside information* if each of the criteria in the definition of *inside information* is met.
- 2.2.4 G
  - (1) In determining the likely price significance of the information an *issuer* should assess whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions and would therefore be likely to have a significant effect on the price of the *issuer's financial instruments* (the "reasonable investor test"). [**Note:** Article 1(2) 2003/124/EC]
  - (2) In determining whether information would be likely to have a significant effect on the price of *financial instruments*, an *issuer* should be mindful that there is no figure (percentage change or otherwise) that can be set for any *issuer* when determining what constitutes a "significant effect on the price of the *financial instruments*" as this will vary from *issuer* to *issuer*.
- 2.2.5 G The reasonable investor test requires an *issuer*:
  - (1) to take into account that the significance of the information in question will vary widely from *issuer* to *issuer*, depending on a variety of factors such as the *issuer's* size, recent developments and the market sentiment about the *issuer* and the sector in which it operates; and

- (2) to assume that a reasonable investor will make investment decisions relating to the relevant *financial instrument* to maximise his economic self interest.

2.2.6 G It is not possible to prescribe how the reasonable investor test will apply in all possible situations. Any assessment should take into consideration the anticipated impact of the information in light of the totality of the *issuer's* activities, the reliability of the source of the information and other market variables likely to affect the relevant *financial instrument* in the given circumstances. However, information which is likely to be considered relevant to a reasonable investor's decision includes information which affects:

- (1) the assets and liabilities of the *issuer*;
- (2) the performance, or the expectation of the performance, of the *issuer's* business;
- (3) the financial condition of the *issuer*;
- (4) the course of the *issuer's* business;
- (5) major new developments in the business of the *issuer*; or
- (6) information previously disclosed to the market. [**Note:** Recital 1 2003/124/EC]

2.2.7 G An *issuer* and its advisers are best placed to make an initial assessment of whether particular information amounts to *inside information*. The decision as to whether a piece of information is *inside information* may be finely balanced and the *issuer* (with the help of its advisers) will need to exercise its judgement.

**Note:** DR 2.7 provides additional guidance on dealing with market rumour.

2.2.8 G The *directors* of the *issuer* should carefully and continuously monitor whether changes in the circumstances of the *issuer* are such that an announcement obligation has arisen under this chapter.

#### When to disclose inside information

- 2.2.9 G
- (1) Subject to the limited ability to delay release of *inside information* to the public provided by DR 2.5.1R, an *issuer* is required to notify, via a *RIS*, all *inside information* in its possession as soon as possible.
  - (2) If an *issuer* is faced with an unexpected and significant event, a short delay may be acceptable if it is necessary to clarify the situation. In such situations a holding announcement should be used where an *issuer* believes that there is a danger of *inside information* leaking before the facts and their impact can be confirmed. The holding

announcement should:

- (a) detail as much of the subject matter as possible;
  - (b) set out the reasons why a fuller announcement cannot be made; and
  - (c) include an undertaking to announce further details as soon as possible.
- (3) If an *issuer* is unable, or unwilling to make a holding announcement it may be appropriate for the trading of its *financial instruments* to be suspended until the *issuer* is in a position to make an announcement.
- (4) An *issuer* that is in any doubt as to the timing of announcements required by this chapter should consult the *FSA* at the earliest opportunity.

#### Communication with third parties

- 2.2.10 G The *FSA* is aware that many *issuers* provide unpublished information to third parties such as analysts, employees, credit rating agencies, finance providers and major shareholders, often in response to queries from such parties. The fact that information is unpublished does not in itself make it *inside information*. However, unpublished information which amounts to *inside information* is only permitted to be disclosed in accordance with the *disclosure rules* and an *issuer* must ensure that at all times it acts in compliance with this chapter.

#### 2.3 Publication of information on internet site

- 2.3.1 R *DR 2.3.2R – DR 2.3.5R* apply to an *issuer* that has an internet site.
- 2.3.2 R *Inside information* announced via a *RIS* must be available on the *issuer's* internet site by the close of the *business day* following the day of the *RIS* announcement.
- 2.3.3 R An *issuer* must ensure that *inside information* is notified to a *RIS* before, or simultaneously with, publication of such *inside information* on its internet site.
- 2.3.4 G To ensure fast access and correct and timely assessment of the information by the public, an *issuer* should not publish *inside information* on its internet site as an alternative to its disclosure via a *RIS*.

- 2.3.5 R An *issuer* must, for a period of one year following publication, post on its internet sites all *inside information* that it is required to disclose via a *RIS*. [**Note:** Article 6(1) *Market Abuse Directive*]
- 2.4 Equivalent information
- 2.4.1 R Without prejudice to its obligations under *DR 2.2.1R*, an *issuer* must take reasonable care to ensure that the disclosure of *inside information* to the public is synchronised as closely as possible in all jurisdictions in which it has:
- (1) *financial instruments admitted to trading on a regulated market*;
  - (2) requested *admission to trading* of its *financial instruments* on a *regulated market*; or
  - (3) *financial instruments* listed on any other *overseas* stock exchange. [**Note:** Article 2(4) 2003/124/EC]
- 2.4.2 R If the rules of another *regulated market* or *overseas* stock exchange require an *issuer* to disclose *inside information* at a time when a *RIS* is not open for business it should disclose the information in accordance with *DR 1.3.6R* at the same time as it is released to the public in the other jurisdiction.
- 2.5 Delaying disclosure of inside information
- Delaying disclosure
- 2.5.1 R An *issuer* may, under its own responsibility, delay the public disclosure of *inside information*, such as not to prejudice its legitimate interests provided that:
- (1) such omission would not be likely to mislead the public;
  - (2) any *person* receiving the information owes the *issuer* a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; and
  - (3) the *issuer* is able to ensure the confidentiality of that information. [**Note:** Article 6(2) and (3) *Market Abuse Directive* ]
- Legitimate interests and when delay will not mislead the public
- 2.5.2 G (1) Delaying disclosure of *inside information* will not always mislead the public, although a developing situation should be monitored so that if circumstances change an immediate disclosure can be made.
- (2) Investors understand that some information must be kept confidential until developments are at a stage when an announcement can be made without prejudicing the legitimate interests of the *issuer*.

- 2.5.3 R For the purposes of applying *DR 2.5.1R*, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:
- (1) negotiations in course, or related elements where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the *issuer* is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long term financial recovery of the *issuer*; or
  - (2) decisions taken or contracts made by the management body of an *issuer* which need the approval of another body of the *issuer* in order to become effective, where the organisation of such an *issuer* requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public. [**Note:** Article 3(1) 2003/124/EC]
- 2.5.4 G (1) *DR 2.5.3R(1)* does not allow an *issuer* to delay public disclosure of the fact that it is in financial difficulty or of its worsening financial condition and is limited to the fact or substance of the negotiations to deal with such a situation. An *issuer* cannot delay disclosure of *inside information* on the basis that its position in subsequent negotiations to deal with the situation will be jeopardised by the disclosure of its financial condition.
- (2) The legitimate interest described in *DR 2.5.3R(2)* refers to an *issuer* with a dual board structure (e.g. a management board and supervisory board if and to the extent that decisions of the management board require ratification by the supervisory board). An *issuer* with a unitary board structure would be unable to take advantage of *DR 2.5.3R(2)* and, therefore, *DR 2.5.3R(2)* should only be available to a very limited number of *issuers* in the *United Kingdom*.
- 2.5.5 G An *issuer* should not be obliged to disclose impending developments that could be jeopardised by premature disclosure. Whether or not an *issuer* has a legitimate interest which would be prejudiced by the disclosure of certain *inside information* is an assessment which must be made by the *issuer* in the first instance. However, the *FSA* considers that, other than in relation to impending developments or matters described in *DR 2.5.3G*, there are unlikely to be other circumstances where delay would be justified.

Selective disclosure

- 2.5.6 R Whenever an *issuer* or a person acting on his behalf or for his account discloses any *inside information* to any third party in the normal exercise of his employment, profession or duties, the *issuer* must make complete and effective public disclosure of that information via a *RIS*, simultaneously in the case of an intentional disclosure and as soon as possible in the case of a non-intentional disclosure, unless *DR 2.5.1R* applies. [**Note:** Article 6(3) *Market Abuse Directive* ]
- 2.5.7 G (1) When an *issuer* is permitted to delay public disclosure of *inside information* in accordance with *DR 2.5.1R*, it may selectively disclose that information to *persons* owing it a duty of confidentiality.
- (2) Such selective disclosure may be made to another *person* if it is in the normal course of the exercise of his employment, profession or duties. However, selective disclosure cannot be made to any *person* simply because they owe the *issuer* a duty of confidentiality. For example, an *issuer* contemplating a major transaction which requires shareholder support or which could significantly impact its lending arrangements or credit-rating may selectively disclose details of the proposed transaction to major shareholders, its lenders and/or credit-rating agency as long as the recipients are bound by a duty of confidentiality. An *issuer* may, depending on the circumstances, be justified in disclosing *inside information* to certain categories of recipient in addition to those employees of the *issuer* who require the information to perform their functions. The categories of recipient include, but are not limited to, the following:
- (a) the *issuer's* advisers and advisers of any other *persons* involved in the matter in question;
  - (b) *persons* with whom the *issuer* is negotiating, or intends to negotiate, any commercial financial or investment transaction (including prospective underwriters or placees of the *financial instruments* of the *issuer*);
  - (c) employee representatives or trade unions acting on their behalf;
  - (d) any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority;
  - (e) major shareholders of the *issuer*;
  - (f) the *issuer's* lenders; and
  - (g) credit-rating agencies.

2.5.8 G Selective disclosure to any or all of the *persons* referred to in *DR 2.5.7G* may not be justified in every circumstance where an *issuer* delays disclosure in accordance with *DR 2.5.1R*.

2.5.9 G An *issuer* should bear in mind that the wider the group of recipients of *inside information* the greater the likelihood of a leak which will trigger full public disclosure of the information via a *RIS* under *DR 2.6.2R*.

## 2.6 Control of inside information

### Denying access to inside information

2.6.1 R An *issuer* must establish effective arrangements to deny access to *inside information* to *persons* other than those who require it for the exercise of their functions within the *issuer*. [**Note:** Article 3(2) 2003/124/EC]

### Breach of confidentiality

2.6.2 R An *issuer* must have in place measures which enable public disclosure to be made via a *RIS* as soon as possible in case the *issuer* is not able to ensure the confidentiality of the relevant *inside information*. [**Note:** Article 3(2) 2003/124/EC]

2.6.3 G If an *issuer* is relying on *DR 2.5.1R* to delay the disclosure of *inside information* it should prepare a holding announcement to be disclosed in the event of an actual or likely breach of confidence. Such a holding announcement should include the details set out in *DR 2.2.9G(2)*.

2.6.4 G We recognise that an *issuer* may not be responsible for breach of *DR 2.5.1R* if a recipient of *inside information* under *DR 2.5.1R* breaches his duty of confidentiality.

## 2.7 Dealing with rumours

2.7.1 G Where there is press speculation or market rumour regarding an *issuer*, the *issuer* should assess whether a disclosure obligation arises under *DR 2.2.1R*. To do this an *issuer* will need to carefully assess whether the speculation or rumour has given rise to a situation where the *issuer* has *inside information*.

2.7.2 G (1) Where press speculation or a market rumour is largely accurate and the information underlying the rumour is *inside information* then it is likely that the *issuer* can no longer delay disclosure in accordance with *DR 2.5.1R* as it is no longer able to ensure the confidentiality of the *inside information*.

(2) An *issuer* that finds itself in the circumstances described in paragraph (1) should disclose the *inside information* in accordance

with *DR 2.6.2R* as soon as possible.

- 2.7.3 G The knowledge that press speculation or market rumour is false is not likely to amount to *inside information*. Even if it does amount to *inside information*, the *FSA* expects that in most of those cases an *issuer* would be able to delay disclosure (often indefinitely) in accordance with *DR 2.5.1R*.

## 2.8 Insider lists

### Requirement to draw up insider lists

- 2.8.1 R An *issuer* must ensure that it and *persons* acting on its behalf or on its account draw up a list of those *persons* working for them, under a contract of employment or otherwise, who have access to *inside information* relating directly or indirectly to the *issuer*, whether on a regular or occasional basis. [**Note:** Article 6(3) *Market Abuse Directive*]

### Providing insider lists to the *FSA* on request

- 2.8.2 R If so requested, an *issuer* must provide to the *FSA* as soon as possible an *insider list* that has been drawn up in accordance with *DR 2.8.1R*. [**Note:** Article 6(3) *Market Abuse Directive*]

### Contents of insider lists

- 2.8.3 R Every *insider list* must contain the following information:
- (1) the identity of each *person* having access to *inside information*;
  - (2) the reason why such *person* is on the *insider list*; and
  - (3) the date on which the *insider list* was created and updated. [**Note:** Article 5(2) 2004/72/EC]

### Maintenance of insider lists

- 2.8.4 R An *insider list* must be promptly updated:
- (1) when there is a change in the reason why a *person* is already on the list;
  - (2) when any *person* who is not already on the list is provided with access to *inside information*; and
  - (3) to indicate the date on which a *person* already on the list no longer has access to *inside information*. [**Note:** Article 5(3) 2004/72/EC]

- 2.8.5 R An *issuer* must ensure that every *insider list* prepared by it or by *persons* acting on its account or on its behalf is kept for at least five years from the date on which it is drawn up or updated, whichever is the latest. [Note: Article 5(4) 2004/72/EC]
- 2.8.6 G An *issuer* and not its advisers or agents is ultimately responsible for the maintenance of *insider lists*.
- 2.8.7 G For the purposes of DR 2.8.1R an *issuer* should maintain a list of:
- (1) its own employees that have access to *inside information*;
  - (2) its principal contacts at any other firm or *company* acting on its behalf or on its account with whom it has had direct contact and who also have access to *inside information* about it.
- 2.8.8 G For the purposes of DR 2.8.1R it is not necessary for an *issuer* to maintain a list of all the individuals working for another firm or *company* acting on its behalf or its account where it has:
- (1) recorded the name of the principal contact(s) at that firm or *company*;
  - (2) made effective arrangements, which are likely to be based in contract, for that firm or *company* to maintain (as set out in DR 2.8.1R, DR 2.8.3R – DR 2.8.5R and DR 2.8.10R) its own list of *persons* both acting on behalf of the *issuer* and with access to *inside information* on the *issuer*; and
  - (3) made effective arrangements for that firm or *company* to provide a copy of its list to the *issuer* as soon as possible upon request.

#### Acknowledgement of legal and regulatory duties

- 2.8.9 R An *issuer* must take the necessary measures to ensure that its employees with access to *inside information* acknowledge the legal and regulatory duties entailed (including dealing restrictions in relation to the *issuer's financial instruments*) and are aware of the sanctions attaching to the misuse or improper circulation of such information. [Note: Article 5(5) 2004/72/EC and Article 3(2) 2003/124/EC]
- 2.8.10 R An *issuer* must ensure that any *person* that:
- (1) is acting on its behalf or on its account; and
  - (2) has drawn up an *insider list* in accordance with DR 2.8.1R;
- has taken the necessary measures to ensure that every *person* whose name is on the *insider list* acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of

such information. [**Note:** Article 5(5) 2004/72/EC]

3 Transactions by persons discharging managerial responsibilities and their connected persons

Purpose

- 3.1.1 G This chapter sets out the notification obligations of *issuers, persons discharging managerial responsibilities* and their *connected persons* in respect of transactions conducted on their own account in *shares* of the *issuer*, or derivatives or any other *financial instrument* relating to those *shares*.

Notification of transactions by persons discharging managerial responsibilities

- 3.1.2 R *Persons discharging managerial responsibilities* and their *connected persons*, must notify the *issuer* in writing of the occurrence of all transactions conducted on their own account in the *shares* of the *issuer*, or derivatives or any other *financial instruments* relating to those *shares* within four *business days* of the day on which the transaction occurred. [**Note:** Article 6(4) *Market Abuse Directive* and Article 6(1) 2004/72/EC]

- 3.1.3 R The notification required by DR 3.1.2R must contain the following information:
- (1) the name of the *person discharging managerial responsibilities* within the *issuer*, or, where applicable, the name of the *person connected* with such a *person*;
  - (2) the reason for responsibility to notify;
  - (3) the name of the relevant *issuer*;
  - (4) a description of the *financial instrument*;
  - (5) the nature of the transaction (e.g. acquisition or disposal);
  - (6) the date and place of the transaction; and
  - (7) the price and volume of the transaction. [**Note:** Article 6(3) 2004/72/EC]

Notification of transactions by issuers to a RIS

- 3.1.4 R (1) An *issuer* must notify a *RIS* of any information notified to it in accordance with:
- (a) DR 3.1.2R; and
  - (b) section 324 as extended by section 328 of the Companies Act 1985 or entered into the *issuer's* register in accordance with

section 325(3) or (4) of the Companies Act 1985.

- (2) The notification to a *RIS* described in paragraph (1) must be made as soon as possible, and in any event by no later than the end of the *business day* following the receipt of the information by the *issuer*.
- 3.1.5 R The notification required by *DR 3.1.4R* must include the information required by *DR 3.1.3R* together with the date on which the notification was made to the *issuer*.
- 3.1.6 R If an *issuer* receives notification of the same dealing under both *DR 3.1.2R* and section 324 or section 328 of the Companies Act 1985, it must make clear in its notification to the *RIS* that a single transaction in respect of the same *financial instrument* has taken place.
- 3.1.7 G An *issuer* may use the form entitled Notification of Transactions of Directors, Persons Discharging Managerial Responsibility or Connected Persons to make the notification required by *DR 3.1.4R*.
- 3.1.8 R An *issuer* with *financial instruments admitted to trading* on a *regulated market* in the *United Kingdom* that does not fall within *DR 1.1.1R(2)* or (4), must notify equivalent information to that required by *DR 3.1.4R* and *DR 3.1.5R* to a *RIS* as soon as possible after the *issuer* becomes aware of the information.

**FEES (MISCELLANEOUS) AND COMPENSATION FUNDING  
INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 213 (The compensation scheme);
  - (5) section 214 (General);
  - (6) section 223 (Management expenses);
  - (7) section 234 (Industry funding); and
  - (8) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on the 1 April 2005.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Supervision manual (SUP)	Annex A
Dispute Resolution: Complaints sourcebook (DISP)	Annex B
Compensation sourcebook (COMP)	Annex C
Professional Firms sourcebook (PROF)	Annex D

**Citation**

- E. This instrument may be cited as the Fees (Miscellaneous) and Compensation Funding Instrument 2005.

By order of the Board  
17 March 2005

## Annex A

### Amendments to the Supervision manual

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

Failure to submit reports

16.3.14 ~~GR~~ If a *firm* does not submit a complete report by the date on which it is due in accordance with the *rules* in this chapter and any prescribed submission procedures, the *firm* must pay an administrative fee of £250.~~Failure to submit a report in accordance with the *rules* in this chapter may lead to the imposition of a financial penalty and other disciplinary sanctions (see *ENF* 13.5).~~

16.3.14A G Failure to submit a report in accordance with the *rules* in this chapter may also lead to the imposition of a financial penalty and other disciplinary sanctions (see *ENF* 13.5). 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 (see *GEN* 3.3.3R).

...

SUP 20 Ann 2R

Part 1

...

- (3) ...
- (b) an additional administrative fee of ~~£500~~250 is payable (but not if it is already subject to an administrative fee under *DISP* 5.5.1R(5) or *COMP* 13.6.14R in respect of the same financial year); and
  - (c) the minimum total fee (including the administrative fee in (b)) is ~~£650~~400.

## Annex B

### Amendments to the Dispute Resolution: Complaints sourcebook

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

- 5.5.1 R (1) A *firm* must provide the *FSA* by the end of February each year (or, if the *firm* has become subject to the *Financial Ombudsman Service* part way through the *financial year*, by the date requested by the *FSA*) ...
- ...
- (5) If a *firm* does not submit a complete statement by the date on which it is due in accordance with this rule and any prescribed submission procedures:
- (a) the *firm* must pay an administrative fee of £250 (but not if it is already subject to an administrative fee under SUP 20 Annex 2R Part 1 or COMP 13.6.14R for the same *financial year*); and
- (b) the *general levy* and any *supplemental levy* will be calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10 (or, if a *firm* has become subject to the *Financial Ombudsman Service* part way through the *financial year*, on the basis of the information provided to *FSA* for the purposes of SUP 20.3.2R) or on any other reasonable basis, making such adjustments as seem appropriate in subsequent levies once the true figures are known.
- 5.5.1A G Failure to submit a statement in accordance with the rules in this chapter may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ENF 13.5).
- ...
- 5.8.6 R 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 an administrative fee of £250 plus interest on any unpaid part of the levy or fee at a rate of 5% over 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 ~~interest at 10% per annum for each day the unpaid part remains outstanding.~~

## Annex C

### Amendments to the Compensation sourcebook

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

13.6.11 R Unless exempt under *COMP* 13.3.1R, a *participant firm* must provide the *FSCS* by the end of February each year (or, if it has become a *participant firm* part way through the financial year, by the date requested by the *FSA*) ...

...

13.6.14 R ~~Where a *participant firm* does not provide the statement required by *COMP* 13.6.11R, the *FSCS* may assess the firm for its share of the *compensation costs levy* or the *specific costs levy* on any reasonable basis (including on the basis of the statement for the previous year),~~

If a *participant firm* does not submit a complete statement by the date on which it is due in accordance with *COMP* 13.6.11R and any prescribed submission procedures:

(1) the *firm* must pay an administrative fee of £250 (but not if it is already subject to an administrative fee under *SUP* 20 Annex 2R Part 1 or *DISP* 5.5.1R for the same financial year); and

(2) the *compensation costs levy* and any *specific costs levy* will be calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10 (or, if it has become a *participant firm* part way through a financial year, on the basis of the information provided to the *FSA* for the purposes of *SUP* 20.3.2R) or on any other reasonable basis, making such adjustments as seem appropriate in subsequent levies once the true figures are known.

...

13.8.4 R If a *participant firm* does not pay its share of a levy as required by *COMP* 13.8.3R, it must thereafter pay additional administrative fees of £250 plus interest based on any unpaid part of the levy the amount outstanding at a rate of 5% over the Bank of England's repo rate, from time to time in force, accruing on a daily basis from the date on which the payment was due.

### Annex 1 — Management Expenses Levy Limit

1 This table belongs to *COMP* 13.5.2R

#### 2 Table

Period	Limit on total of all management expenses levies attributable to that period (£)
...	
1 April 2004 to 31 March 2005	£17,590,000
1 April 2005 to 31 March 2006	£27,030,000

## Annex D

### Amendments to the Professional Firms sourcebook

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

#### **PROF 6 Ann 2R - Fees payable for an order under section 326(1) of the Financial Services and Markets Act 2000**

Any <i>person</i> seeking an order under section 326(1) of the <i>Act</i> (Designation of professional bodies)	£ <del>5,000</del> <u>10,000</u>	30 days after the order is granted
--	----------------------------------	------------------------------------

**ELECTRONIC MONEY SOURCEBOOK (AMENDMENT) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of its power under section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 May 2005.

**Amendments to the Electronic Money sourcebook**

- C. The Electronic Money sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Electronic Money Sourcebook (Amendment) Instrument 2005.

By order of the Board  
17 March 2005

## Annex

### Amendments to the Electronic Money sourcebook

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

6.3.1 R 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* holding the *e-money* in accordance with the *e-money scheme rules* other than a merchant who has accepted *e-money* in the course of business in settlement of goods or services, ~~as long as his holding the *e-money* is not contrary to the *e-money scheme rules*.~~

...

6.3.7 G ~~An example of a *person* coming within ELM 6.3.1R(2) is a merchant who has accepted payment using that *e-money*~~ Merchants who accept *e-money* in the course of their business do not benefit from this right to redemption but will usually make separate contractual arrangements for redemption.

## UKLA FEES INSTRUMENT 2005

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 72 (The competent authority);
  - (2) section 74(4) (The official list);
  - (3) section 99(1) (Fees);
  - (4) section 101 (Listing rules: general provisions); and
  - (5) paragraphs 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 1 April 2005.

### Amendments to the Listing Rules

- D. The Listing Rules are amended in accordance with the Annex to this instrument.

### Notes

- E. In the Annex to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers, but does not form part of the legislative text.

### Citation

- F. This instrument may be cited as the UKLA Fees Instrument 2005.

By order of the Board  
17 March 2005

## Annex

### Amendments to the Listing Rules

In this Annex entire sections of text are being inserted, the place where the change will be made is indicated and the text is not underlined.

Delete existing Schedule 13 and insert new Schedule 13 as follows:

#### Annex 1

Annual fees (for the period 1 April 2005 to 31 March 2006)

**Note:** The annual fees for issuers of shares and certificates representing shares and for Sponsors are to be made in May 2005 (currently the subject of consultation in CP05/02).

#### Annex 2

Fee type

Fee amount

Transaction vetting fees for the period 1 April 2005 to 30 June 2005	
Transaction vetting fees relate to specific events or transactions that an issuer might be involved in during the year and fall due when documentation is first submitted to the <i>FSA</i> .	
Eligibility	New applicants
Category 1	Documents relating to the following transactions: Listing particulars / prospectuses for share and debt listings which fall outside Chapter 23 of the Listing Rules Placing and open offers Rights issues Class 1 transactions
Category 2	Documents relating to the following transactions: Debt issues falling in Chapter 23 Debt programmes falling in Chapter 23 Securitised Derivatives falling in Chapter 24

	New applications for certificates representing shares Asset-backed securities Related party transactions All other vet only transactions	
Category 3	Supplementary listing particulars	£500

Annex 3

Part 1

Fee type

Fee amount

Application Fees for the period 1 April 2005 to 30 June 2005	
Fee type	Fee amount
Application for listing An application fee becomes payable when an issuer makes an application for listing.	£225
Tranches from debt issuance programmes and securitised derivative tranches An upfront fee is required per tranche for draw downs in the following 12 months. Payment in advance for more than 75 draw downs will attract a 10% discount.	£100

Part 2

Sponsor Application Fees for the period 1 April 2005 to 30 June 2005	
Fee type	Fee amount
Application for approval as sponsor An application fee becomes payable when a <i>person</i> applies for approval as a sponsor.	£4,000

**CONSOLIDATED SUPERVISION (MISCELLANEOUS AMENDMENTS)  
INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 June 2005.

**Amendments to the Handbook**

- D. The modules of the FSA's Handbook listed in column (1) are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Integrated Prudential Sourcebook (PRU)	Annex B
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex C

**Citation**

- E. This instrument may be cited as the Consolidated Supervision (Miscellaneous Amendments) Instrument 2005.

By order of the Board  
21 April 2005

## Annex A

### Amendments to the Glossary of definitions

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

*sectoral rules* ...

(g) (in relation to the *insurance sector*) references in this definition to consolidated supervision are to supplementary supervision, similar expressions being interpreted accordingly; ~~and~~

... (h) references to the *FSA's sectoral rules* are to *sectoral rules* in the form of *rules*; and

(i) (for the purpose of calculating *solo capital resources* and a *solo capital resources requirement*) the following *undertakings* are not subject to *sectoral rules* for the purposes of paragraphs 6.2, 6.3, 6.5 or 6.6 of *PRU 8 Ann 1R* as the case may be and instead fall under paragraph 6.7 of *PRU 8 Ann 1R* (Solo capital resources requirement: other members):

(i) a *regulated entity* that is incorporated in, and has its head office in, one of the states or territories referred to in paragraph 6.5 of Part 6 of *PRU 8 Ann 1R* (Solo capital resources requirement: non-EEA firms subject to equivalent regimes), a *UK domestic firm* or an *EEA regulated entity* if it has an exemption from the *sectoral rules* referred to in paragraphs 6.2, 6.3 or 6.6 of *PRU 8 Ann 1R* as the case may be; and

(ii) a *regulated entity* that is incorporated in, and has its head office in, one of the states or territories referred to in paragraph 6.5 of Part 6 of *PRU 8 Ann 1R* if it is not subject to requirements that are equivalent to *EEA prudential sectoral legislation* applicable to its *financial sector*.

...

*solo capital resources requirement*

(for the purpose of *PRU 8* (Group risk)) a capital resources requirement calculated on a solo basis as defined in paragraphs 6.2-6.9 of *PRU 8 Ann 1R* (Solo capital resources requirement: ~~the insurance sector~~).

## Annex B

### Amendments to the Integrated Prudential sourcebook

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

Amend Part 6 of PRU 8 Ann 1R as follows:

...	...	...
Solo capital resources requirement: other members	6.7	<p>The <i>solo capital resources requirement</i> for:</p> <p>(1) <u>any of the following:</u></p> <p>(a) <u>a UK domestic firm;</u></p> <p>(b) <u>an EEA regulated entity; or</u></p> <p>(c) <u>a regulated entity that is incorporated in and has its head office in one of the states or territories referred to in paragraph 6.5;</u></p> <p><u>that is not subject to the solo capital adequacy sectoral rules referred to in paragraph 6.2, 6.3 or 6.6 (including in a case in which this paragraph applies under paragraph (i) of the definition of sectoral rules); and</u></p> <p>(2) any member of a <i>financial conglomerate</i> in the <i>overall financial sector</i> <u>otherwise</u> not treated under paragraphs 6.2 to 6.6;</p> <p>is a notional capital requirement. It is the capital resources requirement that would apply to it under the following <i>rules</i>:</p> <p>(<del>13</del>) (in the case of an <i>asset management company</i>) the <i>rules</i> in Chapter 7 of <i>IPRU(INV)</i>; and</p> <p>(<del>24</del>) (in any other case) the <i>rules</i> applicable to its <i>financial sector</i> under the table in paragraph 6.8.</p>

## Annex C

### Amendments to the Interim Prudential sourcebook for Investment Businesses

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

IPRU(INV), Chapter 14 (Consolidated supervision for investment businesses)

...

14.2.4(1) G *A firm's parent is a financial holding company if it is either a financial institution or a securities and futures firm that is subject to the financial rules in Chapter 3 and that is a broad scope firm (but not a venture capital firm) and if its subsidiary undertakings carryies out mainly listed activities, activities of a credit institution or activities undertaken by a Chapter 3 broad scope firm or if its main business is to acquire holdings in companies undertaking these activities. ...*

...

14.5.2 R Financial resources requirements for individual entities in the group are:

- (1) for *firms* regulated by the *FSA*, their regulatory capital requirement under *FSA* rules;
- (2) for entities regulated by an *EEA regulator* or one of the regulators listed in *IPRU(INV)* 10-App 59 or *IPRU(BANK)* CS Appendix D and which is subject to the local regulatory capital requirement of that regulator, ~~their~~ that local regulatory capital requirement; and
- (3) for other entities in the group, a notional financial resources requirement calculated as if the entity were regulated by the *FSA*.

...

APPENDIX 14(1) (INTERPRETATION)

Glossary of defined terms for Chapter 14

...

*financial holding company* an undertaking that satisfies the following conditions:

(a) it is:

(i) a financial institution; or

(ii) a firm falling within IPRU(INV) rule 14.1.1(1);

(b) ~~its the subsidiary undertakings of which~~ are either exclusively or mainly;

(i) *credit institutions*;

(ii) *investment firms*;

(iii) *broad scope firms or undertakings carrying on activities which (if they were firms doing those activities in the United Kingdom) would make them broad scope firms*; and

(iv) *financial institutions*;

one of which at least is a *credit institution*, a *firm falling within IPRU(INV) rule 14.1.1(1)* or an *investment firm*; and

(c) ~~which~~ it is not a *mixed financial holding company* within the meaning of *PRU 8.4*.

**CHANGING ACCOUNTING FRAMEWORK (PRUDENTIAL CAPITAL)  
INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 21 April 2005.

**Amendments to the handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Integrated Prudential sourcebook (PRU)	Annex B
Interim Prudential sourcebook for Banks (IPRU(BANK))	Annex C
Interim Prudential sourcebook for Building Societies (IPRU(BSOC))	Annex D
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex E
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex F
Supervision manual (SUP)	Annex G

**Citation**

- E. This instrument may be cited as the Changing Accounting Framework (Prudential Capital) Instrument 2005.

By order of the Board  
21 April 2005

**Annex A**  
**Amendments to the Glossary**

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

<u>deficit reduction amount</u>	<u>in respect of a <i>defined benefit occupational pension scheme</i>, the sum, determined by a <i>firm</i> in conjunction with the <i>defined benefit occupational pension scheme's</i> actuaries or trustees (or both), of the additional funding (net of tax) that will be required to be paid into that scheme by the <i>firm</i> over the following five year period for the purpose of reducing the <i>firm's defined benefit liability</i>.</u>
<u>defined benefit asset</u>	<u>the excess of the value of the assets in a <i>defined benefit occupational pension scheme</i> over the present value of the scheme liabilities, to the extent that a <i>firm</i>, as employer, in accordance with the accounting principles applicable to it, should recognise that excess as an asset in its balance sheet.</u>
<u>defined benefit liability</u>	<u>the shortfall of the value of the assets in a <i>defined benefit occupational pension scheme</i> below the present value of the scheme liabilities, to the extent that a <i>firm</i>, as employer, in accordance with the accounting principles applicable to it, should recognise that shortfall as a liability in its balance sheet.</u>
<u>defined benefit occupational pension scheme</u>	<u>an <i>occupational pension scheme</i> which is not a <i>defined contribution occupational pension scheme</i>.</u>
<u>defined benefits pension scheme</u>	(1) <del>(except in <i>PRU</i>)</del> a <i>pension policy</i> or a <i>pension contract</i> under which the only <i>money-purchase benefits</i> are benefits ancillary to other benefits which are not <i>money-purchase benefits</i> ;  (2) <del>(in <i>PRU</i>) an <i>occupational pension scheme</i> under which the only <i>money-purchase benefits</i> are benefits ancillary to other benefits which are not <i>money-purchase benefits</i>.</del>
<u>defined contribution occupational pension scheme</u>	<u>an <i>occupational pension scheme</i> into which a <i>firm</i>, as employer, pays regular fixed contributions and will have no legal or constructive obligation to pay further contributions if the scheme does not have sufficient assets to pay all employee benefits relating to employee service in the current and prior periods.</u>
<u>parent undertaking</u>	(in accordance with section 420 of the <i>Act</i> (Parent and subsidiary undertaking) and section 258 of the Companies Act 1985 (Parent and subsidiary undertakings)):  (a) ...

(v) ~~it has a participating interest (as defined in section 260 of the Companies Act 1985) (Participating interests) in S;~~  
~~and~~

(A) it has the power to exercise, or actually exercises, a dominant influence or control over S; or

(B) it and S are managed on a unified basis; or ...

(vi) ...

...

## Annex B

### Amendments to the Integrated Prudential sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. For the convenience of readers it is in three parts.

#### Part 1: amendments relating to insurers

##### 1.3 Valuation

...

General requirements: accounting principles to be applied

1.3.5 R Subject to PRU 1.3.5AR and PRU 1.3.5BR, ~~E~~except where a rule in PRU provides for a different method of recognition or valuation, whenever a rule in PRU refers to an asset, liability, equity or income statement item, a firm must, for the purpose of that rule, recognise the asset, liability, equity or income statement item and measure its value in accordance with:

- (1) the *insurance accounts rules*, or the Friendly Societies (Accounts and Related Provisions) Regulations 1994;
- (2) Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by the Accounting Standards Board; and
- (3) Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the Accounting Standards Board;  
or
- (4) *international accounting standards*;

as applicable to the *firm* for the purpose of its external financial reporting (or as would be applicable if the *firm* was a company with its head office in the United Kingdom).

1.3.5A R For the purposes of PRU, except where a rule in PRU provides for a different method of recognition or valuation, when a firm, upon initial recognition, designates its liabilities as at fair value through profit or loss, it must adjust any value calculated in accordance with PRU 1.3.5R by subtracting any unrealised gains or adding back in any unrealised losses which are not attributable to changes in a benchmark interest rate.

1.3.5B R For the purposes of PRU, except where a rule in PRU provides for a different method of recognition or valuation, in respect of a defined benefit occupational pension scheme:

- (1) a firm must derecognise any defined benefit asset;

(2) a firm may substitute for a defined benefit liability the firm's deficit reduction amount.

1.3.5C R An election made under PRU 1.3.5BR(2) must be applied consistently for the purposes of PRU in respect of any one financial year.

1.3.5D R A firm should keep a record of and be ready to explain to its supervisory contacts in the FSA the reasons for any difference between the deficit reduction amount and any commitment the firm has made in any public document to provide funding in respect of a defined benefit occupational pension scheme.

1.3.6 G *PRU 1.3.5R provides that unless a rule in PRU provides for a different method of recognition or valuation, the applicable provisions of the Companies Act 1985, the Companies Act (Northern Ireland) Order 1986 or the Friendly Societies (Accounts and Related Provisions) Regulations 1994, as supplemented by Financial Reporting Standards, Statements of Standard Accounting Practice, and Statements of Recommended Accounting Practice, or, where applicable, international accounting standards, should be used to determine the recognition and valuation of assets, liabilities, equity and income statement items for the purposes of PRU, including:*

- (1) whether, and when, to recognise or de-recognise an asset or liability;
- (2) the amount at which to value an asset, liability, equity or income statement item;
- (3) which description to place on an asset, liability, equity or income statement item.

...

1.3.8G Where assets or liabilities are securitised, *PRU 1.3.5R only permits de-recognition where Financial Reporting Standard 5 (or, where applicable, International Accounting Standard 39) permits either de-recognition or the linked presentation. However, the FSA will consider granting a waiver to permit de-recognition in other circumstances provided that the firm can demonstrate that securitisation has effectively transferred risk.*

...

Valuation adjustments or reserves

...

1.3.30R If the result of establishing adjustments or reserves under *PRU 1.3.26R to PRU 1.3.29R* is a valuation which differs from the fair value determined in accordance with ~~*PRU 1.3.5R Financial Reporting Standards issued or adopted by the Accounting Standards Board*~~, a firm must reconcile the two valuations.

...

## 2.2 Capital resources

...

### Valuation differences

...

2.2.79G Additions to and deductions from *capital resources* will arise from the application of asset and liability valuation and admissibility rules (see PRU 1.3, PRU 2.2.86R and PRU 2 Ann 1R). Downward adjustments include *discounting of technical provisions for general insurance business* (which is optional for financial reporting but not permitted for regulatory valuation – see PRU 2.2.80R to PRU 2.2.81R) and derecognition of any defined benefit asset in respect of a defined benefit occupational pension scheme (see PRU 1.3.5BR). Details of valuation differences relating to *technical provisions* and liability adjustments for *long-term insurance business* are set out in PRU 7.3. In particular, contingent loans or other arrangements which are not valued as a liability under PRU 7.3.79R(2) result in a positive valuation difference.

2.2.80R PRU 2.2.81R applies to a *firm* that carries on *general insurance business*, except a *pure reinsurer*, and which *discounts* or reduces its *technical provisions* for *claims* outstanding, ~~to take account of its investment income as permitted by Article 60(1)g of the Annual Accounts Directive.~~

2.2.81R A *firm* of a kind referred to in PRU 2.2.80R must deduct from its *capital resources* the difference between the undiscounted *technical provisions* or *technical provisions* before deductions ~~as disclosed in the notes on the accounts,~~ and the discounted *technical provisions* or *technical provisions* after deductions. This adjustment must be made for all *general insurance business classes*, except for risks listed in *classes* 1 and 2. For *classes* other than 1 and 2, no adjustment needs to be made in respect of the discounting of annuities included in *technical provisions*. For *classes* 1 and 2 (other than annuities), if the expected average interval between the settlement date of the *claims* being discounted and the accounting date is not at least four years, the *firm* must deduct:

- (1) the difference between the undiscounted *technical provisions* and the discounted *technical provisions*; or
- (2) where it can identify a subset of *claims* such that the expected average interval between the settlement date of the *claims* and the accounting date is at least four years, the difference between the undiscounted *technical provisions* and the discounted *technical provisions* for the other *claims*.

...

## 7.4 With-profits insurance capital component

...

### Realistic current liabilities

7.4.191 R ~~In~~ For the purpose of assessing the best estimate provision to be made under PRU 7.4.190R(1) in respect of a *defined benefits occupational pension scheme*, ~~the a~~ firm must use ~~the same amount as results from the application of PRU 1.3.5R~~ either its *defined benefit liability* or its *deficit reduction amount*, consistent with the *firm's* election under PRU 1.3.5BR(2).

**Part 2: amendments relating to insurance and mortgage intermediaries**

9.3 Capital resources for insurance and mortgage mediation activity and mortgage lending and administration:

Capital resources: ~~UK GAAP~~ relevant accounting principles

9.3.22 R A firm must recognise an asset or liability, and measure its amount, in accordance with the relevant ~~UK generally accepted~~ accounting principles applicable to it for the purpose of preparing its annual financial statements unless a *rule* requires otherwise.

...

The calculation of a firm's capital resources

9.3.52 R Table: Items which are eligible to contribute to the capital resources of a firm

	Item	Additional explanation
1.	...	...
2.	Capital other than <i>share capital</i> (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i> )	<p>The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account.  The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i>:</p> <p>(1) capital account, that is ...:  (a) ...  (b) ...:  (i) ...  (ii) ...</p> <p>(2) ...</p> <p><u>For the purpose of the calculation of capital resources, in respect of a <i>defined benefit occupational pension scheme</i>:</u></p> <p>(1) <u>a firm must derecognise any <i>defined benefit asset</i>;</u>  (2) <u>a firm may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that</u></p>

		<u>the election is applied consistently in respect of any one financial year.</u>
3.	Audited reserves	<p>These are the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners</i>' drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i>.</p> <p><u>For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its audited reserves, where appropriate:</u></p> <p>(1) <u>a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held in the available-for-sale financial assets category;</u></p> <p>(2) <u>a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;</u></p> <p>(3) <u>in respect of a <i>defined benefit occupational pension scheme</i>:</u></p> <p>(a) <u>a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</u></p> <p>(b) <u>a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</u></p>
4.	...	
5.	...	
6.	<u>General/collective provisions</u>	<p>These are provisions that a <i>firm</i> carrying on <i>mortgage lending</i> or <i>mortgage administration</i> holds against potential losses that have not yet been identified but which experience indicates are present in the <i>firm's</i> portfolio of assets. Such provisions must be freely available to meet these unidentified losses wherever they arise.</p> <p><u>General/collective provisions must be verified by external auditors and disclosed in the <i>firm's</i> annual report and accounts.</u></p>
7.	...	

9.3.52A G A firm should keep a record of and be ready to explain to its supervisory contacts in the FSA the reasons for any difference between the deficit reduction amount and any commitment the firm has made in any public document to provide funding in respect of a defined benefit occupational pension scheme.

...

**Part 3 : amendments to transitional provisions**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12	PRU 1.3.5R PRU 7.4.191R	R	<p><del>[deleted](1) This rule applies to a firm which for the period specified in column (5) is required by PRU 1.3.5R to measure the surplus or deficit in a defined benefits pension scheme, for the purposes of PRU, in accordance with FRS 17 (Retirement Benefits).</del></p> <p><del>(2) A firm must derecognise any measure of actuarial gains in respect of a defined benefits pension scheme.</del></p> <p><del>(3) A firm may deduct from its liabilities the difference between the measure of actuarial losses in respect of a defined benefits pension scheme which would result from the application of PRU 1.3.5R and the firm's best estimate of the level of additional funding that it will provide for that defined benefits pension scheme over the next five years, as determined in conjunction with the scheme's actuaries or trustees (or both) as appropriate.</del></p>	From 31 December 2004 to 30 December 2005	31 December 2004

## Annex C

### Amendments to the Interim Prudential sourcebook for Banks

In this Annex, underlining indicates new text and striking through indicates deleted text. For the convenience of readers it is in two parts.

#### Part 1: amendments to Volume 1 of the Interim Prudential sourcebook for Banks

##### Chapter CO CAPITAL ADEQUACY OVERVIEW

...

##### 5 APPENDIX: OPTIMISING THE USE OF CAPITAL IN CAPITAL ADEQUACY CALCULATIONS

...

3 Optimisation of the use of capital may be achieved by carrying out the calculations in the following order (although in which steps (b), (c) and (d) are carried out is not critical):

...

(f) Identify general/collective provisions in excess of 1.25% of the sum of risk weighted assets in the banking book and notional risk weighted assets in the trading book; these should not be included in Tier 2 capital.

...

##### Chapter CA DEFINITION OF CAPITAL

##### 1 INTRODUCTION

1.1 How this chapter is organised

...

2 The rest of this section ...

....Section 13 is an appendix giving ~~a~~ proformas for an auditor's opinion on interim profits.

...

##### 2 THE NATURE OF CAPITAL

...

2.3 Types of capital

...

8 Like Tier 1, Upper Tier 2 can be split between issued and internally generated capital.

(a) ...

(b) Internally generated Upper Tier 2 capital includes general/collective provisions and certain revaluation reserves.

...

### 3 INITIAL AND ON-GOING MINIMUM CAPITAL REQUIREMENTS

#### 3.1 Minimum Capital Requirement

...

2 ...

a) Capital that can be used for the minimum initial capital requirement is:

- Fully paid-up ~~shareholders' equity~~ share capital, plus share premium accounts, but excluding cumulative preferential shares;

...

### 4 ELEMENTS OF A BANK'S CAPITAL BASE

...

#### 4.2 Tier 1 - core capital

...

1 Tier 1 (or core) capital consists of:

...

(c) Retained profit and loss arising during the course of the current year where verified by a bank's external auditors.

a) This should be net of tax, ~~anticipated~~ declared dividends and other appropriations.

...

2 In calculating a bank's capital base, a number of deductions should be made from Tier 1:

...

(d) Fully paid ~~shareholders' equity~~ up share capital issued after 1 January 1992 by the capitalisation of property revaluation reserves.

#### 4.3 Tier 2 - supplementary capital

3 Tier 2 (or supplementary) capital consists of:

(a) Reserves arising from the revaluation of tangible fixed assets and fixed asset investments, including any net unrealised gains for the fair valuation of equities held in the available-for-sale financial assets category.

(b) Fully paid ~~shareholders' equity~~ up share capital issued after 1 January 1992 by the capitalisation of property reserves.

(c) General/collective provisions.

...

5 TIER 1 CAPITAL

...

5.2 Reserves

6 *Reserves* are accumulated profits retained by the bank after the payment of all dividends and tax, and other reserves created by appropriations of share premia and other surpluses.

a) Dividends should be deducted from reserves as soon as they are declared.

(a) For the purposes of calculating prudential capital a bank should:

(i) deduct unrealised gains or, where applicable, add back in unrealised losses, on cash flow hedges of financial instruments measured at cost or amortised cost;

(ii) deduct unrealised gains or, where applicable, add back in unrealised losses, on debt instruments held in the available-for-sale financial assets category;

(iii) deduct unrealised gains or, where applicable, add back in unrealised losses, which are not attributable to changes in a benchmark interest rate, arising when a bank, upon initial recognition, designates its financial liabilities as at fair value through profit or loss;

(b) A defined benefit asset should not be considered part of reserves.

a) a defined benefit asset is the excess of the value of the assets in a defined benefit occupational pension scheme over the present value of the scheme liabilities, to the extent that a bank, as employer, in accordance with the accounting principles applicable to it, should recognise that excess as an asset in its balance sheet;

b) a defined benefit occupational pension scheme is an occupational pension scheme which is not a defined contribution occupational pension scheme;

c) a defined contribution occupational pension scheme is an occupational pension scheme into which a bank, as employer, pays regular fixed contributions and will have no legal or constructive obligation to pay further contributions if the scheme does not have sufficient assets to pay all employee

benefits relating to employee service in the current and prior periods.

(c) A bank may, for the purposes of calculating prudential capital, substitute for a defined benefit liability its deficit reduction amount. The election should be applied consistently in respect of any one financial year. A bank should keep a record of and be ready to explain to its supervisory contacts in the FSA the reasons for any difference between the deficit reduction amount and any commitment the bank has made in any public document to provide funding in respect of a defined benefit occupational pension scheme.

a) a defined benefit liability is the shortfall of the value of the assets in a defined benefit occupational pension scheme below the present value of the scheme liabilities, to the extent that a bank, as employer, in accordance with the accounting principles applicable to it, should recognise that shortfall as a liability in its balance sheet.

b) the bank's deficit reduction amount is, in respect of a defined benefit occupational pension scheme, the sum, determined by the bank in conjunction with the defined benefit occupational pension scheme's actuaries or trustees (or both), of the additional funding (net of tax) that will be required to be paid into that scheme by the bank over the following five year period for the purpose of reducing the bank's defined benefit liability.

5.3 Retained profit and loss

7 Current year interim profits, net of any tax, ~~anticipated~~ declared dividends and other appropriations, may be included in Tier 1 capital where they have been verified by the bank's external auditors.

...

10 The auditors should submit an opinion to the bank on whether the interim profits are fairly stated. This should be submitted to the FSA. Banks that report electronically should submit a hard copy of the auditors' report to the FSA.

a) ~~A Proforma~~ for an auditor's opinion is on the verification of interim profits is are included in the Appendix. Proforma 1 is for banks where the external auditor is submitting an opinion on the interim profits in the year in which the bank is publishing its first financial statements under international accounting standards (see definition in the main Glossary). Proforma 2 is for all other years.

6 UPPER TIER 2 CAPITAL

...

- 6.1 Reserves arising from the revaluation of tangible fixed assets and fixed asset investments
- 1 ...
- b) Where ~~n~~Negative goodwill is required to be identified under the adopted accounting framework it will be also included in reserves. *Negative goodwill* arises when a company/ portfolio is purchased below the value of its assets. The difference is called negative goodwill.
- ...
- 6.2 General/collective provisions
- 2 *General/collective provisions* - funds that the company holds in reserve against losses which have not yet been individually identified – should be included in Tier 2 capital up to a maximum of 1.25% of the sum of *risk weighted assets*.
- ...
- c) *Specific/individual provisions* - funds held in reserve against individually identified losses – are not included in capital.
- ...
- 6.4 Fully paid ~~shareholders' equity~~ up share capital issued after 1 January 1992 by the capitalisation of property revaluation reserves
- 4 Equity Shares issued by the capitalisation of property revaluation reserves, if issued before 1 January 1992, may be included in Tier 1. All ~~such equity shares~~ equity shares issued after that date should be included in Upper Tier 2.
- ...
- b) Prior to 1992 a number of banks issued fully paid bonus shares through the capitalisation of property revaluation reserves. The inclusion of such equity shares in Tier 1 capital was not permitted by any other signatory of the Basel Agreement and has been prohibited in the United Kingdom since 1992.
- ...
- 6.5 Hybrid capital instruments
- ...
- 6 Upper Tier 2 capital instruments therefore include:
- ...
- (b) Perpetual subordinated debt, including such debt which is convertible into equity shares. The converted debt should not be included within Tier 1 capital until the conversion has taken effect.
- ...
- 6.7 Convertible loan stock
- 8 ...

- (d) any perpetuals exchanged for equity shares should be cancelled, and not held by the issuing bank for possible future re-issue.

8 GENERAL CONDITIONS FOR SUBORDINATED DEBT

...

8.5 Issuing debt

8.5.1 Procedures for issuing subordinated loan capital

...

17 For Upper Tier 2 subordinated debt the debt agreement should contain an explicit warning to lenders of the condition for the automatic or deemed conversion of the debt into equity shares in the event of the liquidation of the bank, or of any provisions for the debt to be treated as if it had been converted into equity shares immediately preceding the winding-up of a bank, i.e. a deemed conversion.

...

10 DEDUCTIONS FROM CAPITAL

10.1 Deductions from Tier 1 capital

1 The following items should be deducted from Tier 1 capital:

...

- (d) Fully paid ~~shareholders' equity~~ up share capital issued after 1 January 1992 arising from the capitalisation of *property revaluation reserves*.

a) *Property revaluation reserves* are eligible for inclusion in upper Tier 2 capital.

...

ii) ~~Equity Shares~~ issued in this manner prior to January 1992 does not need to be deducted from Tier 1 capital.

- (e) Net unrealised losses on equities held in the available-for-sale financial assets category.

10.2 Deductions from the total of Tier 1 and Tier 2 capital

2 Certain deductions should be made from the total of Tier 1 (after Tier 1 deductions) and Tier 2 capital:

...

- (c) All holdings of capital instruments issued by other *credit institutions* and *financial firms* unless these are covered by a *trading book concession*;

a) This deduction applies to:

...

- ~~Equity holdings~~ Investments in investment trusts, ~~and holdings of units in~~ unit trusts, mutual funds or other investment vehicles established exclusively or mainly to hold *credit* or *financial institutions'* capital instruments;

...

10.3 Exemptions from the deduction policy

...

10.3.1 Trading book “*concessions*”

...

7 ... A bank should also deduct the excess of any direct or indirect holdings which exceed an amount equal to 10% of the paid up ~~equity~~ share capital of the credit or financial institution in which the holding is made.

...

11 APPLICATION AND LIMITS OF CAPITAL

...

11.3 Limits on capital for non-CAD banks

6 The limits non-CAD banks should apply are that:

...

(c) General/collective provisions should not be more than 1.25% of risk weighted assets.

a) This determines the maximum level of general/collective provisions that a bank should include in its capital base. Clearly, a bank can make more general/collective provisions if it chooses.

11.4 Limits on capital for CAD banks

7 CAD banks should apply the following limits:

...

(b) General/collective provisions should not exceed 1.25% of the sum of risk weighted assets in the banking book and notional risk weighted assets in the trading book.

13 APPENDIX – PROFORMA 1 - FOR EXTERNAL AUDITOR'S REPORT ON INTERIM PROFITS IN YEAR OF TRANSITION TO ANOTHER ACCOUNTING FRAMEWORK (eg FROM UK GAAP TO IFRS)

THE BOARD OF DIRECTORS, XYZ BANK LIMITED

Dear Sirs

In accordance with your letter of instruction dated [ ], a copy of which is attached, we have reviewed XYZ Bank Ltd's current year interim profits for the period [ ] as reported on Form BSD3 [or successor form] dated [ ] a copy of which is attached for identification. Our review, which did not constitute an audit, has been carried out having regard to the conditions set out in Section 5 of the chapter on the “Definition of Capital” in the Prudential Sourcebook applying to banks.

On the basis of the results of our review, nothing came to our attention to indicate that :

- (a) the interim profits as reported on Form BSD3 have not been calculated on the basis of accounting policies adopted by the bank to report under international accounting standards for the year to [ ]. These accounting policies are not necessarily consistent with those used in preparing the bank's latest statutory accounts for the year to [ ].'
- (b) the accounting policies adopted by the bank to report under international accounting standards differ in any material respects from those required by the international accounting standards adopted from time to time by the European Commission in accordance with EC Regulation No 1606/2002, [except for...];
- (c) the interim profits amounting to £[ ] as so reported are not reasonably stated.

Yours faithfully  
Chartered Accountants

PROFORMA 2 – FOR EXTERNAL AUDITOR'S REPORT ON INTERIM PROFITS (WHERE THERE IS NO CHANGE IN ACCOUNTING FRAMEWORK)

THE BOARD OF DIRECTORS, XYZ BANK LIMITED

Dear Sirs

- (a) the interim profits as reported on Form BSD3 have not been calculated on the basis of accounting policies adopted by the bank to report under international accounting standards for the year to [ ] [except for ...];
- (b) those accounting policies differ in any material respects from those required by [the Banks Accounts Directive as implemented in the UK *or, where relevant, the international accounting standards adopted from time to time by the European Commission in accordance with EC Regulation No 1606/2002*], [except for];

...

Chapter BC CREDIT RISK IN THE BANKING BOOK

3 RISK WEIGHTING FRAMEWORK: ON BALANCE SHEET

...

3.2 Counterparty Weights

...

3.2.5 50% weighting:

7 The following types of asset should attract a 50% weighting:

...

(a) ...

“Fully secured” means the value of property should be greater than or equal to the value of the loan (ie maximum loan to value of 100%). There is no requirement to revalue properties on a regular basis, but where such a valuation has found that the loan to value ratio exceeds 100% such loans should be weighted at 100%. (However, if the shortfall in the security value is fully covered by a specific or individual provision, the net amount of the exposure may continue to be weighted at 50%.) Conversely, where revaluation indicates that the loan to value ratio has fallen to 100% the loan may be weighted at 50%.

(b) ...

## Part 2: amendments to Volume 2 of the Interim Prudential sourcebook for Banks

### Chapter LE LARGE EXPOSURES

...

4 KEY DEFINITIONS: LARGE EXPOSURES CAPITAL BASE, LARGE EXPOSURES AND EXPOSURES

...

4.4 Reducing an exposure

...

4.4.4 Bad debt provisions

11 An exposure reported at book value should be gross of specific/individual provisions for bad and doubtful debts. Similarly, where an exposure is marked to market the valuation is typically gross of any provisions. However, for monitoring against limits, a specific/individual provision made against a loan should be set off against the gross amount of the exposure.

a) ...

5 KEY DEFINITIONS: COUNTERPARTY

...

5.3 Connected counterparties

...

9 *Parties connected to a bank* comprise:

(a) ~~‘group undertakings’ (including subsidiaries) as defined by section 259 of the Companies Act 1985 as amended by the Companies Act 1989~~ ‘parent undertakings’, ‘subsidiary undertakings’ and ‘related companies’.

‘Parent undertakings’ and ‘subsidiary undertakings’ have, for the purposes of consolidated supervision and large exposures, the meanings given in Articles 1(12) and (13) of the BCD, by reference to the Seventh Company Law

Directive 83/349/EEC. Those provisions are implemented in s258 of the Companies Act 1985.

A 'related company', ...

...

## Chapter SE SECURITISATION AND ASSET TRANSFERS

### 6 BASIS OF THE POLICY: LIMITING THE ASSOCIATION WITH THE ASSETS

...

#### 6.3 Additional policy relating to asset packages

...

#### 6 ...

- (b) The FSA expects the performer of the primary role to have evidence available in its records that ~~its auditors are satisfied that~~ the terms of the scheme satisfy the conditions for non-consolidation of an SPE, derecognition or linked presentation set out in ~~comply with~~ FRS5.

...

## Chapter VA VALUATION

### 2 GENERAL POLICY ON VALUATION

...

#### 6 ~~[deleted]~~The Companies Act requires a bank to value the majority of its assets and liabilities in accordance with the *historical cost* rules.

#### 7 ~~[deleted]~~The *historical cost* rules require:

- (a) ~~a fixed asset~~ to be valued at original cost on acquisition less any provisions for depreciation or diminution in value; and
- a) ~~A fixed asset~~ is an asset that a bank purchases for retention and continuing use in its business.
- b) ~~There are three main types of fixed assets:~~
- i) ~~‘intangible assets’, such as patents and goodwill;~~
- ii) ~~‘tangible assets’, such as land, premises, machinery and equipment; and.~~
- iii) ~~‘fixed asset investments’, ie shares and loans to other companies.~~
- (b) ~~a current asset~~ to be valued at the lower of cost and net realisable value.

a) ~~A *current asset* is an asset which is not a fixed asset; generally, a *current asset* should be readily convertible into cash.~~

8 ~~[deleted]The historical cost rules do, however, allow transferable securities held for trading purposes to be valued at market value.~~

9 ~~[deleted]Some assets may be valued according to alternative accounting rules. One practical effect is that certain fixed assets, notably land and premises, can be revalued to current market value, with any revaluation surplus (loss) taken to (from) a revaluation reserve.~~

...

## Chapter NE COLLATERAL AND NETTING

### 7 ON BALANCE SHEET NETTING

#### 7.1 Overview

1 ...

2 ...

a) In reporting on a net basis, banks should have regard to accounting guidelines where relevant. ~~Reporting of net balances should follow the bank's statutory accounting practices.~~

b) ...

## Chapter CS CONSOLIDATED SUPERVISION

### 4.3 Companies to be consolidated

3 ...

a) The definitions used of *parent* and *subsidiary* are those contained in for the purposes of consolidated supervision derive from Articles 1(12) and (13) of the BCD. These provisions refer to Article 1(1) of the Seventh Company Law Directive (83/349/EEC); these are implemented in the United Kingdom in section 258 of the Companies Act 1985. The definition of *participation* is set out in the Table in chapter GN.

...

## Chapter PN PROVISIONING POLICY STATEMENTS

### 1 INTRODUCTION

- 1.1 Context
- 1 This chapter deals explicitly with provisioning policy statements and provisions in their generality, although general/collective provisions are mentioned in the context of the definition of capital.
- ...
- 2 THE FSA'S BASIC APPROACH TO PROVISIONING
- ...
- 2 The FSA's overall approach is that a bank should hold an adequate level of provisions. The FSA accepts that what is 'adequate' will differ between banks, according to the precise nature and scale of the business(es) they undertake. These provisions may be in the form of general/collective or specific/individual provisions.
- ...
- 3 THE PROVISIONING POLICY STATEMENT
- ...
- 3.2 Issues relating to provisioning for credit exposures and other liabilities
- ...
- 6 How often are the provisions reviewed? By whom? What is the system of review?
- As the status of the exposures/potential losses changes, so the level of provisions held against them will need to be adjusted. The policy documentation should provide for regular reviews of provisions (both general/collective and specific/individual) to cater for sudden changes in conditions associated with the exposures.
- ...
- 3.3 Issues relating to provisioning for credit exposures only
- ...
- 12 How are specific/individual provisions calculated? Is it the result of a formula, a loan grading policy or another method?
- How the level of specific/individual provisions is calculated is important both for consistency and to ensure that there is an audit trail showing the methodology used.
- 13 Who decides whether the proposed level of specific/individual provisions on an individual non-performing exposure is adequate?
- ...
- 14 What methodology determines the level of general/collective provisions on credit exposures?

Does the bank make general/collective provisions according to a formula or is it left to management or a committee to decide? Does the formula provide a methodology to determine latent impairment in the portfolio?

## Annex D

### Amendments to the Interim Prudential sourcebook for Building Societies

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

#### Vol 1 Chapter 1 Solvency

##### 1.6 Own Funds

...

1.6.4 G Whenever a calculation of own funds is to be made other than at the balance sheet date, the amount of reserves included should be after deduction of any overall losses in the current year:

(1) ...

(2) ...

Where a society includes general or collective provisions in its solvency ratio calculation other than at balance sheet date then as a minimum it should have passed a board resolution, after the close of the second financial quarter, to the effect that the directors have satisfied themselves that ~~the general~~ those provisions meet the requirements set out in Annex 1A3.1.

...

##### 1.8 Deductions

...

1.8.2 G ...

1.8.3 G Societies may not include the following in own funds:

(1) any unrealised gains or losses on cash flow hedges of financial instruments measured at cost or amortised cost;

(2) any unrealised gains or losses on debt instruments held in the available-for-sale financial assets category;

(3) any unrealised gains or losses, which are not attributable to changes in a benchmark interest rate, arising when a building society, upon initial recognition, designates its financial liabilities as at fair value through profit or loss;

(4) any defined benefit asset.

1.8.4 G Societies may, for the purpose of calculating own funds, substitute for a defined benefit liability their deficit reduction amount. The election should be applied consistently in respect of any one financial year. Societies should keep a record of and be ready to explain to their supervisory contacts in the FSA the reasons for any difference

between the deficit reduction amount and any commitment a society has made in any public document to provide funding in respect of a defined benefit occupational pension scheme. For these purposes, and for the purpose of 1.8.3G:

- (1) a "defined benefit occupational pension scheme" is an occupational pension scheme which is not a defined contribution occupational pension scheme.
- (2) a "defined contribution occupational pension scheme" is an occupational pension scheme into which the society, as employer, pays regular fixed contributions and will have no legal or constructive obligation to pay further contributions if the scheme does not have sufficient assets to pay all employee benefits relating to employee service in the current and prior periods.
- (3) "occupational pension scheme" is defined in the main glossary of defined terms in the Handbook, and is derived from the Pension Schemes Act 1993.
- (4) a "defined benefit asset" is the excess of the value of the assets in a defined benefit occupational pension scheme over the present value of the scheme liabilities, to the extent that a society, as employer, should recognise that excess as a liability in its balance sheet.
- (5) a "defined benefit liability" is the shortfall of the value of the assets in a defined benefit occupational pension scheme below the present value of the scheme liabilities, to the extent that a society, as employer, should recognise that shortfall as a liability in its balance sheet.
- (6) a society's "deficit reduction amount" is, in respect of a defined benefit occupational pension scheme, the sum, determined by the society in conjunction with the defined benefit occupational pension scheme's actuaries or trustees (or both), of the additional funding (net of tax) that will be required to be paid into that scheme by the society over the following five year period for the purpose of reducing the society's defined benefit liability.

...

## 1.10 Solvency Ratio

1.10.1 G ... Asset values and values attributed to off balance sheet items should also be determined on a basis consistent with the statutory Accounts Regulations and should be net of any specific/individual provisions. Where a society has subsidiary undertakings, the solvency ratio should be calculated on a consolidated basis. For these purposes a subsidiary undertaking is defined by Article 1(13) of the BCD, which refers to Article 1(1) of the Seventh Company Law Directive (83/349/EEC); these provisions are implemented in section 258 of the Companies Act 1985, to which section 119(1) of the 1986 Act refers. ~~Consolidation should be on the same basis as applies to the society's statutory accounts (i.e.~~

~~the Accounts Regulations~~). Where subsidiary undertakings, either singly or in aggregate, have either:

...

Annex 1A

Calculation of "Own Funds"

Ann1A G

1A.1 Tier 1 Capital

...

1A.1.4 ...

1A.1.5 Societies may not include the following in own funds:

- (1) any unrealised gains or losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (2) any unrealised gains or losses on debt instruments held in the available-for-sale financial assets category ;
- (3) any unrealised gains or losses, which are not attributable to changes in a benchmark interest rate, arising when a building society, upon initial recognition, designates its financial liabilities as at fair value through profit or loss;

1A.1.6 Where a society has a defined benefit occupational pension scheme:

- (1) it may not include any defined benefit asset in own funds;
- (2) it may, for the purpose of calculating own funds, substitute for a defined benefit liability its deficit reduction amount, provided that the election is applied consistently in respect of any one financial year.

Definitions of the terms used here are set out in 1.8.4G.

1A.2 Tier 2 Capital

1A.2.1 Term subordinated debt and undated subordinated debt, which meet the requirements of chapter 2; together with general or collective provisions for bad debt and revaluation reserves.

...

1A.3 General/Collective Provisions for Bad Debt

1A.3.1 General or collective provisions should be made to cover possible losses, existing at the balance sheet or other reporting date, which have not been specifically identified.

As such, they are freely available to the society to be utilised against any actual losses subsequently identified or arising and so conform with Article 35.1(a) of the BCD. But the BCD does not permit the inclusion in "own funds" of a provision which covers identified deterioration in particular assets, whether individual or group. Thus societies should not include the latter type of provision in own funds. Societies may only include general or collective provisions in their solvency ratio calculation to an amount less than or equal to that shown in the society's last audited accounts or the amount provided when interim profits were last verified by the external auditors.

...

#### 1A.6 Own Funds

...

1A.6.2 Article 34.2(3) of the BCD allows "funds for general banking risks" to be counted as Tier 1 capital. Such funds are not general or collective provisions for bad debt but are akin to banks' "hidden reserves" and are therefore not applicable to building societies.

#### Annex 1B

##### Risk Asset Weights

##### Ann1B G

##### 1B.1 General

1B.1.1 Risk weights should be applied net of any specific or individual provision. Items subject to deduction from Own Funds should be zero weighted. Assets held by a subsidiary undertaking are weighted on the same basis as if held by the parent society.

...

#### Annex 1E

##### Interim Profits: Verification Procedures

##### Ann1E G

##### 1E.1 Verification of Interim Profits by External Auditors

1E.1.1 The FSA interprets "verified" to mean obtaining a reasonable degree of comfort on the accuracy of the reported interim results. For this purpose, the analytical review procedures commonly used by auditors in the normal course of their work can be helpful and a combination of some of them will provide adequate assurance that reported interim profits are of sufficient quality for inclusion in the capital base, provided that the society has complied in all material respects with the relevant accounting valuation principles ~~of the Accounts Regulations~~.

...

1E.1.3 Verification by auditors should in normal circumstances entail at least the following:

- (1) ...
  - (2) reviewing the accounting policies used in calculating the interim profits so as to obtain comfort that they are consistent with those normally adopted by the society in drawing up its annual financial statements and are in accordance with the ~~principles set out in the Accounts Regulations~~ relevant accounting principles;
- ...

1E.1.4 The external auditors should submit an opinion to the society on whether the interim results are fairly stated. Proformas for the text of the reports are set out below. Proforma 1 is for building societies where the external auditor is submitting an opinion on the interim profits in the year in which the building society is publishing its first financial statements under international accounting standards. Proforma 2 is for all other years. The text of the report is set out below:

Proforma 1:

"Dear Sirs ...

In accordance with your letter of instruction dated [ ] we have reviewed [name of society's] current year interim profits for the period [ ] as reported on Form QFS1, a copy of which is attached for identification. Our review, which did not constitute an audit, has been carried out having regard to the FSA's Interim Prudential Sourcebook for building societies Chapter 1.

On the basis of the results of that review, nothing came to our attention to indicate that:

- (1) the interim profits as reported on QFS1 have not been calculated on the basis of the accounting policies adopted by the society to report under international accounting standards for the year to [ ]. These accounting policies are not necessarily consistent with those used in preparing the society's latest statutory accounts for the year to [ ];
- (2) the accounting policies adopted by the society to report under international accounting standards differ in any material respects from those required by the international accounting standards adopted from time to time by the European Commission in accordance with EC Regulation No. 1606/2002 [except for .....];
- (3) the interim profits amounting to £[ ] as so reported are not fairly stated."

Proforma 2:

"Dear Sirs ...

...

- (1) ...for the year to [ ], [except for];
- (2) those accounting policies differ in any material respects from those required by the Accounts Regulations [or, where relevant, the international accounting standards adopted from time to time by the European Commission in accordance with EC Regulation No. 1606/2002] [except for .....];
- (3) ..."

## Vol 1 Chapter 5 Liquidity

### 5.3 The Prudential Regime for Liquidity

...

5.3.4 G Liquid assets should be genuinely liquid i.e. they should be capable of being realised at very short notice. Only instruments or assets that are marketable (i.e. realisable in a secondary market) or have three months or less to run to maturity should (subject to the guidance in Annex 5A and in paragraph 5.5.2) be included in the calculation of liquidity for prudential purposes. Societies may hold other assets, but as an investment rather than liquidity (~~although such assets might still fall within the "liquid assets" heading in the annual accounts, which has no restriction on maturity~~). ~~The treatment in the annual accounts determines whether an asset is a liquid asset for the purposes of calculating the society's position in relation to the statutory limit in section 6 of the 1986 Act (the "lending limit").~~

## Annex 5C

### Inter-society Holdings

...

5C.2 G A society's aggregate holding of other societies' liabilities should not exceed 5% SDL or £5m whichever is the higher, ~~including liquid assets which, although not counting as prudential liquidity (i.e., deposits with longer than 3 months to run to maturity) are held as other investments and 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.

...

## Volume 1 Chapter 6 Lending

...

### 6.2 Rules

...

6.2.2 R A society must maintain, and submit to the FSA, a board-approved policy statement on lending, which must include plans for the management of arrears, and the procedures for making specific and general (or individual and collective) provisions against impaired loans.

...

## 6.5 Risk Features of Mortgage Lending

...

### Managing Aggregate Lending Risk

6.5.5 G Societies should be aware of the risk profile of their overall mortgage stock and of their new lending and should consider lessons arising from experience with their nonperforming loans and adjust lending policy accordingly. These lessons should also inform general or collective provisioning policies.

...

## Volume 1 Chapter 9 Systems

### 9.3 Accounting Records and Systems

9.3.2 G Every building society is also required, under section 71(1) and (2) of the 1986 Act, to keep accounting records which:-

- (1) ...
- (2) ...
- (3) enable the directors properly to discharge the duties imposed on them by or under the 1986 Act (and where applicable Article 4 of EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards) and their functions of direction of the affairs of the society;
- (4) enable the society properly to discharge the duties imposed on it by or under the 1986 Act (and where applicable Article 4 of EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards).

...

## Volume 1 Chapter 10 Securitisation

SE6 Basis of the Policy: Limiting the Association with the Assets

...

### 6.3 Additional policy relating to asset packages

...

6 ...

(a) ...

(b) The FSA expects the performer of the primary role to have evidence available in its records that ~~its auditors are satisfied that~~ the terms of the scheme satisfy the conditions for non-consolidation of an SPE, derecognition or linked presentation set out in ~~comply with~~ FRS5.

...

## Annex E

### Amendments to the Interim Prudential sourcebook for Friendly Societies

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

#### Appendix 4 Asset valuation rules

#### Appendix 4

#### ASSET VALUATION RULES

...

#### Application

2. (1) ...

...

(6) Notwithstanding (1) (but subject to the conditions set out in (7) and subject to (10)) ...

...

(10) a friendly society must derecognise any defined benefit asset.

...

#### Appendix 5 Liability valuation rules

#### LIABILITY VALUATION RULES

...

#### Long-term and general insurance business

2. (1) ...

(2) ...

(3) A friendly society may substitute for a defined benefit liability its deficit reduction amount.

## Annex F

### Amendments to the Interim Prudential sourcebook for Investment Businesses

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

#### Chapter 3

#### 3 Chapter 3: FINANCIAL RESOURCES FOR SECURITIES AND FUTURES FIRMS WHICH ARE NOT INVESTMENT FIRMS

...

#### 3-62 Tangible net worth

...

#### Approved reserves

3-62(4) R A *firm* may not include reserves other than retained profits as part of *tangible net worth*.

G A *firm* that wishes to include other reserves will need to apply for a modification or waiver of this rule.

#### Profit and loss account/partners' current and capital accounts

3-62(5) R For the calculation of *tangible net worth*, a *firm* must :

(a) deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;

(b) in respect of a *defined benefit occupational pension scheme*, derecognise any *defined benefit asset*.

3-62(6) R A *firm* may, for the purposes of calculating *tangible net worth*, substitute for a *defined benefit liability* the *firm's deficit reduction amount*. The election must be applied consistently in respect of any one financial year.

3-62(7) G A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FSA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

...

Chapter 5

5 CHAPTER 5: FINANCIAL RESOURCES

...  
5.2.2 FINANCIAL RESOURCES

OWN FUNDS

5.2.2(1) R A *firm* must calculate its *own funds* in accordance with Table 5.2.2(1).

...

TABLE 5.2.2(1) CALCULATION OF OWN FUNDS AND LIQUID CAPITAL

PART 1  
METHOD OF CALCULATION

A *firm* must calculate its *own funds* and *liquid capital* as shown below, subject to the detailed requirements set out in Part II.

Financial resources	Category	Part II Para
Tier 1		
(1) Paid-up share capital (excluding preference shares)	A	2
(2) Share premium account		
(3) Audited reserves		<u>2A</u>
...		

PART II  
DETAILED REQUIREMENTS

...

2	Non corporate entities	(a) ...
		(b) ...
		(c) <u>For the calculation of <i>own funds</i>, partners' current accounts figures are subject to the following adjustments in respect of a <i>defined benefit occupational pension scheme</i>:</u>
		(i) <u>a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</u>

- (ii) a firm may substitute for a defined benefit liability the firm's deficit reduction amount. The election must be applied consistently in respect of any one financial year.

Note

A firm should keep a record of and be ready to explain to its supervisory contacts in the FSA the reasons for any difference between the deficit reduction amount and any commitment the firm has made in any public document to provide funding in respect of a defined benefit occupational pension scheme.

2A Audited reserves

For the calculation of own funds the following adjustments apply to the audited reserves figure:

- (a) a firm must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (b) in respect of a defined benefit occupational pension scheme, a firm must derecognise any defined benefit asset;
- (c) a firm may substitute for a defined benefit liability the firm's deficit reduction amount. The election must be applied consistently in respect of any one financial year.

Note

A firm should keep a record of and be ready to explain to its supervisory contacts in the FSA the reasons for any difference between the deficit reduction amount and any commitment the firm has made in any public document to provide funding in respect of a defined benefit occupational pension scheme.

...

Chapter 7

7 UCITS MANAGEMENT COMPANIES

...

7.3 METHOD OF CALCULATION OF FINANCIAL RESOURCES

7.3.1 R This table belongs to *rule 7.2.1R (1)*

PART I		
A <i>firm</i> must calculate its financial resources as shown below, subject to the detailed requirements set out in Part II.		
Financial resources Para	Category	Part II
TIER 1		
(1) Paid-up share capital (excluding preference shares)	} A	2
(2) Share premium account		
(3) Audited reserves		<u>2A</u>
(4) Non-cumulative preference shares		
...		

PART II DETAILED REQUIREMENTS	
...	
2 Non corporate entities	
(a) ...	
(b) ...	
(c) <u>For the calculation of financial resources, partners' current accounts figures are subject to the following adjustments in respect of a <i>defined benefit occupational pension scheme</i>:</u>	
(i) <u>a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</u>	
(ii) <u>a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>. The election must be applied consistently in respect of any one financial year.</u>	
<u>Note</u>	
<u>A <i>firm</i> should keep a record of and be ready to explain to its supervisory contacts in the FSA the reasons for any difference between the <i>deficit reduction amount</i> and any commitment the <i>firm</i> has made in any public document to provide funding in respect of a <i>defined benefit occupational pension scheme</i>.</u>	

## 2A Audited reserves

For the calculation of financial resources, the following adjustments apply to the audited reserves figure:

- (a) a firm must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (b) in respect of a defined benefit occupational pension scheme, a firm must derecognise any defined benefit asset;
- (c) a firm may substitute for a defined benefit liability the firm's deficit reduction amount. The election must be applied consistently in respect of any one financial year.

### Note

A firm should keep a record of and be ready to explain to its supervisory contacts in the FSA the reasons for any difference between the deficit reduction amount and any commitment the firm has made in any public document to provide funding in respect of a defined benefit occupational pension scheme.

...

## Chapter 10

10 Chapter 10: Financial resources for Securities and Futures  
Firms which are Investment Firms

...

10-61 INITIAL CAPITAL

...

Non cumulative preference share capital

10-61(3) R ...

Audited retained earnings

10-61(3A) R When calculating initial capital, a firm may include its audited retained earnings only after making the following adjustments:

- (a) a firm must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;

- (b) in respect of a *defined benefit occupational pension scheme*, a *firm* must derecognise any *defined benefit asset*.

Externally verified interim net profits or current account

10-61(4) R ...

10-61(4A) R When calculating *initial capital*, a *firm* may include its partners' current accounts figure only after making the following adjustments:

- (a) a *firm* must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (b) in respect of a *defined benefit occupational pension scheme*, a *firm* must derecognise any *defined benefit asset*.

Defined benefit pension scheme: defined benefit liability

10-61(4B) R For the calculation of *original own funds*, a *firm* may substitute for a *defined benefit liability* the *firm's deficit reduction amount*. The election must be applied consistently in respect of any one financial year.

10-61 (4C) G A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FSA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

...

Chapter 13

Chapter 13: Financial Resource Requirements for Personal Investment Firms

...

13.3 Financial Resources Test 1 - Own funds

...

#### CALCULATION OF OWN FUNDS

13.3.2 R A *Category A firm's own funds* must be calculated in accordance with tables 13.3.2(1) and (2).

Table 13.3.2(1)

This table forms part of *rule 13.3.2*

FINANCIAL RESOURCES TEST 1 - OWN FUNDS	
Companies	Sole Traders; Partnerships
(1) Paid up ordinary <i>share</i> capital	A Balances on proprietor's or partners'
(2) <i>Share</i> premium account	(5) Capital accounts
(3) Audited reserves (excluding revaluation reserves) ( <u>see 13.3.2AR</u> ) and <i>verified</i> interim net profits	(6) current accounts ( <u>see 13.3.2AR</u> ) (to the extent that the profits are audited and the interim net profits are <i>verified</i> )
(4) Non-cumulative preference <i>shares</i> (if not redeemable by shareholders within 5 years)	
Initial Capital (applicants for authorisation)	

13.3.2A R For the purpose of calculating a *Category A firm's own funds*, the following adjustments apply to audited reserves or, (for non-corporate entities), current accounts figures.

- (1) a *Category A firm* must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (2) a *Category A firm* must derecognise any *defined benefit asset*;
- (3) a *Category A firm* may substitute for a *defined benefit liability* its *deficit reduction amount*. The election must be applied consistently in respect of any one financial year.

13.3.2B G A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FSA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

...

#### CALCULATION OF FINANCIAL RESOURCES TO MEET TESTS 1, 1A OR 2

13.5.4 R A *Category A firm* must be able to calculate its financial resources at any time on the basis of the balance sheet it could draw up at that time.  
For this purpose:

- (1) ...
- (2) ...
- (3) the assets and liabilities in the balance sheet are also subject to the following adjustments:
- (a) a firm must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (b) in respect of a defined benefit occupational pension scheme, a firm must derecognise any defined benefit asset;
- (c) a firm may substitute for a defined benefit liability the firm's deficit reduction amount. The election must be applied consistently in respect of any one financial year.

...

### 13.10 Financial Resources Test 1- Own funds Requirement

...

13.10.2 R A *Category B firm's own funds* must be calculated in accordance with table 13.10(2).

Table 13.10(2).

This table forms part of *rule* 13.10.2

OWN FUNDS	
Companies	Sole Traders: Partnerships
Paid-up <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within 2 years)	Balances on proprietor's or partners'
<i>Share</i> premium account	capital accounts
Audited retained profits (see 13.10.2AR) and <i>verified</i> interim net profits	current accounts (see 13.10.2AR)
Revaluation reserves	Revaluation reserves
Short-term subordinated Loans	Short-term subordinated loans
<i>Debt capital...</i>	

13.10.2A R For the purpose of calculating a *Category B firm's own funds*, the following adjustments apply to audited retained profits or, (for non-corporate entities), current accounts figures.

- (1) a *Category B firm* must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (2) a *Category B firm* must derecognise any *defined benefit asset*;
- (3) a *Category B firm* may substitute for a *defined benefit liability* its *deficit reduction amount*. The election must be applied consistently in respect of any one financial year.

13.10.2B G A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FSA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

#### CALCULATION OF FINANCIAL RESOURCES TO MEET TESTS 1, 1A OR 2

- 13.12.3 R
- (1) ...
  - (2) ...
  - (3) the assets and liabilities in the balance sheet are also subject to the following adjustments:
    - (a) a *Category B firm* must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
    - (b) in respect of a *defined benefit occupational pension scheme*, a *Category B firm* must derecognise any *defined benefit asset*;
    - (c) a *Category B firm* may substitute for a *defined benefit liability* the *firm's deficit reduction amount*. The election must be applied consistently in respect of any one financial year.

#### APPENDIX 13 (1)

#### Defined terms for Chapter 13

...

*parent undertaking* (in accordance with section 420 of the *Act* (Parent and subsidiary undertaking) and section 258 of the Companies Act 1985 (Parent and subsidiary undertakings)):

(1) ...

(e) ~~it has a participating interest (as defined in section 260 of the Companies Act 1985) (Participating interests) in S;~~  
~~and~~

(i) it has the power to exercise, or actually exercises, a dominant influence or control over S; or

(ii) it and S are managed on a unified basis; or ...

(f) ...

## Annex G

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text. For the convenience of readers it is in three parts.

#### Part 1: amendments relating to Banks

SUP 16 Annex 2G form B7

...

#### CURRENT YEAR'S PROFIT AND LOSS

...

##### 4.1 Provisions for bad and doubtful debts

Suspended interest should not be included here, nor should suspended interest be included within item 1.1. This item should equal item 10.3. Specific/individual and General/collective should be as per the branch balance sheet.

...

#### MEMORANDUM ITEMS

##### Provisions against bad and doubtful debts

##### 10.1 Previous balance

Show the balance outstanding on the specific/individual and general/collective provisions account at the end of the previous accounting year relating to debts considered bad or doubtful. Do not include provisions made against the value of investments. The date to which the balance refers should be shown in the space provided.

...

##### 10.3 Charge/credit to profit and loss account

... The charge or credit for specific/individual provisions should not include the charge or credit for provisions in respect of suspended interest (unless it is the practice of the reporting institution to show suspended interest as interest receivable in the P&L account).

...

##### 10.6 Other

Enter any other items, including exceptional provisions and transfers between general/collective and specific/individual provisions.

SUP 16 Annex 2G form BSD3

## SECTION A: BANKING BOOK

### ASSETS

...

A90 Loans secured by mortgage(s) on residential property

...

“Fully secured” means that the value of the property is greater than or equal to the value of the loan (ie a maximum loan to value ratio of 100%). Whilst there is no requirement for reporting institutions to revalue properties on a regular basis, where such valuation has been made and it is found that the loan to value ratio exceeds 100%, such loans should be weighted at 100% (and reported in item A100). (However, if the shortfall in the security value is fully covered by a specific/individual provision, the net amount of the exposure may continue to be weighted at 50%). Conversely, where revaluation indicates that the loan to value ratio has fallen to 100% or less, the loan may be weighted at 50% and reported in item A90.

...

### A120-A190 INVESTMENTS

Report securities, ~~together with any associated accrued interest~~ using the appropriate valuation methodology, with an original maturity of over one year such as equities, eurobonds and FRNs (instruments with an original maturity of one year or less should be reported in items A50-A110). All securities (including British Government stocks) should be reported on a contract day basis, with the payments due or receivable in respect of such transactions to be shown gross in items A760 and A40. Only long positions in securities should be reported in this section of the return (see SGN27). Where the security is being accounted for on a cost or amortised cost basis and it is not possible to identify separately interest accruals they should be reported in item A260 in the appropriate risk weighting band.

...

A120 Central governments and central banks

...

Only holdings of certificates of tax deposit should be reported in the 0% band together with any interest accruals on holdings of securities and debt instruments where the issuer is a Zone A central government or central bank or where the issuer is a Zone B central bank or government and the security is in the local currency of the issuer, accounted for on an accruals basis. For the determination of the appropriate weight band for other securities held, see SGN15. Where the security is being accounted for on a cost or amortised cost basis and it is not

possible to identify separately interest accruals they should be reported in item A260 in the appropriate risk weighting bands.

...

## LIABILITIES

### CORE CAPITAL - TIER 1

...

A500 Reserves

...

A500.2 Disclosed prior years reserves (excluding item A580), disclosed current year's positive movement on reserves and negative movements on reserves

Report the disclosed, undistributed balance on profit and loss account attributable to previous years (ie revenue reserves), reserves arising from exchange rate translation differences and other reserves (eg capital redemption reserves and capital gifts). Do not report reserves arising from the revaluation of fixed assets; such reserves should be shown under item A580. ~~Report here any adjustment in respect of dividends which are not covered by current year's profit verified by external audit.~~

...

Also report any net unrealised losses on equities held in the available-for-sale financial assets category; gains should be reported under item A580.

Do not report:

- (i) any items relating to unrealised gains or losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (ii) any unrealised gains or losses on debt instruments held in the available-for-sale category;
- (iii) any unrealised gains or losses, which are not attributable to changes in a benchmark interest rate, arising when a bank, upon initial recognition, designates its financial liabilities as at fair value through profit or loss.

These items should be reported at A670 as they do not form part of regulatory capital.

Adjustments in respect of a *defined benefit occupational pension scheme* are to be applied as follows:

- a) any *defined benefit asset* must be deducted from this item and reported in A760.2;
- b) a firm may substitute for its *defined benefit liability* its *deficit reduction amount*. Any difference between the *defined benefit liability* and the *deficit reduction amount* should be reported in A760.2.

A500.3 Current year's retained profit verified by external audit

...

~~Pension fund assets arising from either a pension fund surplus or deficiency should be deducted from this item. Pension fund liabilities arising from pension fund surpluses should be added; whereas pension fund liabilities arising from pension fund deficiencies should not be added back but should be added to item A760.2.~~

...

## SUPPLEMENTARY - TIER 2

A580 Fixed asset revaluation reserves

Report reserves relating to the revaluation of fixed assets. Report also shares issued by the capitalisation of property revaluation reserves after 1 January 1992. Also report any net unrealised gains on equities held in the available-for-sale financial assets category.

A590 General/collective provisions

Report general/collective provisions that are held against possible or latent losses but where the losses have not as yet been identified. Provisions earmarked or held specifically against lower valuations of particular claims or classes of claims should not be reported here, but netted against the value of the asset against which they have been made (see SGN6). This item should include any general/collective provisions against the value of investments.

...

## ADJUSTMENT TO CAPITAL (see ANNEX 1 for details of calculation)

A621 Excess general/collective provisions

...

## OTHER CAPITAL

...

A670 Other capital

...

Report items relating to:

- (i) any unrealised gains or losses on cash flow hedges of financial instruments measured at cost or amortised cost;
- (ii) any unrealised gains or losses on debt instruments held in the available-for-sale financial assets category; and

- (iii) any unrealised gains or losses, which are not attributable to changes in a benchmark interest rate, arising when a bank, upon initial recognition, designates its financial liabilities as at fair value through profit or loss.

Report preference shares ...

#### OTHER NON-CAPITAL LIABILITIES

...

A760 Other

...

Include also any difference between a *defined benefit liability* and the bank's *deficit reduction amount* liabilities arising in respect of a *defined benefit occupational pension scheme* pension scheme deficiencies; and any *defined benefit asset* which has been removed from item A500.2 those arising in respect of a pension fund surplus should be included under item A500.3.

...

#### APPENDIX A-IV - CURRENT YEAR'S PROFIT & LOSS ACCOUNT

##### EXPENSES

...

170 Provisions for dividends

For returns covering less than a year, only those dividends declared in the period should be reported ~~provision should be made for an appropriate portion of the estimated total dividend to be paid for the year.~~

#### APPENDIX A-V - PROVISIONS AGAINST BAD AND DOUBTFUL DEBTS AND INVESTMENTS

10 Previous balance

Show the balance outstanding on the specific/individual and general/collective provisions account at the end of the previous accounting year relating to debts considered bad or doubtful. From end December 2001, this should include provisions made against the value of investments, where these are not reported on a fair value basis. The date to which the balance refers should be shown in the space provided.

20 Adjustments for acquisitions/disposals

Enter any adjustments made as a result of an acquisition or disposal of a subsidiary company the balance sheet of which includes specific/individual or general/collective provisions and is included in the consolidation for the particular return. Where the net adjustment is negative, report the amount with a minus sign (not brackets).

...

90 - 150 Specific/individual provisions against bad and doubtful debts

In the relevant boxes, show the assets (by risk weights) against which specific/individual provisions have been made. Total specific/individual provisions (item 150) should equal the total of items 90 to 140. Include in column 1 above earmarked general/collective provisions which are in the nature of specific/individual provisions. Such cases should be agreed with the FSA. All figures should be positive. Specific/individual provisions against the value of investments should be reported in items 170-230.

...

BSD3 SECTION B: TRADING BOOK FOR SOLO BANK AND LINE BY LINE CONSOLIDATED ENTITIES

...

Specific/Individual Provisions

7 All items reported for the purpose of calculating the capital requirement for counterparty risk (items B10 to B100) should be reported net of any specific/individual or earmarked general/collective provisions made.

...

SUP 16 Annex 2G form LE3

Large Exposures (Form LE3)

...

An exposure

See SGN9. You should monitor and report large exposures on an unconsolidated/solo-consolidated basis and, if agreed with us, a consolidated basis. You should measure an exposure as the amount at risk arising from the total of your business to a counterparty, after deducting specific/individual bad debt provisions and eligible collateral.

...

The amount at risk

...

You should calculate exposures ~~in line with UK generally accepted~~ using the accounting practice principles you use for published financial statements. However, in certain cases you may wish to use an alternative accounting practice. If this is the case, you should talk to us to determine whether reports are acceptable on that basis. The accounting practice you use to report exposures should, unless otherwise stated below, be the same as the one you use to calculate your capital base.

...

Reducing an Exposure

...

## Bad debt provisions

You should report in column B the book value gross of specific/individual and earmarked general/collective provisions for bad and doubtful debts. Similarly, where an exposure is marked to market, the valuation should be gross of any specific/individual provisions. However, you should report such provisions in column C. You should also report exposures net of write-offs that have occurred since the last reporting date. You should report these write-offs in a letter to your usual supervisory contact.

...

SUP 16 Annex 2G form LR

## LIQUIDITY RETURN (FORM LR)

### Provisions

24 Items should be reported net of specific/individual provisions. General/collective provisions should not be recorded on this return.

...

SUP 16 Annex 2G Supervisory Guidance Notes (SGN)

...

### Specific/individual provisions

6 All loans, advances, bills and securities (and also off-balance sheet items) reported on the capital adequacy returns should be included net of any specific/individual or earmarked general/collective provisions made. Off-balance sheet items should also be reported net of specific/individual provisions, although the amount of such provisions should be included in item A750 on Form BSD3. For large exposures purposes, the exposures should be reported gross of provisions for bad and doubtful debts.

...

### Closely related counterparties

12 ...

~~An undertaking is the parent undertaking of another undertaking (a subsidiary undertaking) if any of the following (from section 258, Companies Act 1985) apply-~~

~~(a) It holds a majority of the voting rights in the undertaking.~~

~~(b) It is a member of the undertaking and has the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.~~

~~(c) It has the right to exercise a dominant influence over the undertaking:~~

~~(i) — by virtue of provisions contained in the undertaking’s memorandum or articles; or~~

~~(ii) — by virtue of a control contract. The control contract must be in writing and be of a kind authorised by the memorandum or articles of the controlled undertaking. It must also be permitted by the law under which that undertaking is established.~~

~~(d) It is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.~~

~~(e) It has a participating interest in the undertaking and:~~

~~(i) it actually exercises a dominant influence over the undertaking; or~~

~~(ii) it and the undertaking are managed on a unified basis.~~

~~(f) A parent undertaking is also treated as the parent undertaking of the subsidiary undertakings of its subsidiary undertakings.~~

Connected counterparties

13 Parties connected to the reporting institution comprise:-

(i) other group companies<sup>3</sup>, excluding those companies which are included in the consolidation on a particular return;

...

---

<sup>3</sup>The definition of group companies used for supervisory reporting is that set out for “group undertakings” in section ~~262~~ 259(5) of the Companies Act 1985 as amended by the Companies Act 1989, together with any associated companies that are consolidated with the institution for reporting purposes, or that would be consolidated but for the fact that they are supervised by another UK supervisory authority. (For definitions of parent and subsidiary undertakings refer to section 258 of the Companies Act 1985 as amended by the Companies Act 1989 implementing Article 1(1) of the Seventh Company Law Directive (83/349/EEC), referred to in Articles 1(12) and 1(13) of the Banking Consolidation Directive (2000/12/EC).)

...

## Part 2: amendments relating to Building Societies

Sup 16 Annex 4G Form MFS1

### INTRODUCTION: GENERAL NOTES ON THE RETURN

...

#### 3. Accounting conventions

Unless advice is given to the contrary in these Guidance Notes, the return should be compiled using standard accounting practice and in accordance with accounts regulations made under the 1986 Act.

The return ~~was has been~~ designed with the aim of harmonising line items wherever possible with ~~the relevant schedules of the those required under~~ 1998 accounts regulations, ~~and as used in societies' published and internal accounts. In many instances line items reflect the basis adopted in the 1998 accounts regulations.~~ For those societies whose financial reporting base is International Accounting Standards this return will not fully reflect the format of their published accounts.

As the data collected in this return is utilised to support both prudential supervision and provision of statistical sector aggregates to the Bank of England and the Office for National Statistics for Monetary Aggregates there are a number of areas where the guidance notes require data to be provided based on contractual interest rates rather than effective interest rates.

...

#### 7(i) Positions to be reported gross

In general, liabilities and assets should be shown gross, and not netted off. Thus an account which moves from credit to debit will move from one side of the balance sheet to the other.

A notable exception to this however concerns the reporting of loan assets (eg in tables A, B and F) which satisfy the conditions for non-consolidation of an SPE, derecognition or "linked presentation" under set out in FRS5. Such assets should be shown in the balance sheet net of linked funding and also on this basis in table F(1). But in the special analysis in section F9 (table F(2)) they should be shown on a gross basis.

#### 7(ii) Accrued interest

Accrued interest is identified explicitly in the balance sheet under specific subheads. Analysis elsewhere on the return may require either the inclusion or exclusion of accrued interest, but this is indicated on the face of the return as appropriate. Accrued interest should always be calculated using the contractual interest rate.

...

## SECTION B: BALANCE SHEET: Liabilities

...

B1 - B4. Interest accrued

This should be shown gross and calculated using the contractual interest rate.

B1. SHARES

This covers shares as referred to in Section 8 of the 1986 Act.  
It should include:

- (a) ...
- (d) interest credited to accounts (calculated using the contractual rate)

...

...

B2. DEPOSIT AND DEBT SECURITIES

This is a breakdown of liabilities in respect of deposits accepted by the society (including the issue of debt securities), subject to the limitations in Section 8 of the 1986 Act. Deposits should always be reported at their cost value. Debt securities should be reported using the value included in the financial statements.

...

B2.14-18 Debt Securities

Debt securities should be reported using the value included in the financial statements. Where this is on an accruals basis, Deep discounted bonds should be included at issue/purchase price with the "discount" accruing in interest accrued at item B2.19.

B3: CAPITAL

...

B3.5 Other capital – covers capital not described above, and in particular new forms of capital that may be approved in the future but which do not qualify for inclusion in any of items B3.2 or B3.4. In the case of a return completed for a subsidiary undertaking all capital provided by the parent society should go here. Financial results from cash flow hedges and any unrealised gains or losses on available-for-sale financial assets should be reported here.

...

B4 OTHER LIABILITIES includes

...

B4.5 Other includes trade creditors and deferred income; provisions for liabilities; ~~and charges~~ balance sheet amounts relating to fair value hedges and any other effects of applying International Accounting Standards which have not been included within the relevant liability categories above.

...

## SECTION B: BALANCE SHEET: Assets

### B6. LIQUID ASSETS

General Liquid assets in this section of the return are those assets shown as liquid assets under the relevant schedules of the Accounts Regulations ~~and in a society's published and other accounts~~. Liquid assets in the balance sheet (and in table A) are not the same as prudential liquidity, which is analysed in table E.

...

B6.2 Deposits with central banks refers to the Bank of England in the UK and equivalent institutions in other countries. These deposits should be recorded on a contractual basis.

B6.3 Bank Deposits

Report these on a contractual basis and should include:

...

Insert the following before B6.5:

#### B6.4 – B6.11

These sections should be completed in accordance with the accounting principles applicable to these items in the balance sheet of a society.

...

B6.12 Other liquid assets: report these on a contractual basis and includes those with:

...

B6.13 Interest accrued

Only interest accrued on items which are reported in sections B6.2 to B6.12 on a contractual basis should be reported. Where items are reported using market values the interest element should be reported in the appropriate section.

B7 LOANS AND INVESTMENTS

...

All balances entered should be reported on a cost basis and only take ~~bring~~-into account interest (calculated using the rate applied to the loan account) which is due at the reporting date: interest in respect of the remainder of the society's financial year should be excluded since it is not due at the reporting date. Provisions for bad and doubtful debts should not be deducted from individual line items B7.1-7.4 and each of these asset line items should be shown 'gross'. The amount of provisions should be shown separately (B7.6). Balances will however take account of any amounts written off loan assets as shown in the transaction table in Section F.

...

B7.4 Investments should be reported at market value except where they do not have a quoted market price in an active market and whose fair value cannot be reliably measured. In these cases the society should continue to regard investments as being ~~are~~ the aggregate amount outstanding in respect of:

...

B7.6 Provisions: cover general/collective and specific/individual and refers to amounts prepared on a basis consistent with the same items presented in the published accounts. The amount shown should be updated throughout the year whenever updates are made to provisions charged in the Income and Expenditure Account.

...

B10. OTHER ASSETS includes

- (a) trade debtors
- (b) any other item for which payment is due to the society but has not yet been received
- (c) all other assets not shown elsewhere, including all adjustments applied to financial asset values to comply with prudential reporting requirements.

...

## SECTION E: LIQUID ASSETS

E1. REALISABLE WITHIN

- (i) 

...

Balances at the end of the month: as per balance sheet  
Show amounts in this column on the same basis as included in the balance sheet, but in table E include accrued interest along with each line item (in the balance sheet it appears as a separate amount where the asset has been recorded on a contractual basis).
- (ii) Intermediate workings  

....

Market value only applies to gilts, and means the market value at the month end, but before any discounting is applied. This will be the same as the balance sheet figure where market values have been adopted.

...

## SECTION F: LOAN AND INVESTMENTS

...

### F9 LOAN BOOK ACQUISITIONS/SALES AND LOANS SECURITISED

- ...
- (iii) "loans securitised" represents balances on any loans that the society (or subsidiary undertaking in the case of MFS2 reporting) has "securitised" in the month, where "securitised" has the same meaning as described in the Prudential Guidance on Securitisation [Chapter 10 of Volume 1 of the Interim Prudential Source Book ("IPSB") for Building Societies]. ~~It includes balances on loans subject to securitisation transactions qualifying either for "linked presentation" or "derecognition" methods of accounting.~~

The final column "balance at end month on loan assets subject to nonrecourse funding" represents all such loan assets (and not just the amount treated as transactions in the month), and requires the "gross amount" of such loan assets to be reported against relevant line item categories. The "gross amount" is the amount of any such loan that, ~~under the "linked presentation" method of accounting,~~ would be shown in a society's published or other balance sheet (but not Financial Services Authority returns) as X in the example below:

gross loan asset	= X
less non-recourse funding	= Y
net loan asset	= X-Y

Sup 16 Annex 4G Form QFS1

## INTRODUCTION: GENERAL NOTES ON THE RETURN

...

### 3. Accounting conventions

Unless advice is given to the contrary in these Guidance Notes, the return should be compiled using standard accounting practice and in accordance with accounts regulations made under the 1986 Act.

The return ~~was has been~~ designed with the aim of harmonising line items wherever possible with the relevant schedules of the those required under 1998 accounting regulations, and as used in societies' published and internal accounts. In many instances line items reflect the basis adopted in the 1998 accounting regulations. For those societies whose financial reporting base is International Accounting Standards this return will not fully reflect the format of their published accounts.

...

5(ii) Subsidiary undertakings

Columns headed "subsidiary undertakings" means the total in respect of all such bodies which are required to be fully consolidated in group accounts for prudential regulation ~~(e.g. published accounts)~~

5(iii) Group (consolidated)

Columns headed "Group (consolidated)" should be compiled in line with Prudential Guidance on Solvency ~~on a basis equivalent to that used in preparing published Group figures~~. The figures under "Group" will not necessarily be the total of those under "society" and "subsidiary undertaking" because of consolidation adjustments.

...

8 Specific items

8(i) Positions to be reported gross

In general, liabilities and assets should be shown gross, and not netted off. Thus an account which moves from credit to debit will move from one side of the balance sheet to the other.

A notable exception to this however concerns the reporting of loan assets which are subject to required to satisfy the conditions for non-consolidation of an SPE, derecognition or "linked presentation" under set out in FRS5. Such assets should be shown in the balance sheet net of linked funding and also on this basis in other tables where balances are reported on the same basis (e.g. F, G, H, I as relevant).

...

10 Overseas subsidiary undertakings

Should be treated as they would for the purposes of the society's published accounts, ~~(e.g. attributing such overseas assets and liabilities to the relevant balance sheet items used in the Accounts Regs.)~~

11 Subsidiary undertakings: non-coterminous financial year ends:

...

Whereas the accounting standards Accounts Regulations permits a lag of up to 3 months in annual data, the more frequently collected quarterly data needs to be more time-relevant and, where possible, societies should provide information on subsidiaries for the society's actual quarter rather than lagged by up to 2 months.

SECTION A: BALANCE SHEET

...

3 ...

Statutory Percentages (Nature Limits)

...

### A3 Capital

This category will include:

- (i) any unrealised gains or losses on assets held in the available-for-sale financial assets category, and
- (ii) gains or losses on cash flow hedges of financial instruments measured at cost or amortised cost.

### A5 Other Liabilities

This category should include all liabilities measured at fair value not included in any other liability category on the return.

### A12 Other Assets

This category should include all assets measured at fair value not included in any other asset category on the return.

The purpose of lines items A14 and A15 is to report the actual value at the quarter end (and the expected value for the current financial year end) of the statutorily defined percentages related to the funding and lending nature limits.

A14 ...

## SECTION B: INCOME AND EXPENDITURE ACCOUNT

~~Items should be compiled on the same basis as specified in the Accounts Regulations [1998]. See also Guidance Notes on AFS1 (Table B).~~

### B6.2 Administrative Expenses: Other (inc. appointed agents)

"Appointed agents" refers to those properly appointed by the society to act as its agent mainly for the purpose of obtaining retail funding or making loans.

The amount is the cost to the society of commissions (e.g. on shares or deposits from individuals) and any other payments made by the society to its appointed agents.

~~This amount is included within the other expenses sub-head of Administrative Expenses in published accounts under the Account Regulations and is shown similarly on the return.~~

...

## B17-19 Reconciliation of net Profit/(Loss) with changes in reserves

The purpose of these items is to show the analysis of changes in reserves, excluding revaluation reserves, during the relevant period, and the reconciliation is

$$B19 \text{ must equal } (B16 + B17 + B18)$$

~~"Reserves" has the same meaning as in the Accounts Regs and hence excludes revaluation reserves.~~

## SECTION C: INCOME AND EXPENDITURE ACCOUNT– Further analysis

...

### C1.3 Net profit/(loss) on financial operations

~~The This Accounts Regulations define this category as including~~ includes:

- (i) ...
- (ii) ...
- (iii) unrealised gains and losses recorded in the income and expenditure account in respect of assets and liabilities which have been measured on a fair value basis.

## SECTION D: CAPITAL AVAILABLE: Own Funds

...

### TIER I CAPITAL

#### D1.1 Reserves at start of year

Reserves exclude revaluation reserves which are to be shown at D2.1.

Report any net unrealised losses on equities held in the available-for-sale financial assets category; gains should be reported under item D2.5

Do not include any items relating to gains or losses on cash flow hedges of financial instruments measured at cost or amortised cost nor any unrealised gains or losses on debt instruments held in the available-for-sale category; such items should be reported under D2.5.

In respect of a defined benefit occupational pension scheme:

- (i) any defined benefit asset should be deducted from this item and reported in D2.5, but
- (ii) in the calculation of own funds a society may substitute for a defined benefit liability its deficit reduction amount. The difference between the defined benefit liability and the deficit reduction amount should be reported in D2.5.

...

#### D1.4 Intangible fixed assets

Should be deducted. It includes, for example, goodwill to the extent that it is already included in the balance sheet (and hence already included in reserves). ~~See also fuller details for this item in the Accounts Regs.~~

...

#### TIER II CAPITAL

...

#### D2.2 General/collective provisions for bad debt

General/collective provisions should be included on the basis set out in the relevant Annex of the P/G.

...

#### D2.5 Other tier II

Any tier II capital resource that may be permitted in the future and which does not fall to be included under any of the above sub heads. This should include any gains or losses on cash flow hedges and gains or losses on assets held in the available-for-sale financial assets category EXCEPT net unrealised losses on equities which should be reported under item D1.1.

Report also here any difference between the society's defined benefit liability and its deficit reduction amount in respect of a defined benefit occupational pension scheme where the society has elected to substitute the deficit reduction amount for the defined benefit liability in its calculation of own funds. Report also any defined benefit asset which has been removed from item D1.1.

Also include here under "group" columns only, the amount of any allowable minority interests that count as Tier II.

#### D2.76 Amounts in excess of Tier II limits

...

Additionally this section should include the following items included in D2.5:

(iii) gains or losses on cash flow hedges of financial instruments measured at cost or amortised cost;

(iv) any unrealised gains or losses on debt instruments held in the available-for-sale financial assets category;

(v) any difference between the society's defined benefit liability and its deficit reduction amount in respect of a defined benefit occupational pension scheme; or

(vi) any defined benefit asset.

...

D3 Deductions from Tier I and Tier II

D3.1 Deductions not shown elsewhere

...

Also include deductions (described in P/G) in respect of the following: life and general insurance companies, mortgage indemnity insurance captives, securitisations, etc.

Adjustments recorded here should also include any unrealised gains and losses (which are not attributable to changes in a benchmark interest rate) arising when a building society, upon initial recognition, designates its financial liabilities as at fair value through profit or loss.

## SECTION F: CAPITAL: Solvency Ratio

...

On balance sheet items

Details of risk asset weights are given in an Annex of the P/G.

All loan asset balances in table F should be shown net of specific or individual provisions (see below).

...

Columns      Asset amount and Weighted amounts

Columns headed "asset amount" should show the nominal asset figures (including accrued interest). For "on balance sheet" items totals of relevant categories (e.g. liquid assets) should agree with amounts shown in the balance sheet table A (except in the case of loan assets, where balances should be shown after the deduction of specific or individual provisions), unless of course "solo consolidation" or "exclusion from consolidation" applies to table F. For "off balance sheet" items the

nominal asset amount is the amount of principal involved (which in the case of F6.3 to F6.6 is the amount prior to the application of any credit conversion factor).

## SECTION L, EXPOSURE ANALYSIS: Large exposures - Group

...

### 3. (j) Specific or individual provisions

This is to be the amount of any specific or individual provision which has been included in the income and expenditure account in respect of the relevant lending or investment.

## Sup 16 Annex 4G Form QFS2

## SECTION C: UK GOVERNMENT STERLING SECURITIES

...

### C1-3 TRANSACTIONS (Columns)

Points on individual columns are:

...

- (v) Balances at end quarter is given on two bases:
- (a) Book value - which should reconcile with the previous columns
  - (b) Market value - which provides a bench-mark for compilation of sector balance sheets. This may be the same as book value if the accounts have been compiled on a market value basis.

...

## Sup 16 Annex 4G Form AFS1

## INTRODUCTION: GENERAL NOTES ON THE RETURN

...

### 3. Accounting conventions

Unless advice is given to the contrary in these Guidance Notes, the return should be compiled using standard accounting practice and in accordance with accounts regulations made under the 1986 Act.

The return ~~was has been~~ designed with the aim of harmonising line items wherever possible with the relevant schedules of the those required under 1998 accounts regulations, and as used in societies' published and internal accounts. ~~In most instances line items reflect the basis adopted in the 1998 accounting regulations.~~ For those societies whose financial reporting base is International Accounting Standards this return will not fully reflect the format of their published accounts. Given the existence of detailed "definitions" in the Accounts Regs (in the form of particular

treatments to be adopted in compiling balance sheet and income and expenditure accounts) and also guidance in the BSA's Annual Accounts Manual, sections A and B of these Guidance Notes deal only with a limited number of line items where additional notes are thought likely to be needed.

...

5(ii) Subsidiary undertakings

Columns headed "subsidiary undertakings" means the total in respect of all such bodies which are required to be fully consolidated in group accounts for prudential regulation (~~e.g. published accounts~~)

5(iii) Group (consolidated)

Columns headed "Group (consolidated)" should be compiled in line with Prudential Guidance ~~on a basis equivalent to that used in preparing published Group figures.~~

8. Specific items

8(i) Positions to be reported Gross

In general, ~~Accounts Regulations indicate that~~ amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure, subject to certain exceptions relating to financial operations and to provisions and amounts written off which are dealt with in paragraphs B5, B9 and B10 of these Guidance Notes.

A notable exception to this however concerns the reporting of loan assets which ~~are subject to~~ should satisfy the conditions for non-consolidation of an SPE, derecognition or "linked presentation" under FRS5. Such assets should be shown in the balance sheet net of linked funding and also on this basis in other tables where balances are reported on the same basis (e.g. G).

...

## SECTION A: BALANCE SHEET: LIABILITIES

A2 Deposits and debt securities

Although this is not a specific sub-head in the published accounts ~~Accounts Regs~~, it is used for convenience to bring together three sources of funding other than "shares".

...

## SECTION B: INCOME AND EXPENDITURE

...

B5 Other income and charges

Although no longer a sub-head in the published accounts Accounts Regs, it has been retained since all the component items remain.

### Part 3: amendments relating to insurance and mortgage intermediaries

Sup 16 Annex 18BG Notes for completion of the Retail Mediation Activities Return ('RMAR')

...

Section D: Regulatory Capital

...

Section D1: guide for completion of individual fields

...

Eligible capital (mortgage and non-investment insurance)	
Incorporated firms	
Share capital	...
Audited reserves	<p>These are the audited accumulated profits retained by the <i>firm</i> (after deduction of tax and dividends) and other reserves created by appropriations of share premiums and similar realised appropriations.</p> <p>Reserves also include gifts of capital, for example, from a <i>parent undertaking</i>.</p> <p>If reserves have not been audited this field should be zero.</p> <p><u>The audited reserves figure is subject to the following adjustments, where appropriate:</u></p> <p>(a) <u>any unrealised gains must be deducted or, where applicable, any unrealised losses added back in on cash flow hedges of financial instruments measured at cost or amortised cost;</u></p> <p>(b) <u>any unrealised gains must be deducted or, where applicable, any unrealised losses added back in on debt instruments held in the available-for-sale financial assets category;</u></p> <p>(c) <u>in respect of a <i>defined benefit occupational pension scheme</i>, any <i>defined benefit asset</i> must be <u>derecognised;</u></u></p> <p><u>A <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>.</u></p>

...

Sup 16 Annex 19BG Notes for the completion of the Mortgage Lending & Administration Return ('MLAR')

## INTRODUCTION: GENERAL NOTES ON THE RETURN

...

### 5. Accounting conventions

Unless the contrary is stated in these guidance notes, the return should be compiled using generally accepted accounting practice.

However, information in respect of lending (eg balances, advances, interest rates, arrears etc) to be reported in sections D, E, F, G, H and J of the return should not be fair-valued but should report the contractual position (ie as between lender and borrower).

...

### 9. Specific items

#### 9(i) Positions to be reported gross

In general, liabilities and assets should be shown gross, and not netted off (unless there is a legal right of set-off). Thus an account which moves from credit to debit will move from one side of the balance sheet to the other.

A notable exception to this however concerns the reporting of loan assets, which ~~are subject to~~ should follow PRU 9.3.33R – PRU 9.3.35G 'linked presentation' (e.g. under FRS5). Such assets should be shown in the balance sheet net of linked funding and also on this basis in other tables where balances are reported on the same basis. Only sections A3 and D2 require the reporting of such loan assets on a 'gross' basis.

...

## SECTION A: BALANCE SHEET

A1, A2 The balance sheet is intended to reflect the practices used in compiling published or other accounts (~~e.g. those prepared under the UK Companies Acts~~), although its format in the *MLAR* (with 'total assets' and 'total liabilities') will not necessarily be the same as that used by *firms* in their regular accounts. However, the differences should only be presentational.

...

A1.6 ...

A1.11 Other current assets should include all assets measured at fair value not included in any other asset category on the return.

A2.1 Shareholders' funds should include any unrealised gains or losses resulting from the fair valuation of available-for-sale financial assets, and any fair value gains or losses arising on cash flow hedges of financial instruments measured at cost or amortised cost.

A2.7 Other liabilities should include all liabilities measured at fair value not included in any other liability category on the return.

A3 ...

...

#### SECTION B: PROFIT & LOSS ACCOUNT

...

B1.2-1.7 Covers a range of income elements which are more closely related to financial activities, including in particular those associated with mortgage lending. In particular B1.7 Other income should include unrealised gains in respect of assets and liabilities which have been measured on a fair value basis.

B1.9-1.13 Covers a range of expenditure elements, including those related to nonfinancial and also to financial (including mortgage related) activities. In particular B1.13 Other expenses should include unrealised losses in respect of assets and liabilities which have been measured on a fair value basis.

...

#### SECTION C: CAPITAL

...

(3) Audited reserves

Audited reserves are audited accumulated profits retained by the *firm* (after deduction of tax, dividends and proprietors' or *partners'* drawings) and other reserves created by appropriations of *share* premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a parent company. For *partnerships*, audited reserves include *partners'* current accounts according to the most recent financial statement.

The audited reserves figure is subject to the following adjustments, where appropriate:

- (a) any unrealised gains must be deducted or, where applicable, any unrealised losses added back in on cash flow hedges of financial instruments measured at cost or amortised cost;
- (b) any unrealised gains must be deducted or, where applicable, any unrealised losses added back in on debt instruments held in the available-for-sale financial assets category. Any unrealised gains or losses on equities held in the available-for-sale financial assets category should be reported at C1.5;
- (c) in respect of a defined benefit occupational pension scheme, any defined benefit asset must be derecognised;

A firm may substitute for a defined benefit liability the firm's deficit reduction amount provided that that election is applied consistently in respect of any one financial year.

...

(6) General/collective provisions

*Firms* should report general/collective provisions that are held against potential losses that have not yet been identified, but which experience indicates are present in the *firm's* portfolio of assets. Such provisions must be freely available to meet these unidentified losses wherever they arise. General/collective provisions must be verified by external auditors and disclosed in the *firm's* annual report and accounts.

...

Treatment of eligible capital items (listed above) in section C1:

...

C1.4 General/collective provisions

C1.5 Other eligible capital: includes

- any other item of eligible capital not required to be included in items C1.1 to C1.4, including any unrealised gains or losses on equities held in the available-for-sale financial assets portfolio.

...

SECTION D1: LENDING – BUSINESS FLOWS AND RATES

...

D2

Loans: Book movements

...

(iii) 'loans securitised' represents balances on any loans that the *firm* has 'securitised' in the quarter. It includes balances on loans subject to securitisation transactions ~~qualifying either for the 'linked presentation' or 'derecognition' methods of accounting as described in FRS 5~~ which should follow PRU 9.3.33R – PRU 9.3.35G;

...

The final column 'balance at end quarter on loan assets subject to nonrecourse funding' represents all such loan assets (and not just the amount treated as transactions in the quarter), and requires the 'gross amount' of such loan assets to be reported against relevant line item categories. The 'gross amount' is the amount of any such loan that, ~~under the 'linked presentation' method of accounting,~~ would be shown in a *firm's* published or other balance sheet as X in the example below: ...

## PENSIONS AND CONSEQUENTIAL AMENDMENTS INSTRUMENT 2005

### 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 156 (General supplementary powers);
  - (4) section 157(1) (Guidance); and
  - (5) section 247 (Trust scheme rules).
- 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 21 April 2005.

### Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2):

(1)	(2)
Glossary of definitions	Annex A
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex B
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex C
Conduct of Business sourcebook (COB)	Annex D
Mortgages: Conduct of Business sourcebook (MCOB)	Annex E
Money Laundering sourcebook (ML)	Annex F
Authorisation manual (AUTH)	Annex G
Supervision manual (SUP)	Annex H
Dispute Resolution: Complaints sourcebook (DISP)	Annex I
Collective Investment Schemes sourcebook (CIS)	Annex J
New Collective Investment Schemes sourcebook (COLL)	Annex K

**Citation**

- E. This instrument may be cited as the Pensions and Consequential Amendments Instrument 2005.

By order of the Board  
21 April 2005

## Annex A

### Amendments to the Glossary of definitions

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

<i>constable</i>	a police officer in the <i>United Kingdom</i> or a <i>person</i> commissioned by the Commissioners of <del>Customs and Excise</del> <u>HM Revenue and Customs</u> .
...	
<i>CTF provider</i>	(in accordance with section 3(1) of the Child Trust Funds Act 2004) a <i>person</i> approved by <del>the Inland Revenue</del> <u>HM Revenue and Customs</u> in accordance with the <i>CTF Regulations</i> .
...	
<i>investment trust</i>	a <i>company</i> listed in the <i>United Kingdom</i> or another <i>EEA State</i> which:  (a) is approved by the <del>Inland Revenue</del> Commissioners for <u>HM Revenue and Customs</u> under section 842 of the Income and Corporation Taxes Act 1988 (or, in the case of a newly formed <i>company</i> , has declared its intention to conduct its affairs so as to obtain such approval); or
...	
<i>ISA manager</i>	a <i>person</i> who is approved by <del>the Inland Revenue</del> <u>HM Revenue and Customs</u> for the purposes of the <i>ISA Regulations</i> as an account manager.
...	

## Annex B

### Amendments to the Interim Prudential sourcebook for Friendly Societies

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

7.1 In this Part of the *IPRU(FSOC)*, unless the contrary intention appears, the following definitions apply -

...

*partnership pension society* means an unincorporated *friendly society*, which satisfies the following conditions –

- (a) the purpose of the society is to effect or carry out unit-linked contracts to pay *annuities on human life*, which are approved by the Commissioners ~~of the Inland Revenue~~ for HM Revenue and Customs under Section 620 of the Income and Corporation Taxes Act 1988;

...

## Annex C

### Amendments to the Interim Prudential sourcebook for Investment Businesses

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

#### Appendix 1 (Interpretation)

##### Glossary of terms for chapter 5 (Former IMRO firms)

...

*investment trust* means a *company listed in the United Kingdom or another EEA State* which is

- (a) approved by the ~~Inland Revenue~~ Commissioners for HM Revenue and Customs under section 842 of the Income and Corporation Taxes Act 1988 (or, in the case of a newly formed *company*, has declared its intention to conduct its affairs so as to obtain such approval); or

...

*ISA manager* means a *person* who is approved by the ~~Inland Revenue~~ Commissioners for HM Revenue and Customs for the purposes of the Individual Savings Account Regulations 1998 (SI 1998/1870) as an account manager.

...

#### Appendix 13(1) Defined terms for chapter 13

...

*investment trust* a *company listed in the United Kingdom or another EEA State* which:

- (a) is approved by the ~~Inland Revenue~~ Commissioners for HM Revenue and Customs under section 842 of the Income and Corporation Taxes Act 1988 (or, in the case of a newly formed *company*, has declared its intention to conduct its affairs so as to obtain such approval); or

...

## Annex D

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where entire sections of text are being deleted, the place where the deletion will be made is indicated and the text is not shown struck through.

COB TP4      Miscellaneous transitional provisions applying to all firms

(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>15</u>	<u>COB 6.6.51R, COB 6.6.52R, COB 6.6.84R</u>	<u>R</u>	<u>As an alternative to complying with the provisions of COB 6.6.51R, COB 6.6.52R or COB 6.6.84R, a firm will satisfy its obligations if it complies with the version of the rule in force on 20 April 2005.</u>	<u>21 April 2005 – 1 August 2005</u>	<u>21 April 2005</u>

...

3.9.29R      *A direct offer financial promotion* relating to, or offering a facility for, *income withdrawals* must include the following explanations:

...

- (4)      if the maximum withdrawals permitted by ~~Inland Revenue~~ HM Revenue and Customs regulations are to be taken, high *income withdrawals* may not be sustainable during the deferral period.

...

COB 5.3.26R [deleted]

...

COB 5.9 Information about stakeholder pension schemes

[Section deleted]

...

6.5.53R ...

(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 these include:

(i) annuities which provide level or increasing benefits;

(ii) annuities which cover either a single life or make provision for a spouse or a partner; and

(iii) annuities which may be with or without guarantee on the early death of the scheme member or *policyholder*;

and that the scheme member or *policyholder* may get a better deal by shopping around);

...

6.5.53AR A *firm* to which COB 6.5.53R(3)(a) applies must also provide general information explaining characteristic features of the types of annuity mentioned.

...

6.5.55G (1) A *firm* may comply with its obligations under COB 6.5.53R(3)(a), (b), (c) and (d) and COB 6.5.53AR by providing a copy of the FSA's factsheet about annuities entitled 'Your pension – it's time to choose'.

....

6.6.5R COB 6.6.4R does not apply to a *firm* when it provides a *projection*:

...

(2) issued with a view to determining a maximum contribution allowed by ~~the Inland Revenue~~ HM Revenue and Customs, provided the assumptions used in calculating such a contribution are disclosed;

...

6.6.51R 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)

This table belongs to COB 6.6.49R

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
...			
(b) after vesting			
Monetary rates of return	Y+ <u>1.5</u> %	Y+ <u>33.5</u> %	Y+ <u>55.5</u> %
...			
Note: For the after vesting rates of return: $Y = 0.5 * (ILG5 + ILG0) - 0.5$ and rounded to the nearest 0.2%, with an exact 0.1% rounded down. ...			

...

6.6.52R Rate of return assumptions for protected rights annuity projections given in accordance with COB 6.6.11R(1)

This table belongs to COB 6.6.49R

Rate of return assumptions for protected rights annuity projections given in accordance with COB 6.6.11R(1)			
	Lower rate	Intermediate rate	Higher rate
...			
(b) after vesting: - for annuities linked to the retail prices index	<u>21</u> %	<u>32</u> %	<u>43</u> %

...

6.6.84R In the formulae in *COB* 6.6.81R, mortality rates must be calculated as follows:

- (1) the mortality tables to be used are PMA92 (for males) and PFA92 (for females) appropriate to the individual's year of birth with the medium cohort projection improvements; these tables are published by the Faculty of Actuaries and Institute of Actuaries;

...

## **COB 6 Ann 1R**

**Decision trees for stakeholder  
pension schemes (as required in  
COB 6.5.8R): text, content and  
format (R)**

## STAKEHOLDER PENSION 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?”**

**Decision trees are intended to help you make your own choice about your pension arrangements. They do not give you financial or professional advice and you should not regard them as doing so.**



[Insert current tax year]

## ***You need to read the following notes before using the decision tree***

***flowcharts.*** There is also more information starting on page [insert page number] that you can refer to at any stage.

### ***What is a stakeholder pension?***

A stakeholder pension is a *private pension* - it's *not a State pension*. It must meet minimum standards laid down by the Government about charges, flexibility and the regular information you must be given. The standards are designed to help ensure that all stakeholder pensions give good basic value. There's more about this in the "Further information" section on page [insert page number].

With a stakeholder pension, you can pay regular contributions, and you can also make lump-sum contributions whenever you like. Your employer can also make contributions ~~on your behalf~~. You will benefit from tax relief on your own contributions – there's more about the tax advantages in the "Further information" section on page [insert page number].

Your contributions are invested to build up your own pension fund. The amount of your fund when you come to retire is not guaranteed and depends on how much has been paid in, the type of investment fund you choose, ~~and~~ how those investments perform, and the level of charges. A stakeholder pension scheme will usually offer you a range of investment funds, with differing degrees of investment risk and potential investment growth.

You can retire and draw your stakeholder pension benefits at any time between certain ~~the ages of 50 and 75~~. The minimum age is currently 50 but by April 2010 it will be increased to 55. The precise timing of this increase may vary between different stakeholder pension schemes. However, you must start to draw your benefits by age 75. ~~The Government has announced plans to increase the minimum age for drawing benefits to age 55.~~ You will need to bear this in mind when deciding on your retirement plans. You can't withdraw any money from your pension fund before you retire and take your pension.

When you retire, you can choose to take up to 25% (a quarter) of your pension fund as a tax-free lump sum. And you use the rest of your pension fund (or all of it, if you decide against a tax-free lump sum) to buy an "annuity". The annuity will pay you a regular income during your retirement. That income will depend on the size of your pension fund and annuity rates at the time you take your pension. You may have to pay tax on your annuity income.

### ***Is a stakeholder pension a good choice for me?***

You can contribute to a stakeholder pension whether you are in employment, a fixed-contract worker, self-employed, or even not working. You can get one from a bank, building society, insurance company, investment company, or through a financial adviser.

Stakeholder pensions suit a wide range of people. But they are likely to be particularly attractive to people who have no existing pension provision apart from the State pensions, such as the self-employed or any employee whose employer does not contribute to a workplace-based pension scheme. In some cases, stakeholder pensions can be used to top up the benefits provided by an employer's own scheme. But if your employer offers to match any additional voluntary contributions (AVCs) that you choose to make to his scheme, this is likely to be a better way of topping-up than through your own separate stakeholder pension.

Stakeholder pensions have many advantages for many people, but they may not be the right choice for everyone. These decision trees are intended to help you decide what would be a good choice for you.

## ***Do I need to save for my retirement through a stakeholder pension?***

To answer this question, you must make your own judgment. Will your State pensions, any existing private pensions, any employer-sponsored pensions and any other sources of income be enough for you to live on when you retire? You need to think about the standard of living you want to enjoy when you retire and the income you'll need to support it.

***Ask yourself these seven questions:***

- ***Roughly how much will I need to live on when I retire?***

Try to work out how much money you will need to live on when you have retired to afford the things you'll want and the things you'll want to do.

- ***Will I qualify for the full basic State Pension?***

~~If you have paid National Insurance contributions for about 90% of your working life, you are entitled to the full basic State Pension. You can get a State Pension forecast to check the amount you will get. Details of how to get a forecast are on page [insert page number].~~

You cannot get your basic State Pension until you reach State pension age (currently 65 for men and 60 for women). Details of how the State Pension age for women is changing are on page [insert page number].

You can get a basic State Pension by building up enough qualifying years before State Pension age. A qualifying year is a tax year in which you have enough earnings on which you have paid, are treated as having paid or have been credited with, National Insurance (NI) contributions. Men normally need 44 qualifying years to get the full basic State Pension; women currently normally need 39 qualifying years to get the full basic State Pension. In 2020, when State Pension age for women is raised from 60 to 65, the normal requirement will increase to 44 qualifying years for the full basic State Pension.

To check the amount you will receive, you can get a State Pension forecast – see the details on page [insert page number].

The Government reviews the amount of the basic State Pension every year. The current rates are shown in a table under “Further information” on page [insert page number].

- ***Will I qualify for an additional pension through the State Second Pension (formerly State Earnings Related Pension Scheme – SERPS)?***

The State Second Pension is payable when you reach State pension age, on top of the basic State Pension. The amount depends on your earnings while you were in employment and the National Insurance contributions you paid. Since April 2002, you may also qualify for an additional State Pension if you are a carer or have a long-term illness or disability.

**Self-employed people do not qualify for the State Second Pension (formerly SERPS).**

~~And~~ ~~†~~ Those employees who were “contracted-out” of the ~~Second~~ State Second Pension will not qualify for the additional pension for the period when they were contracted out. Some people will be contracted out through an employer’s occupational pension scheme and some through private pension arrangements. Check with your employer or pension provider if you are not sure.

- ***Does my current employer provide a pension scheme and how much will that give me?***

Check with your employer if you are not sure about membership. If you are a member of an employer's scheme, you should get regular statements setting out what your benefits ~~might~~ may be when you retire. If you cannot find these statements, check with your employer.

- ***Am I already contributing to a personal pension scheme or a stakeholder pension? If so, how much income will they give me?***

If you are already contributing to a personal pension or stakeholder pension, you need to find out what retirement income they might provide. Look at the most recent benefit statements you have been sent, or check with your pension plan provider.

- ***Have I got any old pensions, maybe from previous employers' schemes or from personal pension schemes? If so, how much income will they give me?***

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~~ may get from them.

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 your pension plan provider, for example the insurance company or the employer that offered the pension to you.

- ***Will the Government's ~~new~~ Pension Credit make a difference ~~for~~ to me?***

~~The Government introduced the Pension Credit from October 2003. This is designed to make sure that people aged 60 and over have a minimum income and that those aged 65 and over with modest savings get some credit for having saved. These savings could, for example, be in the form of an employer's pension, a stakeholder or other personal pension, or the State Second Pension. This is not a complete list, and you could have other savings that will count.~~

~~The Pension Credit means 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. See "Where to get more help" on page [insert page number].~~

You need to bear in mind that governments can change the rules for State pensions and benefits at any time. So it may be unwise to rely on any particular type or level of benefit being available when you retire.

There's more information about getting a forecast of your State pensions (page [insert page number]) and how to track down pensions provided by any former employers<sup>2</sup> or personal pensions (page [insert page number]).

If the income you expect in retirement is less than ~~what~~ you want, you need to think about saving more to make up the difference. A stakeholder pension is one of your options. But before you decide anything, you need to think about your priorities.

***What else should I think about before contributing to a stakeholder pension?***

You ~~might~~ may have other financial commitments that will affect what you can afford to contribute to a stakeholder pension. Or you ~~might~~ may feel that other financial needs must come first. For example, 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 thinking about a stakeholder scheme and that you would still be able to afford your other commitments.

- ***Would I be prepared, if necessary, to give up anything so that I can pay into a stakeholder pension?***

Remember that saving through a pension scheme is a long-term commitment. Any change in how you spend your money may need to last for a long time.

- ***Should I be thinking of other things first?***

For example, you ~~might~~ may want to consider life assurance protection for you and your family, or building up some “rainy-day” cash savings before thinking about a stakeholder pension.

If you are a member of your current employer’s pension scheme, it ~~might~~ may make sense to pay additional voluntary contributions to that scheme rather than contribute to a stakeholder scheme. And if you are currently contributing to a personal pension or stakeholder pension, it ~~might~~ may make sense to increase your contributions to that scheme rather than start a separate stakeholder pension, especially if you have a stakeholder pension that has kept to the original 1% limit on charges. There's more about charges under “Further information” on page [insert page number].

## ***How much should I contribute to my stakeholder pension?***

Contributions to stakeholder pensions can be as low as £20. But, even a regular monthly contribution of £20 over several years will not give you a large pension when you retire. And the older you are when you start saving, the less time there is for your pension fund to grow to something worthwhile.

## ***Estimated pensions in the Pension Table***

The Pension Table later on will give you a fair idea of the pension income you could get, depending on your age and contributions. **But please remember that the figures in the table are only estimates and are not guaranteed. You ~~might~~ may get less, or you ~~might~~ may get more.**

The pension figures are also shown before income tax. When you receive your pension during retirement you may be taxed on it.

The estimated pensions are based on the new stakeholder pension charge limit of 1.5% for the first 10 years. If the stakeholder pension scheme has kept to the original 1% charge limit on the fund, then the estimated pension figures in the Pensions Table will be higher. There's more about charges under “Further information” on page [insert page number].

The figures in the table are calculated on the ~~following~~ basis of the following assumptions:

**Before you retire**

Your monthly contributions increase in line  
with inflation.....2.5% a year.  
Before charges, your fund grows by.....7% a year.  
Charges deducted from your fund.....1.5% 4% of fund a year for 10 years,  
.....then reducing to 1%.

**When you retire**

Your entire fund is used to buy an annuity, and  
you do not take any tax-free lump sum.  
Annuity rates assume that the investment  
return after retirement is.....1.2% a year in excess of inflation.  
Your pension increases in line with inflation.  
Your spouse will receive half your pension on your death.

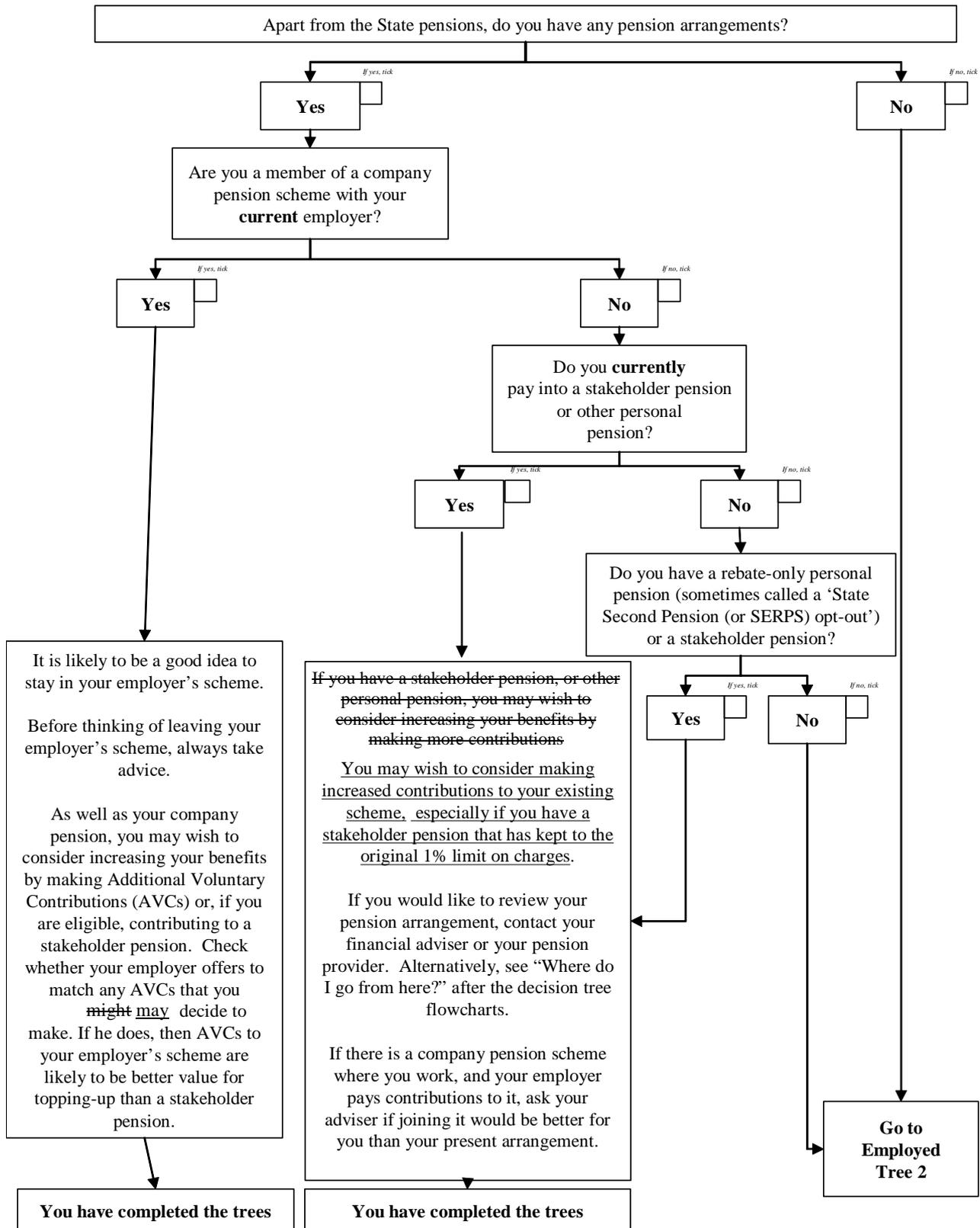
### *How do I use the decision trees?*

- **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. Because the decision trees do not give personalised advice, any decision you take is your own responsibility.**
- **There are separate decision trees for:**
  - **Employed people**
  - **Self-employed people**
  - **People who are not employed**
- **When you have found the right decision tree, work through the questions 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.**
- **After the decision trees, you'll find further information about what to do next.**

Some of the information used in these materials comes from sources outside the FSA. The FSA does not guarantee or warrant the accuracy of the information included in these materials, and does not accept any liability for errors or omissions. The FSA shall not be liable for any damages arising from any action or decision taken as a result of using any of these materials ~~or any of them~~.

This information is intended to help you make your own choice about your pension arrangements. It does not give you financial or professional advice and you should not regard it as doing so. You should get help if you require advice.

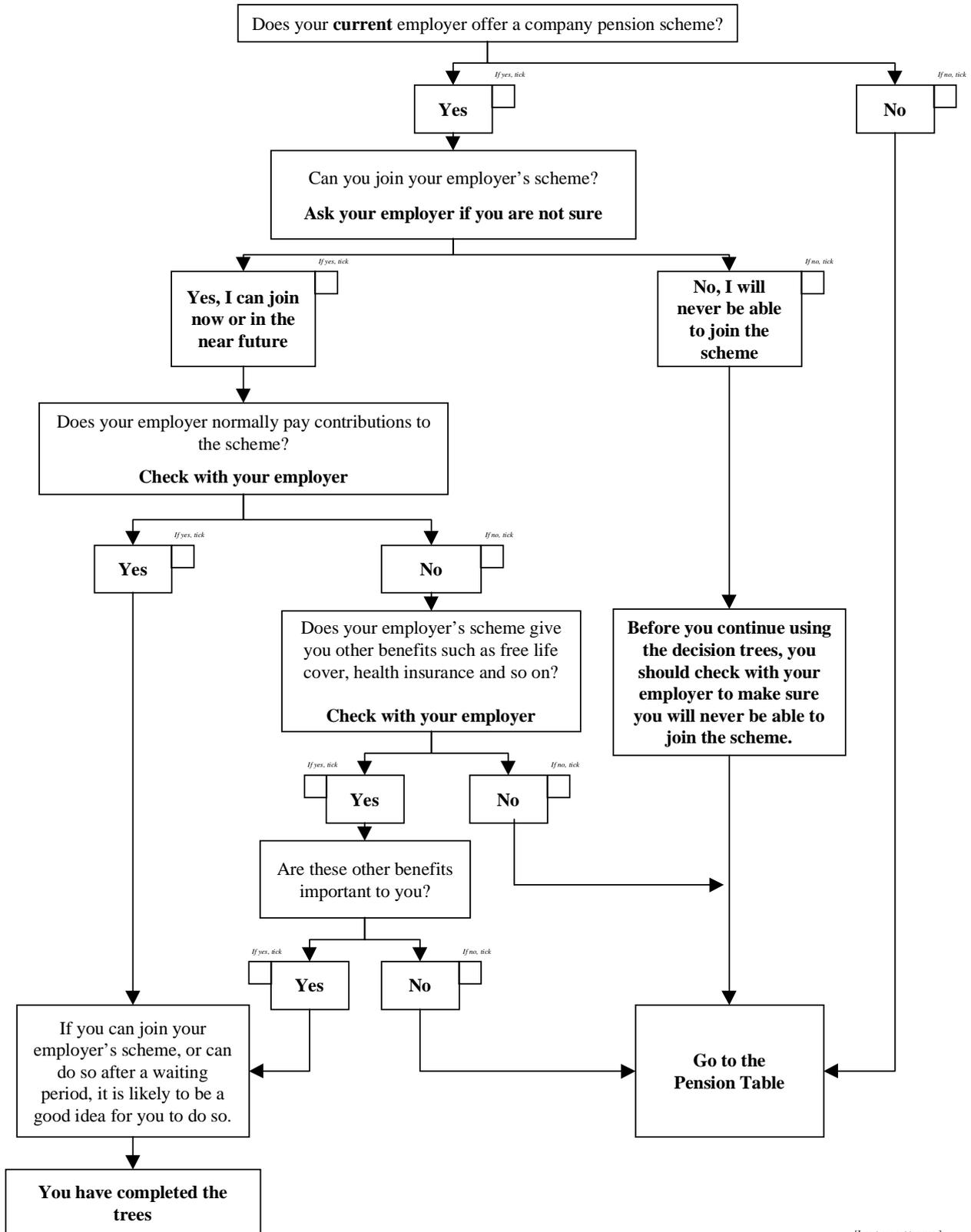
# Employed Tree 1 – Current pensions



[Insert current tax year]

This information is intended to help you make your own choice about your pension arrangements. It does not give you financial or professional advice and you should not regard it as doing so. You should get help if you require advice.

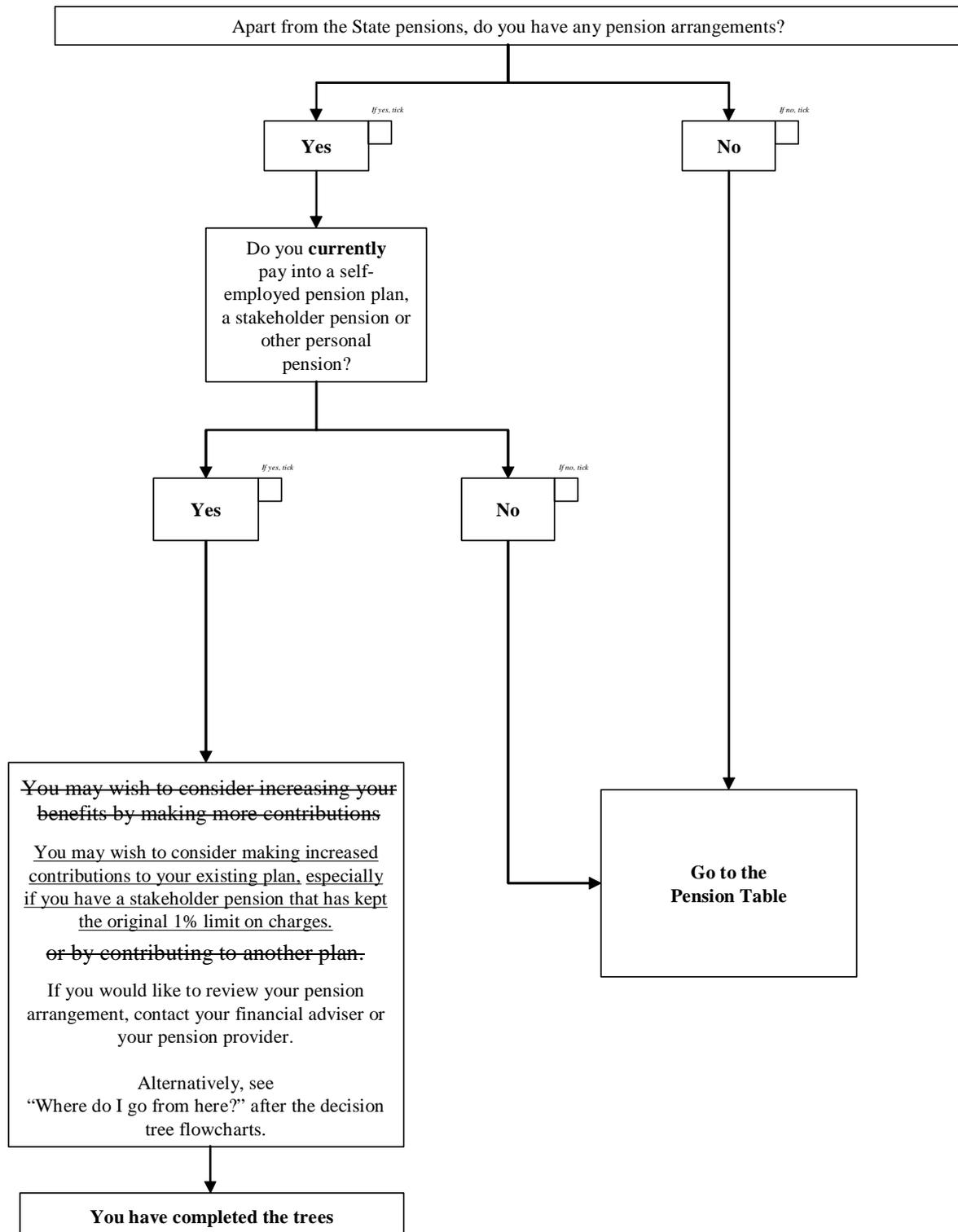
## Employed Tree 2 – No current pension



[Insert current tax year]

This information is intended to help you make your own choice about your pension arrangements. It does not give you financial or professional advice and you should not regard it as doing so. You should get help if you require advice.

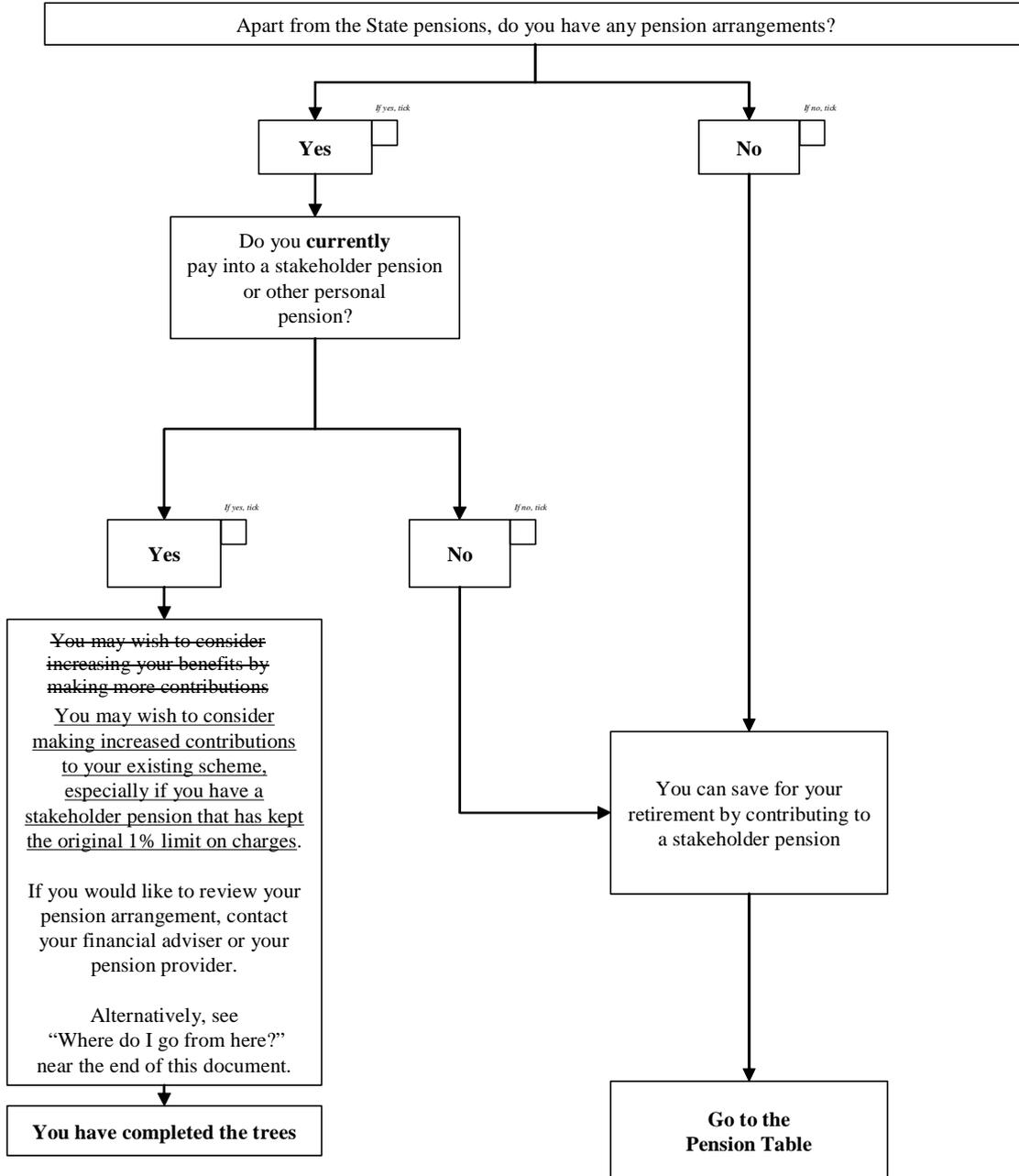
## Self-employed Tree



[Insert current tax year]

This information is intended to help you make your own choice about your pension arrangements. It does not give you financial or professional advice and you should not regard it as doing so. You should get help if you require advice.

## Not employed Tree



[Insert current tax year]

This information is intended to help you make your own choice about your pension arrangements. It does not give you financial or professional advice and you should not regard it as doing so. You should get help if you require advice.

## Pension Table

### How much should I save towards a pension?

#### THIS IS AN IMPORTANT DECISION

Most people save every month. It is better if you can keep up your monthly contributions.

The following table shows the **estimated monthly pension**, at today's prices, that you would get for different **regular monthly contributions**. The contribution shown is assumed to **increase each year in line with inflation**. The government will also add tax rebates to increase the actual amounts paid into your stakeholder pension (although all tax breaks are subject to change). The estimated pension figures include this tax rebate. They also assume that your pension will increase in line with inflation.

**Remember: these estimates are not guaranteed – you could get more or less than the amounts shown.**  
**A stakeholder pension would be on top of any State pensions you are entitled to.**

The table gives you an idea of how much you need to pay now – as a regular monthly contribution – to receive the monthly pension you want when you retire. First look down the left-hand column to find the age closest to your age now. Then look across to find the monthly contribution you want to pay and the age at which you want to retire.

<b>Your approximate age now</b>	<b>What you pay per month for the first year (tax rebates will be added to this amount)</b>							
	<b>£ 20</b>		<b>£ 50</b>		<b>£ 100</b>		<b>£ 200</b>	
	<b>Initial monthly pension if you retire at</b>	<b>Initial monthly pension if you retire at</b>	<b>Initial monthly pension if you retire at</b>	<b>Initial monthly pension if you retire at</b>	<b>Initial monthly pension if you retire at</b>	<b>Initial monthly pension if you retire at</b>	<b>Initial monthly pension if you retire at</b>	<b>Initial monthly pension if you retire at</b>
	65	60	65	60	65	60	65	60
20	£ 106	£ 74	£ 267	£ 187	£ 534	£ 374	£ 1,068	£ 749
25	£ 86	£ 59	£ 215	£ 148	£ 430	£ 297	£ 860	£ 595
30	£ 68	£ 46	£ 171	£ 116	£ 342	£ 232	£ 684	£ 464
35	£ 53	£ 35	£ 133	£ 88	£ 267	£ 176	£ 534	£ 353
40	£ 40	£ 25	£ 101	£ 64	£ 203	£ 129	£ 406	£ 258
45	£ 29	£ 17	£ 74	£ 44	£ 148	£ 88	£ 297	£ 177
50	£ 20	£ 10	£ 51	£ 27	£ 102	£ 54	£ 204	£ 108
55	£ 12	£ 5	£ 31	£ 12	£ 62	£ 25	£ 125	£ 50
60	£ 5		£ 14		£ 29		£ 58	

**Have you found the level of monthly pension that you need in the table and can you afford the monthly contribution?**

*If yes, tick*

Yes, I've found the pension I need and can afford the monthly contribution

*If no, tick*

No, I can't find the pension I need or I can't afford the contribution

Consider starting a stakeholder pension or restart making contributions to a stakeholder pension. If you are employed, check if your employer **has designated** offers workplace access to a particular stakeholder pension and if he offers a contribution to it.  
 If in doubt seek help from an expert adviser.  
 See "Where do I go from here?" on the next page.

**You have completed the trees**

**For details of where to get further help, see "Where do I go from here?" on the next page.**

[Insert current tax year]

## ***Where do I go from here?***

You've worked your way through the decision trees and now need to make some decisions. You ~~might~~ may be confident that contributing to a stakeholder pension would be a good choice for you, or you ~~might~~ may want more help before reaching a decision on what to do.

### ***If you ~~h~~Have you decided that a stakeholder pension is a good choice for you:***

If so, it is a good idea to contact several firms selling stakeholder pensions and ask them for a brochure or a Key Features Document, so that you can compare products. The Key Features Document sets out important details about that particular firm's stakeholder pension product.

You can compare different stakeholder pension and personal pension schemes by using the FSA's *Comparative Tables*, which you can find at [www.fsa.gov.uk/tables](http://www.fsa.gov.uk/tables). You can also look at a register of stakeholder schemes published by ~~The Pensions Regulator~~ ~~the Occupational Pensions Regulatory Authority~~ at [www.stakeholder.opra.gov.uk](http://www.stakeholder.opra.gov.uk) [www.thepensionsregulator.gov.uk/stakeholderPensions](http://www.thepensionsregulator.gov.uk/stakeholderPensions) (The Pensions Regulator replaced the Occupational Pensions Regulatory Authority in April 2005).

You can also contact an adviser to help you choose a particular stakeholder provider. See the list below of useful contacts.

### ***Do you need more help?***

You may need to get more help before making a decision, particularly if you are in one or more of the following situations:

- You already have a pension arrangement but want to know if you should save more.
- 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.

You should consider getting advice if:

- ~~Y~~you are not sure that saving through a pension plan is a good idea for you; or
- ~~Y~~you want to look at other ways of saving and investing for the long term.

Some organisations that ~~might~~ may be able to help you are listed below.

### ***Where to get more help***

You could contact the ~~OPAS Pensions Helpline~~ provided by the Pensions Advisory Service helpline on 0845 6012923. Their information is free but call charges may vary.

You can also visit their website at [www.stakeholderhelpline.org.uk](http://www.stakeholderhelpline.org.uk)

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:

- IFA Promotions: 0800 085 3250 or at [www.unbiased.co.uk](http://www.unbiased.co.uk) (for a list of three local independent financial advisers)

- Institute of Financial Planning: 0117 945 2470 or at [www.financialplanning.org.uk](http://www.financialplanning.org.uk)
- ~~Society of Financial Advisers~~The Personal Finance Society: 020 7417 4419 or at [www.sefathepfs.org/findanadviser](http://www.sefathepfs.org/findanadviser)
- Solicitors for Independent Financial Advice: 01372 721172 or at [www.sifa.co.uk](http://www.sifa.co.uk)

Alternatively, contact the pension provider of your choice.

Remember that advisers may charge for any help or advice they give you, so check first on how much you would have to pay.

The next section gives further detailed information about stakeholder pensions, State pensions and how to track down old pension schemes.

## *Further information*

### *The minimum standards*

Stakeholder pensions must meet the standards laid down by the Government.

#### **The standards include:**

##### v **Charges**

Providers of stakeholder pensions usually charge for managing your money. There is an upper limit of 1.5% of the value of your fund each year for the first 10 years (so on a fund value of £10,000, the maximum charge is £150+00 a year), which then reduces to 1%.

But if you started your stakeholder pension before 6 April 2005, the maximum that you can be charged is still 1%. If you took out a stakeholder pension before 6 April 2005, it may be cheaper to continue contributing to it rather than take out a new stakeholder pension.

##### v **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.

##### v **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 will also include a forecast of how much your pension ~~might~~ could be in today's prices. Look out for this forecast – it's called a Statutory Money Purchase Illustration – which is updated each year and will help you decide whether you are making enough provision for your retirement.

v **Investments**

But one thing you must understand is that **the minimum standards do not necessarily mean that your money is protected**. The performance of your stakeholder pension depends on the type of investment fund you choose and how those investments perform. Remember that investments linked to the stock market can fall as well as rise.

You don't have to make decisions about how your contributions are to be invested. Stakeholder pensions must provide what is called "lifestyling" for anyone who does not want to make a choice. Lifestyling means that at least five years before retirement your pension savings will start to be moved into less risky investments. This will help to guard against falls in investment value as retirement approaches. You can, however, choose to turn off the lifestyling before it begins.

## ***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 HM Revenue and Customs will pay an extra 28p into your fund, even if you don't normally pay income tax.

### ***Example***

***If you pay in £50 a month, income tax relief will increase your contribution to £64.10.***

Because of the tax advantages, there are limits on how much you can contribute to a stakeholder pension. These limits are set by ~~the Inland Revenue~~ HM Revenue and Customs and depend on your taxable earnings and your age. There are also special limits for people without any earnings and those who are members of employers' occupational pension schemes.

Most people can contribute up to £3,600 to a stakeholder pension in any tax year, including basic-rate tax relief. This means you could pay in £2,808 and the income tax relief would increase your contribution to £3,600.

If you are self-employed or in non-pensionable employment you ~~might~~ may 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.

If you pay income tax at the higher rate, you will be able to claim back the extra tax from ~~the Inland Revenue~~ HM Revenue and Customs at the end of each tax year.

Even if you have no form of paid employment, you can set up a stakeholder pension. You can then benefit from tax relief on your contributions, even if you don't pay any income tax.

The Government is ~~reviewing the limits on pension contributions that qualify for tax relief, and plans to~~ simplifying the tax rules for pensions from April 2006. ~~These changes are provisionally due to~~

come into effect in April 2006. From then on, you will be able to contribute as much of your taxable earnings to your pension as you want – up to a maximum limit set at £215,000 for tax year 2006/07 – and still benefit from tax relief.

There will also be an overall "lifetime allowance" on the total amount of money you can save in your pension and still benefit from tax relief. This is set at £1.5 million for tax year 2006/07 and also includes the value of old pensions from previous jobs. There is information on how to get details of your old pension plans on page [insert page number].

## ***State pensions***

Rates of State pensions and benefits change every year. The following table shows the current rates of basic State Pension (assuming a full National Insurance contribution record) and the minimum income provided by the Pension Credit.

**THE BASIC STATE RETIREMENT PENSION AND PENSION CREDIT RATES GIVEN HERE ARE THOSE ANNOUNCED BY THE GOVERNMENT AS APPLYING IN THE TAX YEAR [Insert current tax year].**

	Weekly	Monthly equivalent
<b>BASIC STATE PENSION from age 65 (men) or 60 (women)</b>		
One person with a full NI contribution record	[...]	[...]
Full rate <del>for man with dependent wife</del> based on a spouse's NI contribution record	[...]	[...]
Couples who have <i>both</i> paid full National Insurance contribution	[...] each	[...] each
<b>PENSION CREDIT guarantees a minimum income from age 60 of at least:</b>		
Single person	[...]	[...]
Couple	[...]	[...]

You can get a forecast of your State pensions by calling the State Retirement Pension Forecasting Team on 0845 3000 168, or if you have hearing or speech difficulties and have a textphone, on textphone 0845 3000 169. Lines are open from 8am to 8pm Monday to Friday and 9am to 1pm on Saturday. 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:

State Retirement Pension Forecasting Team  
 The Pension Service  
 Room TB001  
 Tyneview Park  
 Whitley Road  
 Newcastle upon Tyne  
 NE98 1BA

You can also complete the form on the Internet using the Pension Service website, [www.thepensionsservice.gov.uk](http://www.thepensionsservice.gov.uk) then print it out and post it in the normal way.

There are changes to the State Pension age which affect women born on or after 6 April 1950. The State Pension age for women will be increased gradually over a ten-year period from 2010 so that by 2020 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 Pension Service guide *Pensions for women – Your guide* (PM6) or by using the State Pension age calculator on The Pension Service website: [http://www.thepensionsservice.gov.uk/resource\\_centre/calc.asp](http://www.thepensionsservice.gov.uk/resource_centre/calc.asp).

The DWP produces a series of guides that give basic information on pensions. You can get copies by calling the DWP on 0845 731 3233. The line is open 24 hours a day and call charges may vary. A textphone service is available on 0845 604 0210. You can also order copies of these information guides on the Internet at [www.thepensionsservice.gov.uk](http://www.thepensionsservice.gov.uk)

You can get more information about ~~the~~ Pension Credit on the Pension Service's website at [www.thepensionsservice.gov.uk](http://www.thepensionsservice.gov.uk) or by telephoning 0800 99 1234.

### ***Old pension plans***

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 Tracing Service~~ provides a free tracing service. They can help you identify pension schemes you have belonged to in the past. ~~To contact the Pension Schemes Registry,~~ The Pension Tracing Service is free and you can phone them on 0191 225 6316 0845 6002 537 and ask for a tracing request form or write to them at:

~~Pension Schemes Registry  
PO Box 1NN  
Newcastle upon Tyne  
NE99 1NN~~

Pension Tracing Service  
The Pension Service  
Whitley Road  
Newcastle upon Tyne  
NE98 1BA

There is also an online form available at [www.opra.gov.uk](http://www.opra.gov.uk) [www.thepensionsservice.gov.uk](http://www.thepensionsservice.gov.uk).

### ***Using a stakeholder pension to contract out of the State Second Pension***

You can ~~think about using~~ use a stakeholder pension to contract-out of the State Second Pension, but it's not an easy decision.

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 the State Second Pension unless they decide to leave it or are contracted-out through an employer's occupational pension

scheme. Leaving the State Second Pension is called ‘contracting-out’. If you contract-out, you give up your State Second Pension entitlement and instead build up a replacement for it in your own private pension arrangement, such as a stakeholder pension.

Whether you would be better off contracting-out of the ~~Second~~ State Second Pension or staying in it depends on your own personal circumstances. You need to get advice on what ~~might~~ may be the best thing for you to do. The FSA publishes information ~~a factsheet~~ on its website at [www.fsa.gov.uk](http://www.fsa.gov.uk), designed to help you understand the issues, but it’s not intended to replace professional advice.

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~~ important to review your decision regularly.

## Annex E

### Amendments to the Mortgages: Conduct of Business sourcebook

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

8.5.5R In determining whether *MCOB* 8.5.4R(1)(a) applies, where a *firm* has insufficient knowledge of means-tested benefits and tax allowances to reach a conclusion, the *firm* must refer a *customer* to an appropriate source or sources such as the Pension Service, ~~Inland Revenue~~ HM Revenue and Customs or Citizens Advice Bureau (or other similar agency) to establish the required information.

...

9.4.33R The *illustration* must include under the heading 'Risks - important things you must consider' statements and warnings on the following:

...

- (6) a warning that taking out this *regulated lifetime mortgage contract* may affect the *customer's* tax and welfare benefits position, that tax and welfare benefits can change and that the *customer* should consider seeking further information from ~~the Inland Revenue~~ HM Revenue and Customs, Benefits Agency or another source of advice such as a Citizens' Advice Bureau;

...

## Annex F

### Amendments to the Money Laundering sourcebook

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

3.1.3R

...

- (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~~ for HM Revenue and Customs, sufficient evidence of identity must include the registered number, within the meaning given by regulation 9(2) of the *Money Laundering Regulations*, of the *client* or the *person* on whose behalf he is acting.

...

## Annex G

### Amendments to the Authorisation manual

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

2.6.19G A *stakeholder pension scheme* is defined in section 1 of the Welfare Reform and Pensions Act 1999. Regulations made under that section set out detailed rules under which such schemes will operate (see the Stakeholder Pension Scheme Regulations 2000). Schemes must be registered with the ~~Occupational Pensions Regulatory Authority~~ Pensions Regulator and approved by ~~the Board of the Inland Revenue~~ HM Revenue and Customs. Rights under such schemes are *specified investments* for the purposes of the *Regulated Activities Order*. There are no exclusions in the Order.

...

3.15.3G Applicants should also be aware that a *firm* wishing to act as an *ISA* or *PEP* manager will have to obtain approval from ~~the Inland Revenue~~ HM Revenue and Customs as an account manager under the ~~Inland Revenue~~ HM Revenue and Customs regulations.

3.15.4G To manage *ISAs* or *PEPs*, an applicant must be able to demonstrate to the *FSA* that it can satisfy and continue to satisfy the *threshold conditions* should the application for *Part IV permission* be granted. This will include demonstrating that it is ready, willing and organised to comply with the relevant regulatory and ~~Inland Revenue~~ HM Revenue and Customs requirements.

...

3.16.1G Applicants should be aware that, in addition to requiring *permission* from the *FSA* to *establish, operate or wind up a stakeholder pension scheme*, a *firm* will need to obtain exempt approval of the *stakeholder pension scheme* from ~~the Inland Revenue~~ HM Revenue and Customs and to register the scheme with the ~~Occupational Pensions Regulatory Authority~~ Pensions Regulator.

...

App 6.7.18G When self-assessment for income tax was first introduced, a number of providers set up schemes connected with their tax accounting and tax advisory services. In consideration of an annual fee, the provider undertakes to deal with any enquiries or investigations that ~~the Inland Revenue~~ HM Revenue and Customs might launch into the self-assessment that the provider completes for the recipient. The event covered by these

schemes (an investigation) is both uncertain and adverse to the interests of the recipient, who would, if the scheme were not in place, have to devote resources to dealing with the investigation. Accordingly, these schemes fall within the description of a contract of insurance (see AUTH App 6.3.4G).

App 6.7.19G

Some providers argued that these schemes amount to nothing more than a ‘manufacturer’s warranty’ of their own work, within the scope of AUTH App 6.7.7G (Example 3: manufacturers’ and retailers’ warranties). However, ~~the Inland Revenue~~ HM Revenue and Customs is expected to make a significant number of random checks of self-assessment forms, irrespective of the quality of the work done by the provider. These random checks are also covered by the schemes. The *FSA* concluded, therefore, that these schemes were not analogous to manufacturers’ warranties and that the better view was that they were contracts of insurance.

...

## Annex H

### Amendments to the Supervision manual

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

12 Ann 1G

...

2. Assessing the financial position of an appointed representative (other than an introducer appointed representative)

Accounts	1. Consider whether the type of accounts obtained is appropriate to the type of <i>appointed representative</i> (for example, <i>companies</i> should supply audited accounts prepared in accordance with Companies Act provisions while individuals in business on their own may only prepare unaudited accounts, for example, for submission to <del>the Inland Revenue</del> <u>HM Revenue and Customs</u> or their bankers).
...	...
Credit checks/dealings with <i>government</i> bodies	... 2. Ask the <i>appointed representative</i> whether it is up to date in its dealings with <del>the Inland Revenue, HM Customs and Excise</del> <u>HM Revenue and Customs</u> (etc).
...	

...

## Annex I

### Amendments to the Dispute Resolution: Complaints sourcebook

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

App 2.5.10G            *Firms* proposing to offer arrangements involving some form of minimum underpinning or ‘guarantee’ should discuss their proposals with the *FSA* and ~~the Inland Revenue~~ HM Revenue and Customs at the earliest possible opportunity (see *DISP* App 2.5.8G). The *FSA* will need to be satisfied that these proposals provide complainants with redress which is at least commensurate with the standard approaches contained in this appendix.

...

## Annex J

### Amendments to the Collective Investment Schemes sourcebook

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

2.2.7G (1) There are a number of provisions in this sourcebook that only apply to the extent that they are provided for in the *trust deed*. Sub-paragraphs (a) to (n) include some provisions that may be contained in the *trust deed* for this purpose.

...

(m) *Relevant pension schemes*

for a *scheme* formed with the intention of it being a *relevant pension scheme*, additional provisions included with a view to the *scheme's* satisfying the requirements of ~~the Board of Inland Revenue~~ HM Revenue and Customs (Pension Schemes Office and National Insurance Contributions Office), or those of any agency which may regulate a *relevant pension scheme* from time to time;

...

7.8.6R The *manager* must from time to time prepare and supply to the *trustee* the returns relating to the *scheme property* required to be submitted by the *trustee* to ~~the Board of Inland Revenue~~ HM Revenue and Customs.

...

9.2.8R The *authorised fund manager* must ensure that tax certificates for the income available for allocation are sent or given in accordance with the requirements for the time being of ~~the Board of Inland Revenue~~ HM Revenue and Customs, but in any event not less than once for every *annual accounting period*.

...

## Annex K

### Amendments to the New Collective Investment Schemes sourcebook

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

6.6.9R      The *manager* of an *AUT* must prepare and supply to the *trustee* the returns required to be submitted by the *trustee* to ~~the Board of Inland Revenue~~ HM Revenue and Customs.

...

## SIMPLIFIED PROSPECTUS INSTRUMENT 2005

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 140 (Restriction on managers of authorised unit trust schemes);
    - (c) section 145 (Financial promotion rules);
    - (d) section 156 (General supplementary powers);
    - (e) section 157(1) (Guidance);
    - (f) section 238(5) (Restrictions on promotion);
    - (g) section 247 (Trust scheme rules);
    - (h) section 248 (Scheme particulars rules);
    - (i) section 278 (Rules as to scheme particulars); and
  - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers and related provisions 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 indicated in this table.

Annex	Date
A	1 May 2005 (part) and 1 October 2005 (part)
B	1 May 2005 (part) and 1 October 2005 (part)
C	1 May 2005
D	1 May 2005
E	1 May 2005 (part) and 1 October 2005 (part)

- D. Changes to the Handbook text in Annexes A, B and E placed in bold square brackets, irrespective of whether the change takes the form of insertion of additional text or deletion of text, come into force on 1 October 2005. Otherwise, these Annexes come into force on 1 May 2005.

## **Amendments to the 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).

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COB)	Annex B
Collective Investment Schemes sourcebook (CIS)	Annex C
New Collective Investment Schemes sourcebook (COLL)	Annex D
Electronic Commerce Directive (ECO)	Annex E

## **Citation**

- F. This instrument may be cited as the Simplified Prospectus Instrument 2005.

By order of the Board  
21 April 2005

Amended by Addendum  
23 June 2005

## Annex A

### Amendments to Glossary

In this Annex underlining indicates new text and striking through indicates deleted text. Further, in this Annex, changes to Handbook text placed in bold square brackets, irrespective of whether the change takes the form of insertion of additional text or deletion of text, come into force on 1 October 2005. Otherwise, this Annex comes into force on 1 May 2005.

...

*fund supermarket service* a service consisting of the provision by a firm of regulated activities for a customer which consists of arranging (bringing about) deals in investments and safeguarding and administering investments with particular reference to regulated collective investment schemes where:

(a) the schemes are managed by other firms;

(b) the customer's units are held under

arrangements in which their legal title is held by a nominee company; and

(c) the service relates to schemes offered by several product providers, at least one of whom is not an affiliated company of another provider.

*key features* information about a life policy, [key features] scheme, or stakeholder pension scheme which is required to be produced in the format specified in COB 6.1 (Packaged products and ISA disclosure) to COB 6.5 (Content of key features and important information: life policies, [key features] schemes, cash deposit ISAs and stakeholder pension schemes).

*key features scheme* means a scheme that is not:

(a) a simplified prospectus scheme; or

(b) a qualified investor scheme; or

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

*simplified prospectus* (in relation to a simplified prospectus scheme) a marketing document containing information about the scheme and complying with the requirements in COB 6.2.26R (Production and publication of simplified prospectus) and COB 6.2.37R (Table: Contents of the simplified prospectus).

simplified prospectus  
scheme

means:

- (a) a UCITS scheme that is not a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States); or
- (b) a key features scheme for which an election that is permitted by COB 6.2.22R(2) ([Key features] schemes) has been made.

...

\*See Addendum 23 June 2005

## Annex B

### Amendments to the Conduct of Business sourcebook

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

Further, in this Annex, changes to Handbook text placed in bold square brackets, irrespective of whether the change takes the form of insertion of additional text or deletion of text, come into force on 1 October 2005. Otherwise, this Annex comes into force on 1 May 2005.

#### COB Contents

...

#### Conduct of Business

...

#### COB 6 Product disclosure and the customer's right to cancel or withdraw

...

#### 6.2 Provision of key features or simplified prospectus

...

#### 6.5 Content of key features and important information: life policies, [key features] schemes, ISA cash deposit components and stakeholder pension schemes

...

...

- COB 3      Financial Promotion
- ...
- 3.8      Form and content of financial promotions
- ...
- Standardised past performance information
- ...
- 3.8.13    R    (5) This *rule* does not apply to a *prospectus* drawn up in accordance with *CIS* 3.2.1R (Drawing up of prospectus) or *COLL* 4.2.2R (Publishing the prospectus) or a *simplified prospectus* drawn up in accordance with the requirements of *COB* 6.2 (Provision of key features or simplified prospectus).
- ...
- 3.9      Direct offer financial promotions
- ...
- Packaged products
- 3.9.10    R    (1) A direct offer financial promotion relating to a packaged product other than a simplified prospectus scheme must contain the information required by *COB* 6.5.2R(1), (3) and (5) as applicable (Contents of key features).
- (2) A direct offer financial promotion relating to a simplified prospectus scheme must contain the information required by *COB* 6.2.37R (Table: Contents of the simplified prospectus) and where a *projection* has to be provided in accordance with *COB* 6.2.43R(1) (Projection for simplified prospectus scheme), the required contents of that *projection*.
- 3.9.11    G    The information should follow, where possible, the same *order* as *key features* or, as the case may be, the *simplified prospectus*. But adjustments may be made to the order, where this would assist design and understanding of the material.
- ...
- 3.14      The internet and other electronic media
- ...
- Specific guidance
- 3.14.5    G    (1) *Key features, simplified prospectus, initial disclosure document* and written contractual terms
- ...
- (b) It is important that recipients should have the opportunity to view the full text of the relevant *key features, simplified prospectus, initial disclosure document*, terms and conditions, customer agreement and any other applicable risk information required by the

*rules.*

...

(2) Application forms

- (a) It is not necessary for access to an application form to be denied until the recipient has read *key features* or the *simplified prospectus*, and other contractual terms, but *firms* should ensure that on the application form, or in the preceding text, they draw attention to the existence of this material and the importance of reading it, as relevant business will be conducted on the basis of the *key features* or *simplified prospectus*, and written contractual terms.

...

COB 5 Advising and selling

...

5.7 Disclosure of charges, remuneration and commission

...

Packaged products

...

5.7.4 G (1) A *firm* may make the disclosures required by COB 5.7.3R in its *terms of business*, in a *client agreement*, or in a separate written statement. Disclosure should indicate any product-related *charges* that are deducted from the *private customer's* investment. If the product is a *packaged product*, product-related *charges* and expenses will be disclosed in the *key features* document, *simplified prospectus* or in the minimum information that the *firm* is required to provide to the *private customer* in accordance with COB 6.2 (Provision of key features or *simplified prospectus*) and COB 6.4 (Product disclosure: special situations). ...

....

...

(3) In the case of a *packaged product*, product related charges and expenses will be disclosed in the *key features* document, *simplified prospectus* or in the minimum information that the *firm* is required to provide to *private customers* in accordance with COB 6.2 (Provision of key features or *simplified prospectus*) and COB 6.4 (Product disclosure: special situations). When a *firm* is a *broker fund adviser*, disclosure should include any *fees* payable to the *firm* or its *associate* in connection with that activity by a *product provider*.

...

5.7.10 R The requirement in COB 5.7.5R to disclose to a *private customer* the amount or value, in cash terms, of *commission* or *equivalent* does not apply if the *firm* provides the *private customer* with example *key features* or a *simplified prospectus*, in accordance with COB 6.2.7R (Life policies), COB 6.2.22R [(Schemes Key features schemes)] and COB 6.2.33R (Obligation on a firm to provide a *simplified prospectus*) as applicable, provided that the *firm* discloses to the *private customer* the actual amount or value of *commission* or *equivalent* within five *business days* of effecting the transaction.

...

5.7.13 G The disclosures required by COB 5.7.5R should normally be made in writing. For example, if a specific *key features* document, *simplified prospectus* or *projection* is provided to a *private customer*, the required disclosures should either be contained in the *projection* or the *key features* document or *simplified prospectus*, or be given to the *private customer* in a separate written statement at the time these *documents* are given to the *private customer*.

...

...

5.7.16 E Table Calculating commission equivalent

This table forms part of COB 5.7.8E

Calculating commission equivalent		
...		
	8.	The following costs should be excluded:
	...	
		(e) costs of developing and maintaining computer systems for the provision of <i>projections</i> of benefits, <i>customer specific key features</i> documents, <u>simplified prospectuses</u> or other product information;
		...

5.7.17 G Table Remuneration and commission disclosure statements: content and wording.

This table forms part of COB 5.7.13G

Remuneration and commission disclosure statements: content and wording			
...			
3.	...	... Examples of some common cases are:	
	(c)	fund related basis:	
		(i)	using the same rate of growth and the same periods as those in the <i>key features document</i> or the <u>simplified prospectus</u> , the example will normally show the <i>commission</i> or <i>remuneration</i> in the first year in which it is paid and the tenth year; or
			...

...

- COB 6 Product disclosure and the customer's right to cancel or withdraw
- 6.1 Product disclosure
- 6.1.1 R *COB 6.1 to COB 6.5 apply to a firm:*
- (1) which sells, *personally recommends* or *arranges (brings about)* for the sale of a *packaged product (other than units in a simplified prospectus scheme)* to a *private customer* or to ...
- (1A) which is an operator of a *simplified prospectus scheme* or which sells, *personally recommends* or *arranges (brings about)* for the sale of *units in such a scheme* to a *client*, whether or not held within a *PEP* or an *ISA*; or
- ...
- 6.1.2 G (1) *COB 6.2.21R* (Exceptions from the requirement to provide key features for life policies) and *COB 6.2.24R* (Exceptions from the requirement to provide key features for [key features] schemes) contain exemptions from the requirement to produce *key features* in relation to *life policies* and [key features] schemes. For *simplified prospectus schemes* *COB 6.2.35R* (Exceptions from the requirement to provide the *simplified prospectus*) and *COB 6.2.36R* (Exception from the requirement to provide a *simplified prospectus*: firms offering a funds supermarket service) contain similar exemptions from the requirement to provide a *simplified prospectus*.
- ...
- Application of ~~COB 6.2.26R~~ 6.2.46R and COB 6.2.47R
- 6.1.2A R ~~*COB 6.2.26R*~~ 6.2.46R (UCITS Directive: requirement to offer a *simplified prospectus* for section 264 schemes) and COB 6.2.47R (Sale of a section 264 scheme by distance contract) ~~applies~~ apply to a *firm* when it sells, *personally recommends* or *arranges* for the sale of a *UCITS scheme* which is a *recognised scheme* under section 264 of the Act (*Schemes constituted in other EEA States*) to a *client*.
- Requirement to produce key features
- 6.1.4 R ...
- (3) (1) does not apply in relation to a *simplified prospectus scheme*.
- Quality and production of key features
- 6.1.5 R A *firm* must ensure that any *key features* or information document it produces in relation to a *packaged product*, *cash deposit ISA* or *cash deposit CTF* is in

writing, whether in printed hard copy or in electronic format, and:

- (1) ...
- (2) is separate from any other material given to the *customer*, unless it is produced for a [~~collective investment scheme~~, key features] scheme [~~investment trust savings scheme~~] or *stakeholder pension scheme*; 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.

## 6.2 Provision of key features or simplified prospectus

...

- 6.2.4 G *Firms* are reminded that any *key features*, *simplified prospectus* or other information required by *COB 6.4 2* to *COB 6.5* is a form of *financial promotion* and therefore the *financial promotion rules* contained in *COB 3* apply (subject to the application provisions of *COB 3.1* to *COB 3.3*).

...

- 6.2.5A G Where this chapter requires *key features*, a *simplified prospectus* or other information to be given, it does not require the same information to be provided again if the *private customer* already has it.

...

### Provision of key features: [key features] schemes

- 6.2.22 R (1) When a *firm* sells, *personally recommends* or arranges for the sale of a [key features] scheme to a *private customer*, unless *COB 6.2.24R* (exceptions) or *COB 6.4.27R* to *COB 6.4.31R* (telephone sales and other exemptions) applies, the *private customer* must be provided with appropriate *key features* for the *scheme* before ~~he~~ ~~the private customer~~ completes an application for the *scheme holding*.
- (2) (1) does not apply where the *operator* of the *scheme* has elected that the *scheme* will comply with *COB 6.2.26R* to *COB 6.2.45R* instead of the provisions in *COB 6* that relate to *key features*.
- (3) (2) does not apply to an *investment trust*.
- 6.2.23 G (1) *COB 6.2.22R* applies not just to new purchases but also to any recommendation or application to transfer the value of a particular fund holding within a [key features] scheme to a different fund within the same *scheme*.

...

Exceptions from the requirement to provide key features for [key features] schemes

- 6.2.24 R A firm need not provide *key features* to a *private customer* in respect of a [key features] scheme if:
- ...
- (6) a *private customer* is making a purchase of a *scheme holding* (whether or not held within a *CTF*) in a [fund key features scheme] in which he already has a *scheme holding* and has already been provided with appropriate *key features* covering the purchase; or
  - (7) ... the transfer; or
  - (8) the *scheme* is a *UCITS scheme* recognised under section 264 of the *Act* (Schemes constituted in other EEA States); however, if the sale is by way of a *distance contract*, the *firm* must provide all the contractual terms and conditions and the information in COB App.1 instead of *key features*.

Purpose of the COB 6 provisions on the simplified prospectus

- 6.2.25A G The purpose of COB 6.2.26R (Production and publication of simplified prospectus), COB 6.2.27R (Revision of simplified prospectus) to COB 6.2.32R (Offering a simplified prospectus), COB 6.2.37R (Table: Contents of the simplified prospectus), COB 6 Annex 2R (Total expenses ratio) and COB 6 Annex 3R (Portfolio turnover rate) is to give effect to the provisions of the Management Company Directive (2001/107/EC) which amended the UCITS Directive, in so far so as it imposes a series of obligations on Member States in relation to the *simplified prospectus*. The *simplified prospectus* is a pre-sale marketing document which contains sufficient information about a *simplified prospectus scheme* to enable an investor to make an informed decision about whether to acquire *units* in the *scheme* to which it relates.

Requirement to offer a simplified prospectus for section 264 schemes

- 6.2.26 R
- (1) ~~When a firm sells, personally recommends or arranges for the sale of a UCITS scheme which is a recognised scheme under section 264 of the Act (schemes constituted in other EEA States) to a client, it must offer the client free of charge a copy of the scheme's most recent simplified prospectus before an application for the scheme holding is completed.~~
  - (2) ~~The simplified prospectus must meet the requirements of the UCITS Directive necessary for the scheme to enjoy the rights conferred by the Directive.~~
  - (3) ~~When the scheme holding is purchased on behalf of a client by an investment manager exercising discretion, the requirement in (1) will be satisfied by the investment manager being offered the simplified prospectus free of charge before the application form for a schemes holding is completed.~~
  - (4) ~~a firm must not carry on any of the activities referred to in (1) in relation~~

to a *UCITS scheme* which is a *recognised scheme* under section 264 of the *Act* unless it is satisfied on reasonable grounds that:

- (a) a copy of the *scheme's simplified prospectus* has been filed with the *FSA* before any *units* in the *scheme* are marketed in the *UK*; and
- (b) the information contained in the *simplified prospectus* is up to date and is not in need of revision;

and that any subsequent amendments thereto have been filed with the *FSA*.

#### Production and publication of simplified prospectus

- 6.2.26 R (1) An operator of a *simplified prospectus scheme* must, for each *simplified prospectus scheme* in respect of which it is the *operator*, produce and publish a *simplified prospectus* in accordance with the *rules* in this section and ensure that it contains in summary form each of the matters referred to in *COB 6.2.37R*.
- (2) A *simplified prospectus* must be incorporated in a written document or in any *durable medium*.
- (3) An operator of a *simplified prospectus scheme* must be satisfied on reasonable grounds that each *simplified prospectus* which it produces:
- (a) includes all such information as is necessary to enable an investor to make an informed decision about whether to acquire *units* in the *scheme*;
  - (b) does not omit any key item of information;
  - (c) wherever possible is written in plain language which avoids technical language and jargon; and
  - (d) adopts a format and style of presentation which is clear and attractive to the average reader, so that it can be easily understood by him.
- (4) The *simplified prospectus* may be attached to the full *prospectus* as a removable part of it.
- (5) Where the *simplified prospectus scheme* is an *umbrella* or has more than one *class* of *units*, the *operator* may at its option produce and publish either a composite *simplified prospectus* covering all the *sub-funds* that comprise the *umbrella* or all the *classes* of *units*, as applicable, or a separate *simplified prospectus* for each *sub-fund* comprising the *umbrella* or for each *class* of *units*, as the case may be.
- (6) Where in accordance with (5) an *operator* produces and publishes separate *simplified prospectuses* for the *sub-funds* of an *umbrella* or, as the case may be, for each *class* of *units*, references in *COB 6.2.26R* to *COB 6.2.45R* to “*scheme*” or “*simplified prospectus scheme*” should be taken as referring to the relevant *sub-fund* or *class*, as applicable.

Revision of simplified prospectus

- 6.2.27 R An operator of a simplified prospectus scheme must, for each simplified prospectus scheme of which it is the operator, keep its simplified prospectus up-to-date and must revise it immediately on the occurrence of any material change.
- 6.2.28 G It is the FSA's view that any change to a simplified prospectus scheme that would be likely to influence the average investor in deciding whether to invest in the scheme or realise his investment in it should be regarded as a material change for the purposes of COB 6.2.27R. Examples would be changes to the scheme's objectives or investment policy. The FSA would expect a simplified prospectus to be updated at least annually.

Filing requirements

- 6.2.29 R A UCITS management company must for each UCITS scheme it manages file the scheme's initial simplified prospectus, together with each revision to it, with:
- (1) the FSA; and
  - (2) the competent authority of each EEA state in which its units are to be marketed in the exercise of an EEA right.

UK firms exercising passporting rights in respect of UCITS scheme

- 6.2.30 R (1) A UCITS management company must for each UCITS scheme it manages and in respect of which it is marketing units in another EEA State in the exercise of an EEA right, produce a simplified prospectus for the scheme drawn up in accordance with the requirements contained in this section.
- (2) The simplified prospectus must be drawn up in the, or one of the, official languages of the EEA State for which it was prepared or in a language approved by the competent authority of that State.
- (3) The simplified prospectus may, without alteration, be used for marketing purposes in the EEA State for which it was prepared and in which the units of the simplified prospectus scheme are to be sold.

- 6.2.31 G (1) In translating the *simplified prospectus* from English into the or one or more of the official languages of the *EEA State* in which the *simplified prospectus scheme* is to be marketed, or into a language approved by the *competent authority* of that *State*, it is permissible under article 28.3 of the *UCITS Directive*, as amended, in the *FSA*'s view, for figures expressed in pounds sterling to be converted into the appropriate local currency such as euros. It is not necessary, for example, for the *simplified prospectus* of a *scheme* that is to be marketed across the *EEA* in the exercise of an *EEA right*, to have to refer to each amount in pounds sterling, in euros and additionally in every other local currency of an *EEA State* in which *units* of the *scheme* are to be marketed that has not adopted the euro as its currency.
- (2) Operators considering marketing the *units* of their *simplified prospectus schemes* in another *EEA State* in the exercise of an *EEA right* should have regard to the local marketing legislation of such country. In this regard the attention of *firms* is drawn to *COB 6.2.38R(2)* (Reduction in yield), under which an *operator* when it is producing a *simplified prospectus* for a *simplified prospectus scheme* whose *units* are to be marketed in another *EEA State*, need not provide the reduction in yield information or format for that *simplified prospectus*. Inclusion of such information and format might be confusing for investors in such countries who are unlikely to be familiar with them. The *simplified prospectus* that is to be marketed in the *United Kingdom* must, however, include the reduction in yield information and format. Likewise there is no requirement for a projection under *COB 6.2.43R(1)* to have to be included in a *simplified prospectus* which is being used for marketing purposes in another *EEA State*.

#### Offering a simplified prospectus

- 6.2.32 R (1) When a *firm* sells, *personally recommends* or *arranges (brings about)* for the sale of a *simplified prospectus scheme*, it must offer the *scheme's* up-to-date *simplified prospectus* free of charge to any *person* who may become a subscriber to the *scheme* before a contract for the sale of *units* is concluded.
- (2) The requirement in (1) will be met by a *firm* in relation to a *private customer* if it or any other *firm* provides him with a copy of the *simplified prospectus* in accordance with *COB 6.2.33R(1)*.

#### Obligation on a firm to provide a simplified prospectus

- 6.2.33 R (1) When a *firm* sells, *personally recommends* or *arranges (brings about)* for the sale of a *simplified prospectus scheme* to a *private customer* in the *United Kingdom*, the *firm* must provide him with the up-to-date *simplified prospectus* for the *scheme* before he completes an application for the *scheme holding* unless *COB 6.2.35R* or *COB 6.2.36R* or *COB 6.4.27R* to *COB 6.4.31R* (telephone sales and other exemptions) apply.

(2) (1) does not apply to a UCITS management company when it sells units in a UCITS scheme without personally recommending or arranging for the sale of such units.

- 6.2.34 G (1) COB 6.2.33R applies not just to new purchases but also to any recommendation or application to transfer the value of a particular fund holding within a scheme to a different sub-fund within the same scheme.
- (2) Where a private customer has responded to a direct offer financial promotion, the mailing package or direct offer financial promotion should have included the simplified prospectus for the scheme, in which case there is no requirement to provide a further simplified prospectus to such a private customer in respect of the same transaction.
- (3) COB 6.2.33R may apply to either the operator or the distributor of a simplified prospectus scheme depending on how units in the scheme are to be sold.
- (4) Where one of the exceptions in COB 6.2.35R or COB 6.2.36R applies, firms should bear in mind that they must still comply with COB 6.2.32R (Offering a simplified prospectus) which represents an absolute requirement of the UCITS Directive and as such, cannot be made subject to any exclusions. For example, a firm offering a funds supermarket service which is entitled to the benefit of the exception in COB 6.2.36R must ensure that every private customer is offered the simplified prospectus of each relevant simplified prospectus scheme before a contract for the sale of units is concluded.

Exceptions from the requirement to provide the simplified prospectus

- 6.2.35 R A firm need not, unless a private customer specifically requests it, provide a simplified prospectus to a private customer for a simplified prospectus scheme if:
- (1) the firm is a product provider and the scheme holding is sold on the personal recommendation of, or arranged to be sold on the personal recommendation of, or arranged to be sold by another person, provided that other person:
- (a) is a firm (or appointed representative) operating from an establishment maintained by the firm (or appointed representative) in the United Kingdom; or
- (b) is operating from an establishment in an EEA State whose law imposes obligations on the person to provide information about the scheme holding in accordance with articles 3 and 5(1) and (2) of the Distance Marketing Directive; or
- (2) at the time the private customer signs the application, the private customer is habitually resident outside the EEA and is not present in the United Kingdom; or

- (3) (except for *distance* contracts with *retail customers*) the *scheme holding* is purchased by the *private customer* in the course of an *execution-only transaction*; or
- (4) the *scheme holding* is purchased on behalf of the *private customer* by an *investment manager* exercising discretion; or
- (5) the sale of the *scheme holding* is arranged or recommended by an *investment manager* who is not exercising discretion and the *private customer* has agreed, either in relation to that specific holding or generally, that the *simplified prospectus* need not be provided; or
- (6) a *private customer* is making a purchase of a *scheme holding* (whether or not held within a *CTF*) in a *scheme* in which he already has a *scheme holding* and has already been provided with the up-to-date *simplified prospectus* which covers the purchase; or
- (7) a *private customer* is transferring from *accumulation units* to *income units* of the same *scheme* (or vice versa) and has already been supplied with the up-to-date *simplified prospectus* of the *scheme* which covers the transfer.

Exception from the requirement to offer a simplified prospectus: firms offering a funds supermarket service

- 6.2.36 R (1) A firm to which COB 6.2.33R (Obligation on a firm to provide a simplified prospectus) applies that is offering a *funds supermarket service*, need not, unless a *private customer* requests it, provide a *private customer* with a *simplified prospectus* for any *simplified prospectus scheme* to which its *funds supermarket service* relates provided it complies with the condition in (2).
- (2) The condition is that the *firm* must instead provide the *private customer* with a composite *key features document* that meets the requirements of COB 6.5 (Content of key features) which covers each of the *key features schemes* and *simplified prospectus schemes* to which its *funds supermarket service* relates.

6.2.37 R Table: Contents of the simplified prospectus

This table belongs to COB 6.2.26 R (1)

<u>Contents of simplified prospectus</u>	
<b>Note:</b>	<p><u>This table sets out the required contents of the <i>simplified prospectus</i>. It reproduces Schedule C (Contents of the simplified prospectus) of the Management Company Directive (2001/107/EC), as amplified by the Commission Recommendation (2004/384/EC).</u></p> <p><u>This Table also includes, and cross-refers to, other material which the FSA considers should be included.</u></p>
<p><u>Brief presentation of the <i>simplified prospectus scheme</i> (in this Table referred to as “the <i>scheme</i>”).</u></p> <p><u>Where a <i>scheme</i> comprises an <i>umbrella</i> or has more than one <i>class</i> of <i>units</i> and the <i>operator</i> in accordance with COB 6.2.26R(5) is producing a separate <i>simplified prospectus</i> for each <i>sub-fund</i> or, as the case may be, for each <i>class</i> of <i>units</i>, references in this Table to <i>scheme</i> should be taken, wherever appropriate, as referring to the relevant <i>sub-fund</i> or <i>class</i>, as applicable.</u></p>	
(1)	<u>when the <i>scheme</i> was created and an indication of the <i>EEA State</i> where the <i>scheme</i> has been registered or incorporated;</u>
(2)	<u>in the case of a <i>scheme</i> having different investment compartments (<i>sub-funds</i>), the indication of this circumstance;</u>
(3)	<u>the name and contact details of the <i>operator</i> (when applicable);</u>
(4)	<u>the expected period of existence of the <i>scheme</i> (when applicable);</u>
(5)	<u>the name and contact details of the <i>depository</i>;</u>
(6)	<u>the name and contact details of the auditors;</u>
(7)	<u>the name and brief details of the financial group (e.g. a bank) promoting the <i>scheme</i>;</u>
<u>Investment information</u>	
(8)	<u>a short description of the <i>scheme's</i> objectives including:</u>
(a)	<u>a concise and appropriate description of the outcomes sought for any investment in the <i>scheme</i>;</u>

<u>Contents of simplified prospectus</u>		
	(b)	<u>a clear statement of any guarantees offered by third parties to protect investors and any restrictions on those guarantees; and</u>
	(c)	<u>a statement, where relevant, that the <i>scheme</i> is intended to track an index or indices, and sufficient information to enable investors both to identify the relevant index or indices and to understand the extent or degree of tracking pursued;</u>
<b>Notes:</b>	1.	<u>Information on (8)(a) should include a statement as to whether there is any arrangement intended to result in a particular capital or income return from the <i>units</i> or any investment objective of giving protection to their capital value or income return and, if so, details of that arrangement or protection.</u>
	2.	<u>The information disclosed under (8)(b) should include an explanation of what is to happen when an <i>investment</i> is encashed before the expiry of any related guarantee or protection.</u>
(9)		<u>the <i>scheme's</i> investment policy, including:</u>
	(a)	<u>the main categories of eligible financial instruments which are the object of investment;</u>
	(b)	<u>whether the <i>scheme</i> has a particular strategy in relation to any industrial, geographic or other market sectors or specific classes of assets, e.g. investments in emerging countries' financial instruments;</u>
	(c)	<u>where relevant, a warning that, whilst the actual portfolio composition is required to comply with the broad legal and statutory rules and limits, risk-concentration may occur in regard of certain tighter asset classes, economic and geographic sectors;</u>
	(d)	<u>if the <i>scheme</i> invests in bonds, an indication of whether they are corporate or government, their duration and the ratings requirements;</u>
	(e)	<u>if the <i>scheme</i> uses financial derivative instruments, an indication of whether this is done in pursuit of the <i>scheme's</i> objectives, or for hedging purposes only;</u>
	(f)	<u>whether the <i>scheme's</i> management style makes some reference to a benchmark; and in particular whether the <i>scheme</i> has an 'index tracking' objective, with an indication of the strategy to be pursued to achieve this; and</u>

<u>Contents of simplified prospectus</u>			
	(g)	<u>whether the <i>scheme's</i> management style is based on a tactical asset allocation with high frequency portfolio adjustments;</u>	
	<u>provided the information is material and relevant;</u>		
<b>Note:</b>	<u>The information referred to in paragraphs (8) and (9) may be set out as a single item in the <i>simplified prospectus</i> (e.g. for the information on index tracking), provided that the information so combined does not lead to confusion of the objectives and policies of the <i>scheme</i>. The order of the information items may be adapted to reflect the <i>scheme's</i> specific investment objectives and policy.</u>		
(10)	<u>a brief assessment of the <i>scheme's</i> risk profile by investment compartment or sub-fund, including:</u>		
	(a)	<u>overall structure of the information provided:</u>	
	(i)	<u>a statement to the effect that the value of investments may fall as well as rise and that investors may get back less than they put in;</u>	
	(ii)	<u>a statement that details of all the risks actually mentioned in the <i>simplified prospectus</i> may be found in the full <i>prospectus</i>;</u>	
	(iii)	<u>a description in words of any risk investors have to face in relation to their investment, but only where such risk is relevant and material, based on risk impact and probability; and</u>	
	(b)	<u>details regarding the description (in words) of the following risks:</u>	
	(i)	<u>specific risks:</u>	
		<u>The description referred to in paragraph (10)(a)(iii) should include a brief and understandable explanation of any specific risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the <i>scheme</i> such as:</u>	
		A	<u>the risk that the entire market of an asset class will decline thus affecting the prices and values of the assets (market risk);</u>
		B	<u>the risk that an issuer or a counterparty will default (credit risk);</u>

<u>Contents of simplified prospectus</u>			
			<u>C</u> <u>only where strictly relevant, the risk that a settlement in a transfer system does not take place as expected because a counterparty does not pay or deliver on time or as expected (settlement risk);</u>
			<u>D</u> <u>the risk that a position cannot be liquidated in a timely manner at a reasonable price (liquidity risk);</u>
			<u>E</u> <u>the risk that the investment's value will be affected by changes in exchange rates (exchange or currency risk);</u>
			<u>F</u> <u>only where strictly relevant, the risk of loss of assets held in custody that could result from the insolvency, negligence or fraudulent action of the custodian or of a subcustodian (custody risk); and</u>
			<u>G</u> <u>risks related to a concentration of assets or markets; and</u>
		<u>(ii)</u>	<u>horizontal risk factors:</u>
			<u>The description referred to in paragraph (10)(a)(iii) should also mention, where relevant and material, the following factors that may affect the product:</u>
			<u>A</u> <u>performance risk, including the variability of risk levels depending on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties;</u>
			<u>B</u> <u>risks to capital, including potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns;</u>
			<u>C</u> <u>exposure to the performance of the provider/third-party guarantor, where investment in the product involves direct investment in the provider, rather than assets held by the provider;</u>
			<u>D</u> <u>inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers;</u>
			<u>E</u> <u>inflation risk; and</u>
			<u>F</u> <u>lack of certainty that environmental factors, such as a tax regime, will persist;</u>

<u>Contents of simplified prospectus</u>		
	(iii)	<u>possible prioritisation of information disclosure:</u>
		<u>In order to avoid conveying a misleading image of the relevant risks, the information items should be presented so as to prioritise, based on scale and materiality, the risks so as to better highlight the individual risk profile of the scheme;</u>
(11)		<u>the historical performance of the scheme (where applicable) and a warning that this is not an indicator of future performance (which may be either included in or attached to the simplified prospectus), including:</u>
	(a)	<u>disclosure of past performance:</u>
	(i)	<u>the scheme's past performance, as presented using a bar chart showing annual returns for the last ten full consecutive years. If the scheme has been in existence for fewer than ten years but at least for a period of one year, it is recommended that the annual returns, calculated net of tax and charges, be given for as many years as are available; and</u>
	(ii)	<u>if a scheme is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the scheme should include a comparison with the past performance of the benchmark according to which the scheme is managed or the performance fee is calculated;</u>
<b>Note:</b>		<u>Comparison should be achieved by representing the past performance of the benchmark and that of the scheme through the use of appropriate graphs to assist the reader to make the comparison.</u>
	(b)	<u>disclosure of cumulative performance:</u>
		<u>Disclosure should be made of the cumulative performance of the scheme over the ten year period referred to in paragraph (11)(a)(i). A comparison should also be made with the cumulative performance (where relevant) of a benchmark, when comparison to a benchmark is required in accordance with paragraph (11)(a)(ii);</u>
<b>Note:</b>		<u>Where the scheme has been in existence for fewer than ten years but at least for a period of one year, disclosure of the past cumulative performance should be made for as many years as are available.</u>

<u>Contents of simplified prospectus</u>		
	(c)	<u>exclusion of subscription and redemption fees, subject to appropriate disclosure:</u>
		<u>A statement should be made that past performance of the <i>scheme</i> does not include the effect of subscription and redemption fees.</u>
<b>Notes:</b>	1.	<u>Where a comparison is being made with the cumulative performance of a benchmark as required by paragraph (11)(b), the comparison should be achieved by representing the past performance of the benchmark and that of the <i>scheme</i> through the use of appropriate graphs to assist the reader to make the comparison.</u>
	2.	<u>The <i>scheme's</i> historical performance may be produced as a separate attachment to the <i>simplified prospectus</i>.</u>
(12)		<u>a profile of the typical investor the <i>scheme</i> is designed for;</u>
<u>Economic information</u>		
(13)		<u>the <i>scheme's</i> applicable tax regime, including:</u>
	(a)	<u>the tax regime applicable to the <i>scheme</i> in the <i>UK</i>; and</u>
	(b)	<u>a statement which explains that the regime of taxation of the income or capital gains received by individual investors depends on the tax law applicable to the personal situation of each individual investor and/or to the place where the capital is invested and that if investors are unclear as to their fiscal position, they should seek professional advice or information from local organisations, where available;</u>
<b>Note:</b>		<u>This information should include a statement in relation to <i>SDRT provision</i>, explaining how the <i>scheme</i> may suffer stamp duty reserve tax as a result of transactions in <i>units</i> and whether the <i>operator's</i> policy is such that an <i>SDRT provision</i> may be imposed.</u>
(14)		<u>details of any entry and exit commissions relating to the <i>scheme</i> and details of the <i>scheme's</i> other possible expenses or fees, distinguishing between those to be paid by the <i>unitholder</i> and those to be paid from the <i>scheme's</i> or the <i>sub-fund's</i> assets, including:</u>
	(a)	<u>overall contents of the information provided:</u>
	(i)	<u>disclosure of a total expense ratio (TER), calculated as indicated in <i>COB 6 Annex 2R</i>, except for a newly created <i>fund</i> where a TER cannot yet be calculated;</u>

<u>Contents of simplified prospectus</u>			
		(ii)	<u>on an ex ante basis, disclosure of the expected cost structure, that is an indication of all costs available according to the list set forth in COB 6 Annex 2R so as to provide investors, in so far as possible, with a reasonable estimate of expected costs;</u>
		(iii)	<u>all entry and exit commissions and other expenses directly paid by the investor;</u>
		(iv)	<u>an indication of all the other costs not included in the TER, including disclosure of transaction costs;</u>
		(v)	<u>as an additional indicator of the importance of transaction costs, the portfolio turnover rate, calculated as shown in COB 6 Annex 3R; and</u>
		(vi)	<u>an indication of the existence of fee-sharing agreements and soft commissions;</u>
<b><u>Notes:</u></b>		1.	<u>In explaining the function of the TER to the reader, appropriate wording should be used in the <i>simplified prospectus</i>. For example, TER might be explained in the following terms:</u>  <u>“The TER shows the annual operating expenses of the <i>scheme</i> – it does not include transaction expenses. All European funds highlight the TER to help you compare the annual operating expenses of different <i>schemes</i>.”.</u>
		2.	<u>It is the FSA’s understanding that the disclosure of a reasonable estimate of expected costs on an ex ante basis, as required by paragraph (14)(a)(ii), only applies to new <i>schemes</i> where a TER cannot yet be calculated. Where a TER can be calculated for a <i>simplified prospectus scheme</i>, there is no need to have to disclose a reasonable estimate of expected costs on an ex ante basis in accordance with paragraph (14)(a)(ii), in addition to the <u>TER.</u></u>

<u>Contents of simplified prospectus</u>		
	3.	<u>In disclosing details of all entry and exit commissions relating to the <i>fund</i> and details of the <i>scheme's</i> other possible expenses or fees, the <i>firm</i> must present the information in the format required by COB 6 2.38R (1) (Reduction in yield). Compliance with this rule will ensure that the information is presented in the form of an impact of charges table based on reduction in yield figures, so as to assist the comprehension of the reader.</u>
	4.	<u>Paragraph (14)(a)(vi) should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the Handbook. Taking into account current market practice, consideration should be given as to how far the <i>scheme's</i> existing fee-sharing agreements and comparable fee arrangements are for the exclusive benefit of the <i>scheme</i>.</u>
	5.*	<u>For the purposes of paragraph (14)(a)(vi), fee-sharing agreements should be taken as those agreements whereby a party remunerated, either directly or indirectly, out of the assets of a <i>scheme</i> agrees to split its remuneration with another party and which result in that other party meeting expenses through this fee-sharing agreement that should normally be met, either directly or indirectly, out of the assets of the <i>scheme</i>.</u>
	6.*	<u>For the purposes of paragraph (14)(a)(vi) soft commissions should be regarded as any economic benefit, other than clearing and execution services, that an asset manager receives in connection with the <i>scheme's</i> payment of commissions on transactions that involve the <i>scheme's</i> portfolio securities. Soft commissions are typically obtained from, or through, the executing broker.</u>
	7.*	<u>The <i>simplified prospectus</i> should make a reference to the full <i>prospectus</i> for detailed information on these kinds of arrangements, which should allow any investor to understand to whom expenses are to be paid and how possible conflicts of interest will be resolved in his/her best interest. The information provided in the <i>simplified prospectus</i> should remain concise in this respect.</u>
*See Addendum 23 June 2005		

<u>Contents of simplified prospectus</u>	
*	(b) <u>detailed information about 'fee sharing agreements' and 'soft commissions', including:</u>
	(i) <u>identification of 'fee-sharing agreements';</u>
<b>Note:*</b>	<u>See note 5 to paragraph (14)(a).</u>
	(ii) <u>identification of soft commissions;</u>
<b>Note:*</b>	<u>See note 6 to paragraph (14)(a).</u>
	(iii)* <u>presentation of TER and portfolio turnover note;</u>
<b>Note:</b>	<u>Both the TER and the portfolio turnover rate may be either included in or attached to the <i>simplified prospectus</i> in the same paper as information on past performance.</u>
<u>Commercial information</u>	
(15)	<u>how to buy the <i>units</i>;</u>
<b>Note:</b>	<u>This should include an explanation of any relevant right to cancel or withdraw from the purchase, or, where it is the case, that such rights do not apply.</u>
(16)	<u>how to sell the <i>units</i>;</u>
(17)	<u>in the case of a <i>scheme</i> having different investment compartments (<i>sub-funds</i>), an explanation of how to switch from one investment compartment into another and any charges applicable in such cases;</u>
(18)	<u>when and how dividends on <i>units</i> or <i>shares</i> of the <i>scheme</i> (if applicable) are distributed;</u>
(19)	<u>when and where prices of <i>units</i> are published or made available;</u>
<u>Additional information</u>	
(20)	<u>a statement that, on request, the full <i>prospectus</i> and the annual and half-yearly reports of the <i>scheme</i> may be obtained free of charge before the conclusion of the contract and afterwards, together with details of how they may be obtained or how a <i>person</i> may gain access to them;</u>
(21)	<u>the name and contact details of the <i>FSA</i> as being the <i>competent authority</i> which has authorised or registered the <i>scheme</i>;</u>
*See Addendum 23 June 2005	

<u>Contents of simplified prospectus</u>	
<u>(22)</u>	<u>details of a contact point (<i>person</i> or department, and, if appropriate the times of day etc.) where additional information may be obtained if needed;</u>
<u>(23)</u>	<u>the date of publication of the <i>simplified prospectus</i>.</u>
<b><u>General Note:</u>*</b>	
	<u>In making the disclosures required by paragraphs (8) to (19) of this Table, the information must be presented in the form of questions and answers. This format is designed to assist the comprehension of the reader.</u>

\*See Addendum 23 June 2005

### Reduction in yield

- 6.2.38 R (1) In disclosing the information required by paragraph (14) of COB 6.2.37R (Table: Contents of the simplified prospectus), a *firm* should set out the information in the format required by, and include the contents of, COB 6.5.30R (Table for [key features] schemes) to COB 6.5.35R (Calculation method for “effect of charges to date” for [key features] schemes) and COB 6.5.38R (Commission and commission equivalent for life policies, [key features] schemes and stakeholder pension schemes), as if such provisions applied to *simplified prospectus schemes*, as modified by COB Table 6.2.39R.
- (2) Where the *units* of a *simplified prospectus scheme* are to be marketed and sold in another *EEA State*, the *operator* of the *scheme* need not comply with the requirements in (1) for the *simplified prospectus* that is to be used to market the *scheme* in that *EEA State*.
- (3) Note 3 to paragraph (14) of COB 6.2.37R (Table: Contents of the simplified prospectus) and COB 6.2.38R to COB 6.2.40G cease to have effect on 30 June 2009, unless re-made.

6.2.39 R Table Application of COB 6.5.30R to COB 6.5.35R, and COB 6.5.38R

This table belongs to COB 6.2.38R

<u>Application of COB 6.5.30R to COB 6.5.35R, and COB 6.5.38R</u>		
<u>Rule</u>	<u>Description</u>	<u>Modification</u>
<u>COB 6.5.31R</u>	<u>Table</u>	<u>Substitute “COB 6.2.43R (1)” for the reference to COB 6.5.15R (2).</u>

<u>COB 6.5.32R (1), (2) and (3)</u>	<u>Scheme projections</u>	<u>Substitute “COB 6.2.43R (1)” for the references to COB 6.5.15R (2).</u>
<u>COB 6.5.32R (3) and (7)(a)</u>	<u>Scheme projections</u>	<u>Substitute “client” for the references to “private customer”.</u>

6.2.40    G    The FSA intends to review the operation of COB 6.2.38R and COB 6.2.39R in 2008 and will re-examine these RIY requirements from first principles at that time. This will be done with a view to determining whether the retention of the RIY information and format, in addition to the disclosure of the European TER standard, remains appropriate in the light of the then prevailing circumstances, including consumer understanding of the issues. Should the result of that review indicate that these RIY requirements should be retained or otherwise changed, the FSA will consult publicly on its proposals in accordance with section 155(1) of the Act.

Distance contracts for the sale of simplified prospectus schemes

6.2.41    R    When a firm sells, personally recommends or arranges (brings about) for the sale of a simplified prospectus scheme to a retail customer in circumstances where a distance contract is being concluded, it must ensure that the retail customer is provided in good time with all the contractual terms and conditions and the information in COB Appendix 1.1 before the contract for the scheme holding is concluded.

6.2.42    G    Firms should bear in mind the guidance at COB 6.2.5AG. Where a simplified prospectus is provided to a retail customer in circumstances where a distance contract is being concluded, this chapter does not require the same information to be provided again to the customer as a result of COB 6.2.41R. Firms should note, however, that while the contents of a simplified prospectus and the contractual terms and conditions and the information required by COB Appendix 1.1 substantially overlap, there are differences between them. Consequently it is necessary for firms additionally to provide the contractual terms and conditions and the information required by COB Appendix 1.1 to the extent that such information is not covered by the contents of the simplified prospectus. This additional information may accompany, but should not form part of, the simplified prospectus itself.

Projection for simplified prospectus scheme

6.2.43    R    (1) When a firm sells, personally recommends or arranges for the sale of a simplified prospectus scheme to a private customer and the proposed transaction is for a scheme:

(a) which relates to an election to make income withdrawals; or

(b) where the private customer’s primary objective is to acquire:

- (i) a specified sum of money on a specified date; or
- (ii) a specified sum of money on death; or
- (iii) an annuity of a specified amount payable as from a specified date;

the firm must provide the private customer with a projection, illustrating how the principal terms of the proposed transaction apply to him.

- (2) (1) does not apply to a UCITS management company when it sells units in a UCITS scheme without personally recommending or arranging for the sale of such units.
- (3) (1) does not apply to a direct offer financial promotion in relation to units in a simplified prospectus scheme.

6.2.44 G A projection may be provided by a firm for a simplified prospectus scheme where COB 6.2.43R (1) does not require one, at a firm's discretion. Likewise it is at the firm's discretion to decide whether it is appropriate to include the projection, whether or not required by COB 6.2.43R (1), as part of the simplified prospectus.

#### PEP and ISA investments

- 6.2.45\* R (1) When a firm sells, personally recommends or arranges for the sale of a unit in an simplified prospectus scheme to a private customer which is to be held within a PEP or ISA, it must provide him with the following additional information:
- (a) a description of the nature of the services the firm will provide for the private customer in relation to the PEP or ISA;
  - (b) for ISAs or ISA components which are stated as satisfying the CAT standards:
    - (i) a table comparing the ISA or ISA component with the CAT standards;
    - (ii) clarification that satisfying the CAT standards does not mean that the investment is appropriate for the private customer or that there is any guarantee of performance;
  - (c) the fact, if applicable, that an ISA does not meet the CAT standards together with any relevant explanation;
  - (d) a statement that the favourable tax treatment of ISAs may not be maintained;
  - (e) how and when statements (if any) will be sent;

\*See Addendum 23 June 2005

- (f) an explanation how the ISA or plan may be terminated or transferred to another ISA or PEP manager;
  - (g) whether the ISA is a mini or maxi-ISA agreement and an explanation of the differences between the two; and
  - (h) whether the private customer has a choice to reinvest income, where uninvested money will be held and whether interest is paid on such money.
- (2) (1) does not apply to a UCITS management company when it sells units in a UCITS scheme without personally recommending or arranging for the sale of such units.
  - (3) (1) does not apply to the extent that a private customer is making a purchase of a scheme holding in a simplified prospectus scheme in which he already has a scheme holding and has already been provided with the information set out at (1)(a) to (h) which remains up-to-date.

UCITS Directive: requirement to offer a simplified prospectus for section 264 schemes

- 6.2.46 R
- (1) When a firm sells, personally recommends or arranges (brings about) for the sale of a UCITS scheme which is a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States) to a client, it must offer the client free of charge a copy of the scheme's most recent simplified prospectus before an application for the scheme holding is completed.
  - (2) The simplified prospectus must meet the requirements of the UCITS Directive necessary for the scheme to enjoy the rights conferred by the Directive.
  - (3) When the scheme holding is purchased on behalf of a client by an investment manager exercising discretion, the requirement in (1) will be satisfied by the investment manager being offered the simplified prospectus free of charge before the application form for a scheme holding is completed.
  - (4) A firm must not carry on any of the activities referred to in (1) in relation to a UCITS scheme which is a recognised scheme under section 264 of the Act unless it is satisfied on reasonable grounds that:
    - (a) the scheme's simplified prospectus has been sent to the FSA before any units in the scheme are marketed in the UK; and
    - (b) the information contained in the simplified prospectus is up-to-date and is not in need of revision;and that any subsequent amendments thereto have been sent to the FSA.

Sale of a section 264 scheme by distance contract

- 6.2.47\* R If the sale in COB 6.2.46R (1) is by way of a *distance contract*, the *firm* must provide all the contractual terms and conditions and the information in COB Appendix 1.1.
- ...
- 6.4 Product disclosure: special situations
- ...
- 6.4.2 G *Firms* are reminded that, under COB 6.2.2R, the *key features* required to be provided to a *private customer* under COB 6.4 must be provided by the *firm* in a *durable medium*. See also COB 6.2.3G – COB 6.2.5G. For *simplified prospectus schemes*, *firms* are referred to COB 6.2.26R to COB 6.2.45R for the applicable provisions in relation to *simplified prospectuses*.
- Occupational pension schemes
- 6.4.3 G COB 6.1 (Packaged product and ISA disclosure) and COB 6.2 (Provision of key features or simplified prospectus) apply to a *firm* in respect of the purchase of *packaged products*, whether *life policies* or *schemes*, by the trustees of *money-purchase occupational schemes*. ...
- 6.4.4 R (1) When a *firm* sells, *personally recommends* or arranges the sale of a new group or master *life policy*, the first in a series of individual *life policies* or the first *units* in a particular [*key features*] *scheme or simplified prospectus scheme* to or for the trustees of a *money-purchase occupational scheme*, it must provide the trustees with *key features*, in accordance with COB 6.2.7R to COB 6.2.25R or for a *simplified prospectus scheme*, with a *simplified prospectus*, in accordance with COB 6.2.26R to COB 6.2.45R.
- ...
- (3) In addition to the information to be provided to trustees under COB 6.4.4R(1), the *firm* must ensure that *key features or the simplified prospectus* are made available to the trustees to distribute to all scheme members at the outset of the scheme and for subsequent new members.
- ...
- 6.4.5 G ...
- (3) *Group personal pension schemes* are not *occupational pension schemes* and COB 6.4.4R does not apply to them. *Firms* should therefore provide each *person* who is offered membership of a *group personal pension scheme* with *key features or a simplified prospectus* in accordance with COB 6.1 and COB 6.2. ...
- ...

\*See Addendum 23 June 2005

## Self-invested personal pension schemes

- 6.4.6 R (1) *A firm which sells, personally recommends or arranges the sale of a packaged product (other than a simplified prospectus scheme) to or for a member, prospective member or trustees of a self-invested personal pension scheme, must provide key features to that member or trustees, in accordance with COB 6.2.7R to COB 6.2.25R or for the sale of a simplified prospectus scheme, provide a simplified prospectus to that member or trustees, in accordance with COB 6.2.26R to COB 6.2.45R.*
- ...

- 6.4.7 G *Investments within a self-invested personal pension scheme (a “SIPP”) are effected by the trustees on behalf of scheme members. Key features or a simplified prospectus should be given to the trustees and to members of SIPPs when packaged products (whether life policies or schemes) are recommended by a firm to scheme members or effected by SIPP trustees. ...*

## Income withdrawals

- 6.4.8 R *When a firm personally recommends, arranges or effects income withdrawals to or for a private customer, the customer must be provided with key features or with a simplified prospectus in good time before he signs any form of application or authority electing to make those withdrawals, whether that election is made with advice on investments or on an execution-only basis, unless COB 6.4.10R to COB 6.4.12R or COB 6.4.27R to COB 6.4.31R (telephone sales and other exemptions) applies.*

- 6.4.9 R *In relation to an election to make income withdrawals, the requirement for the provision of key features or a simplified prospectus in:*

...

- (2) *COB 6.2.22R or, for simplified prospectus schemes, COB 6.2.33R also applies when an existing scheme holding is to be used.*

- 6.4.10 R *In relation to an election to make income withdrawals, the requirements of COB 6.4.11R and COB 6.4.12R override the relevant requirement in COB 6.2 (Provision of key features or simplified prospectus), where there is conflict, but only where this would not contravene a requirement of the UCITS Directive.*

- 6.4.11 R *When a private customer makes a series of elections within a period of 12 months to make income withdrawals, the firm that is personally recommending, arranging or effecting the elections may provide one combined set of key features or simplified prospectuses for those elections, or may provide separate sets of key features for elections which relate to life policies and [key features] schemes or separate simplified prospectuses for simplified prospectus schemes.*

...

## Stakeholder pension schemes

- 6.4.15 R *When a firm sells, manages, personally recommends or arranges the sale of a stakeholder pension scheme to or for a private customer, the firm must, subject*

to COB 6.4.18R and unless COB 6.4.27R to COB 6.4.31R (telephone sales and other exemptions) applies, provide the *private customer* with *key features* or a *simplified prospectus* before the *private customer* completes an application for the *stakeholder pension scheme*.

...

- 6.4.19 R (1) When a *firm* sells, *personally recommends* or arranges the sale of a new group or master *life policy*, the first in a series of individual *life policies* or the first *units* in a particular [*key features*] *scheme* or *simplified prospectus scheme* to the trustees or the operator of a *stakeholder pension scheme*, it must provide the trustees or operator with *key features*, in accordance with COB 6.2.7R to COB 6.2.25R or for a *simplified prospectus scheme*, with a *simplified prospectus*, in accordance with COB 6.2.26R to COB 6.2.45R.

...

Exemption: telephone sales

- 6.4.27 R (1) Where this chapter requires *key features*, a *simplified prospectus* or other information to be provided, in the case of voice telephony communications, a *firm*:

(a) ...

...

- (3) In the case of either (1) or (2), the *firm* must send the *private customer* immediately after the contract is concluded, the required *key features*, *simplified prospectus* or other information (as applicable) in a *durable medium*.

...

...

Exemption: certain other means of distance communication

- 6.4.29 R This exemption applies where this chapter requires a *key features*, *simplified prospectus* or other information to be provided in relation to a *distance contract*, if the *distance contract* is concluded at the *customer's* request using a *means of distance communication* (other than telephone) which does not enable provision of the information in a *durable medium* before the *customer* is bound by the contract or offer. In that case, the *firm* must provide a *key features*, *simplified prospectus* or other information to the *customer* in a *durable medium* immediately after the conclusion of the contract.

Exemption: successive or separate operations under an initial service agreement

- 6.4.30 R This exemption applies where this chapter requires a *key features*, *simplified prospectus* or other information to be provided in relation to a *distance contract*, if the *firm* has an initial service agreement with the *customer* and the contract is in relation to a successive operation or a separate operation of the same nature under that agreement (see COB 1.10.2G (1)).

Exemption: other successive or separate operations

6.4.31 R This exemption applies where this chapter requires a *key features*, *simplified prospectus* or other information to be provided in relation to a *distance contract* if:

- (1) the *firm* has no initial service agreement with the *customer*;
- (2) the *firm* has performed an operation for the *customer* within the last year; and
- (3) the contract is in relation to a successive operation or separate operation of the same nature (see *COB* 1.10.2G(2)).

...

6.5 Content of key features and important information: life policies, [key features] schemes, ISA cash deposit components and stakeholder pension schemes

...

General

6.5.2 R A *firm* must ensure, unless *COB* 6.5.3R applies, that:

- (1) the *key features* it produces for a [*life policy* or a *key features scheme* other than a *stakeholder pension scheme* (whether or not held within a *PEP* or an *ISA*) ~~*packaged product*~~ other than a *stakeholder pension scheme*] includes the information required by *COB* 6.5.11R, set out in the order shown divided by appropriate and prominent sub-headings, some of which are prescribed in the *rules*;

...

...

6.5.4 G ...

- (2) For the purposes of *COB* 6.5.2R(1)
  - (a) a *firm* which offers more than one [key features] *scheme* may choose whether to produce separate *key features* for each *scheme* (including a fund or *sub-fund* or *share* class), or to produce a single *key features* to cover a range of funds (provided the differences between those funds are made clear);
  - (b) where a publication covers more than one [key features] *scheme* (for example, in the case of a year book comprising information on all the funds offered by a *unit trust manager*), it might consist of a *key features* section at the beginning giving details common to all the

relevant funds (whether *units trusts, ICVCs, sub-funds* of an *umbrella scheme* or *share* classes within an *ICVC*), followed by separate pages setting out, for each fund, those items which are specific to it, for example 'Aims', Risk Factors' and 'Charges and their Effect'.

...

- 6.5.11 R Table Table of Information / Applicable provisions  
This table belongs to COB 6.5.2 R(1)

Information		Application provisions
Title Nature of <i>life policy</i> or [ <u>key features</u> ] <i>scheme</i> or <i>stakeholder pension scheme</i>		COB 6.5.12R COB 6.5.13R – COB 6.5.14G
An example		COB 6.5.15R – COB 6.5.19R
Description of the <i>life policy</i> or [ <u>key features</u> ] <i>scheme</i> or <i>stakeholder pension scheme</i>		COB 6.5.20R
Tables:	<i>Life policies</i> [ <u>Key features</u> ] Schemes	COB 6.5.23R – COB 6.5.26R COB 6.5.30R – COB 6.5.32R
Deductions Summary:	<i>Life policies</i> [ <u>Key features</u> ] Schemes	COB 6.5.27R – COB 6.5.29R COB 6.5.33R – COB 6.5.36G
<i>Commission and remuneration</i>		COB 6.5.38R – COB 6.5.39G
Further information		COB 6.5.40R

...

Title

- 6.5.12 R A *firm* must include this heading: 'key features of the [name of *life policy*/[key features] *scheme*/*stakeholder pension scheme*]'.

Nature of *life policy* or [key features] *scheme* or *stakeholder pension scheme*

- 6.5.13 R (1) A *firm* must describe the nature of the *life policy* or [key features] *scheme* or *stakeholder pension scheme* under the following headings: 'its aims', 'your commitment', or, 'your investment' (whichever is more appropriate) and 'risk factors'.

...

An example

- 6.5.15 R A *firm* must include a *projection*, illustrating how the principal terms of the proposed transaction apply to the *private customer*:

...

- (2) where the proposed transaction does not relate to a *CTF* or a *stakeholder product* sold through *basic advice* and is for a [key features] *scheme* or a *linked life stakeholder product*:

...

- 6.5.16 G A *projection* may be included for [key features] *schemes* where *COB* 6.5.15R(2) does not require one, at a *firm's* discretion.

...

Description of the life policy or [key features] *scheme* or stakeholder pension scheme

- 6.5.20 R In addition to *COB* 6.5.13R and *COB* 6.5.18R, a *firm* must set out in the form of questions and answers a description of the principal terms of the *life policy*, [key features] *scheme*, or *stakeholder pension scheme* and any other information necessary to enable the *private customer* to make an informed decision.

...

- 6.5.21 G The information required by *COB* 6.5.20R should include:

- (8) for a *life policy* or a [key features] *scheme* which is to be held within a *CTF* the information referred to in *COB* 6.5.40R(7).

Tables and deductions summaries for life policies, [key features] *schemes* and stakeholder pension schemes

- 6.5.22 G (1) ...  
(2) *COB* 6.5.30R to *COB* 6.5.36G set out the Tables, Deductions, Summary and method of calculating 'Effect of deductions to date' for [key features] *schemes*.

...

...

Table for [key features] *schemes*

- 6.5.30 R For [key features] *schemes*, a *firm* must include the contents of *COB* 6.5.31R unless the [key features] *scheme* is to be held within a *stakeholder CTF*.

...

Deductions summary for [key features] *schemes*

- 6.5.33 R ...

...

Calculation method for 'effect of changes to date' for [key features] schemes

6.5.35 R

...

Commission and *commission equivalent* for life policies, [key features] 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), (1A) or (1B), as applicable, or the information required by (2):

...

(1A) for [key features] 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

...

...

Further information for life policies, [key features] schemes, stocks and shares ISAs, PEPs 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:

(1) for *life policies*:

- (a) a clear indication, in one place, of the nature and amount or rate of any charges or expenses which the *private customer* will or may bear; if charges or expenses are levied in the form of reduced investment, both the method and effect must be clearly explained; in the case of a single *premium* charge for mortality or morbidity under *linked benefit policies*, it is sufficient to describe its nature and basis;
- (b) the information that Annex II to the *Third Life Directive* requires to be communicated to policyholders, which is specified in COB 6.5.49R; and
- (c) an explanation how the *private customer* may obtain further information about compensation arrangements and other matters relating to the *life policy*.

(2) for all [key features] schemes, an explanation that other information about the *scheme* is available on request and how it may be obtained;

(3) for *regulated collective investment schemes* [that constitute key features schemes] and for such *investments* held within a *PEP* or an *ISA*:

...

...

...

- 6.6 Projections
- Application
- 6.6.1 R *COB 6.6 applies to a firm in respect of projections for life policies, key features schemes, simplified prospectus schemes and stakeholder pension schemes.*
- Purpose
- 6.6.2 G *COB 6.6 amplifies Principle 7 (Communications with clients) which 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. A projection needs to be carried out on a basis of uniform and consistent rates of investment return so that firms do not seek to compete on the basis of wholly speculative forecasts as to the potential value of future benefits. This should ensure that private customers purchasing a life policy, key features scheme, simplified prospectus scheme, or stakeholder pension scheme receive information about possible future returns from their investment in a way which is fair and not misleading.*
- Content
- 6.6.3 G *COB 6.6 sets out:*
- ...
- (6) *the method of calculating charges and expenses relating to key features schemes or simplified prospectus schemes. COB 6.6.63G - COB 6.6.79G;*
- ...
- General
- 6.6.4 R *A firm must not provide a projection for a life policy, key features scheme, simplified prospectus scheme, or stakeholder pension scheme unless the projection is calculated and presented in accordance with the rules in COB 6.6.*
- Exceptions
- 6.6.5 R *COB 6.6.4R does not apply to a firm when it provides a projection:*
- ...
- (7) *provided in accordance with COB 8.2.4R and COB 8.2.17E where the life policy, key features scheme, simplified prospectus scheme, or stakeholder pension scheme is a structured capital-at-risk product.*
- ...
- Information to accompany projections
- 6.6.8 ...
- (2) *The information under the headings 'Tables', 'Deductions Summary' and 'Commission and Remuneration' in COB 6.5 (Key Features) need not be included in a projection issued in respect of:*

- (a) an existing contract; or
- (b) a *financial promotion* (other than a *direct offer financial promotion*); or
- (c) an *execution-only transaction* relating to a key features scheme or a simplified prospectus scheme.

...

Generic and stochastic projections

6.6.9 R ...

(2) A *firm* which provides a generic *projection* must ensure that:

...

- (f) key features or a simplified prospectus are supplied in accordance with COB 6.1 to COB 6.5 (Key Features) if a recommendation is subsequently made.

...

...

6.6.15 R (1) The statements in COB 6.6.16R must accompany each *projection* for a *life policy*, key features scheme or simplified prospectus scheme as indicated, except a generic *projection* given in accordance with COB 6.6.9R (see COB 6.6.17R), or a *protected rights annuity projection* calculated in accordance with COB 6.6.11R (see COB 6.6.18R).

...

6.6.16 R Table Statements to accompany projections of *life policies*, key features schemes, simplified prospectus schemes, or *stakeholder pension schemes* (excluding generic projections and protected rights annuity projections)

This table belongs to COB 6.6.15R

Statements to accompany projections of *life policies*, key features schemes, simplified prospectus schemes, or *stakeholder pension schemes* (excluding generic projections and protected rights annuity projections)

...

6.6.17 R Table Statements to accompany generic projections

This table belongs to COB 6.6.15R

Statements to accompany generic projections
These figures are only illustrative.
An assessment of your needs will be confirmed before a recommendation can be made OR your needs will be confirmed before a recommendation can be made.
<u>Key features</u> or a <u>simplified prospectus</u> , together with <del>including</del> a projection which is personal to your circumstances, will be provided if a recommendation

for an investment product is made.

...

The calculation of a projection

6.6.20 G COB 6.6.21R - COB 6.6.53G set out:

- (1) definitions of key terms used in the calculation of a *projection* (COB 6.6.21R);
- (2) the basic approach to be used when calculating a *projection* for *life policies* (COB 6.6.34R), *Holloway sickness policies* (COB 6.6.35R), *key features schemes* or *simplified prospectus schemes* (COB 6.6.36R), and *stakeholder pension schemes* (COB 6.6.34R);
- (3) principles which must be taken into account when calculating a *projection* including general principles which may apply to all *life policies*, *key features schemes*, *simplified prospectus schemes* and *stakeholder pension schemes* (COB 6.6.37R - COB 6.6.38R) and specific principles applicable to certain types of product or features within a product (COB 6.6.39R - COB 6.6.46R);

...

...

Adjusted premium

6.6.22 R (1) The adjusted *premium* is the *premium* or contribution payable under the contract during the contract period (defined in COB 6.6.25R), disregarding any increases that cannot be quantified at the commencement of the contract (but allowing for any increases which are assumed and disclosed in the *key features* or *projection*).

...

...

Charges and expenses

6.6.23 R (1) For a *key features scheme*, *simplified prospectus scheme* or unit-linked *life policy*, charges and expenses are all explicit charges and expenses the *customer* will or may bear:

- (a) including:
  - (i) all other deductions and expenses which will or may bear upon the fund (including charges in respect of any *collective investment scheme* or insurance fund in which any funds of the contract in question are invested but excluding dealing costs of the underlying portfolio); and
  - (ii) all deductions from the *premium* or contribution payable which do not accrue to the benefit of the *customer* by way of contribution to the value of the benefit;
- (b) having regard to:

- (i) the principal terms of the contract; and
- (ii) any tax relief which will be available to the fund or key features scheme or simplified prospectus scheme in respect of so much of the *scheme's* gross expenses as can be properly attributed to the contract.

...

... Contract period

6.6.25 R The contract period of a *life policy*, key features scheme, simplified prospectus scheme or *stakeholder pension scheme* is the period beginning with the commencement of the contract and ending as follows:

...

...

6.6.27 R In the case of any contract not falling within *COB* 6.6.25 R, then:

- (1) for key features schemes and simplified prospectus schemes, the contract period will end on the tenth anniversary of the commencement date of the contract; and
- (2) for all other contracts there will be two contract periods, the first ending on the fifth anniversary of the commencement date of the contract, and the second ending on the tenth anniversary of the commencement date.

...

Relevant contribution

6.6.29 R The relevant contribution is the actual payment or payments to be made by the *customer*, or a sum which reasonably reflects the amounts which the *customer* is proposing to invest, into a key features scheme or simplified prospectus scheme, except in the case of a protected rights annuity (see *COB* 6.6.31 R).

...

Key features scheme and simplified prospectus scheme calculation

6.6.36 R (1) A *projection* of any future benefit payable under a key features scheme or simplified prospectus scheme must be calculated by reference to the relevant contribution for the *scheme*.

...

(3) An allowance must be made where a *customer* has exercised or expressed the intention to exercise an option under the key features scheme or simplified prospectus scheme to make withdrawals, either by:

...

General rules applicable to the calculation of projections

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*, *key features scheme* or *simplified prospectus scheme*, the *projection* must be increased to that guaranteed amount.

...

...

6.6.50 R Table Rate of return assumptions for all key features schemes, simplified prospectus schemes, ordinary branch non-pensions, industrial branch, friendly S<sub>society</sub>, immediate annuity and Holloway sickness policies (all monetary rates of return)

This table belongs to COB 6.6.49 R

Rate of return assumptions for all <u>key features schemes</u> , <u>simplified prospectus schemes</u> , ordinary branch non-pensions, industrial branch, friendly S <sub>society</sub> , immediate annuity and Holloway sickness policies (all monetary rates of return)			
(a) Non-tax-exempt business relating to <u>key features schemes</u> , <u>simplified prospectus schemes</u> , ordinary branch non-pensions and industrial branch business	4%	6%	8%
(b) <i>Holloway sickness policies</i>	4%	6%	8%
(c) Tax-exempt business held within an <i>ISA</i> , <i>PEP</i> or <i>CTF</i> or by a <i>friendly society</i> , relating to <u>key features schemes</u> , <u>simplified prospectus schemes</u> , ordinary branch non-pensions and industrial branch business	5%	7%	9%
(d) immediate annuities	5%	7%	9%
Notes			

In relation to key features schemes and simplified prospectus schemes: The monetary rates of return above include any distribution of income. The rates of return may be used for contracts for units denominated in currencies other than sterling unless it is expected they will overstate the investment potential of the contract.

...

Calculation of the reduction in yield due to the effect of charges and expenses content

- 6.6.54 R G COB 6.6.55R - COB 6.6.62R set out the *rules* to be used when calculating the effect of deductions (the 'reduction in yield') to be provided within key features (COB 6.5) or in a projection accompanying a simplified prospectus (COB.6.2.43R) for all types of *life policies*, key features schemes and simplified prospectus schemes. COB 6.6.63G - COB 6.6.79G provide *guidance* in assessing the expenses and charges relating to key features schemes and simplified prospectus schemes.

...

Charges and expenses disclosure for key features schemes and simplified prospectus schemes

- 6.6.63 G COB 6.6.65G - COB 6.6.79G set out *rules* and *guidance* on how to calculate charges and expenses (as described in COB 6.6.23R) for key features schemes and simplified prospectus schemes.

...

Charges and expenses disclosure for authorised unit trusts

...

- 6.6.65 G ...

- (4) Where a key features scheme or simplified prospectus scheme invests in other *packaged products*, it will be necessary to look through to ensure that all charges and expenses which the *customer* will or may bear are included. Appropriate allowance may be made for any abatement to avoid double charging. If the *product provider* is not required to make expense disclosure in respect of such *packaged products*, the charges and expenses of an equivalent product from another provider should be used. In the case of *investment trusts*, the method in COB 6.6.70G(4) should be used.

...

Representative unit trust

- 6.6.66 G ...

- (2) The representative *unit trust* will normally be the one that is most likely to be selected by the *customers* to whom the material is issued. Where advantage is taken of this option, the *document* should include

information which shows the differences if other trusts are selected. The normal presentation will be to show the differences as a reduction of investment return, or as an adjustment to the Table in *key features* or in the *projection* accompanying the *simplified prospectus*. Where the reduction of *investment* return is used, it will not be necessary to show differences unless the rounded difference is at least 0.1% and the unrounded difference is at least 0.05%.

...

...

**Notes:**

1. This Annex sets out the requirements in relation to the TER. It reproduces, and adapts where appropriate for the purposes of COB 6, Annex 1 to Commission Recommendation (2004/384/EC), amplifying Schedule C (Contents of the simplified prospectus) to the Management Company Directive (2004/107/EC).
  
2. The non-exhaustive typology of calculation bases referred to in paragraph 2(b) below reflects the diversity of recent commercial practice across Member States (at the end of 2003) and should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the Handbook.

Total expense ratio (TER)

1. Definition of the TER

The total expense ratio (TER) of a *simplified prospectus scheme* is the ratio of the *scheme's* total operating costs to its average net assets calculated according to paragraph 3.

2. Included/excluded costs

- (a) The total operating costs are all the expenses which come in deduction of a *simplified prospectus scheme's* assets. These costs are usually shown in a *scheme's* statement of operation for the relevant fiscal period. They are assessed on an 'all taxes included' basis, which means that the gross value of expenses should be used.
  
- (b) Total operating costs include any legitimate expenses of the *simplified prospectus scheme*, whatever their basis of calculation (e.g. flat-fee, asset-based, transaction-based – see note 2 above), such as:
  - management costs including performance fees;
  - administration costs;
  - fees linked to *depository* duties;
  - audit fees;
  - payments to shareholder services providers including payments to the *simplified prospectus scheme's* transfer agent and payments to broker-dealers that are record owners of the *scheme's* shares and that provide sub-accounting services for the beneficial owners of the *scheme's* shares;

- payments to lawyers;
- any distribution or unit cancellation costs charged to the *scheme*;
- registration fees, regulatory fees and similar charges;
- any additional remuneration of the management company (or any other party) corresponding to certain fee-sharing agreements in accordance with paragraph 4 below.

(c) The total operating costs do not include:

- transaction costs which are costs incurred by a *simplified prospectus scheme* in connection with transactions on its portfolio. They include brokerage fees, taxes and linked charges and the market impact of the transaction taking into account the remuneration of the broker and the liquidity of the concerned assets;
- interest on borrowing;
- payments incurred because of financial derivative instruments;
- entry/exit commissions or any other fees paid directly by the investor;
- soft commissions in accordance with paragraph 4.

### 3. Calculation method and disclosure

(a) The TER is calculated at least once a year on an ex post basis, generally with reference to the fiscal year of the *simplified prospectus scheme*. For specific purposes it may also be calculated for other time periods. The *simplified prospectus* should in any case include a clear reference to an information source (e.g. the *scheme's* website) where the investor may obtain previous years'/periods' TER figures.

(b) The average net assets must be calculated using figures that are based on the *scheme's* net assets at each calculation of the net asset value (NAV), e.g. daily NAVs where this is the normal frequency of NAV calculation as approved by the *simplified prospectus scheme's* competent authorities. Further circumstances or events which could lead to misleading figures have equally to be taken into consideration.

Tax relief should not be taken into account.

The calculation method of the TER must be validated by the *simplified prospectus scheme's* auditors and/or competent authorities.

### 4. Fee-sharing agreements and soft commissions

It regularly results from fee-sharing agreements on expenses that are generally not included in the TER, that the management company or another party is actually meeting, in all or in part, operating costs that should normally be included in the

TER. They should therefore be taken into account when calculating the TER, by adding to the total operating costs any remuneration of the management company (or another party) that derives from such fee-sharing agreements.

There is no need to take into account fee-sharing arrangements on expenses that are already in the scope of the TER. Soft commissions should also be left outside the scope of the TER.

Thus:

- the remuneration of a management company through a fee-sharing agreement with a broker on transaction costs and with other fund management companies in the case of funds of funds (if this remuneration has not already been taken into account in the synthetic TER (see paragraph 6 below) or through other costs already charged to the fund and therefore directly included into the TER) should anyway be taken into account in the TER,
- conversely, the remuneration of a management company through a fee-sharing agreement with a *scheme* (except when this remuneration falls under the scope of the specific fund-of-fund case covered in the previous indent) should not be taken into account.

5. Performance fees:

Performance fees should be included in the TER and should also be disclosed separately as a percentage of the average net asset value.

6. Simplified prospectus scheme investing in UCITS scheme or in non-UCITS scheme:

When a *simplified prospectus scheme* invests at least 10% of its net asset value in *UCITS schemes* or in *schemes* that are not *UCITS schemes* which publish a TER in accordance with this Annex, a synthetic TER corresponding to that investment should be disclosed.

The synthetic TER is equal to the ratio of:

- the *simplified prospectus scheme's* total operating costs expressed by its TER and all the costs borne by the *scheme* through holdings in underlying funds (i.e. those expressed by the TER of the underlying funds weighted on the basis of the *simplified prospectus scheme's* investment proportion), plus the subscription and redemption fees of these underlying funds, divided by
- the average net assets of the *scheme*.

As mentioned in the previous subparagraph, subscription fees and redemption fees of the underlying funds should be included in the TER. Subscription and redemption fees may not be charged when the underlying funds belong to the same group in accordance with Article 24 (3) of the *UCITS Directive*.

When any of the underlying *schemes* that are not *UCITS schemes* does not publish a TER in accordance with this Annex, disclosure of costs should be adapted in the following way:

- the impossibility of calculating the synthetic TER for that fraction of the investment must be disclosed,
- the maximum proportion of management fees charged to the underlying fund(s) must be disclosed in the *simplified prospectus*,
- a synthetic figure of total expected costs must be disclosed, by calculating:
  - a truncated synthetic TER incorporating the TER of each of those underlying funds for which the TER is calculated according to this Annex, weighted on the basis of the *simplified prospectus scheme's* investment proportion, and
  - by adding, for each of the other underlying funds, the subscription and redemption fees plus the best available maximum estimate of TER-eligible costs. This should include the maximum management fee and the last available performance fee for that fund, weighted on the basis of the *simplified prospectus scheme's* investment proportion.

7. Umbrella funds/multiclass funds:

In the case of umbrella funds, the TER should be calculated for each *sub-fund*. If, in the case of multiclass funds, the TER differs between different share classes, a separate TER should be calculated and disclosed for each share class. Furthermore, in keeping with the principle of equality among investors, where there are differences in fees and expenses across classes, these different fees/expenses should be disclosed separately in the *simplified prospectus*. An additional statement should indicate that the objective criteria (e.g. the amount of subscription), on which these differences are based, are available in the full *prospectus*.

## COB 6 Annex 3R

Note: This Annex sets out the requirements in relation to the portfolio turnover rate. It reproduces Annex II to Commission Recommendation (2004/384/EC), amplifying Schedule C (Contents of the simplified prospectus) to the Management Company Directive (2004/107/EC).

This table also includes other material which the FSA considers should be included.

### Portfolio turnover rate

A simplified prospectus scheme's or, where relevant, a compartment's (sub-fund's) portfolio turnover rate must be calculated in the following way:

Purchases of securities = X

Sales of securities = Y

Total 1 = total of transactions in securities = X + Y

Issues/Subscriptions of units of the scheme = S

Cancellations/Redemptions of units of the scheme = T

Total 2 = Total transactions in units of the scheme = S + T

Reference average of total net assets = M

Turnover = [(Total 1 - Total 2)/M]\*100

The reference average of total net assets corresponds to the average of net asset values calculated with the same frequency as under COB 6 Annex 2R. The portfolio turnover rate disclosed should correspond to the period(s) for which a TER is disclosed. The simplified prospectus should in any case include a clear reference to an information source (e.g. the scheme's website) where the investor may obtain previous periods' performance.

### Note

Firms should note that inclusion of the portfolio turnover rate in the simplified prospectus is mandatory. The rate must be calculated according to the formula which is prescribed above. However, because the rate includes both purchases and sales of securities, readers may find it difficult to understand. Consequently firms should consider including an explanation of the formula, such as:

(Purchases of securities + Sales of securities) – (Subscription of units + Redemptions of units)

---

(Average Fund Value over 12 months) x 100.

COB Appendix 1 – Required information for certain terms of business, key features, simplified prospectuses and direct offer financial promotions

1.1.1 R

Table Required information

This table belongs to *COB 3.9.6R*, *COB 4.2.10R*, *COB 6.2.16R*, *COB 6.2.18R*, *COB 6.2.41R*, *COB 6.2.47R*, *COB 6.4.13R*, *COB 6.4.25R*, *COB 6.4.27R*, and *COB 6.5.2R (6)*, *COB 6.5.42R* to *COB 6.5.44R*

...

Transitional provisions TP4

Miscellaneous transitional provisions applying to all firms

(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
...					
13	<del>COB 6.2.26R</del> <del>COB 6.2.46R</del>	<u>R</u>	Simplified prospectus requirements for section 264 schemes <i>A firm</i> may comply with <i>COB 6.2.22R</i> (Schemes) instead of <del>COB 6.2.26R</del> <del>COB 6.2.46R</del> (Requirement to offer a simplified prospectus for section 264 schemes), if the <i>EEA State</i> in which the <i>recognised scheme</i> is established ...		
15	...				
16	<del>COB 6.2.26R</del> to <i>COB 6.2.45R</i>	<u>R</u>	<u>Simplified prospectus requirements for simplified prospectus schemes</u>  <u><i>A firm</i> need not comply with the <i>rules</i> specified in column (2) to the extent that it complies with the provisions of COB 6.2 (Provision of key features or simplified prospectus) that relate to <i>key features schemes</i> and ensures that every <i>key features</i> for the <i>scheme</i> which is offered to a <i>client</i> or provided to a <i>private customer</i> is</u>	<u>From 1 May 2005</u>	<u>30 September 2005</u>

			<u>produced in accordance with the applicable requirements of COB 6.5 (Content of key features and important information: life policies, [key features] schemes, ISA cash deposit components and stakeholder pension schemes).</u>		
--	--	--	--	--	--

Schedule 2 – Notification requirements

G

1 Table				
Handbook Reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COB</i> 6.2.22R (2)	notice of election	in writing – election that <i>scheme</i> will comply with those provisions of <i>COB</i> 6.2 that relate to the <i>simplified prospectus</i> – date from which election is to take effect	election	as soon as reasonably practicable
<i>COB</i> 6.2.46R(4)	simplified prospectus and subsequent amendments	in writing – required contents of simplified prospectus	commencement of sale of <i>units</i>	as soon as reasonably practicable
...				

## Annex C

### Amendments to the Collective Investment Schemes sourcebook

In this Annex, underlining indicates new text.

- 11 Meetings of holders, amendments to the scheme and service of notices
- 11.4 Amendments to the instrument constituting the scheme
- ...
- Matters to be included in notices sent to unitholders when a manager proposes a change from dual to single pricing
- 
- 11.4.5 G ...
  - (2) ...
    - (c) The *FSA* has no objection to detailed issues being covered by reference to the *prospectus*, *key features* or *simplified prospectus* for the *AUT* and other documents, where these documents accompany the notice sent to *unitholders* or *plan investors*.
  - ...
- ...

## Annex D

### Amendments to the New Collective Investment Schemes sourcebook

In this Annex, underlining indicates new text.

Prohibition on promotional payments: guidance

- 6.7.13 G Examples of payments which are not permitted by *COLL* 6.7.12R include:
- (1) *commission* payable to intermediaries (such payments should normally be borne by the *authorised fund manager*);
  - (2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than the preparation of *key features* or the *simplified prospectus*); and
  - (3) payments to third parties, for maintaining details of beneficial *unitholders*.

...

## Annex E

### Amendments to the Electronic Commerce sourcebook

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

Further, in this Annex, changes to Handbook text placed in bold square brackets, irrespective of whether the change takes the form of insertion of additional text or deletion of text, come into force on 1 October 2005. Otherwise, this Annex comes into force on 1 May 2005.

1 Incoming ECA providers

...

1.2 Provision of essential information to customers

...

Provision of essential information to customers: UK requirements

1.2.6 E (1) In order to comply with *ECO* 1.2.1R, 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 simplified prospectus) 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* 1.2.9E;

...

...

1.2.9 E Table Provision of essential information to customers: key features.

This table belongs to *ECO* 1.2.6E(1)(a)

COB rule	Description
<i>COB</i> 6.5.15R	Projections: an example
<i>COB</i> 6.5.19R(1)	Projections: an example
<i>COB</i> 6.5.19R(3)	Projections: an example
<i>COB</i> 6.5.40R(1)(a) and (c)	Further information for life policies, [ <u>key features</u> ] schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40R(3)	Further information for life policies, [ <u>key features</u> ] schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40R(4) (a) - (g), (i) - (p)	Further information for life policies, [ <u>key features</u> ] schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40R(5) (a) - (b), (d) - (g)	Further information for life policies, [ <u>key features</u> ] schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40R(6)	Further information for life policies, [ <u>key</u>

<p><i>COB</i> 6.5.42R(3) - (10), (12) - (14)</p> <p><i>COB</i> 6.5.43R</p> <p><i>COB</i> 6.5.44R</p>	<p><u>features</u>] schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes</p> <p>Information requirements for cash deposit ISAs, friendly society tax-exempt policies, traded life policies and broker funds</p> <p>Friendly society tax exempt policies</p> <p>Traded life policies</p>
--	---

...

1.3 Provision of insurance services

...

1.3.3 E Table Provision of insurance services. This table belongs to ECO 1.3.1R

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> 6.2.2R to <i>COB</i> 6.2.24R	Provision of key features or <u>simplified prospectus</u>
<i>COB</i> 6.4	Product disclosure: special situations
<i>COB</i> 6.5 (except <i>COB</i> 6.5.40R(1)(b), <i>COB</i> 6.5.47R, <i>COB</i> 6.5.48G and <i>COB</i> 6.5.49R)	Content of key features
<i>COB</i> 6.6	Projections

...

## ADDENDUM

### SIMPLIFIED PROSPECTUS INSTRUMENT 2005

In this Addendum the text shown is that which results following this instrument. Underlining indicates the insertion of new Handbook text while striking through indicates the text to be deleted.

Annex A (Glossary) of this instrument is amended by adding the following amended definition:

...

*UCITS scheme* an authorised fund whose instrument constituting the scheme contains the statement in *COLL 3.2.6R 1(2)* (Table:contents of the instrument constituting the scheme) or, if it complies with *CIS*, the statement required by *CIS 2.2.6R (2)(a)(i)* (Matters that must be included in the trust deed) or paragraph 4 (1)(b) of Schedule 2 to the *OEIC Regulations*, that it is a *UCITS scheme*, unless:

...

...

Annex B (COB) of this instrument is amended as follows:

6.2.37 R ...  
(14) (a) ...  
**Notes:** ...

~~5. For the purposes of paragraph (14)(a)(vi), fee-sharing agreements should be taken as those agreements whereby a party remunerated, either directly or indirectly, out of the assets of a scheme agrees to split its remuneration with another party and which result in that other party meeting expenses through this fee-sharing agreement that should normally be met, either directly or indirectly, out of the assets of the scheme.~~

~~6. For the purposes of paragraph 14(a)(vi), soft commissions should be regarded as any economic benefit, other than clearing and execution services, that an asset manager receives in connection with the scheme's payment of commissions on transactions that involve the scheme's portfolio securities. Soft commissions are typically obtained from, or through, the executing broker.~~

~~7.5.~~ The *simplified prospectus* should ...

- ...
- (b) ~~detailed~~ information about “fee sharing agreements” and “soft commissions”, ~~including~~:

- (i) identification of “fee-sharing agreements”;

**Note:** ~~See note 5 to paragraph (14)(a).~~ For the purposes of paragraph (14)(b)(i), fee-sharing agreements should be taken as those agreements whereby a party remunerated, either directly or indirectly, out of the assets of a *scheme* agrees to split its remuneration with another party and which result in that other party meeting expenses through this fee-sharing agreement that should normally be met, either directly or indirectly, out of the assets of the *scheme*.

- (ii) identification of soft commissions;

**Note:** ~~See note 6 to paragraph (14)(a).~~ For the purposes of paragraph 14(b)(ii), soft commissions should be regarded as any economic benefit, other than clearing and execution services, that an asset manager receives in connection with the *scheme's* payment of commissions on transactions that involve the *scheme's* portfolio securities. Soft commissions are typically obtained from, or through, the executing broker.

- (c) ~~(iii)~~ presentation of TER and portfolio turnover ~~note~~ rate;

...

**General Note:**

In making the disclosures required by paragraphs (8) to (19) of this Table, the information must be presented in the form of questions and answers. This format is designed to assist the comprehension of the reader. This requirement will not apply in relation to a *simplified prospectus* that is to be used to market the *units* of the *scheme* in another *EEA State*.

...

- 6.2.45 R (1) When a *firm* sells, *personally recommends* or arranges for the sale of a *unit* in ~~an~~ a *simplified prospectus scheme* to a *private customer* which is to be held within a *PEP* or *ISA*, it must provide him with the following additional information:
- (a) a description of ...
- (b) ~~for ISAs or ISA components which are stated as satisfying the CAT standards:~~

- (i) ~~a table comparing the ISA or ISA components with CAT standards;~~
- (ii) ~~clarification that satisfying the CAT standards does not mean that the investment is appropriate for the private customer or that there is any guarantee of performance; [deleted]~~
- (c) ~~the fact, if applicable, that an ISA does not meet the CAT standards together with any relevant explanation; [deleted]~~
- (d) ...

...

6.2.47 R

If the sale in COB 6.2.46R(1) is by way of a *distance contract to a retail customer*, the *firm* must provide all the contractual terms and conditions and the information in COB Appendix 1.1.

...

Addendum  
23 June 2005

**COMPENSATION SOURCEBOOK (AMENDMENT NO 6) INSTRUMENT 2005**

**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) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 June 2005.

**Amendments to the Glossary**

- D. The Glossary is amended in accordance with Annex A to this instrument.

**Amendments to the Compensation sourcebook**

- E. The Compensation sourcebook is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Compensation Sourcebook (Amendment No 6) Instrument 2005.

By order of the Board  
21 April 2005

## Annex A

### Amendment to the Glossary

In this Annex underlining indicates new text.

*money-purchase benefits*

(1) (except in COMP) (in relation to an occupational pension scheme) benefits the rate or amount of which are calculated by reference to a payment or payments made by a member of the scheme.

(2) (in COMP) in relation to a member of a personal pension scheme or an occupational pension scheme or the widow or widower of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which are not average salary benefits.

## Annex B

### Amendments to the Compensation sourcebook

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

- 4.2.2 R Table
- ...
- (1) *Firms* (other than a *sole trader firm*, a *credit union*, a trustee of a *stakeholder pension scheme* (which is not an *occupational pension scheme*) or a *small business* whose *claim* arises out of a *regulated activity* for which they do not have a *permission*).
- ...
- (4) Pension and retirement funds, and anyone who is a trustee of such a fund. However, this exclusion does not apply to: ~~(except~~
- (a) a trustee of a *personal pension scheme* or a *stakeholder pension scheme* (which is not an *occupational pension scheme*); or
- (b) a trustee of a *small self-administered scheme* or an *occupational pension scheme* of an employer which is not a *large company*, *large partnership* or *large mutual association*.~~)~~
- ...
- (9) *Bodies corporate* in the same group as the *relevant person in default* except *bodies corporate* which fall within COMP 4.2.2R(4)(a) or (b).
- ...
- 12.6.2A R If a claimant has a *claim* as a trustee of a kind falling within COMP 4.2.2R(4)(a) or (b) for one or more members of a pension scheme (or, where relevant, the widow or widower of any member) whose benefits are *money-purchase benefits*, the FSCS must treat the member or members (or, where relevant, the widow or widower of any member) as having the *claim*, and not the claimant.

## THIRD PARTY PROCESSORS INSTRUMENT 2005

### 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 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 1 June 2005.

### Amendments to the Handbook

- D. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Insurance: Conduct of Business sourcebook (ICOB)	Annex C
Mortgages: Conduct of Business sourcebook (MCOB)	Annex D
Money Laundering sourcebook (ML)	Annex E
Supervision manual (SUP)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G

### Citation

- E. This instrument may be cited as the Third Party Processors Instrument 2005.

By order of the Board  
19 May 2005

Amended by Addendum  
24 May 2005

## Annex A

### Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position:

- third party processor*
- (1) A *firm* ("Firm A") which carries on *regulated mortgage activities* or *insurance mediation activities* in relation to *non-investment insurance contracts*, or both, for another *firm* (or an *appointed representative*) ("Firm B") under a properly documented *outsourcing* agreement, the terms of which provide that when Firm A carries on any of these activities ("the outsourced activities") for Firm B:
    - (a) Firm A acts only on the instructions of Firm B;
    - (b) in any communication with a *customer*, Firm A represents itself as Firm B;
    - (c) Firm A undertakes to co-operate fully with Firm B in relation to any complaints arising from Firm A's performance of the outsourced activities, even if the complaint is made after Firm A has ceased to carry on the outsourced activities for Firm B; and
    - (d) Firm B accepts full responsibility for the acts and omissions of Firm A when carrying on the outsourced activities and must pay any redress due to the *customer*.
  - (2) A *firm* ("Firm C") which carries on *regulated mortgage activities* or *insurance mediation activities* in relation to *non-investment insurance contracts*, or both, for a *third party processor* within (1) ("Firm A"), where:
    - (a) the *outsourcing* agreement between Firm A and the *firm* for which Firm A is carrying on outsourced activities ("Firm B") authorises Firm A to outsource some or all of those activities to third parties which are *firms*, and identifies Firm C by name as one of those third parties;
    - (b) under the *outsourcing* agreement between Firm A and Firm B, Firm B accepts full responsibility for the acts and omissions of Firm C when carrying on the activities which are outsourced to it by Firm A; and
    - (c) there is a properly documented *outsourcing* agreement between Firm C and Firm A the terms of which provide that when Firm C carries on any of the outsourced

activities:

- (i) Firm C acts only on the instructions of Firm A;
- (ii) in any communication with a customer, Firm C represents itself as Firm B; and
- (iii) Firm C undertakes to co-operate fully with Firm A and Firm B in relation to any complaints arising from Firm C's performance of the outsourced activities, even if the complaint is made after Firm C has ceased to carry on the outsourced activities for Firm A.

## Annex B

### Amendments to General Provisions

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

*Annex amended by Addendum*

#### Disclosure in letters to private customers

- 4.3.1R (1) Subject to (2), (3) and (4), a ~~A~~ firm must take reasonable care to ensure that every letter (or electronic equivalent) which it or its employees send to a private customer, with a view to or in connection with the firm carrying on a regulated activity, includes the disclosure in GEN 4 Ann 1R.
- (2) Where a firm has outsourced activities to a third party processor, (1) does not apply to that third party processor when acting as such, so long as the outsourcing firm ensures that the third party processor and its employees comply with (1) as if it was the firm and they were employees of the firm.
- (3) Where an appointed representative has outsourced insurance mediation activities in relation to non-investment insurance contracts or mortgage mediation activities to a third party processor, (1) does not apply to that third party processor when acting as such, so long as the appointed representative's principal ensures that the third party processor and its employees comply with (1) as if it was the appointed representative and they were the employees of the appointed representative.
- (4) Where an appointed representative of a firm is carrying on:
- (a) insurance mediation activities in relation to non-investment insurance contracts; or
- (b) mortgage mediation activities;
- which have been outsourced to it by the firm, (1) does not apply to the firm when the appointed representative is carrying on the outsourced activities, so long as the firm ensures that the appointed representative and its employees comply with (1) as if it was the firm and they were employees of the firm.

...

## Annex C

### Amendments to Insurance: Conduct of Business sourcebook

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

1.2.1R (1) Except as provided for in *ICOB* 1.2.8R to *ICOB* 1.2.16G~~15R~~, *ICOB* applies to:

(~~1a~~) an *insurance intermediary*, including an *insurer*, when it carries on *insurance mediation activities* for a *customer* in relation to a *non-investment insurance contract* or enters into a *distance non-investment mediation contract* with a *retail customer*;

(~~2b~~) ...

(~~3c~~) ...

(~~4d~~) ...

(~~5e~~) ...

(~~6f~~) ....

(2) Where a firm (or its appointed representative) has outsourced insurance mediation activities to a third party processor, any rule in *ICOB* which requires the third party processor, when acting as such, to disclose its identity to a customer must be read as requiring disclosure of the identity of the firm (or appointed representative, as appropriate) which is taking responsibility for the acts and omissions of the third party processor when carrying on the outsourced activities.

1.2.2G ...

(3) Firms which outsource regulated activities are reminded of the guidance on outsourcing in SYSC 3.2.4G.

...

4.2.8R Table: Information to be provided before conclusion of the contract or immediately after conclusion of the contract

This table belongs to *ICOB* 4.2.2R.

(1)	...
	...
(4)	Unless the <i>insurance intermediary</i> is an <i>insurer</i> , <u>or a third party processor acting as such on behalf of an insurer</u> , details of any holding...
(5)	Unless the <i>insurance intermediary</i> is an <i>insurer</i> , <u>or a third party processor acting as such on behalf of an insurer</u> , details of any holding...

...

...

4.2.19R (1) Unless (3) applies, An insurance intermediary...

(2) ...

(3) (1) does not apply to an insurance intermediary when acting as a third party processor.

## Annex D

### Amendments to Mortgages: Conduct of Business sourcebook

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

1.2.1R (1) *MCOB* applies to every *firm* that:

~~(1)~~(a) carries on *regulated mortgage activities* (subject to *MCOB* 1.2.3R(1)); or

~~(2)~~(b) *communicates* or *approves* a *qualifying credit promotion*.

(2) Where a *firm* has outsourced activities to a *third party processor*, any rule in *MCOB* which requires the *third party processor*, when acting as such, to disclose its identity to a *customer* must be read as requiring disclosure of the identity of the *firm* (or *appointed representative*, as appropriate) which is taking responsibility for the acts and omissions of the *third party processor* when carrying on the outsourced activities.

1.2.1AG *Firms* which outsource *regulated activities* are reminded of the *guidance on outsourcing* in *SYSC 3.2.4G*.

...

## Annex E

### Amendments to Money Laundering sourcebook

In this Annex, underlining indicates new text.

1.1.4R In this sourcebook, “*relevant regulated activities*” means any *regulated activity* apart from:

(1) ...

...

(5) *mortgage mediation activity* and administering a regulated mortgage contract.

...

## Annex F

### Amendments to Supervision manual

In this Annex, underlining indicates new text.

16.7.77R

...

Note 4 = A *firm* which submits an *MLAR* is not required to submit sections A and B of the *RMAR*. A *firm* which submits an *MLAR* and which carries on the activities of a *third party processor* is not required to submit an *RMAR* in respect of those activities.

...

## Annex G

### Amendments to Dispute Resolution: Complaints sourcebook

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

1.1.1R Subject to *DISP 1.1.1AR*,tThis chapter applies to every *firm*...

1.1.1AR Where a *firm* has outsourced activities to a *third party processor*, *DISP 1.1.1R* does not apply to the *third party processor* when acting as such, but applies to the *firm* which is taking responsibility for the acts and omissions of the *third party processor* in respect of the outsourced activities.

...

## ADDENDUM

### THIRD PARTY PROCESSORS INSTRUMENT 2005

In this Addendum, the entire text is new and replaces the existing text in Annex B (Amendments to General Provisions). The effect of this is that GEN 4.3.1R remains unamended and the exception to it is contained in a new provision, namely GEN 4.3.6R.

Insert the following new provision:

Exception: use of third party processors in mortgage and non-investment insurance business

- 4.3.6R (1) Where a *firm* has outsourced activities to a *third party processor*, GEN 4.3.1R does not apply to that *third party processor* when acting as such, so long as the outsourcing *firm* ensures that the *third party processor* and its *employees* comply with that *rule* as if it was the *firm* and they were *employees* of the *firm*.
- (2) Where an *appointed representative* has outsourced *insurance mediation activities* in relation to *non-investment insurance contracts* or *mortgage mediation activities* to a *third party processor*, GEN 4.3.1R does not apply to that *third party processor* when acting as such, so long as the *appointed representative's principal* ensures that the *third party processor* and its *employees* comply with that *rule* as if it was the *appointed representative* and they were the *employees* of the *appointed representative*.
- (3) Where an *appointed representative* of a *firm* is carrying on:
- (a) *insurance mediation activities* in relation to *non-investment insurance contracts*; or
- (b) *mortgage mediation activities*;

which have been outsourced to it by the *firm*, GEN 4.3.1R does not apply to the *firm* when the *appointed representative* is carrying on the outsourced activities, so long as the *firm* ensures that the *appointed representative* and its *employees* comply with that *rule* as if it was the *firm* and they were *employees* of the *firm*.

Addendum  
24 May 2005

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS  
(AMENDMENT NO 7) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages); and
  - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 July 2005.

**Amendments to the Interim Prudential sourcebook for Insurers**

- D. The Interim Prudential Sourcebook for Insurers (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 7) Instrument 2005.

By order of the Board  
19 May 2005

## Annex

### Amendments to the Interim Prudential sourcebook for Insurers

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

#### **Right of ~~policy holders~~ to receive copies of deposited documents**

9.7 An *insurer* must provide to any person (or the person who has already been provided with a copy under (a)) within 30 days of the date of request (or, in the case of (b), the date of deposit under rule 9.6(5)):

- (a) a copy of any of the documents last deposited by the *insurer* under rule 9.6(1) in respect of the *financial year in question*, and the two *financial years* preceding the *financial year in question*;
- (b) a copy of any document deposited under rule 9.6(5) which corrects or makes good any document provided under (a); and
- (c) a copy of any report deposited with any such document under rule 9.6(6),

where the deposit is made electronically, in the form (whether printed or electronic) requested or, if the deposit is not made electronically, in printed form, but (except in the case of (b)) the *insurer* may make a charge to cover its reasonable costs, including those of printing and postage.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES  
(AMENDMENT No 11) INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 20 May 2005.

**Amendments to the Interim Prudential sourcebook for Investment Businesses**

- D. The Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Investment Businesses (Amendment No 11) Instrument 2005.

By order of the Board  
19 May 2005

## Annex

### Amendments to the Interim Prudential sourcebook for Investment Businesses

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

#### Exemption From Holding Professional Indemnity Insurance

- 13.1.5 R (1) A *firm* is not required to effect or maintain professional indemnity insurance if: ~~(a) it is a member of the same group as a bank, building society, insurer or a firm which is a friendly society provides the firm with a comparable guarantee; and~~
- (2~~b~~) If the *firm* is a member of a group in which there is a bank, building society, insurer or a firm which is a friendly society, the firm's comparable guarantee must be from that bank, building society, insurer or friendly society.
- (3) ~~there exists between the *firm* and an entity specified in (a) above. A comparable guarantee means an enforceable, written agreement to on terms at least equal provide equivalent cover to thoseat required for professional indemnity insurance in by IPRU(INV) 13.1.4(2)R.~~

...

**PERIODIC FEES (2005/2006) INSTRUMENT 2005****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) and (4) (Guidance);
  - (4) section 234 (Industry funding); and
  - (5) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 June 2005.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Supervision manual (SUP)	Annex A
Dispute Resolution: Complaints sourcebook (DISP)	Annex B
Collective Investment Schemes sourcebook (CIS)	Annex C
New Collective Investment Schemes sourcebook (COLL)	Annex D
Professional Firms sourcebook (PROF)	Annex E
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex F

**Citation**

- E. This instrument may be cited as the Periodic Fees (2005/2006) Instrument 2005.

By order of the Board  
19 May 2005

Amended by Addendum  
18 August 2005

## 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 of text is being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

SUP 16.7.77 R

...

Note 7 = In relation to section J of the *RMAR firms* with an *accounting reference date* of between 1 February and 31 August (inclusive) must report the information required by section J solely in their half year end *RMAR*. All other *firms* must report the information required by section J solely in their year end *RMAR*.

Note 8 = In relation to section J of the *MLAR, firms* must report the information required by section J solely in their year end *MLAR*. *Firms* with an *accounting reference date* of between 31 December and 31 March (inclusive) must report the information required by section J calculated as at 31 December of the calendar year immediately before the relevant fee period. All other *firms* must report the information required by section J of the *MLAR* calculated as at 31 December of the previous calendar year. For example, for 2006/07 fees, for *firms* with an *accounting reference date* of between 31 December 2005 and 31 March 2006 (inclusive) the information required by section J is that calculated as at 31 December 2005. For all other *firms* the information required by section J is that calculated as at 31 December 2004.

...

SUP 16 Ann 18AR Retail Mediation Activities Return ('RMAR')

SECTION J: data required for calculation of fees

#### Income for fees calculations

	FSA	FOS	FSCS
<del>Regulated Mortgage Contracts</del> <u>Mortgage mediation</u>	<del>RR0678</del> [see <u>SUP 20 Ann 1R Part 2 fee block A18</u> ]	<del>RR0679</del> [see <u>DISP 5 Ann 1R industry block 16</u> ]	<del>RR0680</del> [see <u>COMP 13.6.9AR</u> ]
Non-investment insurance <u>mediation</u>	<del>RR0682</del> [see <u>SUP 20 Ann 1R Part 2 fee block A19</u> ]	<del>RR0683</del> [see <u>DISP 5 Ann 1R industry block 17</u> ]	<del>RR0684</del> [see <u>COMP 13.6.9BR</u> ]
<del>Retail investments</del> <u>Investment mediation</u>	<del>RR0686</del> [see <u>SUP 20 Ann 1R Part 2 fee blocks A12/13</u> ]	<del>RR0687</del> [see <u>DISP 5 Ann 1R industry blocks 8/9</u> ]	<del>RR0688</del> [see <u>COMP 13.6.9R contribution groups A12/13</u> ]

SUP 16 Ann 18BG Notes for Completion of the Retail Mediation Activities Return ('RMAR')

Section J: data required for calculation of fees

This information is required so that we can calculate the fees payable by *firms* in respect of the *FSA*, ~~Financial Ombudsman Service ('FOS')~~ and the ~~Financial Services Compensation Scheme ('FSCS')~~.

~~The precise way in which these fees will be calculated is still under consultation. Therefore, further information on the completion of these data fields will be provided in due course.~~

Income <u>Data</u> for fees calculations	<i>Firms</i> will need to report data for the purpose of calculating <i>FSA</i> , <i>FOS</i> and <i>FSCS</i> levies. <del>The rules to implement these measures will be subject to consultation in 2004 (see below).</del>
FSA	<del>The formal rules for calculating <i>FSA</i> fees will be subject to consultation in the second quarter ('Q2') of 2004, and will become final <i>handbook</i> text in Q3 2004.</del> <u>The relevant information required is the tariff data set out in SUP 20 Ann 1R Part 2 under fee blocks A 12/13, 18 and 19. Note that firms are required to report tariff data information relating to all business falling within fee blocks A18/19 and not simply that relating to retail investments.</u>
FOS	<del><i>Mortgage mediation and insurance mediation</i>: the formal rules for calculating <i>FOS</i> fees will be subject to consultation in March 2004, and will become final <i>handbook</i> text in Q3 2004.</del> <del><i>Retail investment activities</i>: consultation dates to be confirmed.</del> <del><i>Retail investment activities</i>: consultation dates to be confirmed.</del> <u>The relevant information required is the tariff data set out in DISP 5 Ann 1R industry blocks 8/9, 16 and 17. Note that <i>firms</i> are required to report tariff data information relating to all business falling within industry blocks 16/17 and not simply that relating to retail investments.</u>
FSCS	<del><i>Mortgage mediation and insurance mediation</i>: the formal rules for calculating <i>FSCS</i> fees will be subject to consultation in March 2004, and will become final <i>handbook</i> text in Q3</del>

	<p>2004. <del>Retail investment activities: consultation dates to be confirmed.</del> <u>The relevant information required is the tariff data set out in COMP 13.6.9R contribution groups A12/13, COMP 13.6.9AR and COMP 13.6.9BR. Note that firms are required to report tariff data information relating to all business falling within COMP 13.6.9AR and COMP 13.6.9BR and not simply that relating to retail investments.</u></p>
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Firms with an accounting reference date of between 1 February and 31 August (inclusive) must report the information required in this section solely in their half year end RMAR. All other firms must report the information in their year end RMAR.

...

**Part 7: SUP 16 Ann 19BG**

**NOTES FOR COMPLETION OF THE MORTGAGE LENDING & ADMINISTRATION RETURN ('MLAR')**

**SECTION J: FEE TARIFF MEASURES**

**J1 Introduction**

The purpose of this section is to enable the *firm* to provide data on the current fee tariff measures that apply to each of the *regulated activities of mortgage lending and mortgage administration*.

This section also distinguishes between the fee tariff measures that apply to the *FSA* (~~Financial Services Authority~~) and *FOS* (~~Financial Ombudsman Service~~).

Since the relevant fee tariff measures may change from time to time, these *guidance* notes merely define where the current definitions of fee tariff measures are to be found. Accordingly the following is a reference to the relevant part of the *FSA's* website where such details can be found:

\* Refer to *SUP 20 Annex 1R* of the *FSA Handbook* for the *FSA* fee tariff\*

\* Refer to *DISP 5 Annex 1R* of the *FSA Handbook* for the *FOS* fee tariff\*

In relation to section J of the *MLAR*, *firms* must report the information required by this section solely in their year end *MLAR*. *Firms* with an *accounting reference date* of between 31 December and 31 March (inclusive) must report the information required by this section as at 31 December of the calendar year immediately before the relevant fee period. All other *firms* must report the information required by this section as at 31 December of the previous calendar year. For example, for 2006/07 fees, for *firms* with an *accounting reference date* of between 31 December 2005 and 31 March 2006 (inclusive) the information required by section J is that calculated as at 31 December 2005. For all other *firms* the information required by section J is that calculated as at 31 December 2004.

Insert after SUP 20.4.13R a new rule as follows, this text is not underlined:

**Minimum fee discount**

20.4.14	R	(1)	A <i>firm</i> (other than a <i>firm</i> in (2) or a <i>credit union</i> ) in more than one fee block must pay at least 50% of the total minimum fee payable in any fee block in which it is a minimum fee payer.
		(2)	A <i>firm</i> (other than a <i>credit union</i> ) liable to pay only minimum fees in each fee block it is in must pay 100% of the highest total minimum fee payable within any one fee block and must pay at least 50% of the total minimum fee payable in any other fee blocks in which it is a minimum fee payer.
		(3)	A <i>credit union</i> in more than one fee block must pay at least 50% of the total minimum fee payable in any fee block, other than fee block A1, in which they are a minimum fee payer.

...

Insert after SUP 20.6 new provisions as follows, this text is not underlined:

**Waiver application guidance fees regarding the Basel Capital Accord**

- 20.7.1 R (1) A *firm* submitting a first application for *guidance* on the availability of a *waiver* or concession in connection with future *rules* implementing the revised Basel Capital Accord (including any amendments), must pay to the *FSA* a fee applicable to it as specified in *SUP 20 Annex 4R*.
- (2) A *firm* submitting a second application for *guidance* described in (1) within 12 months of the first application made in accordance with (1) must pay 50% of the fee applicable to it under *SUP 20 Annex 4R*, but only in respect of that second application.
- (3) Any payment under (1) or (2) must be made on or before the date on which the application is made, in full and without any deduction.
- 20.7.2 G The *FSA's* power to charge in respect of *guidance* is derived from section 157(4)(c) of the *Act*. An application for *guidance* will not be considered by the *FSA* until the fee has been paid and the fee is non-refundable.
- 20.7.3 G A *firm* submitting third and subsequent applications for *guidance* described in 20.7.1R will be required to pay at the full rates specified in *SUP 20 Annex 4R* in respect of those applications.

SUP 20 Ann 1R - Activity groups, tariff bases and valuation dates applicable  
Part 1

...

A12 Advisory arrangers ...	Its <i>permission</i> : ... <ul style="list-style-type: none"> <li>• <i>advising on investments (except pension transfers and pension opt-outs);</i></li> <li>• <u><i>providing basic advice on a stakeholder product;</i></u></li> <li>• <u>...</u></li> </ul>
A13 Advisory arrangers ...	... (2) its <i>permission</i> : ... <ul style="list-style-type: none"> <li>• <i>advising on investments (except pension transfers and pension opt-outs);</i></li> <li>• <u><i>providing basic advice on a stakeholder product;</i></u></li> <li>• ...</li> </ul>

Part 2

This table indicates the tariff base for each fee-block. The tariff base is the means by which we measure the ‘amount of business’ conducted by a *firm*. Note that where the tariff base is the number of *approved persons* it may be that a particular *firm* has *permission* for relevant activities as described in Part 1 but the type of activity that the *firm* undertakes is not one requiring a *person* to be approved to undertake a relevant *customer function* (for example

firms only giving basic advice on stakeholder products). In these circumstances, the firm will be required to pay a minimum fee only (see SUP 20 Ann 2R Part 1).

...

A4	<p>...</p> <p><b>Notes:</b></p> <p>(1) <del>Business conducted through an associated company should be excluded in reporting the product provider's premium income. [deleted]</del></p> <p>(2) ...</p>

...

Delete existing SUP 20 Ann 2R and SUP 20 Ann 3R and insert new text as follows, this text is not underlined:

SUP 20 Annex 2R - Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2005 to 31 March 2006

Part 1

This table shows the tariff rates applicable to each fee-block.

(1)	For each activity group specified in the table below, the fee is the total of the sums payable for each of the tariff bands applicable to the <i>firm's</i> business, calculated as follows:	
	(a)	the relevant minimum fee; plus
	(b)	an additional fee calculated by multiplying the <i>firm's</i> tariff base by the appropriate rates applying to each tranche of the tariff base, as indicated.
(2)	A <i>firm</i> may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:	
	(a)	it has reasonable grounds for believing that the costs of identifying the <i>firm's</i> UK business separately from its non-UK business in the way described in Part 2 of SUP 20 Ann 1R are disproportionate to the difference in fees payable; and
	(b)	it notifies the FSA in writing at the same time as it provides the information concerned under SUP 20.3 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.
(3)	For a <i>firm</i> which has not complied with 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 £400.

Activity group	Fee payable	
A.1	Minimum fee (£)	150
	£ million of Modified Eligible Liabilities (MELs)	Fee (£/£m or part £m of MELs)
	0 - 0.5	0
	>0.5 - 2	additional flat-rate fee of £350
	>2 - 10	additional flat-rate fee of £500
	>10 - 200	31.61
	>200 - 2,000	31.58
	>2,000 - 10,000	31.53
	>10,000 - 20,000	31.40
	>20,000	31.15
	For a <i>firm</i> in A.1 which has a limitation on its <i>permission</i> to the effect that it may <i>accept deposits</i> from <i>wholesale depositors</i> only, the fee is calculated as above less 30%.	
	In addition, the fee specified below is payable by <i>UK banks</i> and <i>building societies</i> . The <i>wholesale depositors</i> discount and permitted deductions in Part 2 of SUP 20 Ann 2R do not apply to this fee.	
	Minimum fee (£m of MELs)	Fee (£)
	if 0 - 2,000	0
	if >2,000	4,000
	£ million of MELs	Fee (£/£m or part £m of MELs)
	0 - 5,000	0
	>5,000 - 10,000	1.56
	>10,000 - 20,000	1.42
	>20,000	1.32
A.2	Minimum fee (£)	450
	No. of mortgages	Fee (£/mortgage)
	0 – 50	0
	51 – 500	4.52
	501 – 1,000	1.81
	1,001 – 50,000	1.36
	50,001 – 500,000	0.45
	>500,000	0.09

A.3	Gross premium income (GPI)	
	Minimum fee (£)	400
	£ million of GPI	Fee (£/£m or part £m of GPI)
	0 - 0.5	0
	>0.5 - 2	1,628.36
	>2 - 5	1,505.79
	>5 - 20	1,393.27
	>20 - 75	440.87
	>75 - 150	381.05
	>150	53.21
	PLUS	
	Gross technical liabilities (GTL)	
	Minimum fee (£)	0
	£ million of GTL	Fee (£/£m or part £m of GTL)
	0 - 1	0
	>1 - 5	39.99
	>5 - 50	37.05
	>50 - 100	34.40
	>100 - 1,000	10.82
	>1,000	4.33
A.4	Adjusted annual gross premium income (AGPI)	
	Minimum fee (£)	200
	£ million of AGPI	Fee (£/£m or part £m of AGPI)
	0 - 1	0
	>1 - 50	723.93
	>50 - 1,000	674.90
	>1,000 - 2,000	463.28
	>2,000	318.07
	PLUS	
	Mathematical reserves (MR)	

	Minimum fee (£)	200
	£ million of MR	Fee (£/£m or part £m of MR)
	0 - 1	0
	>1 - 10	38.75
	>10 - 100	35.48
	>100 - 1,000	24.02
	>1,000 - 5,000	16.90
	>5,000 - 15,000	13.13
	>15,000	10.21
A.5	Minimum fee (£)	550
	£ million of Active Capacity (AC)	Fee (£/£m or part £m of AC)
	0 - 50	0
	>50 - 150	97.87
	>150 - 250	82.37
	>250	24.15
A.6		£1,166,000
A.7	For class 1(C), (2) and (3) <i>firms</i> :	
	Minimum fee (£)	1,150
	£ million of Funds under Management (FuM)	Fee (£/£m or part £m of FuM)
	0 – 10	0
	>10 – 100	59.24
	>100 – 2,500	19.04
	>2,500 – 10,000	10.61
	>10,000	1.19
	For class 1(B) <i>firms</i> : the fee calculated as for class 1(C) <i>firms</i> above, less 15%. For class 1(A) <i>firms</i> : the fee calculated as for class 1(C) <i>firms</i> above, less 50%.	
A.8	This activity group does not apply for this period.	
A.9	Minimum fee (£)	1,800
	£ million of Gross Income (GI)	Fee (£/£m or part £m of GI)
	0 – 1	0
	>1 – 5	1,397.35
	>5 - 15	1,373.68
	>15 – 40	1,360.03
	>40	1,341.51

A.10	Minimum fee (£)	2,000
	No. of traders	Fee (£/trader)
	0 - 2	0
	3 - 5	1,746
	6 - 10	1,261
	11 - 50	1,166
	51 - 200	1,008
	>200	813
	In addition, the fee specified below is payable by <i>UK domestic firms</i> . The permitted deductions in Part 2 of <i>SUP 20 Ann 2R</i> do not apply to this fee.	
	Minimum fee (No. of traders)	Fee (£)
	if 0 - 100	0
	if >100	2,000
	No. of traders	Fee (£/trader)
	0 - 125	0
	126 - 250	80.50
	>250	58.50
A.11	This activity group does not apply for this period.	
A.12	Minimum fee (£)	1,680
	No. of persons	Fee (£/person)
	0 - 1	0
	2 - 4	980
	5 - 10	495
	11 - 25	362
	26 - 150	197
	151 - 1,500	150
	>1,500	100
	For a <i>professional firm</i> in A.12 the fee is calculated as above less 10%.	
A.13*	For class (2) <i>firms</i> :	
	Minimum fee (£)	1,590
	No. of persons	Fee (£/person)
	0 - 1	0
	2 - 4	867
	5 - 10	835
	11 - 25	801
	26 - 500	736
	501 - 4,000	678

\*See Addendum 18 August 2005 p. 24

	>4000	640
	For class (1) <i>firms</i> : £1,560 For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.	
A.14	Minimum fee (£)	1,220
	No. of persons	Fee (£/person)
	0 - 1	0
	2	1,195
	3 - 4	1,117
	5 - 10	1,028
	11 - 100	975
	101 - 200	683
	>200	410
A.15	This activity group does not apply for this period.	
A.16	0	
A.17	This activity group does not apply for this period.	
A.18	Minimum fee (£)	620
	£ thousands of Annual Income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	0 – 100	0
	>100 – 1,000	5.73
	>1,000 – 5,000	4.77
	>5,000 – 10,000	3.82
	>10,000 – 20,000	2.87
	>20,000	2.39
A.19	Minimum fee (£)	400
	£ thousands of Annual Income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	0 – 100	0
	>100 – 1,000	3.49
	>1,000 – 5,000	3.05
	>5,000 – 15,000	2.18
	>15,000 – 100,000	0.87
	>100,000	0.35
B. Market operators	£20,000	
B. Service companies	Bloomberg LP	£31,500
	EMX Co Ltd	£21,000
	LIFFE Services Ltd	£21,000
	Ofex plc	£51,500
	OMGEO Ltd	£21,000
	Reuters Ltd	£31,500

	Swapswire Ltd	£21,000
	Thomson Financial Ltd	£21,000

## Part 2

This table shows the permitted deductions that apply:

Activity group	Nature of deduction	Amount of deduction
A.1	Financial penalties received	9.5% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.3	Financial penalties received	8.5% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.4	Financial penalties received	9.8% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.5	Financial penalties received	8.5% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.6	Financial penalties received	8.5% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.7	Financial penalties received	10.6% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.9	Financial penalties received	8.5% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.10	Financial penalties received	14.3% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.12	Financial penalties received	16.8% of the fee payable by the <i>firm</i> for then activity group (see Part 1)
A.13	Financial penalties received	10.4% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.14	Financial penalties received	8.5% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
E.	Financial penalties received	7.4% of the fee payable by the <i>firm</i> for the activity group (see Part 1)

## Part 3

This table shows the modifications to fee tariffs that apply to *incoming EEA firms* and *incoming Treaty firms*.

Activity group	Percentage of tariff payable under Part 1 applicable to the firm subject to a minimum amount payable of £100 (unless specified below)
A.1	20% (for a <i>firm</i> 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 and A.9	95%
A.10, A.12, A.13 and A.19	90%

SUP 20 Annex 3R Transaction reporting fees and Article 54 RAO certificate fees for the period from 1 April 2005 to 31 March 2006

#### Part 1

This table shows the fees payable for transaction reporting.

Fee type	Fee amount (including VAT)		Date payable
	Number of transactions per annum	Fee per transaction (inc. VAT)	
Transaction charge	For the first 1,000	0p	First working day of each <i>month</i>
	1,001 – 1,000,000	3p	
	1,000,001 – 4,000,000	2.75p	
	4,000,001 – 8,000,000	2.5p	
	8,000,001 – 13,000,000	2.25p	
	13,000,001 – 20,000,000	2p	
	20,000,001 – >20,000,000	1.75p	
	>20,000,000	1.75p	

(1) Firms using the Direct Reporting System software will be additionally invoiced for:  
 (a) an initial software licence fee of £587.50 (including VAT); and  
 (b) an annual enrolment fee of £235 (including VAT) per licence held on 1 April each year.

(2) The applicable methods of payment of these fees are listed at *SUP 20.2.7AR*.

#### Part 2

The periodic fee payable under *SUP 20.6.1R* for a certificate issued under Article 54 of the *Regulated Activities Order* is £1,000.

Insert after SUP 20 Annex 3R a new SUP 20 Annex 4R as follows:

SUP 20 Ann 4R – Application fees for guidance on the Capital Requirements Directive for the period from 1 April 2005 to 31 March 2006

For *firms* falling into a group (Group 1) in which five or more significant overseas entities are applying for *guidance* on the availability of a *waiver* or concession in connection with future *rules* implementing the revised Basel Capital Accord (including any amendments), the fees in Table 1 are applicable.

Table 1

Application group	Description of group	Application fee 2005/06		
		Advanced IRB (£'000)	Foundation IRB (£'000)	AMA (£'000)
Group 1	Five or more significant overseas entities applying for <i>guidance</i> on the availability of a <i>waiver</i> or concession in connection with future <i>rules</i> implementing the revised Basel Capital Accord (including any amendments)	219	190	148

For all other *firms* the fees in Table 2 are applicable

Table 2

Application group	Description of group		Application fee 2005/06		
	Modified eligible liabilities (£m)	Number of traders as at 31 December 2004	Advanced IRB (£'000)	Foundation IRB (£'000)	AMA (£'000)
Group 2	>40,000	>200	190	162	120
Group 3	>5,000 – 40,000	26 - 200	77	59	42
Group 4	0 – 5,000	0 - 25	35	25	20

(1) Advanced and Foundation IRB applications are applications for *guidance* regarding the Internal Ratings Based approach for credit risk. AMA applications are applications for *guidance* regarding the Advanced Measurement Approach for operational risk.

(2) For the purposes of Table 2, a *firm's* A.1 or A10 tariff data for the relevant period will be used to provide the value of modified eligible liabilities or number of traders.

## Annex B

### Amendments to the Dispute Resolution: Complaints sourcebook

In this Annex, all the text is new and is not underlined; the place where the change will be made is indicated.

Delete existing DISP 5 Ann 1R and insert new DISP 5 Ann 1R as follows:

DISP 5 Ann 1R: Annual Fees Payable in Relation to 2005/06

Introduction: annual budget

1. The *annual budget* for 2005/06 approved by the *FSA* is £53.1m.

Part 1: General levy and supplementary levy

2. The total amount expected to be raised through the *general levy* in 2005/06 will be £11.067m.

Part 2: Fee tariffs for general levy and supplementary levy

3. No *establishment costs* will be raised in 2005/06 by the *supplementary levy*.

Table: fee tariffs for industry blocks

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>mortgage lenders</i> and <i>administrators</i> (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in <i>DISP</i> 2.6.1R	£0.00356 per relevant account, subject to a minimum levy of £100
2-Insurers – general (excluding <i>firms</i> in blocks 13 & 15)	Relevant annual gross premium income	£0.044 per £1,000 of relevant annual gross premium income, subject to a minimum levy of £100
3-The <i>Society</i> of Lloyd's	Not applicable	£24,048 to be allocated by the <i>Society</i>
4-Insurers – life (excluding <i>firms</i> in block 15)	Relevant adjusted annual gross premium income	£0.10 per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £100
5-Fund managers (including those holding <i>client money</i> /assets and not holding <i>client money</i> /assets)	Relevant funds under management	£0.0009 per £1,000 of relevant funds under management, subject to a minimum levy of £100
6-Operators , <i>trustees</i> and	Flat fee	Levy of £75

<i>depositories of collective investment schemes</i>		
7-Dealers as principal	Flat fee	Levy of £50
8-Advisory <i>arrangers</i> , dealers or brokers holding and controlling <i>client money</i> and/or assets	Number of relevant <i>approved persons</i> ( <i>controlled functions</i> 21, 22, 24, 25, 26)	£100 per relevant <i>approved person</i> ( <i>controlled functions</i> 21, 22, 24, 25, 26), subject to a minimum levy of £100
9-Advisory <i>arrangers</i> , dealers or brokers not holding and controlling <i>client money</i> and/or assets	Number of relevant <i>approved persons</i> ( <i>controlled functions</i> 21, 22, 24, 25, 26)	£25 per relevant <i>approved person</i> ( <i>controlled functions</i> 21, 22, 24, 25, 26), subject to a minimum levy of £50
10-Corporate finance advisers	Flat fee	Levy of £50
11-	N/A for 2004/05	
12-	N/A for 2004/05	
13-Cash plan health providers	Flat fee	Levy of £50
14- <i>Credit unions</i>	Flat fee	Levy of £50
15- <i>Friendly societies</i> whose tax-exempt business represents 95% or more of their total relevant business	Flat fee	Levy of £50
16 – Mortgage lenders, advisers and <i>arrangers</i> (excluding <i>firms</i> in blocks 13, 14 & 15)	Flat fee	Levy of £50
17 – General insurance mediation (excluding <i>firms</i> in blocks 13,14 & 15)	Flat fee	Levy of £50

4 [not used]

5 The *industry blocks* in the table are based on the equivalent activity groups set out in Part 1 of SUP 20 Ann 1R.

6 Where the tariff base in the table is defined in similar terms as that for the equivalent activity group in Part 2 of SUP 20 Ann 1R, it must be calculated in the same way as that tariff base - taking into account only the *firm's relevant business*.

## Annex C

### Amendments to the Collective Investment Schemes sourcebook

In this Annex, all the text is new and is not underlined; the place where the change will be made is indicated.

Delete existing text in CIS 18 Annex 1R and insert new text as follows:

CIS 18 Annex 1R Fees payable in relation to the period from 1 April 2005 to 31 March 2006

#### Part 1 – Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	2005/06 fee (£)
ICVC AUT Section 264 of the <i>Act</i> Section 270 of the <i>Act</i>	610	1-2	1	610
		3-6	2.5	1,525
		7-15	5	3,050
		16-50	11	6,710
		>50	22	13,420
Section 272 of the <i>Act</i>	2,500	1-2	1	2,500
		3-6	2.5	6,250
		7-15	5	12,500
		16-50	11	27,500
		>50	22	55,000

Fees are charged according to the number of funds or sub-funds operated by a *firm* as at 31 March 2005. Where more than one fund or sub-fund is operated the number of funds (not including the umbrella or parent fund) produces a 'fund factor' in accordance with the table above which is then applied to a basic fee to produce one total fee per operator. Fund factors are applied per operator rather than per scheme so that the fees relate to the number of funds rather than the number of schemes. This means that, for example, an authorised fund manager of three schemes pays the same as an operator or authorised fund manager of one scheme with three sub-funds (as only the sub-funds are counted).

## Annex D

### Amendments to the New Collective Investment Schemes sourcebook

In this Annex, all the text is new and is not underlined; the place where the change will be made is indicated.

Delete existing text in COLL 10 Annex 1R and insert new text as follows:

COLL 10 Ann 1R Periodic fees payable for the period 1 April 2005 to 31 March 2006

#### Part 1 – Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	2005/06 fee (£)
ICVC AUT Section 264 of the Act Section 270 of the Act	610	1-2	1	610
		3-6	2.5	1,525
		7-15	5	3,050
		16-50	11	6,710
		>50	22	13,420
Section 272 of the Act	2,500	1-2	1	2,500
		3-6	2.5	6,250
		7-15	5	12,500
		16-50	11	27,500
		>50	22	55,000

Fees are charged according to the number of funds or sub-funds operated by a *firm* as at 31 March 2005. Where more than one fund or sub-fund is operated the number of funds (not including the umbrella or parent fund) produces a 'fund factor' in accordance with the table above which is then applied to a basic fee to produce one total fee per operator. Fund factors are applied per operator rather than per scheme so that the fees relate to the number of funds rather than the number of schemes. This means that, for example, an authorised fund manager of three schemes pays the same as an operator or authorised fund manager of one scheme with three sub-funds (as only the sub-funds are counted).

## Annex E

### Amendments to the Professional Firms sourcebook

In this Annex, all the text is new and is not underlined; the place where the change will be made is indicated.

Delete existing PROF 6 Ann 1R and insert new text as follows:

PROF 6 Annex 1R Fees payable in relation to the period from 1 April 2005 to 31 March 2006

Table. Fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date
The Law Society	£51,700	30 April 2005
	£74,020	1 September 2005
The Law Society of Scotland	£17,450	1 July 2005
The Law Society of Northern Ireland	£15,730	1 July 2005
The Institute of Actuaries	£10,230	1 July 2005
The Institute of Chartered Accountants in England and Wales	£34,000	30 April 2005
	£9,970	1 September 2005
The Institute of Chartered Accountants of Scotland	£12,980	1 July 2005
The Institute of Chartered Accountants in Ireland	£11,740	1 July 2005
The Association of Chartered Certified Accountants	£45,710	1 July 2005
The Council for Licensed Conveyancers	£12,480	1 July 2005

## Annex F

### Amendments to the Recognised Investment Exchange and Recognised Clearing Houses sourcebook

In this Annex, all the text is new and is not underlined; the place where the change will be made is indicated.

Delete existing REC 7 Ann 1R and insert new text as follows:

REC 7 Annex 1R Fees payable in relation to the period from 1 April 2005 to 31 March 2006

In this Annex:

- the term *recognised body* includes a body which was a recognised investment exchange or a recognised clearing house recognised under the Financial Services Act 1986 and which is a *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

Name of UK recognised body	Amount payable	Due date
CRESTCo Limited	£294,000	30 April 2005
	£271,000	1 September 2005
The International Petroleum Exchange of London Limited	£166,000	30 April 2005
	£159,000	1 September 2005
LIFFE Administration and Management	£361,000	30 April 2005
	£439,000	1 September 2005
LCH.Clearnet Limited	£309,500	30 April 2005
	£395,500	1 September 2005
The London Metal Exchange Limited	£217,500	30 April 2005
	£242,500	1 September 2005
London Stock Exchange plc	£352,500	30 April 2005
	£382,500	1 September 2005
virt-x Exchange Ltd	£117,000	30 April 2005
	£93,000	1 September 2005
EDX London Ltd	£95,000	30 April 2005
	£65,000	1 September 2005

Any other <i>UK recognised investment exchange</i> recognised as such by a <i>recognition order</i> made in the period	£150,000	30 days after the date on which the <i>recognition order</i> is made
Any other <i>UK recognised clearing house</i> recognised as such by a <i>recognition order</i> made in the period	£250,000	30 days after the date on which the <i>recognition order</i> is made

Part 2 - Periodic fees for overseas recognised bodies

Name of overseas recognised body	Amount payable	Due date
Cantor Financial Futures Exchange	£10,000	1 July 2005
The Chicago Mercantile Exchange	£10,000	1 July 2005
Chicago Board of Trade	£10,000	1 July 2005
EUREX (Zurich)	£10,000	1 July 2005
National Association of Securities and Dealers Automated Quotations (NASDAQ)	£10,000	1 July 2005
NQLX LLC	£10,000	1 July 2005
New York Mercantile Exchange Inc.	£10,000	1 July 2005
The Swiss Stock Exchange	£10,000	1 July 2005
Sydney Futures Exchange Limited	£10,000	1 July 2005
Wareterminborse Hannover	£10,000	1 July 2005
US Futures Exchange LLC	£10,000	1 July 2005
Any other <i>overseas investment exchange</i> recognised as such by a <i>recognition order</i> made in the period	£10,000	30 days after the date on which the <i>recognition order</i> is made
Any other <i>overseas clearing house</i> recognised as such by a <i>recognition order</i> made in the period	£35,000	30 days after the date on which the <i>recognition order</i> is made

## ADDENDUM

### PERIODIC FEES (2005/2006) INSTRUMENT 2005

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

Annex A of this instrument is amended as follows:

Sup 20 Ann 2R

...		
A13	...	
	...	
For class (1) <i>firms</i> : <del>£1,560</del> <u>£1,590</u>		
For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.		

Addendum  
18 August 2005

## LISTING RULES FEES INSTRUMENT 2005

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 72 (The competent authority);
  - (2) section 74(4) (The official list);
  - (3) section 99(1) (Fees);
  - (4) section 101 (Listing rules: general provisions); and
  - (5) paragraph 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 1 June 2005.

### Amendments to the Handbook

- D. The Listing Rules are amended in accordance with the Annex to this instrument.

### Citation

- E. This instrument may be cited as the Listing Rules Fees Instrument 2005.

By order of the Board  
19 May 2005

## Annex

### Amendments to the Listing Rules

In this Annex, all the text is new and is not underlined; the place where the change will be made is indicated.

Delete existing Annex 1 of Schedule 13: Fees and insert new text as follows:

Annex 1

Fee type	Fee amount
<b>Annual fees for the period 1 April 2005 to 31 March 2006</b>	
Listing – All <i>issuers</i> of <i>shares</i> and certificates representing <i>shares</i>	<p><b>(1) For all <i>issuers</i> of securitised derivatives, depositary receipts and global depositary receipts the fees payable are set out in Table 1.</b></p> <p><b>(2) For all other <i>issuers</i>, subject to (3), fees to be determined according to market capitalisation as set out in Table 2. The fee is calculated as follows:</b></p> <p><b>(a) the relevant minimum fee; plus</b></p> <p><b>(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche.</b></p> <p><b>(3) Notwithstanding (2), <i>issuers</i> solely with a listing by the FSA of equity securities of an overseas company which is not a primary listing must pay 80% of the fee otherwise payable under (2).</b></p>
Sponsor Fees	<b>£10,000</b>
An <i>issuer</i> or sponsor which becomes subject to the Listing Rules during the course of the financial year must pay a proportion of the annual fee which is calculated in accordance with Table 3.	

Table 1

Annual fees for *issuers* of securitised derivatives, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers</i> of securitised derivatives	£3,000
<i>Issuers</i> of depositary receipts and global depositary receipts	£3,600

Table 2  
Tiered annual fees for all other *issuers*

<b>Fee payable</b>	
<b>Minimum fee (£)</b>	3,000
<b>£ million of Market Capitalisation</b>	<b>Fee (£/£m or part £m of Market Capitalisation)</b>
0 – 100	0
>100 – 250	11.81
>250 – 1,000	4.72
>1,000 – 5,000	1.57
>5,000 – 25,000	0.0295
>25,000	0.0079

Table 3  
Proportion of the annual fee payable throughout year

<b>Quarter in which the issuer/sponsor becomes subject to the Listing Rules</b>	<b>Proportion payable</b>
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%

**PERIODIC FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)  
(2005/2006) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance); and
  - (4) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 June 2005.

**Amendments to the Handbook**

- D. The Unauthorised mutuals registration fees rules are amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Periodic Fees (Unauthorised Mutual Societies Registration) (2005/2006) Instrument 2005.

By order of the Board  
19 May 2005

## Annex

### Amendments to the Unauthorised mutuals registration fees rules manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

- 1.3 G Most of the detail of the periodic fees which will be payable by *registered societies* ~~and *sponsoring bodies*~~ is set out ... for each financial year. Most of the detail of the application fees which will be payable by *registered societies* and *sponsoring bodies* is set out in Annex 1AR, the provisions of which may not change each year.
- ...
- 1.5 G ...to be filed with the *FSA*. ~~The periodic fee payable by *sponsoring bodies* for their model rules is a flat fee, payable annually.~~
- ...
- 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. [deleted]~~
- 2.3 R ~~A *registered society* or *sponsoring body* must ...~~
- 2.4 R ~~A *registered society* or *sponsoring body* must ...~~
- ...
- 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. [deleted]~~
- ...

Delete existing Ann 1R and insert new Ann 1R as follows:

#### ANNEX 1R

#### PERIODIC FEES PAYABLE FOR THE PERIOD 1 APRIL 2005 TO 31 MARCH 2006

##### Part 1

##### Periodic fee payable by Registered Societies (on 30 June 2005)

This fee is not payable by a *credit union*.

Transaction	Total assets (£'000s)	Amount payable (£)
Periodic Fee	0 to 50	60
	> 50 to 100	100
	> 100 to 250	150

	> 250 to 1,000	200
	> 1,000	370

**Part 2**  
**Methods of payment of periodic fees**

<b>Payment method</b>	<b>Additional amount or discount applicable</b>
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

**PERIMETER GUIDANCE INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of its powers under section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (“the Act”).

**Commencement**

- B. This instrument comes into force on 1 July 2005.

**Perimeter guidance**

- C. General guidance on FSA regulatory perimeter issues, in the form set out in the Annex to this instrument, is made. This general guidance does not form part of the Handbook.

**Citation**

- D. This instrument may be cited as the Perimeter Guidance Instrument 2005.

By order of the Board  
16 June 2005

**Annex**  
**Perimeter guidance**

The following is new text and is not underlined. It is general guidance which is closely based on the text which previously appeared as AUTH Chapters 2 and 7, and AUTH Appendices 1, 2, 3, 4, 5 and 6.

## INTRODUCTION TO THE PERIMETER GUIDANCE MANUAL

### 1 Introduction to the Perimeter Guidance manual

#### 1.1 Application and purpose

##### Application

##### 1.1.1 G This manual applies to:

- (1) a *person* who is considering carrying on activities in the *United Kingdom* which may fall within the scope of the *Act* and is seeking *guidance* on whether he needs to be an *authorised person*;
- (2) a *person* who seeks to become an *authorised person* under the *Act* and who is, or is considering, applying to the *FSA* for *Part IV* permission to carry on *regulated activities* in the *United Kingdom*;
- (3) a *person* who is seeking *guidance* on whether any communication he may be seeking to make or cause to be made will be a *financial promotion* and be subject to the restriction in section 21 of the *Act*; and
- (4) *persons* generally.

##### Purpose

##### 1.1.2 G The purpose of this manual is to give *guidance* about the circumstances in which *authorisation* is required, or *exempt person* status is available, including *guidance* on the activities which are regulated under the *Act* and the exclusions which are available.

#### 1.2 Introduction

- ##### 1.2.1 G
- (1) The Financial Services and Markets Act 2000 (the *Act*) is the *UK* legislation under which *bodies corporate, partnerships, individuals* and unincorporated associations are permitted by the *FSA* to carry on various financial activities which are subject to regulation (referred to as *regulated activities*).
  - (2) The activities which are *regulated activities* are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the *Regulated Activities Order*): for example, *accepting deposits, managing investments, effecting contracts of insurance, dealing in investments as agent*. In general terms, a *regulated activity* is an activity, specified in the *Regulated Activities Order*, carried on by way of business in relation to one or more of the *investments* specified in the

*Regulated Activities Order. PERG 2 gives further general guidance on regulated activities and specified investments.*

- 1.2.2 G (1) The *Act*, and the secondary legislation made under the *Act*, is complex. Although *PERG* gives *guidance* about *regulated activities* and *financial promotions*, it does not aim to, nor can it, be exhaustive.
- (2) References have been made to relevant provisions in the *Act* or secondary legislation. However, since reproducing an entire statutory provision would sometimes require a lengthy quotation, or considerable further explanation, many provisions of the *Act*, or secondary legislation made under the *Act*, are summarised. For the precise details of the legislation, readers of the manual should, therefore, refer to the *Act* and the secondary legislation itself, as well as the manual.
- (3) The *Act* and the secondary legislation made under it can be obtained from HMSO at <http://www.legislation.hmso.gov.uk/legislation/uk.htm> or can be accessed through the Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

1.2.3 G *PERG* uses words and phrases that have specific meanings in the *Handbook* or in legislation; these may be different from, or more precise than, their usual dictionary meanings. Defined terms used in the text of the *Handbook* are shown in italics (see Chapter 7 of the Reader's Guide to the *Handbook* at <http://fsahandbook.info/FSA/pdf/rguide.pdf>). For the meanings of defined terms used in *PERG*, see the *Glossary*. It is essential that readers refer to these definitions.

1.2.4 G *PERG* 1.4.1G (General guidance to be found in *PERG*) summarises the general *guidance* contained in *PERG*. Readers should note that in a cross-reference, as explained in paragraph 40 of the Readers' Guide, the code letters of the manual or sourcebook immediately precede the chapter number. For example, *PERG* 1 is the first chapter of the Perimeter Guidance manual. *PERG* 1.5 provides details of and links to other general *guidance* on perimeter issues that is available on the *FSA* website.

### 1.3 Status of guidance

1.3.1 G This *guidance* is issued under section 157 of the *Act* (Guidance). 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 relevant secondary legislation 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.

1.4 General guidance to be found in PERG

1.4.1 G *PERG* 1.4.2G has a table setting out the general *guidance* to be found in *PERG*.

1.4.2 G Table: list of general guidance to be found in *PERG*.

<b>Chapter:</b>	<b>Applicable to:</b>	<b>About:</b>
<i>PERG</i> 2: Authorisation and regulated activities	<ul style="list-style-type: none"> <li>• an <i>unauthorised person</i> wishing to find out whether he needs to be <i>authorised</i> or <i>exempt</i></li> <li>• an <i>authorised person</i> wishing to know whether he needs to vary his <i>Part IV permission</i></li> </ul>	<ul style="list-style-type: none"> <li>• the regulatory scope of the <i>Act</i></li> <li>• the <i>Regulated Activities Order</i></li> <li>• the <i>Exemption Order</i></li> <li>• the <i>Business Order</i></li> </ul>
<i>PERG</i> 3: Issuing e-money	<p>a <i>person</i> who needs to know</p> <ul style="list-style-type: none"> <li>• whether a particular electronic payment product is <i>e-money</i> and whether the <i>person</i> issuing it needs to be <i>authorised</i> under the <i>Act</i></li> <li>• whether any communications about the product will be restricted</li> </ul>	<ul style="list-style-type: none"> <li>• the scope of the <i>regulated activity</i> of <i>issuing e-money</i></li> <li>• the application of the restriction in section 21 of the <i>Act</i> (Restrictions on financial promotion) to <i>communications</i> about <i>e-money</i></li> </ul>

<i>PERG 4:</i> Regulated activities connected with mortgages	any <i>person</i> who needs to know whether the activities he conducts in relation to mortgages are subject to <i>FSA</i> regulation. This is likely to include: <ul style="list-style-type: none"> <li>• lenders</li> <li>• administration service providers</li> <li>• mortgage brokers and advisers</li> </ul>	the scope of relevant orders (in particular, the <i>Regulated Activities Order</i> ) as respects activities concerned with mortgages
<i>PERG 5:</i> Insurance mediation activities	any <i>person</i> who needs to know whether he carries on <i>insurance mediation activities</i> and is, thereby, subject to <i>FSA</i> regulation. This is likely to include: <ul style="list-style-type: none"> <li>• insurance brokers</li> <li>• insurance advisers</li> <li>• <i>insurance undertakings</i></li> <li>• other <i>persons</i> involved in the sale or administration of <i>contracts of insurance</i>, where these activities are secondary to their main business.</li> </ul>	the scope of relevant orders (in particular, the <i>Regulated Activities Order</i> ) as respects activities concerned with the sale or administration of insurance
<i>PERG 6:</i> Identification of contracts of insurance	any <i>person</i> who needs to know whether a contract with which he is involved is a <i>contract of insurance</i>	the general principles and range of specific factors that the <i>FSA</i> regards as relevant in deciding whether any arrangement is a <i>contract of insurance</i>

<p><i>PERG 7:</i> Periodical publications, news services and broadcasts: application for certification</p>	<p>any <i>person</i> who needs to know whether he will be regulated for providing advice about investments through the medium of a periodical publication, a broadcast or a news service</p>	<ul style="list-style-type: none"> <li>• the circumstances in which such <i>persons</i> will be carrying on the <i>regulated activities</i> of <i>advising on investments</i> or <i>advising on regulated mortgage contracts</i> (including where a request for a certificate may be appropriate)</li> <li>• how the <i>FSA</i> will exercise its power to grant certificates</li> </ul>
<p><i>PERG 8:</i> Financial promotion and related activities</p>	<p>any <i>person</i> who needs to know</p> <ul style="list-style-type: none"> <li>• whether his communications are <i>financial promotions</i> or are subject to the restriction in section 21 of the <i>Act</i> or both</li> <li>• whether his activities in making or helping others to make <i>financial promotions</i> are <i>regulated activities</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• the scope of the restriction on <i>financial promotion</i> under section 21 of the <i>Act</i> and the main exemptions provided</li> <li>• the circumstances in which <i>persons</i> who are primarily involved in making or helping others to make <i>financial promotions</i> may themselves be conducting <i>regulated activities</i> requiring <i>authorisation</i> or exemption</li> </ul>
<p><i>PERG 9:</i> Meaning of open-ended investment</p>	<p>any <i>person</i> who needs to know whether a <i>body corporate</i> is an <i>open-ended</i></p>	<p>the circumstances in which a <i>body corporate</i> will be an <i>open-ended</i></p>

company	<i>investment company</i> as defined in section 236 of the <i>Act</i> (Open-ended investment companies) and is therefore a <i>collective investment scheme</i> .	<i>investment company</i>
<i>PERG 10</i> : Activities related to pension schemes	[to be added]	

1.5 What other guidance about the perimeter is available from the FSA?

1.5.1 G General *guidance* on the perimeter is also contained in various *FSA* documents (mainly fact sheets and frequently asked questions) that are available on the *FSA* website at [www.fsa.gov.uk](http://www.fsa.gov.uk). These documents, and the URL on which they may be accessed, include:

- (1) *guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of group risk managers and co-participants in a *joint enterprise* - <http://www.fsa.gov.uk/pages/doing/info/mgi/topics/risk.shtml>;
- (2) *guidance* about the scope of the exclusion in article 72B of the *Regulated Activities Order* (Activities carried on by a provider of relevant goods or services) as it applies to services related to travel - <http://www.fsa.gov.uk/Pages/Doing/Info/MGI/FAQs/travel.shtml>;
- (3) *guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of persons who provide freight forwarding services - <http://www.fsa.gov.uk/pages/Doing/Info/MGI/FAQs/freight.shtml>;
- (4) *guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of property owners and tenants - <http://www.fsa.gov.uk/Pages/Doing/Info/MGI/FAQs/property.shtml>;
- (5) *guidance* about the scope of the exclusion in article 72C of the *Regulated Activities Order* (Provision of information on an incidental basis)

<http://www.fsa.gov.uk/pages/doing/info/mgi/faqs/exclusion.shtml>;

- (6) *guidance* on passporting for insurers and insurance intermediaries -  
<http://www.fsa.gov.uk/Pages/Doing/Info/MGI/FAQs/insurers.shtml>;
- (7) *guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of the company appointed to manage a PPP or similar construction and operation project -  
[http://www.fsa.gov.uk/pubs/other/letter\\_pppforum.pdf](http://www.fsa.gov.uk/pubs/other/letter_pppforum.pdf);
- (8) *guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of property managing agents -  
[http://www.fsa.gov.uk/pages/doing/info/mgi/pdf/property\\_guidance\\_note.pdf](http://www.fsa.gov.uk/pages/doing/info/mgi/pdf/property_guidance_note.pdf); and
- (9) *guidance* for employers about how to provide advice and information to their employees on pension matters without contravening the *Act* -  
<http://www.fsa.gov.uk/pubs/other/guide4employers.pdf>.

1.5.2 G Any *person* who, having read relevant general *guidance* and, where appropriate, taken legal advice, remains uncertain about whether his activities amount to *regulated activities* or his communications will be subject to the restriction in section 21 of the *Act*, may seek individual *guidance* from the *FSA*. Requests for individual *guidance* should be made in line with *SUP 9*.

1.5.3 G In addition, the *FSA* has established a team to provide general assistance and guidance to persons generally about the scope of the *Act*. Enquiries of this kind may be made:

- (1) by authorised firms, to either the Firm Contact Centre (email [fcc@fsa.gov.uk](mailto:fcc@fsa.gov.uk), Tel 0845 606 9966) or their normal supervisory contact; or
- (2) by individuals or non-authorised firms, to the Consumer Contact Centre (email [ccc@fsa.gov.uk](mailto:ccc@fsa.gov.uk), Tel 0845 606 1234) or the Perimeter Enquiries Team (email [authorisationenquiries@fsa.gov.uk](mailto:authorisationenquiries@fsa.gov.uk), Tel 020 7066 0082).

1.5.4 G The *FSA* will review its general *guidance* from time to time and may need to amend or withdraw published or written *guidance* in the light of changing circumstances, developing business practices, or case law. For the status of *guidance* issued by the *FSA*, see *PERG 1.3.1G*.

## AUTHORISATION AND REGULATED ACTIVITIES

- 2 Authorisation and regulated activities
- 2.1 Application and purpose
- Application
- 2.1.1 G This chapter is relevant to any *person* who needs to know what activities fall within the scope of the *Act*.
- Purpose
- 2.1.2 G The purpose of this chapter is to provide *guidance*:
- (1) to *unauthorised persons* who wish to find out whether they need to be *authorised* and, if so, what *regulated activities* their *permission* needs to include; and
  - (2) to *authorised persons* who may have questions about the scope of their existing *permission*.
- 2.2 Introduction
- 2.2.1 G Under section 23 of the *Act* (Contravention of the general prohibition), a *person* commits a criminal offence if he carries on activities in breach of the *general prohibition* in section 19 of the *Act* (The general prohibition) (see *AUTH 1.2.2G*). Although a *person* who commits the criminal offence is subject to a maximum of two years imprisonment and an unlimited fine, it is a defence for a *person* to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- 2.2.2 G Another consequence of a breach of the *general prohibition* is that certain agreements could be unenforceable (see sections 26 to 29 of the *Act*). This applies to agreements entered into by *persons* who are in breach of the *general prohibition*. It also applies to any agreement entered into by an *authorised person* if the agreement is made as a result of the activities of a *person* who is in breach of the *general prohibition*.
- 2.2.3 G Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in *PERG 2 Annex 1G*):
- (1) Will I be carrying on my activities by way of business (see *PERG 2.3*)?

- (2) Will I be managing the assets of an *occupational pension scheme* (see *PERG 2.3.2G(3)*)?
- (3) If the answer is 'Yes' to (1) or (2), will my activities involve *specified investments* in any way (see *PERG 2.6*)?
- (4) If so, will my activities be, or include, *regulated activities* (see *PERG 2.7*)?
- (5) If so, will I be carrying them on in the *United Kingdom* (see *PERG 2.4*)?
- (6) If so, will my activities be excluded (see *PERG 2.8* and *PERG 2.9*)?
- (7) If not, will I be exempt (see *PERG 2.10.5G* to *PERG 2.10.8G*)?
- (8) If not, am I allowed to carry on *regulated activities* without *authorisation* (see *PERG 2.10.9G* to *PERG 2.10.16G*)?
- (9) If not, do I benefit from the few provisions of the *Act* that *authorise* me without a *permission* under Part IV of the *Act* (see *AUTH 1.2.4G(1)*)?
- (10) If not, what is the scope of the *Part IV permission* that I need to seek from the *FSA* (see *PERG 2 Annex 2G* and *AUTH 3*)?

2.2.4 G The rest of this chapter provides a high level guide through the questions set out in *PERG 2.2.3G*. It aims to give an overall picture but in doing so it necessarily relies on the reader referring to statutory provisions to fill in the detail (which can be extensive).

2.2.5 G The process of applying for *Part IV permission* is described in *AUTH 3*. But a list of the activities for which *permission* may be given is annexed to this chapter (see *PERG 2 Annex 2G*). You may find this helpful in providing an overview of the activities that are regulated. The list is included here because, with some exceptions, the *investments* and activities for which *permission* may be given are the same as the investments and activities specified in the *Regulated Activities Order*. The exceptions (which are explained in *AUTH 3.4* and *AUTH 3.5*) involve distinctions being drawn within each of several activities and *investments* so specified. This creates a few additional categories for which *permission* must be sought.

2.3 The business element

2.3.1 G Under section 22 of the *Act* (Regulated activities), for an activity to be a *regulated activity* it must be carried on 'by way of business'.

- 2.3.2 G There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476) and the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2005 (SI 2005/922)). The result is that the business element differs depending on the activity in question. This in part reflects certain differences in the nature of the activities:
- (1) The activity of *accepting deposits* will not be regarded as carried on by way of business by a *person* if he does not hold himself out as *accepting deposits* on a day-to-day basis and if the *deposits* he accepts are accepted only on particular occasions. In determining whether *deposits* are accepted only on particular occasions, the frequency of the occasions and any distinguishing characteristics must be taken into account.
  - (2) Except as stated in *PERG* 2.3.2G(2A) and (3), the business element is not to be regarded as satisfied for any of the *regulated activities* carried on in relation to *securities* or *contractually based investments* (or for those *regulated activities* carried on in relation to 'any property') unless a *person* carries on the business of engaging in one or more of the activities. This also applies to the *regulated activities* of *arranging* in relation to a *regulated mortgage contract* and *advising on regulated mortgage contracts*. This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right.
  - (2A) A *person* who carries on an *insurance mediation activity* will not be regarded as doing so by way of business unless he takes up or pursues that activity for remuneration. *PERG* 2.3.3G gives *guidance* on the factors that are relevant to the meaning of 'by way of business' in section 22 of the *Act*. *PERG* 5.4 (The business test) gives further *guidance* on the business element as applied to *insurance mediation activities*.
  - (3) A *person* managing assets on a discretionary basis while acting as *trustee* of an *occupational pension scheme* may in certain circumstances be regarded as acting by way of business even if he would not, in the ordinary meaning of the phrase, be regarded as doing so. The Financial Services and Markets Act (Carrying on Regulated Activities by Way of Business) Order 2001 (as amended) contains some exceptions

from this (see article 4).

- (4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting or carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract* and *entering into or administering regulated mortgage contracts* (see *PERG 2.7.20G*).

2.3.3 G Whether or not an activity is carried on by way of business is ultimately a question of judgement that takes account of several factors (none of which is likely to be conclusive). These include the degree of continuity, the existence of a commercial element, the scale of the activity and the proportion which the activity bears to other activities carried on by the same *person* but which are not regulated. The nature of the particular *regulated activity* that is carried on will also be relevant to the factual analysis.

## 2.4 Link between activities and the United Kingdom

2.4.1 G Section 19 of the *Act* (The general prohibition) provides that the requirement to be *authorised* under the *Act* only applies in relation to activities that are carried on 'in the *United Kingdom*'. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example because a client is outside the *United Kingdom* or because some other element of the activity happens outside the *United Kingdom*, the question may arise as to where the activity is carried on.

2.4.2 G Even with a cross-border element a *person* may still be carrying on an activity 'in the *United Kingdom*'. For example, a *person* who is situated in the *United Kingdom* and who is *safeguarding and administering investments* will be carrying on activities in the *United Kingdom* even though his *client* may be overseas.

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 five additional cases. The *Act* states that, in these 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*.

- (1) The first case is where a *UK-based person* carries on a *regulated activity* in another *EEA State* in exercise of rights under a *Single Market Directive*.

- (2) The second case consists of the *marketing* in another *EEA State* of a *UK-based collective investment scheme* by the *scheme's manager* where the *scheme* in question is one to which the *UCITS Directive* applies.
- (3) The third case is where a *regulated activity* is carried on by a *UK-based person* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*.
- (4) The fourth case is where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an establishment in the *United Kingdom*. This might occur when each of the stages that make up a *regulated activity* (such as *managing investments*) takes place in different countries. For example, a *person's* management is in country A, the assets are held by a nominee in country B, all transactions take place in country B or country C but all decisions about what to do with the investments are taken from an office in the *United Kingdom*. Given that the investments are held, and all dealings in them take place, outside the *United Kingdom* there may otherwise be a question as to where the *regulated activity* of *managing investments* is taking place. For the purposes of the *Act*, it is carried on 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*.

2.4.4 G The application of the third and fourth cases will depend on how the activities carried on from the *UK* establishment are set up and operated.

2.4.5 G A *person* who is based outside the *United Kingdom* but who sets up an establishment in the *United Kingdom* must therefore consider the following matters. First, he must not, unless he is *authorised*, carry on *regulated activities* in the *United Kingdom*. Second, unless he is *authorised*, the day-to-day management of the carrying on of the *regulated activity* must not be the responsibility of the *UK* establishment. This may, for example, affect those *UK* establishments that in the context of *deposit-taking* activities were, before the *commencement* of the *Act*, treated as representative offices of overseas institutions. Such institutions will need to seek *authorisation* if the responsibility for the day-to-day management of the accepting of *deposits* by them outside the *United Kingdom* is nevertheless effectively that of their *UK* establishment. Third, such a *person* will need to ensure that he does not contravene other provisions of the *Act*

that apply to *persons* who are not *authorised*. These include the controls on *financial promotion* (section 21 of the *Act* (Financial promotion)), and on giving the impression that a *person* is *authorised* (section 24).

2.4.6 G A *person* based outside the *United Kingdom* may also be carrying on activities in the *United Kingdom* even if he does not have a place of business maintained by him in the *United Kingdom* (for example, by means of the internet or other telecommunications system or by occasional visits). In that case, it will be relevant to consider whether what he is doing satisfies the business test as it applies in relation to the activities in question. In addition, he may be able to rely on the exclusions from certain *regulated activities* that apply in relation to *overseas persons* (see *PERG 2.9.15G*).

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 *PERG 2.9.18G(2)*).

## 2.5 Investments and activities: general

2.5.1 G In addition to the requirements as to the business test and the link to the *United Kingdom*, two other essential elements must be present before a *person* needs *authorisation* under the *Act*. The first is that the *investments* must come within the scope of the system of regulation under the *Act* (see *PERG 2.6*). The second is that the activities, carried on in relation to those *specified investments*, are regulated under the *Act* (see *PERG 2.7*). Both *investments* and activities are defined in the *Regulated Activities Order* made by the Treasury under section 22 of the *Act*.

2.5.2 G The *Regulated Activities Order* contains exclusions. Exclusions may exist in relation to both the element of investment and the element of activity. Each should therefore be checked carefully. The exclusions that relate to *specified investments* are considered in *PERG 2.6*, together with the outline of the *specified investments*. The exclusions that relate to activities are considered separately from the outline of activities (see *PERG 2.8* and *PERG 2.9*).

### Modification of certain exclusions as a result of Investment Services and Insurance Mediation Directives

2.5.3 G The application of certain of the exclusions considered in *PERG 2.8* (Exclusions applicable to certain regulated activities) and *PERG 2.9* (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who are subject to the *Investment Services Directive* or the *Insurance Mediation Directive*. The reasons for this and the consequences of it are explained in *PERG 2.5.4G* as respects the *Investment Services Directive*, and *PERG 5* (Insurance

mediation activities), as respects the *Insurance Mediation Directive*.

#### Investment services

- 2.5.4 G It remains the Government's responsibility to ensure the proper implementation of the *Investment Services Directive*. In this *Directive*, persons (called 'investment firms') who are caught by the *Directive* must be brought within the scope of regulation under the *Act*. An *investment firm* is any person whose ordinary business involves the provision to third parties on a professional basis of *core investment services* (these services are described in the extract from the *Directive* in Schedule 2 to the *Regulated Activities Order*). The *Investment Services Directive* does not apply in the circumstances described in the extract from the *Directive* in Schedule 3 to the *Regulated Activities Order*. A person will need to consider whether he is an *investment firm* to which the *Directive* applies, having due regard to the provisions in Schedule 3 to the *Regulated Activities Order*.
- 2.5.5 G For persons who are *investment firms*, the activities that must be caught by the *Regulated Activities Order* are those that are caught by the *Investment Services Directive*. To achieve this result, some of the exclusions in the *Order* (that will apply to persons who are not caught by the *Directive*) have been made unavailable to *investment firms*. Article 4(4) of the *Regulated Activities Order* (Specified activities: general) lists a number of exclusions that must be disregarded. These relate to the exclusions concerned with:
- (1) the absence of holding out (see *PERG 2.8.4G(1)*);
  - (2) transactions or arrangements with or through certain persons (see *PERG 2.8.4G(2)*, *PERG 2.8.5G(1)* and *PERG 2.8.6G(4)*);
  - (3) risk management (see *PERG 2.8.4G(5)* and *PERG 2.8.5G(2)*);
  - (4) persons acting under powers of attorney (see *PERG 2.8.7G*);
  - (5) sale of goods (see *PERG 2.9.7G*);
  - (6) groups and joint enterprises (see *PERG 2.9.9G*); and
  - (7) sale of a *body corporate* (see *PERG 2.9.11G*).

#### Insurance mediation or reinsurance mediation

- 2.5.6 G The *Insurance Mediation Directive* has in part been implemented through various amendments to the *Regulated Activities Order*. These include article 4(4A) (Specified activities: general) which precludes a person who, for remuneration, takes up or pursues *insurance mediation* or *reinsurance mediation* in relation to a risk or

commitment situated in an *EEA State* from making use of certain exclusions. In other cases, some of the exclusions provided in relation to particular *regulated activities* are unavailable where the activity involves a *contract of insurance*. This is explained in more detail in *PERG 5* (Insurance mediation activities).

2.6 Specified investments: a broad outline

- 2.6.1 G The following paragraphs describe the various *specified investments*, taking due account of any exclusion that applies.

Deposits

- 2.6.2 G A *deposit* is defined in article 5(2) of the *Regulated Activities Order*. This focuses on a sum of *money* paid by one *person* to another on terms that it will be repaid when a specified event occurs (for example, a demand is made).

- 2.6.3 G Certain transactions are excluded. The definition of *deposit* itself excludes money paid in connection with certain transactions such as advance payments for the provision of goods or services and sums paid to secure the performance of a contract. 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) and another in article 9A (Sums received in exchange for electronic money). *PERG 3.2.15G* to *PERG 3.2.19G* contain *guidance* on the exclusion relating to *electronic money*.

- 2.6.4 G In addition, several separate exclusions focus on the identity of the *person* paying the *money* or the *person* receiving it (or both).

- (1) Payments by certain *persons* are excluded if they are made by specified *persons* (such as local authorities or national, or supranational, bodies) or by *persons* acting in the course of a business consisting wholly or partly of lending money.
- (2) Exclusions apply for sums paid between certain *persons* who are linked in a specified way (such as *group companies* or *close relatives*).
- (3) Exclusions apply to sums received by *persons* acting for specified purposes. This covers sums received by a practising solicitor acting in the course of his profession or by *authorised* or *exempt persons* carrying on one of a specified range of *regulated activities* and acting within the scope of their *permission* or exemption.

## 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 (SI 2002/682)). 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 *PERG 3* (Guidance on the scope of the regulated activity of issuing e-money).

## Rights under a contract of insurance

- 2.6.5 G *Contract of insurance* is defined to include certain things that might not be considered a *contract of insurance* at common law. Examples of such additions include *capital redemption* contracts or contracts to pay annuities on human life. Detailed *guidance* on identifying a *contract of insurance* is in *PERG 6* (Guidance on the Identification of Contracts of Insurance).
- 2.6.6 G There are two main sorts of *contracts of insurance*. These are *general insurance contracts* and *long-term insurance contracts*. The *Regulated Activities Order* provides that, in certain specified circumstances, a contract is to be treated as a *long-term insurance contract* notwithstanding that it contains supplementary provisions that might also be regarded as relating to a *general insurance contract* (see article 3(3)).
- 2.6.7 G The *Regulated Activities Order* uses two further terms in relation to *contracts of insurance* to identify those contracts under which rights are treated as *contractually based investments*.
- (1) The first term is 'qualifying contracts of insurance' (referred to as *life policies* in the *Handbook*). This identifies those *long-term insurance contracts* under which rights are treated as *contractually based investments*. This term does not cover *long-term insurance contracts* which are contracts of reinsurance or, if specified conditions are met, contracts under which benefits are payable only on death or incapacity.
  - (2) The second term is '*relevant investments*'. This term applies to:
    - (a) *contractually based investments*, which includes rights under *life policies*, and rights to or interests in such *investments* under article 89 of the *Regulated Activities Order* (Rights to or interests in investments); and
    - (b) rights under *contracts of insurance* other than *life policies*

(but not rights to or interests in such rights).

This term is used in connection with the treatment, under various parts of the *Regulated Activities Order*, of persons carrying on *insurance mediation activities* (see *PERG 5* (Insurance mediation activities) for further *guidance* on such activities).

- 2.6.8 G Certain arrangements in relation to funeral plans are specifically excluded from being *contracts of insurance* if they would otherwise be so. The exclusion applies to arrangements that fall within the definition of a *funeral plan contract* (see *PERG 2.6.26G*) as well as arrangements that are excluded from the *regulated activity of entering as provider into funeral plan contracts* (see *PERG 2.8.14G*).

#### Shares etc

- 2.6.9 G *Shares* are defined in the *Regulated Activities Order* as shares or stock in a wide range of entities; that is, any *body corporate* wherever incorporated and unincorporated bodies formed under the law of a country other than the *United Kingdom*. They include deferred shares issued by *building societies* as well as transferable shares in *industrial and provident societies*, *credit unions* and equivalent *EEA* bodies. These shares are transferable and negotiable in a way similar to other shares or stock and are treated as such for the purposes of defining *regulated activities*. They are specifically mentioned as being within the *specified investment* category of *shares* because other types of share issued by these mutual bodies are not transferable and are expressly excluded (see *PERG 2.6.10G*).
- 2.6.10 G The following are excluded from the *specified investment* category of *shares*. Shares or stock in all *open-ended investment companies* are excluded from being treated in this particular category (but see *PERG 2.6.17G*). Exclusions from this category also apply to shares or stock in the share capital of certain mutuals or in equivalent *EEA* bodies. This takes out *building society* or *credit union* accounts and non-transferable shares in *industrial and provident societies*. These may nevertheless be *specified investments* in another category (such as *deposits* in the case of *building society* accounts).

#### Debt instruments

- 2.6.11 G Two categories of *specified investments* relating to debt instruments are dealt with under this heading. They broadly split into private debt and public sector debt.
- (1) The first category of 'instruments creating or acknowledging indebtedness' (defined in article 77 of the *Regulated Activities Order* and referred to in the *Handbook* as *debentures*) expressly refers to a range of *instruments* such as *debentures*, bonds and

loan stock and contains a catch-all reference to 'any other instrument creating or acknowledging indebtedness.'

- (2) The second category (defined in article 78 of the *Regulated Activities Order* and referred to in the *Handbook* as *government and public securities*) refers to loan stock, bonds and other instruments creating or acknowledging indebtedness which are issued by or on behalf of any government, the assemblies for Scotland, Wales or Northern Ireland, a local authority or an international organisation.

An instrument cannot fall within both categories of *specified investments* relating to debt instruments. 'Instrument' is defined to include any record whether or not in the form of a document (see article 3(1) of the *Regulated Activities Order*).

- 2.6.12 G Certain instruments are excluded from both these categories of *specified investments*. These include trade bills, specified banking documents (such as cheques and banknotes though not bills of exchange accepted by a banker) and *contracts of insurance*. There is a further exclusion from this category of *specified investment* dealing with public debt for National Savings deposits and products.

#### Warrants

- 2.6.13 G The category of *specified investment* of instruments giving entitlements to investments (referred to in the *Handbook* as *warrants*) covers warrants and other instruments which confer an entitlement to subscribe for *shares*, *debentures* and *government and public securities*. This is one of several categories of *specified investments* that are expressed in terms of the rights they confer in relation to other categories of *specified investment*. The rights conferred must be rights to 'subscribe' for the relevant investments. This means that they are rights to acquire the investments directly from the *issuer* of the *investments* and by way of the *issue* of new investments (rather than by purchasing investments that have already been issued).
- 2.6.14 G To keep clear distinctions between the different *specified investment* categories, instruments giving entitlements to investments are not to be regarded as *options*, *futures* or *contracts for differences*.

#### Certificates representing securities

- 2.6.15 G The *specified investment* category of *certificates representing certain securities* covers certificates or other instruments which confer rights in relation to *shares* and *debt securities*. It includes depositary receipts.
- 2.6.16 G There is an exclusion for any instrument that would otherwise fall within the *specified investment* category of *units* in a *collective*

*investment scheme*. But the exclusion does not apply where the underlying investments covered by the certificate are issued by the same (non-public sector) *issuer* or constitute a single issue of public sector debt (such as a single issue of gilts). Certificates or other instruments conferring rights in respect of investments in these two cases continue to be treated as *certificates representing certain securities*.

## Units

- 2.6.17 G The *specified investment* category of *units* in a *collective investment scheme* includes *units* in a *unit trust scheme*, *shares* in *open-ended investment companies* and rights in respect of most limited *partnerships*. *Shares* in or *securities* of an *open-ended investment company* are treated differently from *shares* in other *companies*. They are excluded from the *specified investment* category of *shares*. This does not mean that they are not investments but simply that they are uniformly treated in the same way as *units* in other forms of *collective investment scheme*. The effect is that an *open-ended investment company* will, in issuing its *shares*, be subject to the restrictions on promotion of *collective investment schemes* in section 238 of the *Act* (rather than to restrictions, such as those in the Public Offers of Securities Regulations 1995, that apply to other forms of body corporate). For exclusions from the restrictions on the provisions of *collective investment schemes*, see the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (SI 2001/1060). *Guidance* on the meaning of *open-ended investment company* is in *PERG 9* (Meaning of open-ended investment company).
- 2.6.18 G There are no exclusions in the *Regulated Activities Order* for this *specified investment* category. This is because '*collective investment scheme*' is defined in section 235 of the *Act* (Collective investment schemes) for the purposes of the *Act* generally. But there is a separate power to provide for exemptions from that definition and the Treasury have exercised it (see the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062)). The result is that *units* in certain arrangements are excluded from being *collective investment schemes* (for example, closed-ended *bodies corporate*, franchise arrangements, timeshare schemes).

## Rights under a stakeholder pension scheme

- 2.6.19 G A *stakeholder pension scheme* is defined in section 1 of the Welfare Reform and Pensions Act 1999. Regulations made under that section set out detailed rules under which such schemes will operate (see the Stakeholder Pension Scheme Regulations 2000). Schemes must be registered with The Pensions Regulator and approved by the Board of HM Revenue and Customs. Rights under such *schemes* are *specified*

*investments* for the purposes of the *Regulated Activities Order*. There are no exclusions in the Order.

#### Options

- 2.6.20 G The *specified investment* category of *options* is limited to *options* to acquire or dispose of *securities* or *contractually based investments*, currency and certain precious metals and *options* to acquire or dispose of such *options*. *Options* to buy or sell other types of *commodity* will only fall within this *specified investment* category if they are *options* to buy or sell *futures*, or *options* to buy or sell *contracts for differences*, which are based on other *commodities*. But *options* to buy or sell other types of *commodity* may be *contracts for differences* (see PERG 2.6.23G).

#### Futures

- 2.6.21 G *Futures* is the name given to rights under a contract for the *sale* of a *commodity*, or of property of any other description, under which delivery is to be made at a future date and at a price agreed on when the contract is made.
- 2.6.22 G The key issue in determining whether something is an investment in this category for the purposes of the *Regulated Activities Order* is whether the contract is made for investment purposes rather than commercial purposes. Contracts which are made for commercial purposes are excluded from this *specified investment* category and the *Regulated Activities Order* contains several tests as to when that is, or is not, the case (some are conclusive, others only indicative).

#### Contracts for differences

- 2.6.23 G The *specified investment* category of *contracts for differences* covers rights under *contracts for differences* and rights under other contracts whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in certain factors. In addition to fluctuations in the value or price of property of any description or in an index, those factors also include fluctuations in any 'other factor designated in the contract'. This catches a wide range of factors. All contracts in this category are cash-settled instruments (as opposed to being settled by way of delivering something other than cash). Many would be unenforceable as gaming contracts were it not for section 412 of the Act (Gaming contracts). Examples of things that count as *specified investments* under this category are *spread bets* and interest rate swaps.
- 2.6.24 G There are a number of exclusions. These include a case where the parties intend that the profit is to be secured or the loss to be avoided by taking delivery of property. This avoids overlap with the *specified investment* categories of *options* and *futures*. Also excluded are

index-linked *deposits* and rights under certain contracts connected with the National Savings Bank or National Savings products. There is also provision to ensure that the *specified investment* category of *contracts for differences* does not include rights under *life policies*.

#### Lloyd's investments

- 2.6.25 G Two types of *specified investment* are relevant. These are the *underwriting capacity of a Lloyd's syndicate* and a *person's membership of a Lloyd's syndicate*. There are no exclusions from these *specified investment* categories.

#### Rights under a funeral plan

- 2.6.26 G Rights under a *funeral plan contract* are the rights to a funeral obtained by a *person* who pays for the funeral before the death of the *person* whose funeral it will be.

#### Rights under a regulated mortgage contract

- 2.6.27 G In accordance with article 61(3)(a) of the *Regulated Activities Order*, a *regulated mortgage contract* is a contract which, at the time it is entered into, satisfies the following conditions:
- (1) the contract is one where the lender provides credit to an individual or trustees (the "borrower");
  - (2) the obligation of the borrower to repay is secured by a first legal charge on land (other than timeshare accommodation) in the *United Kingdom*; and
  - (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related *person*.

Detailed guidance on this is set out in *PERG 4.4* (Guidance on regulated activities connected with mortgages).

#### Rights to or interests in investments

- 2.6.28 G Rights to, or interests in, all the *specified investments* in *PERG 2.6* (except rights to, or interests in, rights under a *regulated mortgage contract*) are themselves treated as *specified investments*. The effect is that, in most cases, an activity carried on in relation to rights or interests derived from any of those *investments* is also a *regulated activity* if the activity would be regulated if carried on in relation to the investment itself. The exception is where the rights or interests relate to a *pure protection contract* or a *general insurance contract*.

2.6.29 G There are several things that are not covered by this category (other than rights to, or interests in, rights under a mortgage contract). Anything that is covered by any other *specified investment* category is excluded, as are interests under the trusts of an *occupational pension scheme*. Finally, where a contract is excluded from the scope of the *regulated activity of entering as provider into a funeral plan contract* (see *PERG 2.8.14G*), then rights to, or interests in, the *contracts of insurance* or interests under the trusts, to which the *contracts* relate are also excluded from this *specified investment* category.

2.7 Activities : a broad outline

2.7.1 G The following paragraphs describe the various specified activities. The exclusions relating to activities are dealt with in *PERG 2.8* and *PERG 2.9*.

Accepting deposits

2.7.2 G Whether or not *accepting deposits* is a *regulated activity* 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 of, or interest on, money received by way of *deposit*.

Issuing e-money

2.7.2A G *Guidance* on the *regulated activity of issuing e-money* is given in *PERG 3*.

Effecting or carrying out contracts of insurance as principal

2.7.3 G The activities of *effecting a contract of insurance* or *carrying out a contract of insurance* are separate *regulated activities*, each requiring *authorisation*. But this only applies where they are carried on by a *person* who is acting as principal. This means that the activities of agents, such as loss adjusters, will not constitute this *regulated activity*. The activities of some agents may, however, be regulated as *insurance mediation activities* (see *PERG 5* (Guidance on insurance mediation activities)).

2.7.4 G In addition, certain other activities carried on in relation to rights under *contracts of insurance* are *regulated activities*. These are where the activity is carried on in relation to:

(1) *life policies*, where the *regulated activities* concerned are:

(a) *dealing in investments as principal* (see *PERG 2.7.5G*);

- (b) *managing investments* (see *PERG 2.7.8G*);
  - (c) *safeguarding and administering investments* (see *PERG 2.7.9G*); and
  - (d) agreeing to carry on any of those activities (see *PERG 2.7.21G*); and
- (2) rights under any *contract of insurance*, where the *regulated activities* concerned are:
- (a) *dealing in investments as agent* (see *PERG 2.7.5G*);
  - (b) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments* (see *PERG 2.7.7AG*);
  - (c) *assisting in the administration and performance of a contract of insurance* (see *PERG 2.7.8AG*);
  - (d) *advising on investments* (see *PERG 2.7.15G*); and
  - (e) agreeing to carry on any of those activities (see *PERG 2.7.21G*).

*PERG 5* (Insurance mediation activities) has more *guidance* on these *regulated activities* where they are *insurance mediation activities*.

#### Dealing in investments (as principal or agent)

- 2.7.5 G In relation to *securities* or *life policies* (or rights or interests in either), *dealing as principal* is only a *regulated activity* if certain conditions are satisfied (see *PERG 2.8.4G(1)*).
- 2.7.6 G Both the activities of *dealing in investments as principal* and *dealing in investments as agent* are defined in terms of 'buying, selling, subscribing for or underwriting' certain *investments*. These *investments* are:
- (1) for *dealing in investments as principal, securities* or *contractually based investments* (except rights under a *funeral plan contract*); and
  - (2) for *dealing in investments as agent, securities* and *relevant investments* (except rights under a *funeral plan contract*).
- 2.7.6A G Because of the different nature of the *specified investments* in relation to which these activities are carried on, 'buying' and 'selling' are

defined terms that have an extended meaning. For example, some of the *specified investments* listed in *PERG 2.6* are particular things that can be bought and sold in the ordinary meaning of the words. Others fall outside the ordinary meaning of 'buy' and 'sell' because their transfer involves an assumption of a potential liability under a bilateral contract (*contracts for differences* are an example of this). To deal with the possible range of circumstances, '*buying*' is defined in the *Regulated Activities Order* to include acquiring for valuable consideration. '*Selling*' is defined to include disposing for valuable consideration and '*disposing*' is itself given a specified meaning that covers a range of possible transactions according to the nature of the investment being transferred (including, for example, surrendering a life insurance contract).

Arranging deals in investments and arranging regulated mortgage activities

2.7.7 G [not used]

2.7.7A G There are four arranging activities that are *regulated activities* under the *Regulated Activities Order*. These are:

- (1) *arranging (bringing about) deals in investments* which are *securities, relevant investments* or the *underwriting capacity of a Lloyd's syndicate* or *membership of a Lloyd's syndicate* (article 25(1));
- (2) *making arrangements with a view to transactions in investments* which are *securities, relevant investments* or the *underwriting capacity of a Lloyd's syndicate* or *membership of a Lloyd's syndicate* (article 25(2));
- (3) *arranging (bringing about) regulated mortgage contracts*, which includes arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into before 31 October 2004 (article 25A(1)); and
- (4) *making arrangements with a view to regulated mortgage contracts* (article 25A(2)).

2.7.7B G The activity of *arranging (bringing about) deals in investments* is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, *arrangements* that bring it about). The activity of *making arrangements with a view to transactions in investments* is aimed at cases where it may be said that the transaction is "brought about" directly by the parties. This is where this happens in a context set up by a third party specifically with a view to the conclusion by others of transactions through the use of that third party's *facilities*. This will catch the activities of *persons* such as exchanges, *clearing houses* and *service companies*

(for example, *persons* who provide communication facilities for the routing of orders or the negotiation of transactions). A *person* may be carrying on this *regulated activity* even if he is only providing part of the *facilities* necessary before a transaction is brought about.

- 2.7.7C G Further *guidance* on the arranging activities as they relate to *regulated mortgage contracts* and *contracts of insurance* is in *PERG* 4.5 (Arranging regulated mortgage contracts) and *PERG* 5.6 (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance) respectively.

#### Managing investments

- 2.7.8 G The *regulated activity* of *managing investments* includes several elements.
- (1) First, a *person* must exercise discretion. Non-discretionary portfolio management (where the manager *buys* and *sells*, as principal or agent, on the instructions of some other *person*) is not caught by this activity, although it may be caught by a different *regulated activity* such as the activity of *dealing in investments as principal* or *dealing in investments as agent*. The discretion must be exercised in relation to the composition of the portfolio under management and not in relation to some other function (such as proxy voting) carried on by the manager.
  - (2) Second, the property that is managed must belong beneficially to another *person*. This excludes from the *regulated activity* the management by a *person* of his own property. But discretionary management of assets by a *person* acting in his capacity as trustee will be caught even though he is the legal owner of the assets.
  - (3) Third, the property that is managed must consist of (or include) *securities* or *contractually based investments*. Alternatively, discretionary management will generally be caught if it is possible that the property could consist of or include such *securities* or investments. This is the case even if there never has been any investment in *securities* or *contractually based investments*, as long as there have been representations that there would be.

#### Assisting in the administration and performance of a contract of insurance

- 2.7.8A G The activity of *assisting in the administration and performance of a contract of insurance* is a *regulated activity* that is identified in the *Insurance Mediation Directive*. Further *guidance* on this activity is in *PERG* 5.7 (The regulated activities: assisting in the administration

and performance of a contract of insurance).

#### Safeguarding and administering investments

2.7.9 G The activity of *safeguarding and administering investments* belonging to another is regulated, as is providing a service under which a *person* undertakes to arrange on a continuing basis for others actually to carry out the safeguarding and administering. In each case, both the elements of safeguarding and administering must be present before a *person* will be said to carry on the activity.

(1) Safeguarding is acting as custodian of the property, for example, holding any documents evidencing the investments such as the share certificate (although it is worth noting that there is express provision that an uncertificated investment may be safeguarded and administered).

(2) Administration covers services provided to the owner or manager of the property, such as settlement of sale transactions relating to an investment, dealing with income arising from the investment and carrying out corporate actions such as voting. The nature of administration services must be such that the custodian has no discretion (otherwise he is likely to be caught by the *regulated activity* of *managing investments* (see *PERG* 2.7.8G)).

2.7.10 G The property that is safeguarded and administered must belong beneficially to another *person*. It must consist of (or include) *securities* or *contractually based investments*. Alternatively, safeguarding and administration will generally be caught if it is possible that the property could consist of (or include) such *securities* or investments. This is the case even if the property in question has never consisted of (or included) such *securities* or investments, as long as there have been representations that it would do.

#### Sending dematerialised instructions

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 *securities* or *contractually based investments*. This is the system maintained under the Uncertificated Securities Regulations 2001 (SI 2001/3755) (and currently operated by CREST). Sending instructions on behalf of another is a *regulated activity*, as is causing such instructions to be sent if the *person* causing the sending is a system-participant, as defined in those Regulations. A system-participant is the *person* who has the computer and network connection to CREST.

#### Establishing etc collective investment schemes

2.7.12 G The *regulated activities* carried on in relation to a *collective investment scheme* generally are the *establishing, operating or winding up a collective investment scheme*. Acting as the *depository* and acting as sole director of an *open-ended investment company* are also separate *regulated activities*. In all these cases, the activities are regulated where the schemes themselves are authorised schemes for the purposes of the *UK* product regulation regime under Part XVII of the *Act* (Collective investment schemes) as well as where the schemes are unregulated schemes. The process for applying for authorisation of a *collective investment scheme* is described in *COLL 2* (Authorised fund applications) and *CIS 16* (Application and notification).

2.7.13 G In addition, express provision is included in the *Regulated Activities Order* to make *acting as trustee of an authorised unit trust scheme* a *regulated activity*. The full picture for authorised schemes (that is, schemes that can be promoted to the public) is as follows:

- (1) *Acting as trustee of an authorised unit trust scheme* is expressly included as a *regulated activity*.
- (2) *Acting as depository of an open-ended investment company* that is authorised under regulations made under section 262 of the *Act* (Open-ended investment companies), is a *regulated activity*.
- (3) Acting as a sole director of such a *company* is a *regulated activity*.
- (4) Managing an *authorised unit trust scheme* will amount to operating the scheme and so will be a *regulated activity*. A *person* acting as *manager* is also likely to be carrying on other *regulated activities* (such as *dealing* (see *PERG 2.7.5G*) or *managing investments* (see *PERG 2.7.8G*)).
- (5) An *open-ended investment company* will, once it is authorised under regulations made under section 262 of the *Act*, become an *authorised person* in its own right under Schedule 5 to the *Act* (Persons concerned in Collective Investment Schemes). Under ordinary principles, a company operates itself and an *authorised open-ended investment company* will be operating the *collective investment scheme* constituted by the *company*. It is not required to go through a separate process of *authorisation* as a *person* because it has already undergone the process of product authorisation.
- (6) *Operators, trustees or depositaries of UCITS schemes* constituted in other *EEA States* are also *authorised persons* under Schedule 5 of the *Act* if those *schemes* qualify as

recognised *collective investment schemes* for the purposes of section 264 of the Act.

#### Establishing etc stakeholder pension schemes

- 2.7.14 G The *regulated activities* carried on in relation to *stakeholder pension schemes* are the *establishment, operating or winding up of a stakeholder pension scheme*. Managers of such schemes will require *authorisation* as they will be operating the schemes.

#### Providing basic advice on stakeholder products

- 2.7.14A G This activity covers advice in the form of a recommendation given to a retail *consumer*. The recommendation must relate to a *stakeholder product* and certain conditions must be met. These conditions are based on the need for the adviser to make an assessment of the *consumer's* needs based on the answers that the *consumer* provides to a series of pre-scripted questions. A fuller description of the activity is given in *PERG 2.7.14BG* and explains what is meant by "retail customer". This activity is separate to the *regulated activity of advising on investments* (see *PERG 2.7.15G* (Advising on investments)). The existence of this separate advising activity does not prevent a *person* from giving advice on *stakeholder products* in circumstances that do not satisfy the conditions set out in *PERG 2.7.14BG*. But such advice is likely to amount to *advising on investments* unless the *stakeholder product* is a *deposit*. Neither does the existence of the activity prevent a *person* from selling *stakeholder products* in any other manner provided the *person* has the appropriate *permission*.

- 2.7.14B G A *person* ('P') carries on the *regulated activity of providing basic advice on a stakeholder product* when:
- (1) P gives the advice:
    - (a) to a *person* ('C') who does not receive the advice in the course of a business that he carries on; and
    - (b) in the course of a business that P carries on;
  - (2) the advice is on the merits of C opening or *buying a stakeholder product*;
  - (3) the following conditions are met:
    - (a) P asks C questions to enable P to assess whether a *stakeholder product* is appropriate for C;
    - (b) if P, relying solely on the information provided by C in response to the questions referred to in (a), assesses that a *stakeholder product* is appropriate for C, P:
      - (i) describes that product to C; and

- (ii) gives a recommendation of that product to C; and
- (4) C has indicated to P that he has understood the description and recommendation referred to in (3)(b).

#### Advising on investments

- 2.7.15 G The *regulated activity* of *advising on investments* under article 53 of the *Regulated Activities Order* applies to advice on *securities* or *relevant investments*. It does not, for example, include giving advice about *deposits*, or about things that are not *specified investments* for the purposes of the *Regulated Activities Order* (such as interests under the trusts of an *occupational pension scheme*). Giving advice on certain other *specified investments* is, however, regulated under other parts of the *Regulated Activities Order* (see *PERG 2.7.16AG* and *PERG 2.7.17G(2)*). Giving a *person* generic advice about *specified investments* (for example, invest in Japan rather than Europe) is not a *regulated activity* nor is giving information as opposed to advice (for example, listings or company news). However, the context in which something is communicated may affect its character; for example, if a *person* gives information on share price against the background that, when he does so, that will be a good time to sell, then this will constitute *advising on investments*.
- 2.7.16 G The advice must also be given to someone who holds *specified investments* or is a prospective investor (including trustees, nominees or discretionary fund managers). This requirement excludes advice given to a *person* who receives it in another capacity. An example of this might be a tax professional to whom advice is given to inform the practice of his profession or advice given to an employer for the purposes of setting up a *group personal pension scheme*. Further *guidance* on the meaning of *advising on investments* is in *PERG 8.24* (Advising on investments).
- 2.7.16A G In certain circumstances, the activity of *advising on investments* can also amount to *providing basic advice on a stakeholder product* (see *PERG 2.7.14A* (Providing basic advice on stakeholder products)).

#### Advising on regulated mortgage contracts

- 2.7.16B G Under article 53A of the *Regulated Activities Order*, giving advice to a *person* in his capacity as borrower or potential borrower is a *regulated activity* if it is advice on the merits of the *person*:
- (1) entering into a particular *regulated mortgage contract*; or
  - (2) varying the terms of a *regulated mortgage contract*.

Advice on varying terms as referred to in (2) comes within article 53A only where the borrower entered into the *regulated mortgage*

*contract* on or after 31 October 2004 and the variation varies the borrower's obligations under the contract. Further *guidance* on the scope of the *regulated activity* under article 53A is in *PERG 4.6* (Advising on regulated mortgage contracts).

#### Lloyd's activities

- 2.7.17 G Certain activities carried on in connection with business at Lloyd's will be regulated. In addition to those already mentioned (*arranging deals in the underwriting capacity of a Lloyd's syndicate or membership of a Lloyd's syndicate*), there are three other *regulated activities* as follows.
- (1) *Managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* is a *regulated activity*. 'Managing agent' is defined in article 3(1) of the *Regulated Activities Order*.
  - (2) *Advising on syndicate participation at Lloyd's*, that is advising a *person* to become, or continue or cease to be, a member of a particular *syndicate* is also caught. Giving advice about *syndicate* participation (such as how members should use their capital within the market and arrange their *syndicate* participation) is a separate *regulated activity* to that of providing advice in relation to *securities* and *contractually based investments* (see *PERG 2.7.15G*). Appropriate *permission* will be needed.
  - (3) *Arranging deals in contracts of insurance written at Lloyd's* is also a *regulated activity* for the *Society* of Lloyd's itself.

#### Entering funeral plan contracts

- 2.7.18 G *Entering as provider into a funeral plan contract* is a *regulated activity*. The 'provider' is the *person* to whom the pre-payments are made and who undertakes to provide, or secure the provision of, the funeral at some future point. He may be the funeral director or a third party who arranges for another *person* to provide the funeral. Certain types of *funeral plan contract* are excluded (see *PERG 2.8.14G*).
- 2.7.19 G In addition, other activities carried on in relation to rights under certain *funeral plan contracts* are regulated (see *PERG 2.7.5G* to *PERG 2.7.11G* and *PERG 2.7.15G* and *PERG 2.7.16G*). This is because such rights are classified as *contractually based investments*.

#### Entering into and administering a regulated mortgage contract

- 2.7.20 G *Entering into as lender, and administering, a regulated mortgage contract* are *regulated activities* under article 61 of the *Regulated Activities Order* (Regulated mortgage contracts). *Guidance* on these

*regulated activities* is in *PERG 4.7* (Entering into a regulated mortgage contract) and *PERG 4.8* (Administering a regulated mortgage contract).

#### Agreeing

- 2.7.21 G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits, issuing e-money, effecting or carrying out contracts of insurance* or carrying on any of the activities that are regulated in relation to *collective investment schemes* and *stakeholder pension schemes*. A person will need to make sure that he has appropriate *authorisation* at the stage of agreement and before he actually carries on the underlying activity (such as the *dealing or arranging*).

#### 2.8 Exclusions applicable to particular regulated activities

- 2.8.1 G Most *regulated activities* are subject to exclusions that are set out in the *Regulated Activities Order* directly following each activity.

#### Accepting deposits

- 2.8.2 G Only one exclusion 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 *PERG 2.9.18G*) does not carry on a *regulated activity*. In addition to the situations that are excluded from being '*deposits*' (see *PERG 2.6.2G* to *PERG 2.6.4G*), several *persons* are *exempt persons* in relation to the *regulated activity* of *accepting deposits* (see *PERG 2.10.8G(2)*).

#### 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).

#### Effecting and carrying out contracts of insurance

- 2.8.3 G The following activities are excluded from both the *regulated activities* of *effecting and carrying out contracts of insurance*.

- (1) In specified circumstances, the activities of an *EEA firm* when participating in a Community co-insurance operation are excluded. A Community co-insurance operation is defined in the *Community Co-insurance Directive*.
- (2) Activities that are carried out in connection with the provision of on-the-spot accident or breakdown assistance for cars and other vehicles (such as repairs, vehicle retrieval, delivery of parts or fuel) are excluded.
- (3) *Electronic commerce activities* provided by an *incoming ECA provider* where those activities are outside the scope of the *Insurance Directives* (see *PERG 2.9.18G*).

#### Dealing in investments as principal

2.8.4 G The *regulated activity* of *dealing in investments as principal* applies to specified transactions relating to any security or to any *contractually based investment* (apart from rights under *funeral plan contracts* or rights to or interests in such contracts). The activity is cut back by exclusions as follows.

- (1) Of particular significance is the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc). This applies where *dealing in investments as principal* involves entering into transactions relating to any security or assigning rights under a *life policy* (or rights or interests in such a contract). In effect, it superimposes an additional condition that must be met before a *person's* activities become *regulated activities*. The additional condition is that a *person* must hold himself out as making a market in the relevant *specified investments* or as being in the business of dealing in them, or he must regularly solicit members of the public with the purpose of inducing them to deal. This exclusion does not apply to dealing activities that relate to any *contractually based investment* except the assigning of rights under a *life policy*.
- (2) Entering into a transaction relating to a *contractually based investment* is not regulated if the transaction is entered into by an *unauthorised person* and it takes place in either of the following circumstances (a transaction entered into by an *authorised person* would be caught). The first set of circumstances is where the *person* with whom the *unauthorised person* deals is either an *authorised person* or an *exempt person* who is acting in the course of a business comprising a *regulated activity* in relation to which he is exempt. The second set of circumstances is where the *unauthorised person* enters into a transaction through a non-UK office (which could be his own) and he deals with or through a *person* who is based outside the

*United Kingdom. This non-UK person must be someone who, as his ordinary business, carries on any of the activities relating to securities or contractually based investments that are generally treated as regulated activities.*

- (3) A *person* (for example, a bank) who provides another *person* with finance for any purpose can accept an instrument acknowledging the debt (and as security for it) without risk of *dealing as principal* as a result.
- (4) A *company* does not *deal* as principal by issuing its own *shares* or *share warrants* and a *person* does not *deal* as principal by issuing his own *debentures* or *debenture warrants*.
- (4A) A *company* does not carry on the activity of *dealing in investments as principal* by purchasing its own *shares* where section 162A of the Companies Act 1985 (Treasury shares) applies to the *shares* purchased or by dealing in its own *shares* held as Treasury shares, in accordance with section 162D of that Act (Treasury shares: disposal and cancellation).
- (5) Risk-management activities involving *options*, *futures* and *contracts for differences* will not require *authorisation* if specified conditions are met. The conditions include the *company's* business consisting mainly of *unregulated activities* and the sole or main purpose of the risk management activities being to limit the impact on that business of certain kinds of identifiable risk.
- (6) A *person* will not be treated as carrying on the activity of *dealing in investments as principal* if, in specified circumstances (outlined in *PERG 2.9*), he enters as principal into a transaction:
  - (a) while acting as bare trustee (or, in Scotland, as nominee);
  - (b) in connection with the sale of goods or supply of services;
  - (c) that takes place between members of a *group* or *joint enterprise*;
  - (d) in connection with the sale of a *body corporate*;
  - (e) in connection with an employee share scheme;
  - (f) as an *overseas person*;
  - (g) as an *incoming ECA provider* (see *PERG 2.9.18G*).

2.8.4A G *Persons* who enter as principal into transactions involving rights under a *contract of insurance* of any kind will need to consider whether they may, as a result, be carrying on the *regulated activity* of:

- (1) *arranging (bringing about) deals in investments*; or
- (2) *making arrangements with a view to transactions in investments*; or
- (3) agreeing to do (1) or (2).

2.8.4B G The possibility referred to in *PERG 2.8.4AG* will only arise where it is not the case that the *person* who enters into the transaction as principal either:

- (1) is the only *policyholder*; or
- (2) as a result of the transaction, would become the only *policyholder*.

#### Dealing in investments as agent

2.8.5 G The *regulated activity of dealing in investments as agent* applies to specified transactions relating to any *security* or to any *relevant investment* (apart from rights under *funeral plan contracts* or rights to or interests in such rights). In addition, the activity is cut back by exclusions as follows.

- (1) An exclusion applies to certain transactions entered into by an agent who is not an *authorised person* which depend on him dealing with (or through) an *authorised person*. It does not apply if the transaction relates to a *contract of insurance*. There are certain conditions which must be satisfied for the exclusion to apply. These are that the agent must not give any relevant advice on the transaction and that he must not receive any remuneration from the transaction unless account is made to his client.
- (2) There is an exclusion for risk-management transactions where the agent is dealing on behalf of a *group company* or a co-participant in a *joint enterprise*.
- (3) In addition, exclusions apply in specified circumstances (outlined in *PERG 2.9 (Regulated activities: exclusions available in certain circumstances)*) where a *person* enters as agent into a transaction:
  - (a) in connection with the carrying on of a profession or of a

business not otherwise consisting of *regulated activities* (see *PERG 2.9.5G*);

- (b) in connection with the sale of goods or supply of services (see *PERG 2.9.7G*);
- (c) that takes place between members of a *group* or *joint enterprise* (see *PERG 2.9.9G*);
- (d) in connection with the sale of a *body corporate* (see *PERG 2.9.11G*);
- (e) in connection with an employee share scheme (see *PERG 2.9.13G*);
- (f) as an *overseas person* (see *PERG 2.9.15G*);
- (g) as an *incoming ECA provider* (see *PERG 2.9.18G*);
- (h) as a provider of non-motor goods or travel services where the transaction involves a *general insurance contract* that satisfies certain conditions (see *PERG 2.9.19G*);
- (i) that involves a *contract of insurance* covering large risks situated outside the *EEA* (see *PERG 2.9.19G*).

More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in *PERG 5* (Insurance mediation activities).

#### Arranging deals in investments and arranging regulated mortgage contracts

2.8.6 G The exclusions in relation to the *regulated activities* of *arranging* are of particular relevance in the context of raising corporate finance. Many of the exclusions outlined below relate to both the elements of the activity; that is, *arranging (bringing about) deals in investments* (under article 25(1) of the *Regulated Activities Order*) and *making arrangements with a view to transactions in investments* (under article 25(2) of the *Regulated Activities Order*). But several exclusions relate only to one of those activities.

- (1) Under article 26, arrangements that do not or would not bring about the transaction to which they relate are excluded from article 25(1) and article 25A(1) only. A *person* will bring about an investment transaction only if his involvement in the chain of events leading to a transaction is of sufficient importance that, without that involvement, the transaction would not take place. This will require something more than the mere giving of advice (although giving such advice may be the *regulated*

*activity of advising on investments*).

- (2) Under article 27, simply providing the means by which parties to a transaction (or possible transaction) are able to communicate with each other is excluded from article 25(2) and article 25A(2) only. This will ensure that *persons* such as Internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to be arrangements made with a view to the participants entering into transactions). If a *person* makes arrangements that go beyond providing the means of communication, and add value to what is provided, he will lose the benefit of this exclusion.
- (3) Under article 28, arranging investment transactions to which the *arranger* is to be a party is excluded from both article 25(1) and (2). The main purpose is to ensure that a *person* is not regarded as arranging deals for another when the transaction in question is one to which he intends to be a party. As a result, a *person* cannot both be engaging in a dealing activity (as principal or agent) and arranging *deals* for another as regards any particular transaction. But where the transaction involves a *contract of insurance*, article 28 will not apply if the *person* making the arrangements:
  - (a) is the only *policyholder*; or
  - (b) as a result of the transaction, would become the only *policyholder*.

Under article 28A, a *person* is excluded from article 25A(1) and (2) if he is to enter into the contract to which the *arrangements* relate. The article also excludes from article 25A(1) a *person* who arranges a variation to a contract to which he is or is to become a party.

- (4) Under article 29, an *unauthorised person* who arranges investment transactions, with a view to a transaction between a third party and an *authorised person*, is excluded from article 25(1) and (2) and article 25A(1) and (2) if specified conditions as to advice and remuneration are satisfied. For example, the exclusion is dependent on the third party not receiving any *advice* on the *transactions* from the *unauthorised person* making the arrangements. The exclusion does not apply where the *investment* is a *contract of insurance*.
- (5) Under article 29A, an *unauthorised person* is excluded from the *regulated activity of arranging* for another *person* to vary the terms of a *regulated mortgage contract* entered into after 31 October 2004 (article 25A(1)(b)). This is if the *arranging* is the

result of:

- (a) anything done in the course of the administration of a *regulated mortgage contract* by an *authorised person* under article 62(a); or
  - (b) anything done by the *person* making the arrangements in connection with the administration of a *regulated mortgage contract* under article 62(b).
- (6) Under article 30, arranging investment transactions in connection with lending on the security of *contracts of insurance* is excluded, from article 25(1) and (2) but only where a *person* is not carrying on *insurance mediation* or *reinsurance mediation*.
- (7) Under article 31, making arrangements for finance (in whatever form) to be supplied to a *person* by a third party is excluded from article 25(1) and (2) if the finance is given in exchange for an instrument acknowledging the debt. This mirrors the exclusion from *dealing in investments as principal* in similar circumstances (see *PERG 2.8.4G(3)*).
- (8) Under article 32, arrangements the only purpose of which is to provide finance to enable *persons* to enter into investment transactions are excluded from article 25(2) only. There is no equivalent exemption from article 25(1). But arrangements for the provision of finance will only be caught by that provision if the arrangements actually bring about the transaction.
- (9) Under article 33, making arrangements under which *clients* will be introduced to third parties who will provide independent services (consisting of *advice* or the exercise of discretion in relation to certain investments) is excluded from article 25(2) and article 25(2A) only. The *person* to whom the introduction is made must be of a specified standing (including that of an *authorised person*). The exclusion does not apply where the arrangements relate to a *contract of insurance*.
- (10) Under article 33A, making arrangements for introducing *persons* to:
- (a) an *authorised person* who has *permission* to carry on certain *regulated activities* concerned with *regulated mortgage contracts*; or
  - (b) an *appointed representative* who is able to carry on any of those activities without breaching the *general prohibition*;  
or

- (c) an *overseas person* who carries on any of those activities;
- is excluded from article 25A(2) subject to certain conditions related to the holding of *client money* and the disclosure of certain information.
- (11) Under article 34, a *company* is not carrying on a *regulated activity* under 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*.
- (12) Under article 35, a body carrying out international securities business of a specified type can apply to the Treasury for approval as an international securities self-regulating organisation (ISSRO). Arrangements made in order to carry out the functions of an ISSRO are excluded from article 25(1) and (2). The exclusion applies whether the arrangements are made by the ISSRO or by a *person* acting on its behalf.
- (13) The following exclusions from both article 25(1) and (2) (outlined in *PERG 2.9*) apply in specified circumstances where a *person* makes arrangements:
- (a) while acting as trustee or personal representative (see *PERG 2.9.3G*);
  - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see *PERG 2.9.5G*);
  - (c) in connection with the sale of goods or supply of services (see *PERG 2.9.7G*);
  - (d) in connection with certain transactions by a *group member* or by a participator in a *joint enterprise* (see *PERG 2.9.9G*);
  - (e) in connection with the sale of a *body corporate* (see *PERG 2.9.11G*);
  - (f) in connection with an employee share scheme (see *PERG 2.9.13G*);
  - (g) as an *overseas person* (see *PERG 2.9.15G*);
  - (h) as an *incoming ECA provider* (see *PERG 2.9.18G*);

- (i) as a provider of non-motor goods or services related to travel (see *PERG 2.9.19G*);
- (j) involving the provision, on an incidental basis, of information to *policyholders* or potential *policyholders* about *contracts of insurance* (see *PERG 2.9.19G*);
- (k) that involve a *contract of insurance* covering large risks situated outside the *EEA* (see *PERG 2.9.19G*).

More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in *PERG 5* (Insurance mediation activities).

### Managing investments

2.8.7 G The activities of *persons* appointed under a power of attorney are excluded under article 38 of the *Regulated Activities Order*, from the *regulated activity of managing investments*, if specified conditions are satisfied. The exclusion only applies where a *person* is not carrying on *insurance mediation* or *reinsurance mediation*. In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* manages assets:

- (1) while acting as trustee or personal representative; or
- (2) in connection with the sale of goods or supply of services; or
- (3) that belong to a *group* member or participator in a *joint enterprise*; or
- (4) as an *incoming ECA provider* (see *PERG 2.9.18G*).

### Assisting in the administration and performance of a contract of insurance

2.8.7A G *Assisting in the administration and performance of a contract of insurance* is excluded under article 39B where it is carried on by a *person* acting in the capacity of:

- (1) an expert appraiser; or
- (2) a loss adjuster acting for a relevant insurer; or
- (3) a claims manager acting for a relevant insurer.

The term 'relevant insurer' is defined in article 39B(2).

- 2.8.7B G The following exclusions from *assisting in the administration and performance of a contract of insurance* also apply to a person in specified circumstances:
- (1) while acting as trustee or personal representative (see *PERG 2.9.3G*); or
  - (2) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see *PERG 2.9.5G*); or
  - (3) as an *incoming ECA provider* (see *PERG 2.9.18G*); or
  - (4) as a provider of non-motor goods or services related to travel (see *PERG 2.9.19G*); or
  - (5) that involve the provision, on an incidental basis, of information to *policyholders* or potential *policyholders* about *contracts of insurance* (see *PERG 2.9.19G(2)*); or
  - (6) that involve a *contract of insurance* covering large risks situated outside the *EEA* (see *PERG 2.9.19G*).

#### Safeguarding and administering investments

- 2.8.8 G The exclusions from the *regulated activity of safeguarding and administering investments* are as follows.
- (1) Safeguarding and administration activities carried on by one *person* are excluded if a specified third party undertakes a responsibility for the assets which is no less onerous than it would have been if he were doing the safeguarding and administration himself. The effect of this is that an *authorised person* with *permission* to carry on this *regulated activity* (or in certain circumstances an *exempt person*) can delegate all or part of the activities without the delegate needing to be *authorised* and without loss of protection to the owner of the assets.
  - (2) Introductions to an *authorised person*, or to an *exempt person* acting within the scope of his exemption and in the course of a business, are excluded from that aspect of this *regulated activity* which consists of *arranging safeguarding and administration of assets* by another *person* (see *PERG 2.7.9G*).
  - (3) Certain specified activities (such as currency conversion and document handling) are excluded from being the administration of investments. A *person* who safeguards and administers assets will not be carrying on *regulated activities* if these are the only administration activities in which he engages. This is

because a *person* must be carrying on both the activity of safeguarding and that of administration, or be arranging for both to be carried on by another, before he requires *authorisation* (see *PERG 2.7.9G*).

- (4) The following exclusions apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):
- (a) while acting as trustee or personal representative (see *PERG 2.9.3G*);
  - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see *PERG 2.9.5G*);
  - (c) in connection with the sale of goods or supply of services (see *PERG 2.9.7G*);
  - (d) which belong to a *group* member or participator in a *joint enterprise* (see *PERG 2.9.9G*);
  - (e) in connection with an employee share scheme (see *PERG 2.9.13G*);
  - (f) as an *incoming ECA provider* (see *PERG 2.9.18G*); and
  - (g) that are *contracts of insurance* and, in so doing, provides information to *policyholders* or potential *policyholders* on an incidental basis in the course of his carrying on a business or profession not otherwise consisting of *regulated activities* (see *PERG 2.9.19G(2)*).

#### Sending dematerialised instructions

2.8.9 G Exclusions from the *regulated activity* of *sending dematerialised instructions* apply in relation to certain types of instructions sent in the operation of the system maintained under the Uncertificated Securities Regulations 2001 (SI 2001/3755). The various exclusions relate to the roles played by participating issuers, settlement *banks* and network providers (such as Internet service providers) and to instructions sent in connection with takeover offers (as long as specified conditions are met). In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* sends dematerialised instructions:

- (1) while acting as trustee or personal representative (see *PERG 2.9.3G*);

- (2) on behalf of a *group* member (see *PERG 2.9.3G*);
- (3) as an *incoming ECA provider* (see *PERG 2.9.18G*).

#### Establishing etc collective investment schemes

- 2.8.10 G There is only one exclusion from the range of activities specified as being regulated in relation to *collective investment schemes*. This exclusion relates to *incoming ECA providers* (see *PERG 2.9.18G*). In other cases, the key issue 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 *PERG 2.6.18G*).

#### Establishing etc stakeholder pension schemes

- 2.8.11 G The only exclusion from the range of activities specified as being regulated in relation to *stakeholder pension schemes* relates to *incoming ECA providers* (see *PERG 2.9.18G*).

#### Advising on investments

- 2.8.12 G In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the *regulated activities* of *advising on investments* and *advising on regulated mortgage contracts* (see *PERG 7* (Periodical publications: news services and broadcasts: applications for certification)). Advice given in the course of the administration of a *regulated mortgage contract* by an *authorised person* is also excluded subject to certain conditions. In addition:
- (1) the following exclusions apply in specified circumstances where a *person* is *advising on investments* or *regulated mortgage contracts*:
    - (a) while acting as trustee or personal representative (see *PERG 2.9.3G*);
    - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see *PERG 2.9.5G*); and
    - (c) as an *incoming ECA provider* (see *PERG 2.9.18G*);
  - (2) the following exclusions apply in specified circumstances where a *person* is *advising on investments*:
    - (a) in connection with the sale of goods or supply of services (see *PERG 2.9.7G*);

- (b) to a *group* member or participator in a *joint enterprise* (see *PERG 2.9.9G*);
- (c) in connection with the sale of a *body corporate* (see *PERG 2.9.11G*);
- (d) as an overseas *person* (see *PERG 2.9.15G*);
- (e) that are limited to certain *contracts of insurance* covering risks to non-motor goods or related to travel (see *PERG 2.9.19G*);
- (f) that are *contracts of insurance* covering large risks situated outside the *EEA* (see *PERG 2.9.19G*).

More detailed *guidance* on certain of these exclusions is in *PERG 4* (Regulated activities connected with mortgages) and *PERG 5* (Insurance mediation activities).

#### Lloyd's activities

- 2.8.13 G *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 *PERG 2.9.18G*). Otherwise the only exclusions that apply concern the *regulated activity* of *arranging deals* in its application to business carried on at Lloyd's.

#### Entering funeral plan contracts

- 2.8.14 G *Entering as provider into a funeral plan contract* is not treated as a *regulated activity* where:
- (1) the contract is one under which the sums received from the customer will be applied towards a *contract of insurance* on the life of the *person* whose funeral is to be provided or be held on trust for the purpose of providing a funeral; in each case certain specified conditions must be met for the exclusion to apply; or
  - (2) the customer and the provider intend or expect that the funeral will be provided within one *month* of the contract being entered into; or
  - (3) it is provided as an *electronic commerce activity* by an *incoming ECA provider* (see *PERG 2.9.18G*).

#### Administering regulated mortgage contracts

- 2.8.14A G Exclusions from the *regulated activity* of *administering a regulated*

*mortgage contract* are provided where *persons* arrange for administration by an *authorised person* and where *persons* administer under an agreement with an *authorised person*. These exclusions are subject to certain conditions and are explained in greater detail in *AUTH* 4.8 (Administering a regulated mortgage contract).

## Agreeing

- 2.8.15 G A *person* who agrees to carry on certain other *regulated activities* (which is itself a *regulated activity* – see *PERG* 2.7.21G) 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 *PERG* 2.9.12G). For this exclusion to apply, the agreement must be one to arrange deals, *manage investments*, *assist in the administration and performance of a contract of insurance*, *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 *PERG* 2.7.21G). 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 *PERG* 2.8.3G). This is still a *regulated activity* when provided as an *electronic commerce activity*.
- 2.8.16 G To the extent that an exclusion applies in relation to a *regulated activity*, then 'agreeing' to carry on an activity falling within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order*.
- 2.9 Regulated activities: exclusions applicable in certain circumstances
- 2.9.1 G The various exclusions outlined below deal with a range of different circumstances.
- (1) Each set of circumstances described in *PERG* 2.9.3G to *PERG* 2.9.17G has some application to several *regulated activities* relating to *securities*, *relevant investments* or *regulated mortgage contracts*. They have no effect in relation to the separate *regulated activities* of *accepting deposits*, *issuing e-money*, *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* or *entering as provider into a funeral plan contract*. Within each set of circumstances, the *Regulated Activities Order*, in 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

involve entering directly into transactions while others relate to the provision of services).

- (2) The exclusion described in *PERG 2.9.18G* 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*.

- 2.9.2 G The exclusions grouped together in the *Regulated Activities Order* are described below in this chapter in general terms. The exact terms of each exclusion will need to be considered by any *person* who is considering whether they need *authorisation*. Each description is accompanied by an indication of which *regulated activities* are affected.

Trustees, nominees or personal representatives

- 2.9.3 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal*;
- (2) *arranging (bringing about) deals in investments, arranging (bringing about) regulated mortgage contracts, making arrangements with a view to transactions in investments and making arrangements with a view to regulated mortgage contracts*;
- (3) *managing investments*;
- (4) *assisting in the administration and performance of a contract of insurance*;
- (5) *safeguarding and administering investments*;
- (6) *sending dematerialised instructions*;
- (7) *advising on investments or regulated mortgage contracts*;
- (8) *entering into regulated mortgage contracts*; and
- (9) *administering regulated mortgage contracts*.

The exclusion is, however, disapplied where a *person* is carrying on *insurance mediation* or *reinsurance mediation*. This is due to article 4(4A) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to *insurance mediation activities* is in *PERG 5* (*Insurance mediation activities*).

- 2.9.4 G A *person* carrying on certain *regulated activities* does not require *authorisation* in specified circumstances if he is acting in a representative capacity. The representative capacities covered by the exclusions depend on the *regulated activity* concerned but, in most cases, the focus is on *persons* who are acting as trustee or personal representative. In broad terms, the exclusions apply to specified transactions, or activities, that are part of the discharge of his general obligations by the trustee or representative when he is acting as such. Many of the exclusions require that the trustee or representative must not hold himself out as providing services consisting of the *regulated activity* in question. In addition, he must not receive remuneration that is additional to any he receives for acting in the representative capacity (although a *person* is not to be regarded as receiving additional remuneration merely because his remuneration as trustee or representative is calculated by reference to time spent). The exclusions for *entering into* and for *administering regulated mortgage contracts*, however, work on a different basis. They apply where the activity relates to a *regulated mortgage contract* under which the borrower is a beneficiary.

#### Professions or business not involving regulated activities

- 2.9.5 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:
- (1) *dealing in investments as agent*;
  - (2) *arranging (bringing about) deals in investments, arranging (bringing about) regulated mortgage contracts, making arrangements with a view to transactions in investments and making arrangements with a view to regulated mortgage contracts*;
  - (3) *assisting in the administration and performance of a contract of insurance*;
  - (4) *safeguarding and administering investments*; and
  - (5) *advising on investments or regulated mortgage contracts*.

The exclusion is, however, disapplied where a *person* is carrying on *insurance mediation* or *reinsurance mediation*. This is due to article 4(4A) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to *insurance mediation activities* is in *PERG 5* (Insurance mediation activities).

- 2.9.6 G The exclusions apply where the *regulated activity* is carried out in the course of a profession or business which does not otherwise consist of the carrying on of *regulated activities* in the *United Kingdom*.

However, activities are only excluded to the extent that they may reasonably be regarded as a necessary part of the other services provided in the course of the profession or business. The exclusion does not apply if separate remuneration is received in respect of any *regulated activity* that is carried on. (See separate *guidance* for *authorised professional firms* in *PROF.*)

#### Sale of goods and supply of services

- 2.9.7 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:
- (1) *dealing in investments as principal;*
  - (2) *dealing in investments as agent;*
  - (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
  - (4) *managing investments;*
  - (5) *safeguarding and administering investments; and*
  - (6) *advising on investments.*
- 2.9.8 G Broadly speaking, the exclusions focus on cases where the main business of a *person* is to sell goods or supply services but where certain activities may have to be carried on for the purposes of that business which would otherwise be *regulated activities*. The exclusions are not available where the customer to whom goods are sold or services are supplied is an individual. They are also not available where what is at issue is a transaction entered into, or service provided, in relation to rights under a *contract of insurance* or *units* in a *collective investment scheme* (or rights to, or interests in, either).

#### Group and joint enterprises

- 2.9.9 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:
- (1) *dealing in investments as principal;*
  - (2) *dealing in investments as agent;*
  - (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
  - (4) *managing investments;*

- (5) *safeguarding and administering investments*;
- (6) *sending dematerialised instructions*; and
- (7) *advising on investments*.

2.9.10 G These exclusions apply to intra-group dealings and activities and to dealings or activities involving participators in a joint enterprise which take place for the purposes of, or in connection with, the enterprise. The general principle here is that, as long as activities that would otherwise be *regulated activities* take place wholly within a group of companies, then there is no need for *authorisation*. The same principle applies to dealings or activities that take place wholly within a *joint enterprise* entered into for commercial purposes related to the participators' unregulated business. The exclusions in *PERG* 2.9.9G(2), (3), (4) and (7) are disapplied where they concern a *contract of insurance*. Guidance on exclusions relevant to *insurance mediation activities* is in *PERG* 5 (Insurance mediation activities).

#### Sale of body corporate

2.9.11 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal*;
- (2) *dealing in investments as agent*;
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments*; and
- (4) *advising on investments*.

2.9.12 G The exclusions apply in relation to transactions to *buy or sell shares* in a *body corporate* where, in broad terms:

- (1) the transaction involves the acquisition or disposal of a least 50 per cent of the voting shares in the *body corporate* and is, or is to be, between certain specified kinds of *person*; or
- (2) the object of the transaction may otherwise reasonably be regarded as being the acquisition of day-to-day control of the affairs of the *body corporate*.

These exclusions also apply to transactions that are entered into for the purposes of the above transactions (such as transactions involving the offer of *securities* in the offeror as consideration or part consideration for the sale of the *shares* in the *body corporate*). These exclusions do not have effect in relation to shares in an *open-ended investment company*. The exclusions in *PERG* 2.9.11G(2), (3) and (4) are disapplied where they concern a *contract of insurance*.

*Guidance on exclusions relevant to insurance mediation activities is in PERG 5 (Guidance on insurance mediation activities).*

#### Employee share schemes

2.9.13 G This group of exclusions applies, in specified circumstance, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (4) *safeguarding and administering investments.*

2.9.14 G In broad terms, the exclusions apply to activities which further an employee share scheme, or are carried on in operation of such a scheme. They apply to activities carried on by the *company* whose securities or debentures (which are given an extended meaning for this exclusion) are the subject of the scheme. They also apply to activities of any *company* in the same *group* or of any trustee who holds certain types of securities or debentures under the scheme.

#### Overseas persons

2.9.15 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, arranging (bringing about) regulated mortgage contracts and making arrangements with a view to regulated mortgage contracts;*
- (4) *advising on investments;*
- (5) *entering into regulated mortgage contracts;*
- (6) *administering regulated mortgage contracts; and*
- (7) *agreeing to carry on the regulated activities of managing investments, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the performance and administration of*

*a contract of insurance, safeguarding and administering investments or sending dematerialised instructions.*

- 2.9.16 G An *overseas person* is defined as a *person* who carries on what would be *regulated activities* (including any activity that would otherwise be excluded from being a *regulated activity* by virtue of the exclusions for *overseas persons* referred to in *PERG 2.9.15G*) but who does not do so, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*. Where a *person* does not have a permanent place of business in the *United Kingdom*, he will not, in any event, need to rely on these exclusions unless what he does is regarded as carried on in the *United Kingdom* (see *PERG 2.4*).
- 2.9.17 G The exclusions are available, for *regulated activities* other than those that relate to *regulated mortgage contracts*, in the two broad cases set out below. For some of these *regulated activities*, the exclusions apply in each case. In others, they apply in only one.
- (1) The first case is where the nature of the *regulated activity* requires the direct involvement of another *person* and that *person* is *authorised* or exempt (and acting within the scope of his exemption). For example, this might occur where the *person* with whom an *overseas person* deals is an *authorised person* or where the arrangements he makes are for transactions to be entered into by such a *person*.
  - (2) The second case is where a particular *regulated activity* is carried on as a result of what is termed a 'legitimate approach'. An approach to an *overseas person* that has not been solicited by him in any way, or has been solicited in a way that does not contravene the restrictions on *financial promotion* in section 21 of the *Act*, is a legitimate approach. An approach that is made by him in a way that does not contravene section 21 of the *Act* is also a legitimate approach. In such circumstances, the *overseas person* can, without requiring *authorisation*, enter into deals with (or on behalf of) a *person* in the *United Kingdom*, give advice in the *United Kingdom* or enter into agreements in the *United Kingdom* to carry on certain *regulated activities*. 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 *PERG 8* (Financial promotion and related activities)).
- 2.9.17A G The exclusions for *overseas persons* who carry on certain *regulated activities* related to *regulated mortgage contracts* work in a different way. They depend on the residency of the borrower or borrowers. *Guidance* on these exclusions is in *PERG 4.11* (Link between

activities and the United Kingdom).

#### Incoming ECA providers

- 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 2002/2157). 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 *PERG 2.8.3G*). However, services provided off-line in the *United Kingdom* (that is, other than as an *electronic commerce activity*) by such a firm which amount to *regulated activities* still require *authorisation*. *ECO* provides *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*).

#### Insurance mediation activities

- 2.9.19 G The exclusions in this group apply to certain *regulated activities* involving certain *contracts of insurance*. The exclusions and the *regulated activities* to which they apply are as follows.
- (1) The first exclusion of this kind relates to certain activities carried on by a provider of non-motor goods or services related to travel in connection with *general insurance contracts* only. The contracts must be for five years duration or less and have

an annual premium of no more than €500. The contract must cover breakdown or loss of or damage to non-motor goods supplied by the provider or loss of or damage to baggage and other risks linked to travel services booked with the provider. There must not be any liability risk cover other than where this is ancillary to the main risk covered in a travel policy). The insurance must be complementary to the goods or services being supplied by the provider in the course of his carrying on a business or profession not otherwise consisting of *regulated activities*, and the policy must be in standard form. This exclusion applies where the *regulated activities* concerned are:

- (a) *dealing in investments as agent;*
  - (b) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
  - (c) *assisting in the administration and performance of a contract of insurance; and*
  - (d) *advising on investments.*
- (2) The second exclusion applies where information is provided to a *policyholder* by a *person* on an incidental basis in the course of that *person's* profession or business that does not otherwise consist of *regulated activities*. This exclusion applies where the *regulated activities* are:
- (a) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
  - (b) *managing investments;*
  - (c) *assisting in the administration and performance of a contract of insurance; and*
  - (d) *safeguarding and administering investments;*
- (3) The third exclusion applies to certain *general insurance contracts* covering large risks where the risk is situated outside the *EEA*. This exclusion applies where the *regulated activities* concerned are:
- (a) *dealing in investments as agent;*
  - (b) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in*

*investments;*

- (c) *assisting in the administration and performance of a contract of insurance; and*
- (d) *advising on investments.*

*Guidance* on these and other exclusions relevant to *insurance mediation activities* is in *PERG 5* (Insurance mediation activities).

- 2.10 Persons carrying on regulated activities who do not need authorisation
- 2.10.1 G There are various provisions that disapply the *general prohibition* from specific *persons* in relation to the carrying on by them of particular *regulated activities*. There is, however, no general provision for *persons* to apply for an exemption.
- 2.10.2 G *Persons* may be exempted from the *general prohibition* in relation to one or more particular *regulated activities*. The extent of any exemption may also be limited to specified circumstances (such as where another *person* who is *authorised* and has relevant *permission* has accepted responsibility for the *regulated activities* in question) or subject to specified conditions (such as a requirement that the activity is not carried on for pecuniary gain).
- 2.10.3 G The *Act* provides that *appointed representatives* (see *PERG 2.10.5G*), *recognised investment exchanges* and *recognised clearing houses* (see *PERG 2.10.6G*) and certain other *persons* exempt under miscellaneous provisions (see *PERG 2.10.7G*) are *exempt persons*. Members of Lloyd's and members of the professions are not '*exempt persons*' as such, but the *general prohibition* in section 19 of the *Act* only applies to them in certain circumstances. The distinction is significant in relation to various provisions (such as those in the *Regulated Activities Order*) that apply only to transactions and other activities that involve *exempt persons*.
- 2.10.4 G *Appointed representatives* and the *persons* exempt under miscellaneous provisions cannot be exempt in relation to some *regulated activities* and *authorised* in relation to others. If a *person* is already *authorised*, and proposes to carry on additional *regulated activities* in respect of which he would otherwise be exempt as an *appointed representative* or under miscellaneous provisions, he must seek an extension to his existing *permission* to cover those additional activities. A *person* in either of these categories who would otherwise be exempt in relation to particular activities will, if he becomes *authorised*, no longer be able to rely on the exemption.

Appointed representatives

- 2.10.5 G A *person* is exempt if he is an *appointed representative* of an *authorised person*. See SUP 12 (Appointed representatives). But where an *appointed representative* carries on *insurance mediation* or *reinsurance mediation* he will not be exempt unless he is included on the register kept by the FSA under article 93 of the *Regulated Activities Order* (Duty to maintain a record of unauthorised persons carrying on insurance mediation activities) (see PERG 5.13 (Appointed representatives)).

#### Recognised Investment Exchanges and Recognised Clearing Houses

- 2.10.6 G Investment exchanges and *clearing houses* can apply for recognition under Part XVIII of the *Act* (Recognised investment exchanges and clearing houses.) See REC.

#### Particular exempt persons

- 2.10.7 G Various named *persons* are exempted by Order made by the Treasury under section 38 of the *Act* from the need to obtain *authorisation* (the *Exemption Order*). Some of the exemptions are subject to restrictions as to the circumstances in which they apply. For example, a *person* is only exempt when acting in a particular capacity or for particular purposes.
- 2.10.8 G The exemptions apply so as to confer exemption on *persons* from the *general prohibition* in respect of four distinct categories of *regulated activities*.
- (1) The first category is carrying on any *regulated activity*, apart from *effecting* or *carrying out contracts of insurance* (or agreeing to do so). *Exempt persons* here are generally supranational bodies of which the *United Kingdom* or another *EEA State* is a member.
  - (2) The second category is the *regulated activity* of *accepting deposits*. *Exempt persons* here include municipal banks, local authorities, charities and *industrial and provident societies*.
  - (3) The third category is carrying on any of those *regulated activities* relating to *securities* or *relevant investments* or to 'any property' (or agreeing to do so). *Exempt persons* here include *persons* whose activities are subject to a certain degree of control or oversight by the Government.
  - (4) The fourth category is carrying on one or more specified *regulated activities* (or agreeing to do so). *Exempt persons* here cover a range of different *persons*.

#### Members of Lloyd's

- 2.10.9 G Several activities carried on in connection with business at Lloyd's are *regulated activities* in respect of which *authorisation* must be obtained. These include the *regulated activities* of *advising on syndicate participation at Lloyd's* or *managing the underwriting capacity of Lloyd's syndicate as a managing agent at Lloyd's* or *arranging (bringing about) deals in investments* or *making arrangements with a view to transactions in investments* for another in relation to such participation or underwriting capacity.
- 2.10.10 G But under section 316 of the *Act* (Direction by the FSA) the *general prohibition* does not apply to a *person* who is a member of the *Society of Lloyd's* unless the *FSA* has made a direction that it should apply. The *general prohibition* is disapplied in relation to any *regulated activity* carried on by a member relating to *contracts of insurance* written at Lloyd's. Directions can be made by the *FSA* in relation to individual *members* or the *members* of the *Society of Lloyd's* taken together. Alternatively, instead of being required to obtain *authorisation*, a member of the *Society of Lloyd's* may, as a result of a direction under section 316 of the *Act*, become subject to specific provisions of the *Act* even though he is not an *authorised person*.
- 2.10.11 G A *person* who ceased to be an *underwriting member* at any time on or after 24 December 1996 may, without *authorisation*, *carry out contracts of insurance* he has underwritten at Lloyd's. But this is subject to any requirements or *rules* that the *FSA* may impose under sections 320 to 322 of the *Act* (Former underwriting members).

#### Members of the professions

- 2.10.12 G The *general prohibition* does not in certain circumstances apply to a *person* providing professional services that are supervised and regulated by a professional body designated by the Treasury under section 326 of the *Act* (Designation of professional bodies) (see *PROF*). Certain of the exclusions from *regulated activities* outlined in *PERG 2.8* and *PERG 2.9* will be relevant to members of *designated professional bodies*. The regime outlined below applies only where no exclusion applies and a *person* will be carrying on a *regulated activity*.
- 2.10.13 G Such a *person* may carry on *regulated activities* if the conditions outlined below are met, that is the *person*:
- (1) is not affected by an order or direction made by the *FSA* under section 328 or 329 of the *Act* (Directions and orders in relation to the general prohibition) which has the effect of re-imposing the *general prohibition* in any particular case;
  - (2) is, or is controlled by, a member of a profession;

- (3) does not receive any pecuniary reward or other advantage from the *regulated activities* which is given to him by any *person* other than his client (or if he does, he must account to his client for it);
- (4) provides any service in the course of carrying on the *regulated activities* in a manner which is incidental to the provision of professional services;
- (5) carries on only those *regulated activities* which are permitted by the rules of the professional body or in respect of which they are an *exempt person*; and
- (6) is not an *authorised person*.

2.10.14 G The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the *Act* (Exemption from the general prohibition) (the *Non-Exempt Activities Order*). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

- (1) *accepting deposits*;
- (2) *effecting or carrying out contracts of insurance*;
- (3) *dealing in investments as principal*;
- (4) *establishing, operating or winding up a collective investment scheme*;
- (5) *establishing, operating or winding up a stakeholder pension scheme*;
- (6) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (7) *entering as provider into funeral plan contracts*;
- (8) agreeing to do certain of the above activities.

2.10.15 G In addition, there are restrictions on carrying on (or agreeing to carry on) certain other *regulated activities*. These relate to *managing investments, advising on investments or regulated mortgage contracts, advising on syndicate participation at Lloyd's and entering into a regulated mortgage contract or administering a regulated mortgage contract*.

2.10.16 G A *person* carrying on *regulated activities* under the regime for

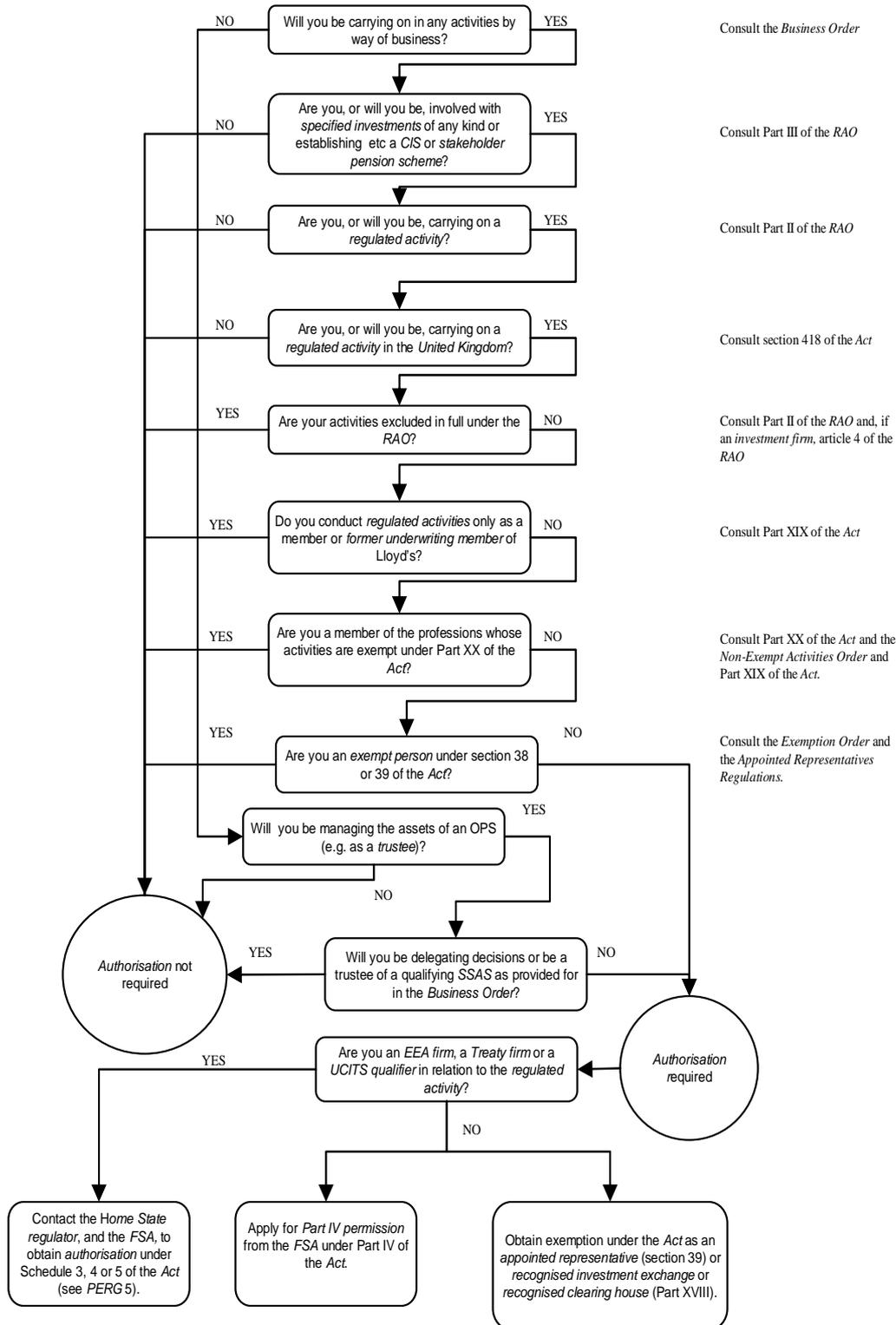
members of the professions will be subject to rules made by the professional body designated by the Treasury. Such bodies are obliged to make rules governing the carrying on by their members of those *regulated activities* that they are able to carry on without *authorisation* under the *Act*. Where such a *person* is carrying on *insurance mediation* or *reinsurance mediation*, he must also be included on the register kept by the *FSA* under article 93 of the *Regulated Activities Order* (Duty to maintain a record of unauthorised persons carrying on insurance mediation activities) (see *PERG 5.10* (Exemptions)).

2.11 What to do now ?

2.11.1 G Any *person* who concludes or is advised that he will need to make an application for *Part IV permission* should look at *PERG 2 Annex 2G* to determine the categories of *specified investment* and *regulated activities* that are relevant to the next step and should then refer to *AUTH 3* for details of the application process.

PERG 2 Annex 1G Authorisation and regulated activities

Do you need authorisation?



## PERG 2 Annex 2G

### Regulated activities and the permission regime

#### 1 Table

1.1 G Table 1 is designed to relate the *permission* regime to *regulated activities*. Section 42(6) of the *Act* gives the *FSA* the power to describe the *regulated activity* or *regulated activities* for which it gives *permission* in such manner as the *FSA* considers appropriate. Table 1 details how the *FSA* has chosen to describe the *regulated activities* and *specified investments* for the purposes of the *permission* regime.

1.2 G In an application for *Part IV permission*, an applicant will need to state the *regulated activities* it requires *permission* to carry on. This will involve an applicant identifying the *regulated activities* and the *specified investments* associated with those activities for which it requires *Part IV permission*.

1.3 G Part II of the *Regulated Activities Order* (Specified activities) specifies the activities for the purposes of section 22 of the *Act*. This section states that an activity is a *regulated activity* if it is an activity of a specified kind which is carried on by way of business and:

- (1) relates to an *investment* of a specified kind; or
- (2) in the case of an activity specified for the purposes of section 22(1)(b) of the *Act*, is carried on in relation to property of any kind.

Part III of the *Regulated Activities Order* (Specified investments) specifies the *investments* referred to in (1).

1.4 G Column 1 of Table 1 lists the *regulated activities* and column 2 lists the associated *specified investments*. Descriptions of some categories of *specified investments* are expanded in Tables 2 and 3. There are notes to all three tables which provide further explanation where appropriate.

1.5 G A reference to an article in the tables in *PERG 2 Ann 2G* is to the relevant article in the *Regulated Activities Order*.

## 2 Table

<b>Table 1: Regulated Activities</b> [See note 1 to Table 1]	
<b>Regulated activity</b>	<b>Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on</b>
<b>Accepting deposits</b>	
(a) <i>accepting deposits</i> (article 5)	<i>deposit</i> (article 74)
<b>Issuing electronic money</b>	
(aa) <i>issuing electronic money</i> (article 9B)	<i>electronic money</i> (article 74A)
<b>Insurance business</b>	
(b) <i>effecting contracts of insurance</i> (article 10(1))	<i>contract of insurance</i> (article 75) [expanded in Table 2]
(c) <i>carrying out contracts of insurance</i> (article 10(2))	
<b>Designated investment business</b> [see notes 1A and 1B to Table 1]	
(d) <i>dealing in investments as principal</i> (article 14) [see note 2 to Table 1]	(in relation to (d) to (l)) <i>security</i> [expanded in Table 3]; or  <i>contractually based investment</i> [expanded in Table 3.]  (in relation to (e) to (g) and (j) only) <i>a long-term care insurance contract which is a pure protection contract</i>
(e) <i>dealing in investments as agent</i> (article 21) [see notes 1B and 2 to Table 1]	
(f) <i>arranging (bringing about) deals in investments</i> (article 25(1)) [see note 1B to Table 1] [also see Sections of Table 1 headed 'The Lloyd's market' and 'Regulated mortgage activity']	
(g) <i>making arrangements with a view to transactions in investments</i> (article 25(2)) [see note 1B to Table 1] [also see Sections of Table 1 headed 'The Lloyd's market' and 'Regulated mortgage activity']	
(h) <i>managing investments</i> (article 37) [see note 3 to Table 1]	

<p>(i) <i>safeguarding and administering investments</i> (article 40) [see note 3 Table 1]</p> <p>For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</p> <p>(i) <i>safeguarding and administration of assets (without arranging)</i>; and</p> <p>(ii) <i>arranging safeguarding and administration of assets.</i></p> <p>(j) <i>advising on investments</i> (article 53) [see note 1B to Table 1] [also see Section of Table 1 headed 'Regulated mortgage activity']</p> <p>For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</p> <p>(i) <i>advising on investments (except pension transfers and pension opt-outs)</i>; and</p> <p>(ii) <i>advising on pension transfers and pension opt-outs</i> [see note 4 to Table 1]</p> <p>(k) <i>sending dematerialised instructions</i> (article 45(1))</p> <p>(l) <i>causing dematerialised instructions to be sent</i> (article 45(2))</p>	
<p>(m) <i>establishing, operating or winding up a collective investment scheme</i> (article 51)</p> <p>For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</p> <p>(i) <i>establishing, operating or winding up a regulated collective investment scheme</i>; and</p> <p>(ii) <i>establishing, operating or winding up an unregulated collective investment scheme.</i></p> <p>(n) <i>acting as trustee of an authorised unit trust scheme</i> (article 51)</p> <p>(o) <i>acting as the depositary or sole director of an open-ended investment company</i> (article 51)</p> <p>(p) <i>establishing, operating or winding up a stakeholder pension scheme</i> (article 52)</p>	[see note 5 to Table 1]
<p>(pp) <i>providing basic advice on a stakeholder product</i> (article 52B)</p>	those <i>specified investments</i> that are also a <i>stakeholder product</i> [see note 7]

<b>Insurance mediation activity [see note 5A to Table 1]</b>	
<p>(pa) <i>dealing in investments as agent</i> (article 21)</p> <p>(pb) <i>arranging (bringing about) deals in investments</i> (article 25(1))</p> <p>(pc) <i>making arrangements with a view to transactions in investments</i> (article 25(2))</p> <p>(pd) <i>assisting in the administration and performance of a contract of insurance</i> (article 39A)</p> <p>(pe) <i>advising on investments</i> (article 53)</p> <p>For the purpose of the <i>permission</i> regime, this <i>regulated activity</i> is sub-divided into:</p> <p>(i) <i>advising on investments (except pension transfers or pension opt-outs);</i></p> <p>(ii) <i>advising on pension transfers or pension opt-outs</i> [See note 5E to Table 1].</p>	<p><i>life policy</i> [see note 5B to Table 1]</p> <p><i>pure protection contract</i> [see note 5C to Table 1]</p> <p><i>general insurance contract</i> [see note 5D to Table 1]</p> <p><i>rights to or interests in investments</i> (article 89) in so far as they relate to a <i>life policy</i></p>
<b>The Lloyd's market [see note 6 to Table 1]</b>	
(q) <i>advising on syndicate participation at Lloyd's</i> (article 56)	membership of a Lloyd's syndicate (article 86(2))
(r) <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> (article 57)	<i>underwriting capacity of a Lloyd's syndicate</i> (article 86(1))
(s) <i>arranging (bringing about) deals in investments</i> (article 25(1))	<i>underwriting capacity of a Lloyd's syndicate</i> (article 86(1))
(t) <i>making arrangements with a view to transactions in investments</i> (article 25(2))	<p><i>membership of a Lloyd's syndicate</i> (article 86(2))</p> <p><i>rights to or interests in investments</i> (article 89) in so far as they relate to <i>underwriting capacity of a Lloyd's syndicate</i> or <i>membership of a Lloyd's syndicate</i></p>
<b>Funeral plan providers</b>	
(u) <i>entering as provider into a funeral plan contract</i> (article 59) [see note 1A to Table 1]	<i>funeral plan contract</i> (article 87)

<b>Regulated mortgage activity</b>	
(v) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25(A)(1))	<i>regulated mortgage contract</i> (article 88)
(w) <i>making arrangements with a view to regulated mortgage contracts</i> (article 25(A)(2))	
(x) <i>advising on regulated mortgage contracts</i> (article 53A)	
(y) <i>entering into a regulated mortgage contract</i> (article 61(1))	
(z) <i>administering a regulated mortgage contract</i> (article 61(2))	

## Notes to Table 1

### Note 1:

In addition to the *regulated activities* listed in Table 1, article 64 of the *Regulated Activities Order* specifies that *agreeing to carry on a regulated activity* is itself a *regulated activity* in certain cases. This applies in relation to all the *regulated activities* listed in Table 1 apart from:

- *accepting deposits* (article 5);
- *issuing electronic money* (article 9B);
- *effecting and carrying out contracts of insurance* (article 10);
- *establishing, operating or winding up a collective investment scheme* (article 51(1)(a));
- *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));
- *acting as the sole depositary or sole director of an open-ended investment company* (article 51(1)(c)); and
- *establishing, operating or winding up a stakeholder pension scheme* (article 52).

*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 in articles 5, 9B, 10, 51 and 52 detailed above).

### Note 1A:

*Funeral plan contracts* are *contractually based investments*. Accordingly, the following are *regulated activities* when carried on in relation to a *funeral plan contract*: (a) *arranging (bringing about) deals in investments*, (b) *making arrangements with a view to transactions in investments*, (c) *managing investments*, (d) *safeguarding and administering investments*, (e) *advising on investments*, (f) *sending dematerialised instructions* and (g) *causing dematerialised instructions to be sent* (as well as agreeing to carry on each of the activities listed in (a) to (g)). However, they are not *designated investment business*.

### Note 1B:

*Life policies* are *contractually based investments*. Where the *regulated activities* listed as *designated investment business* in (e) to (g) and (j) are carried on in relation to a *life policy*, these activities also count as 'insurance mediation activities'. The full list of *insurance mediation activities* is set out in (pa) to (pe). The *regulated activities* of agreeing to carry on each of these activities will, if carried on in relation to a *life policy*, also come within both *designated investment business* and *insurance mediation activities*.

## Notes to Table 1

### Note 2:

For the purposes of the *regulated activities* of *dealing in investments as principal* (article 14) and *dealing in investments as agent* (article 21), the definition of *contractually based investments* [expanded in Table 3] excludes a *funeral plan contract* (article 87) and rights to or interests in *funeral plan contracts*.

### Note 3:

The *regulated activities* of *managing investments* (article 37) and *safeguarding and administering investments* (article 40) may apply in relation to any assets, in particular circumstances, if the assets being managed or safeguarded and administered include, (or may include), any *security* or *contractually based investment*.

### Note 4:

For the purposes of the *permission* regime, the activity in (j)(ii) of *advising on pension transfers and pension opt-outs* is carried on in respect of the following *specified investments*:

- *unit* (article 81);
- *stakeholder pension scheme* (article 82);
- *life policy* (explained in note 5); and
- *rights to or interests in investments* in so far as they relate to a *unit*, a *stakeholder pension scheme* or a *life policy*.

### Note 5:

Article 4(2) of the *Regulated Activities Order* specifies the activities (m) to (p) for the purposes of section 22(1)(b) of the *Act*. That is, these activities will be *regulated activities* if carried on in relation to any property and are not expressed as relating to a *specified investment*.

### Note 5A:

Where they are carried on in relation to a *life policy*, the activities listed as *insurance mediation activities* in (pa) to (pe) (as well as the *regulated activity* of agreeing to carry on those activities) are also *designated investment business*.

### Note 5B:

*Life policy* is the term used in the *Handbook* to mean 'qualifying contract of insurance' (as defined in article 3(1) of the *Regulated Activities Order*) and, except in *COB 3*, *PERG 5* and *PERG 8* the term also includes a *long term care insurance contract* which is a *pure protection contract*.

## Notes to Table 1

### Note 5C:

*Pure protection contract* is the term used in the *Handbook* to mean a *long-term insurance contract* which is not a *life policy*.

### Note 5D:

*General insurance contract* is the term used in the *Handbook* to mean *contract of insurance* within column 1 of Table 2.

### Note 5E:

For the purposes of the *permission* regime, the activity in (pe)(ii) of *advising on pension transfers and pension opt-outs* is carried on in respect of the following *specified investments*:

- *life policy* (explained in note 5A); and
- *rights to or interests in investments* in so far as they relate to a *life policy*.

### Note 6:

Section 315 of the *Act* (The Society: authorisation and permission) states that the *Society of Lloyd's* has *permission* to carry on the *regulated activities* referred to in that section, one of which is specified in article 58 of the *Regulated Activities Order*. This *permission* is unique to the *Society of Lloyd's*.

### Note 7:

A *stakeholder product* is defined in the *Glossary* as:

- an investment of a kind specified in the *Stakeholder Regulations*;
- a *stakeholder pension scheme*; and
- a *stakeholder CTF*.

## 4 Table

Table 2: Contracts of insurance		
<b>Contract of insurance (article 75 of the RAO)</b>		
(a) <i>general insurance contract</i> (Part I of Schedule 1 to the <i>Regulated Activities Order</i> )		(b) <i>long-term insurance contract</i> (Part II of Schedule 1 to the <i>Regulated Activities Order</i> )
Number		
1	<i>Accident</i> (paragraph 1)	<i>life and annuity</i> (paragraph I)
2	<i>Sickness</i> (paragraph 2)	<i>marriage and birth</i> (paragraph II)
3	<i>Land vehicles</i> (paragraph 3)	<i>linked long-term</i> (paragraph III)
4	<i>Railway rolling stock</i> (paragraph 4)	<i>permanent health</i> (paragraph IV)
5	<i>Aircraft</i> (paragraph 5)	<i>tontines</i> (paragraph V)
6	<i>Ships</i> (paragraph 6)	<i>capital redemption</i> (paragraph VI)
7	<i>Goods in transit</i> (paragraph 7)	<i>pension fund management</i> (paragraph VII)
8	<i>fire and natural forces</i> (paragraph 8)	<i>collective insurance</i> (paragraph VIII)
9	<i>damage to property</i> (paragraph 9)	<i>social insurance</i> (paragraph IX)
10	<i>motor vehicle liability</i> (paragraph 10)	
11	<i>aircraft liability</i> (paragraph 11)	
12	<i>liability of ships</i> (paragraph 12)	
13	<i>general liability</i> (paragraph 13)	
14	<i>credit</i> (paragraph 14)	
15	<i>suretyship</i> (paragraph 15)	
16	<i>miscellaneous financial loss</i> (paragraph 16)	
17	<i>legal expenses</i> (paragraph 17)	
18	<i>assistance</i> (paragraph 18)	
<b>Notes to Table 2</b>		
Note 1:		
See <i>IPRU(INS)</i> Ann 10.2 Part II for the groups of <i>classes</i> of <i>general insurance business</i> from the Annex to the <i>First non-Life Directive</i> .		
Note 2:		
See <i>IPRU(INS)</i> 11.8 and the definition of <i>ancillary risks</i> in <i>IPRU(INS)</i> and <i>AUTH</i> 3.12.6G to <i>AUTH</i> 3.12.12G for <i>guidance</i> on the treatment of supplementary and ancillary provisions in relation to <i>contracts of insurance</i> .		

<b>Table 3: Securities, contractually based investments and relevant investments [see notes 1 and 2 to Table 3]</b>		
<b>Security (article 3(1))</b>	<b>Contractually based investment (article 3(1))</b>	<b>Relevant investments (article 3(1))</b>
<p><i>share</i> (article 76)</p> <p><i>debenture</i> (article 77)</p> <p><i>government and public security</i> (article 78)</p> <p><i>warrant</i> (article 79)</p> <p><i>certificate representing certain security</i> (article 80)</p> <p><i>unit</i> (article 81)</p> <p><i>stakeholder pension scheme</i> (article 82)</p> <p><i>rights to or interests in investments</i> (article 89) in so far as they relate to any of the above categories of <i>security</i></p>	<p><i>option</i> (article 83)</p> <p>For the purposes of the <i>permission</i> regime, <i>option</i> is subdivided into:</p> <p>(i) <i>option</i> (excluding a <i>commodity option</i> and an <i>option</i> on a <i>commodity future</i>);</p> <p>(ii) <i>commodity option</i> and <i>option</i> on a <i>commodity future</i>.</p> <p><i>future</i> (article 84)</p> <p>For the purposes of the <i>permission</i> regime, <i>future</i> is subdivided into:</p> <p>(i) <i>future</i> (excluding a <i>commodity future</i> and a <i>rolling spot forex contract</i>);</p> <p>(ii) <i>commodity future</i>;</p> <p>(iii) <i>rolling spot forex contract</i>.</p> <p><i>contract for differences</i> (article 85)</p> <p>For the purposes of the <i>permission</i> regime, <i>contract for differences</i> is subdivided into:</p> <p>(i) <i>contract for differences</i> (excluding a <i>spread bet</i> and a <i>rolling spot forex contract</i>);</p> <p>(ii) <i>spread bet</i>;</p> <p>(iii) <i>rolling spot forex contract</i>.</p> <p><i>life policy</i> (but excluding a <i>long-term care insurance contract</i> which is a <i>pure protection contract</i>) [see note 5B to Table 1]</p> <p><i>funeral plan contract</i> (article 87) [see note 1A to Table 1]</p> <p><i>rights to or interests in investments</i> (article 89) in so far as they relate to any of the above categories of <i>contractually based investment</i>.</p>	<p><i>contractually based investments</i> (article 3(1))</p> <p><i>pure protection contract</i> [see note 5C to Table 1]</p> <p><i>general insurance contract</i> [see note 5D to Table 1]</p>

**Notes to Table 3**

## Note 1:

*Security, contractually based investment and relevant investment* are not, in themselves, *specified investments* they are defined as including a number of *specified investments* as set out in Table 3. *Relevant investments* is the term that is used to cover *contractually based investments* together with rights under a *general insurance contract* and a *pure protection contract*.

## Note 2:

For the purposes of the *regulated activities of dealing in investments as principal* (article 14) and *dealing in investments as agent* (article 21), the definition of *contractually based investments* excludes a *funeral plan contract* (article 87) and rights to or interests in *funeral plan contracts*.

## GUIDANCE ON THE SCOPE OF THE REGULATED ACTIVITY OF ISSUING E-MONEY

3 Guidance on the scope of the regulated activity of issuing e-money

3.1 Application and purpose

### Application

3.1.1 G This chapter 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 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 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*; and
- (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 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 (Restrictions on financial promotion) of the *Act* (see sections 26 to 30 of the *Act* (Enforceability of agreements)).

3.1.5 G 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 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.

### 3.2 The regulated activity of issuing e-money

#### The Regulated Activities Order

- 3.2.1 G 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 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 Further *guidance* on section 19 and *regulated activities* can be found in *PERG 2*.
- 3.2.4 G Article 9B of the *Regulated Activities Order* says that *issuing e-money* is a specified activity of the kind described in *PERG 3.2.2G*. Article 74A of the *Regulated Activities Order* says that *e-money* is a *specified investment* for that purpose.
- 3.2.5 G *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 The *E-Money Directive* introduces a framework for the regulation of *e-money* at a European level.
- 3.2.7 G The *Regulated Activities Order* copies out the definition of *electronic money* in the *E-Money Directive*, with one exception.
- 3.2.8 G 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 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 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 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 G As explained in *PERG 3.2.4G*, the *regulated activity* relating to *e-money* is *issuing e-money*.
- 3.2.13 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 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 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 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 G *PERG 2.6.2G* to *PERG 2.6.4G* has *guidance* on the meaning of *deposit*.
- 3.2.18 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 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.

### 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 *PERG 3.2.12G* to *PERG 3.2.14G*.

#### 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.
- 3.3.3 G *E-money* is an electronic payment product. The value is held electronically and payments using the value are made electronically.
- 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.

#### 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.
- 3.3.6 G 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 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 Value on a debit card may be *e-money* or a *deposit*. *Guidance* on this is given in *PERG 3.3.14G* to *PERG 3.3.20G*.
- 3.3.9 G 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 For a product to be *e-money*, *persons* other than the issuer must accept it as a means of payment.
- 3.3.11 G *PERG* 3.3.10G 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 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 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 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 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:
- "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) As explained in *PERG* 3.3.3G, *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 *Guidance* on the restrictions on *financial promotion* under section 21 of the *Act* (Restrictions on financial promotion) can be found in *PERG 8*. *PERG 3.4* gives further *guidance* on its application to *e-money*.
- 3.4.2 G As explained in *PERG 8*, 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 *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 *Accepting deposits* is however a *controlled activity* and a *deposit* is a *controlled investment*. As explained in *PERG 3.2.15G*, 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 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 Hence the provisions in the *Act* and the *Handbook* about *financial promotions* do not apply to *e-money*.
- 3.4.7 G 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*. *PERG 2.6.2G* to *PERG 2.6.4G* 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.

## GUIDANCE ON REGULATED ACTIVITIES CONNECTED WITH MORTGAGES

### 4 Guidance on regulated activities connected with mortgages

#### 4.1 Application and purpose

##### Application

- 4.1.1 G This chapter applies to any *person* who needs to know whether the activities he conducts in relation to mortgages are subject to *FSA* regulation.

##### Purpose of guidance

- 4.1.2 G With effect from 31 October 2004 certain activities relating to mortgages have been regulated by the *FSA*. The purpose of this *guidance* is to help *persons* decide whether they need *authorisation* and, if they do, to determine the scope of the *Part IV permission* for which they will need to apply.

##### Effect of guidance

- 4.1.3 G This *guidance* is issued under section 157 of *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 contemplated by it, then the *FSA* will proceed on the footing that the *person* has complied with aspects of the requirement to which the *guidance* relates.

- 4.1.4 G 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, 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.

- 4.1.5 G 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*.

##### Guidance on other activities

- 4.1.6 G A *person* may be intending to carry on activities related to other

forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or *ISA* to repay an interest-only mortgage. Such a *person* should also consult the *guidance* in *PERG 2* (Authorisation and regulated activities) and *PERG 8* (Financial promotion and related activities), and *PERG 5* (Mediation of general and pure protection insurance).

## 4.2 Introduction

### Requirement for authorisation or exemption

4.2.1 G In most cases, any *person* who carries on a *regulated activity* in the *United Kingdom* by way of business must either be an *authorised person* or an *exempt person*. Otherwise, the *person* commits a criminal offence and certain agreements may be unenforceable. *PERG 2.2* (Introduction) contains further *guidance* on these consequences. In order to be *authorised*, a *person* must either:

- (1) hold a *Part IV permission* given by the *FSA* (see *AUTH 1.3* (The Authorisation manual) and *AUTH 3* (Application for Part IV permission)); or
- (2) qualify for *authorisation* (see *AUTH 5* (Qualifying for authorisation under the Act)), for example if the *person* is an *EEA firm* or a *Treaty firm*.

### Professional firms

4.2.2 G Certain *professional firms* are allowed to carry on some *regulated activities* without *authorisation* so long as they comply with specified conditions (see *PERG 4.14* (Mortgage activities carried on by professional firms)).

### Questions to be considered to decide if authorisation is required

4.2.3 G A *person* who is concerned to know whether his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flowchart in *PERG 4.18*):

- (1) will I be carrying on my activities by way of business (see *PERG 4.3.3G* (The business test))?
- (2) if so, will my *activities* relate to *regulated mortgage contracts* (see *PERG 4.4* (What is a regulated mortgage contract))?
- (3) if so, will I be carrying on any of the *regulated mortgage activities* (see *PERG 4.5* (Arranging regulated mortgage contracts) to *PERG 4.9* (Agreeing to carry on a regulated

activity))?)

- (4) if so, there is the necessary link with the *United Kingdom* (see *PERG* 4.11 (Link between activities and the United Kingdom))?)
- (5) if so, will any or all of my activities be excluded (see *PERG* 4.5 (Arranging regulated mortgage contracts) to *PERG* 4.10 (Exclusions applying to more than one regulated activity))?)
- (6) if it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under Part XX of the *Act* (see *PERG* 4.14 (Mortgage activities carried on by professional firms))?)
- (7) if not, am I exempt as an *appointed representative* (see *PERG* 4.12 (Appointed representatives))?)
- (8) if not, am I otherwise an *exempt person* (see *PERG* 4.13 (Other exemptions))?)

If a *person* gets as far as question (8) and the answer to that question is 'no', that *person* requires *authorisation* and should refer to *AUTH* 3 (Applications for Part IV permission).

- 4.2.4 G Even if the *person* does not require *authorisation*, he may still require a licence under the Consumer Credit Act 1974 to carry on the activity (see *PERG* 4.17 (Interaction with the Consumer Credit Act 1974)).

#### Financial promotion

- 4.2.5 G An *unauthorised person* who intends to carry on activities connected with mortgages will also need to comply with section 21 of the *Act* (Restrictions on financial promotion). This *guidance* does not cover *financial promotions* that relate to mortgages. *Persons* should refer to the general *guidance* on *financial promotion* in Appendix 1 to the Authorisation manual, *PERG* 8 (Financial promotion and related activities)) and, in particular, to *PERG* 8.17 (Financial promotions concerning agreements for qualifying credit).

#### 4.3 Regulated activities related to mortgages

- 4.3.1 G There are six *regulated mortgage activities* requiring *authorisation* or exemption if they are carried on in the *United Kingdom*. These are set out in the *Regulated Activities Order*. They are:
- (1) *arranging (bringing about) regulated mortgage contracts* (article 25 A(1) (Arranging regulated mortgage contracts));

- (2) *making arrangements with a view to regulated mortgage contracts* (article 25A(2) (Arranging regulated mortgage contracts));
- (3) *advising on regulated mortgage contracts* (article 53A (Advising on regulated mortgage contracts));
- (4) *entering into a regulated mortgage contract* as lender (article 61(1) (Regulated mortgage contracts));
- (5) *administering a regulated mortgage contract* where that contract is entered into by way of business on or after 31 October 2004 (article 61(2) (Regulated mortgage contracts)); and
- (6) *agreeing to carry on* any of the above (article 64 (Agreeing to carry on specific kinds of activity)).

4.3.2 G The scope of these activities is limited by certain exclusions contained in Parts II and III of the *Regulated Activities Order*. These exclusions are referred to in *PERG* 4.5 (Arranging regulated mortgage contracts) to *PERG* 4.10 (Exclusions applying to more than one regulated activity).

#### The business test

4.3.3 G A *person* will only need *authorisation* or exemption if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated activities)). There are, in fact, three different forms of business test applied to the *regulated mortgage activities*. In the *FSA*'s view, however, the difference in the business tests should have little practical effect.

4.3.4 G There is power in the *Act* for the Treasury to change the meaning of the business test by including or excluding certain things. The *Business Order* has been made using this power (partly reflecting differences in the nature of the different activities). The result (which is summarised in *PERG* 4.3.5G) is that:

- (1) the 'by way of business' test in section 22 of the *Act* applies unchanged in relation to the activity of *entering into a regulated mortgage contract*;
- (2) the 'by way of business' test in section 22 of the *Act* applies unchanged in relation to the activity of *administering a regulated mortgage contract*, but another 'by way of business' test arises because the contract being administered by way of business must itself have been entered into by way of business (see *PERG* 4.8.2G); and

- (3) in the case of arranging and advising, the effect of article 3A of the *Business Order* (Arranging and advising on regulated mortgage contracts) is that a *person* is not to be regarded as acting 'by way of business' unless he is 'carrying on the business of engaging in one or more of those activities'.

4.3.5 G Summary of which variant of the business test applies to the different regulated mortgage activities. This table belongs to *PERG* 4.3.4G.

By way of business	Carrying on the business
<i>Entering into a regulated mortgage contract</i> (article 61(1))	<i>Arranging (bringing about) regulated mortgage contracts</i> (article 25A(1))
<i>Administering a regulated mortgage contract</i> (article 61(2)) (and the contract administered must have been entered into by way of business)	<i>Making arrangements with a view to regulated mortgage contracts</i> (article 25A(2))
	<i>Advising on regulated mortgage contracts</i> (article 53A)

4.3.6 G The 'carrying on the business' test in the *Business Order* is a narrower test than that of carrying on *regulated activities* 'by way of business' in section 22 of the *Act* as it requires the *regulated activities* to represent the carrying on of a business in their own right. Whether or not the business test is satisfied in any particular case is ultimately a question of judgement that takes account of a number of factors (none of which is likely to be conclusive). The nature of the particular *regulated activity* that is carried on will also be relevant to the factual analysis. The relevant factors include:

- (1) the degree of continuity;
- (2) the existence of a commercial element; and
- (3) the scale of the activity and, for the 'by way of business' test, the proportion which the activity bears to the other activities carried on by the same *person* but which are not regulated.

In the case of the 'carrying on the business' test, these factors will need to be considered having regard to all the activities together.

4.3.7 G The main factor that might cause an activity to satisfy the 'by way of business' test in section 22 but not the narrower 'carrying on the business' test in the *Business Order* is that of frequency or regularity. As a general rule, the activity would need to be undertaken with some degree of frequency or regularity to satisfy the narrower 'carrying on the business' test. Conversely, the 'by way of business' test in section 22 could be satisfied by an activity undertaken on an isolated occasion (provided that the activity would be regarded as done by 'way of business' in all other respects).

4.3.8 G It follows that whether or not any particular *person* may be carrying on a *regulated mortgage activity* 'by way of business' will depend on his individual circumstances. However, some typical examples where the applicable business test would be likely to be satisfied are where a *person*:

- (1) enters into one or more *regulated mortgage contracts* as lender in the expectation of receiving interest or another form of payment that would enable him to profit from his actions;
- (2) administers a *regulated mortgage contract* in return for a payment of some kind (whether in cash or in kind); and
- (3) arranges or advises on *regulated mortgage contracts*, or does both, on a regular basis and receives payment of some kind (whether in cash or in kind and whether from the borrower or from some other *person*).

4.3.9 G Some typical examples where the business test is unlikely to be satisfied are:

- (1) when an individual enters into or administers a one-off mortgage securing a loan to a friend or member of his family whether at market interest rates or not; or
- (2) when a *person* provides a service without any expectation of reward or payment of any kind, such as advice given or arrangements made by many Citizens Advice Bureaux and other voluntary sector agencies (but see *PERG* 4.3.8G(3) where payment is received for advice).

4.4 What is a regulated mortgage contract?

The definition of "regulated mortgage contract"

4.4.1 G Article 61(3)(a) of the *Regulated Activities Order* defines a *regulated mortgage contract* as a contract which, at the time it is entered into, satisfies the following conditions:

- (1) the contract is one where a lender provides credit to an individual or trustees (the 'borrower');
- (2) the contract provides for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the *United Kingdom*; and
- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related *person*.

*PERG 4.4.2G to PERG 4.4.9G* set out the *FSA*'s understanding of some key concepts contained in article 61(3)(a).

#### Provision of credit

- 4.4.1A G (1) Article 61(3)(c) of the *Regulated Activities Order* states that credit includes a cash loan and any other form of financial accommodation. Although 'financial accommodation' has a potentially wide meaning, its scope is limited by the terms used in the definition of a *regulated mortgage contract* set out in *PERG 4.4.1G*. Whatever form the financial accommodation may take, article 61(3)(a) envisages that it must involve an obligation to repay on the part of the individual who receives it.
- (2) In the *FSA*'s view, an obligation to repay implies the existence, or the potential for the existence, of a debt owed by the individual to whom the financial accommodation is provided (the 'borrower') to the *person* who provides it (the 'lender'). Consequently, for any facility under which any form of financial accommodation is being provided, the test is whether it allows for the possibility that the *person* providing the financial accommodation may be placed in a position where he becomes a creditor of the individual to whom he is providing it. An example of this would be the issue of a guarantee by a bank to a third party for an individual customer (such as a rent guarantee or a performance bond) where the guarantee is secured on a first legal charge over the customer's residential property. In the *FSA*'s view, this would amount to a *regulated mortgage contract* as the customer would owe a debt to the bank in the event that the bank had to pay the third party under the guarantee.

#### Which borrowers?

- 4.4.2 G The condition set out in *PERG 4.4.1G(1)* limits the range of borrowers to whom the protections of the mortgage regulation regime apply to individuals and trustees. If a *company* (which is not acting as

a trustee) borrows money for the purpose of funding the *company's* business, and the loan is secured by a mortgage over the company's property, the mortgage contract is not a *regulated mortgage contract*. So a lender will not carry on a *regulated activity* by entering into that contract, nor will the lender carry on a *regulated activity* if it advises on, arranges or administers that contract. However, if the lender makes a loan for business purposes to an individual sole trader, or (in England and Wales) a partnership, and the loan is secured on the borrower's house or houses, the contract will be a *regulated mortgage contract*.

Date the contract is entered into

- 4.4.3 G In order to meet the definition of a *regulated mortgage contract*, a mortgage contract must meet the conditions set out in *PERG* 4.4.1G(1) to (3) at the time it was entered into. The effect is that contracts which meet those conditions at that time remain *regulated mortgage contracts* throughout their remaining term, even if there are periods of time when some or all of the conditions are not satisfied. Conversely, contracts that do not start out as *regulated mortgage contracts* cannot subsequently become so, even if they meet all the conditions set out in *PERG* 4.4.1G(1) to (3). A *person* that only administers mortgage contracts which did not meet those conditions at the time they were entered into will not, therefore, need *permission to administer regulated mortgage contracts*.
- 4.4.4 G There may, however, be instances where an existing contract, which was not a *regulated mortgage contract* at the time it was entered into, is replaced as a result of a variation (whether the variation is initiated by the customer or by the lender), and the new contract qualifies as a *regulated mortgage contract*. A *person* may therefore need to consider this possibility (which could affect contracts initially entered into before 31 October 2004 as well as subsequent loans) when deciding whether he needs *permission* to carry on any of the *regulated mortgage activities*.

Land in the United Kingdom

- 4.4.5 G The condition set out in *PERG* 4.4.1G(2) means that a *regulated mortgage contract* must be secured on land in the *United Kingdom*. Contracts which involve taking security over moveable property therefore cannot be *regulated mortgage contracts*. So a contract secured on a caravan will not be a *regulated mortgage contract*, unless the contract also involves a mortgage over the land on which the caravan stands.

Occupancy requirement

- 4.4.6 G The condition set out in *PERG* 4.4.1G(3) means that loans secured on property which is entirely used for business purposes (such as an

office block) cannot fall within the definition. However, loans secured on 'mixed use' property could be covered, provided that the borrower (or trust beneficiary, where the borrowers are trustees) or a 'related person' uses at least 40% of the total of the land as or in connection with a dwelling. Loans secured on a six-floor property, half of which was occupied by the borrower and half let out for business purposes would therefore satisfy the definition. (Article 61(4)(b) makes it clear that 'land', in the context of a multi-storey building, means the aggregate of the floor area of each of the storeys.)

- 4.4.7 G The expression 'as or in connection with a dwelling' set out in *PERG* 4.4.1G(3) means that loans to buy a small house with a large garden would in general be covered. However, if at the time of entering into the contract the intention was for the garden to be used for some other purpose – for example, if it was intended that a third party were to have use of the garden – the contract would not constitute a *regulated mortgage contract*. Furthermore, the *FSA* would not regard a loan to purchase farmland and a farmhouse as constituting a *regulated mortgage contract* (where the farmhouse and garden amount to less than 40% of the land area), since it does not appear that the land could properly be said to be used 'in connection with' the farmhouse. The presence of the farmhouse is unconnected with the use to which the farmland is put (in contrast to a residential property's garden, which would have no existence independent of the property).
- 4.4.8 G The requirement that at least 40% of the land area be used as or in connection with a dwelling means that 'buy to let' loans secured on the property to be let will usually be excluded. However, such loans will not be excluded if:
- (1) the lessee is a 'related person' to the borrower. This will be the case even if the borrower subsequently takes possession of the property, as the conditions set out in *PERG* 4.4.1G(1) to (3) were not satisfied at the outset of the contract (see *PERG* 4.4.3G); or
  - (2) at the time the contract is entered into, the borrower has a real intention to use the land as, or in connection with, a dwelling (for example a member of the British Forces Posted Overseas who buys a property in the *United Kingdom* intending to live there on his return but which he lets out in the meantime).
- 4.4.9 G 'Related person' is defined in article 61(4)(c) of the *Regulated Activities Order* as meaning the borrower's spouse, parents, grandparents, siblings, children and grandchildren. An unmarried partner of the borrower whose relationship with the borrower has the characteristics of the relationship between a husband and wife is also included; this can include a *person* of the same sex as the borrower.

Stepchildren, however, would seem to be excluded.

Purpose of the loan is irrelevant

- 4.4.10 G The definition of *regulated mortgage contract* contains no reference to the purpose for which the loan is being made. So, in addition to loans made to individuals to purchase residential property, the definition is wide enough to cover other loans secured on land, such as loans to consolidate debts, or to enable the borrower to purchase other goods and services.

Type of lending

- 4.4.11 G The definition of *regulated mortgage contract* also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as secured overdraft facility, a secured bridging loan, a secured credit card facility, and so-called 'equity release loans' (defined as *regulated lifetime mortgage contracts* in this *guidance*) under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the interest) is not required until the property is sold, usually on the death of the borrower.
- 4.4.12 G A number of products, however, are excluded from the definition, such as:
- (1) loans secured by a second or subsequent charge (as the lender does not have a first charge);
  - (2) loans secured on commercial premises (as the borrower will not be using the land as or in connection with a dwelling); and
  - (3) so-called 'home reversion schemes', under which a property owner (usually an older person) sells some or all of his interest in the property in return for a lump sum (usually a proportion of the value of the property sold) and a right to reside at the property for the rest of his life. (It should be noted, however, that the Government announced in May 2005 that 'home reversion schemes' and 'flexible tenure products' are to be regulated by the *FSA* and that it would be introducing legislation to this effect.)

Regulated mortgage contracts and contract variations

- 4.4.13 G The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:

- (1) a contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date so that it satisfies the conditions set out in *PERG* 4.4.1G(1) to (3), will not be a *regulated mortgage contract* (because it was not a *regulated mortgage contract* at the time it was entered into);
- (2) a contract that was originally entered into before 31 October 2004, but is subsequently changed on or after that date such that a new contract is entered into, will be a *regulated mortgage contract* (provided, of course, that it meets the definition in the *Regulated Activities Order*); and
- (3) a *regulated mortgage contract* that was originally entered into on or after 31 October 2004, and which is subsequently varied by, for example, making a further advance, will remain a *regulated mortgage contract*.

4.4.14 G It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and therefore not be a *regulated mortgage contract*) and a second contract entered into on or after 31 October 2004 (and be a *regulated mortgage contract*).

#### 4.5 Arranging regulated mortgage contracts

##### Definition of the regulated activities involving arranging

4.5.1 G Article 25A of the *Regulated Activities Order* describes two types of *regulated activities* concerned with *arranging regulated mortgage contracts*. These are:

- (1) making arrangements for another *person* to:
  - (a) enter into a *regulated mortgage contract* as borrower; or
  - (b) vary the terms of a *regulated mortgage contract* entered into by him as borrower on or after 31 October 2004 in such a way as to vary his obligations under the contract; and
- (2) making arrangements with a view to a *person* who participates in the arrangements entering into a *regulated mortgage contract* as borrower.

4.5.2 G The first activity (article 25A(1)) is referred to in this *guidance* as *arranging (bringing about) regulated mortgage contracts*. Various points arise:

- (1) It is not necessary for the potential borrower himself to be

involved in making the arrangements.

- (2) This activity is carried on only if the arrangements bring about, or would bring about a *regulated mortgage contract*. This is because of the exclusion in article 26 (see *PERG* 4.5.4G).
- (3) This activity therefore includes the activities of brokers who make arrangements on behalf of a borrower to enter into or vary a *regulated mortgage contract* where these arrangements go beyond merely introducing (see *PERG* 4.5.10G) or advising (although giving advice may be the *regulated activity of advising on regulated mortgage contracts*). Such arrangements might include, for instance, negotiating the terms of the *regulated mortgage contract* with the eventual lender, on behalf of the borrower. It also includes the activities of certain so-called 'packagers' (see *PERG* 4.15 (Mortgage activities carried on by 'packagers').)
- (4) *PERG* 4.6.2G contains examples of variations that are, in the *FSA's* view, within the definition of *advising on regulated mortgage contracts* and would also be covered by article 25A(1) arrangements.

- 4.5.3 G The second activity (article 25A(2)) is referred to in this *guidance* as making *arrangements with a view to regulated mortgage contracts*. This activity is different from article 25A(1)) because it requires a potential borrower to actively participate by utilising the arrangements to enter into a *regulated mortgage contract*. It does not require that the arrangements would bring about a *regulated mortgage contract*. Nor does it cover arrangements leading to contract variations. It includes the activities of introducers (see *PERG* 4.5.10G below) introducing potential borrowers to brokers and lenders. It may also, in certain circumstances, extend to the activities of a publisher, broadcaster, or website operator, albeit subject to exclusions in the *Regulated Activities Order* (see *PERG* 4.5.5G and *PERG* 4.5.6G).

Exclusion: article 25A(1) arrangements not causing a deal

- 4.5.4 G Article 26 of the *Regulated Activities Order* (Arrangements not causing a deal) excludes from article 25A(1) *arrangements* which do not bring about or would not bring about the *regulated mortgage contract* in question. In the *FSA's* view, a *person* brings about or would bring about a *regulated mortgage contract* 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.

Exclusion: article 25(A)2 arrangements enabling parties to communicate

4.5.5 G Article 27 of the *Regulated Activities Order* (Enabling parties to communicate) contains an exclusion that applies to arrangements which might otherwise fall within article 25A(2) merely because they provide the means by which one party to a *regulated mortgage contract* (or potential *regulated mortgage contract*) is able to communicate with other parties. Simply providing the means by which parties to a *regulated mortgage contract* (or potential *regulated mortgage contract*) are able to communicate with each other is excluded from article 25(A)2 only. This will ensure that *persons* such as Internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to be *arrangements made with a view to regulated mortgage contracts*).

4.5.6 G In the FSA's view, the crucial element of the exclusion in article 27 is the inclusion of the word "merely". When 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 25A(2). Further detailed *guidance* relating to the scope of the exclusion in article 27 is contained in *PERG* 8.32.6G to *PERG* 8.32.11G.

Exclusion: article 25A(1) and (2) arranging of contracts to which the arranger is a party

4.5.7 G Arranging a *regulated mortgage contract* (or contract variation) to which the arranger is to be a party is excluded from both article 25A(1) and (2) by article 28A of the *Regulated Activities Order* (Arranging contracts to which the arranger is a party). As a result, a *person* cannot both be *entering into a regulated mortgage contract* and arranging a *regulated mortgage contract* under article 25A as regards a particular *regulated mortgage contract*. This means that a direct sale by a mortgage lender does not involve the *regulated activity* of arranging but, if the transaction is completed, does involve the *regulated activity* of *entering into a regulated mortgage contract*. The FSA's rules on *arranging regulated mortgage contracts*, however, do apply to direct sales.

Exclusion: article 25A(1) and (2) arrangements with or through authorised persons

4.5.8 G An *unauthorised person* who makes arrangements for or with a view to a *regulated mortgage contract* between a borrower and an *authorised person*, is excluded from article 25A(1) and (2) by article 29 of the *Regulated Activities Order* (Arranging deals with or through authorised persons) if specified conditions as to advice and remuneration are satisfied. For example, the exclusion is dependent on the borrower not receiving any advice on the *regulated mortgage*

*contract* from the *unauthorised person* making the arrangements. Additionally, payment must not be received unless it is accounted for to the borrower (which, in the *FSA*'s view, means that it must be paid over to, or treated as belonging to and held to the order of, the borrower).

Exclusion: article 25A(1)(b) arrangements made in the course of administration by authorised person

- 4.5.9 G Article 29A of the *Regulated Activities Order* excludes from article 25A(1)(b) (which covers making arrangements for another *person* to vary the terms of a *regulated mortgage contract*) certain activities of an *unauthorised person* who is taking advantage of the exclusion from *administering a regulated mortgage contract* in article 62 (Exclusion: arranging administration by authorised persons) see *PERG* 4.8.4G).

Exclusion: article 25A(2) arrangements and introducing

- 4.5.10 G Article 33A of the *Regulated Activities Order* (Introducing to authorised persons) excludes from article 25A(2) arrangements under which a borrower is introduced to certain *persons*. Introducing is only a *regulated activity* under article 25A(2) as it does not of itself bring about *regulated mortgage contracts* (see *PERG* 4.5.2G).

- 4.5.11 G The exclusion applies for introductions to:

- (1) an *authorised person* who has *permission* to carry on a *regulated activity* specified in article 25A (Arranging regulated mortgage contracts) or article 53A (Advising on regulated mortgage contracts) or article 61(1) (Entering into a regulated mortgage contract as lender); introducers can check the status of an *authorised person* and its *permission* by visiting the *FSA*'s register at <http://www.fsa.gov.uk/register/>;
- (2) an *appointed representative* who is appointed to carry on a *regulated activity* specified in article 25A or article 53A of the *Regulated Activities Order*; introducers can check the status of an *appointed representative* by visiting the *FSA*'s register at <http://www.fsa.gov.uk/register/>; the *FSA* would normally expect introducers to request and receive confirmation of the *regulated activities* that the *appointed representative* is appointed to carry on, prior to proceeding with an introduction; and
- (3) an *overseas person* who carries on a *regulated activity* specified in article 25A (Arranging regulated mortgage contracts) or article 53A (Advising on regulated mortgage contracts) or article 61(1) (Entering into a regulated mortgage

contract).

- 4.5.12 G The exclusion in article 33A only applies when the introducer satisfies two conditions:
- (1) he does not receive any money paid by the borrower in connection with any transaction that the borrower enters into with or through the *person* to whom the borrower is introduced as a result of the introduction, other than money payable to him on his own account; and
  - (2) before making the introduction he discloses to the borrower all relevant information described in *PERG* 4.5.14G.
- 4.5.13 G In the *FSA's* view, money payable to an introducer on his own account includes money legitimately due to him for services rendered to the borrower, whether in connection with the introduction or otherwise. It also includes sums payable to an introducer (for example, a housebuilder) by a buyer in connection with a transfer of property. For example, article 33A allows a housebuilder to receive the purchase price on a property that he sells to a borrower, whom he previously introduced to an *authorised person* or *appointed representative* to help him finance the purchase and still take the benefit of the exclusion. This is because the sums that the housebuilder receives in connection with the introduction and with the sale of his property to the borrower are both "payable to him on his own account". The housebuilder may also receive a commission from the *person* introduced to. He may not, however, receive any sums payable by the borrower to the *person* to whom the borrower is introduced, for example valuation fees, as those sums are not payable to the housebuilder on his own account.
- 4.5.14 G The information that the introducer must disclose to the borrower prior to making the introduction is, where relevant:
- (1) that he is a member of the same *group* as the *person* (N) to whom the borrower is introduced;
  - (2) details of any payment which he will receive from N, by way of fee or commission, for introducing the borrower to N; and
  - (3) an indication of any other reward or advantage arising out of his introducing to N.
- 4.5.15 G In the *FSA's* view, details of fees or commission referred to in *PERG* 4.5.14G(2) does not require an introducer to provide an actual sum to the borrower, where it is not possible to calculate the full amount due prior to the introduction. This may arise in cases where the fee or commission is a percentage of the eventual loan taken out and the amount of the required loan is not known at the time of the

introduction. In these cases, it would be sufficient for the introducer to disclose the method of calculation of the fee or commission, for example the percentage of the eventual loan to be made by N.

- 4.5.16 G In the *FSA's* view, the information condition in *PERG* 4.5.14G(3) requires the introducer to indicate to the borrower any other advantages accruing to him as a result of ongoing arrangements with N relating to the introduction of borrowers. This may include, for example, indirect benefits such as office space, travel expenses, subscription fees and this and other relevant information may be provided on a standard form basis to the borrower, as appropriate.
- 4.5.17 G The *FSA* would normally expect an introducer to keep a written record of disclosures made to the borrower under article 33A of the *Regulated Activities Order* including those cases where disclosure is made on an oral basis only.
- 4.5.18 G In addition to the exclusion in article 33A, introducers may be able to take advantage of the exclusion in article 33 of the *Regulated Activities Order* (Introducing). This excludes arrangements where:
- (1) they are arrangements under which *persons* will be introduced to another *person*;
  - (2) the *person* to whom the introduction is 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* (including mortgages) to which the arrangements relate.

#### Other exclusions

- 4.5.19 G The *Regulated Activities Order* contains a number of other exclusions which have the effect of preventing certain activities from amounting to *regulated activities* within article 25. These are referred to in *PERG* 4.10 (Exclusions applying to more than one regulated activity). There is also an exclusion where both the arranger and

borrower are overseas, which is referred to in *PERG* 4.11 (Link between activities and the United Kingdom).

#### 4.6 Advising on regulated mortgage contracts

##### Definition of 'advising on regulated mortgage contracts'

4.6.1 G Article 53A of the *Regulated Activities Order* (Advising on regulated mortgage contracts) makes *advising on regulated mortgage contracts* a *regulated activity*. This covers advice which is both:

- (1) given to a *person* in his capacity as borrower or potential borrower; and
- (2) advice on the merits of the borrower:
  - (a) *entering into* a particular *regulated mortgage contract* (whether or not the entering into is done by way of business); or
  - (b) varying the terms of a *regulated mortgage contract* entered into by the borrower on or after 31 October 2004 in such a way as to vary the borrower's obligations under the contract.

4.6.2 G In the *FSA*'s view, the circumstances in which a *person* is giving advice on the borrower varying the terms of a *regulated mortgage contract* so as to vary his obligations under the contract include (but are not limited to) where the advice is about:

- (1) the borrower obtaining a further advance secured on the same land as the original loan; or
- (2) a rate switch or a product switch (that is, where the borrower does not change lender but changes the terms for repayment from, say, a variable rate of interest to a fixed rate of interest or from one fixed rate to another); or
- (3) the borrower transferring from a repayment mortgage to an interest-only mortgage or the reverse situation.

Although advice on varying the terms of a *regulated mortgage contract* is not a *regulated activity* if the contract was entered into before 31 October 2004, there may be instances where the variation to the old contract is so fundamental that it amounts to *entering into* a new *regulated mortgage contract* (see *PERG* 4.4.4G and *PERG* 4.4.13G(2)). In that case, giving the advice would be a *regulated activity*.

- 4.6.3 G For advice to fall within article 53A as set out in *PERG* 4.6.1G it must:
- (1) relate to a particular mortgage contract (that is, one that the borrower may enter into or, in the case of advice on a variation, one that he has already entered into);
  - (2) be given to a *person* in his capacity as a borrower or potential borrower;
  - (3) be advice (that is, not just information); and
  - (4) relate to the merits of the borrower entering into, or varying the terms of, the contract.

- 4.6.4 G Each of these aspects is considered in greater detail in *PERG* 4.6.5G (Advice must relate to a particular regulated mortgage contract) to *PERG* 4.6.17G (Advice must relate to the merits (of entering into as borrower or varying)). Additionally, the following should be borne in mind:

- (1) a *person* may be carrying on *regulated activities* involving arranging, whether or not that *person* is *advising on regulated mortgage contracts* (see *PERG* 4.5);
- (2) the provision of advice or information may involve the communication of a *financial promotion* (see *PERG* 8 (Financial promotion and related activities); and
- (3) *PERG* 8.25 ((Advice must relate to an investment which is a security or contractually based investment) to *PERG* 8.29 (Advice must relate to the merits (of buying or selling a particular investment)) will be relevant to any *person* who may be advising on other forms of investment at the same time as he advises on *regulated mortgage contracts*; this includes, for example, a *person* advising on the merits of using a particular endowment policy or *ISA* as the means for repaying the capital under an *interest-only mortgage*.

Advice must relate to a particular regulated mortgage contract

- 4.6.5 G Advice will come within the *regulated activity* in article 53A of the *Regulated Activities Order* only if it relates to a particular *regulated mortgage contract* (or several different *regulated mortgage contracts*). The question is whether a recommendation is made to a *customer* which either explicitly or implicitly steers the *customer* to a particular *regulated mortgage contract* because of its features.

- 4.6.6 G Advice would not relate to a particular contract if it consisted of a

recommendation that a *person* should take out a mortgage with ABC building society without (expressly or by implication) specifying what kind of mortgage.

4.6.7 G Typical recommendations and whether they will be regulated as advice under article 53A of the *Regulated Activities Order*

This table belongs to *PERG 4.6.5G* and *PERG 4.6.6G*.

Recommendation	Regulated or not?
I recommend you take out the ABC Building Society 2 year fixed rate mortgage at 5%.	Yes. This is advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into.
I recommend you do not take out the ABC Building Society 2 year fixed rate mortgage at 5%.	Yes. This is advice which steers the borrower away from a particular mortgage which the borrower could have entered into.
I recommend that you take out either the ABC Building Society 2 year fixed rate mortgage at 5% or the XYZ Bank standard variable rate mortgage.	Yes. This is advice which steers the borrower in the direction of more than one particular mortgage which the borrower could enter into.
I recommend you take out (or do not take out) an ABC Building Society fixed rate mortgage.	This will depend on the circumstances. If, for example, the society only offers one such mortgage, this would be a recommendation intended implicitly to steer the borrower in the direction of that particular mortgage which the borrower could enter into and therefore would be advice.
I suggest you take out (or do not take out) a mortgage with ABC Building Society.	No. This is not advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into. However, if the society only offers one mortgage, this would be a recommendation intended implicitly to steer the borrower in the direction of that particular

	mortgage which the borrower could enter into and therefore would be advice.
I suggest you change (or do not change) your current mortgage from a variable rate to a fixed rate.	No in respect of the advice about rate type, as this does not steer the borrower in the direction of a particular mortgage which the borrower could enter into.  Yes in respect of the advice about varying the terms of the particular mortgage that the borrower had already entered into.
I suggest you take out (or do not take out) a variable rate mortgage.	No. This is not advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into.
I recommend you take out (or do not take out) a mortgage.	No. This is not advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into.
I would always recommend buying a house and taking out a mortgage as opposed to renting a property.	No. This is an example of generic advice which does not steer the borrower in the direction of a particular mortgage that he could enter into.
I recommend you do not borrow more than you can comfortably afford.	No. This is an example of generic advice.
If you are looking for flexibility with your mortgage I would recommend you explore the possibilities of either a flexible mortgage or an off-set mortgage. There are a growing number of lenders offering both.	No. This is an example of generic advice.

4.6.8 G Generic or general advice will not fall under article 53A. Examples of

generic advice are shown in *PERG 4.6.7G*.

- 4.6.9 G In the *FSA's* view, guiding a *person* through scripted questions or a decision tree should not, of itself, involve advice within the meaning of article 53A (it should be generic advice). But the combination of advice, which in isolation may properly be considered generic, with the identification of a particular or several particular *regulated mortgage contracts* may well, in the *FSA's* view, cause the *person* to be *advising on regulated mortgage contracts*; the *FSA* considers that it is necessary to look at the process as a whole; this is considered in more detail, in the context of scripted questioning, in *PERG 4.6.22G* (Scripted questioning (including decision trees)).

Advice given to a person in his capacity as a borrower or potential borrower

- 4.6.10 G For the purposes of article 53A, advice must be given to or directed at someone who is acting as borrower or potential borrower. As indicated in *PERG 4.4.2G* (Which borrowers?), this means the individual or trustee to whom the credit has been provided by the lender or who is looking to obtain the credit on the security of his property. Advice given to a *body corporate* will not generally be caught because the advice will not concern a *regulated mortgage contract*, as defined. But this does not apply where the *body corporate* is acting as trustee.
- 4.6.11 G Article 53A will not, for example, apply where advice is given to *persons* who receive it as:
- (1) a lender under or administrator of a *regulated mortgage contract*; or
  - (2) an adviser who may use it to inform advice given by him to others; or
  - (3) a journalist or broadcaster; or
  - (4) an agent of a borrower unless appointed as the borrower's attorney and therefore entering into the *regulated mortgage contract* as agent (or proxy) for the borrower.
- 4.6.12 G Advice will still be covered by article 53A even though it may not be given to or directed at a particular borrower (for example advice given in a periodical publication or on a website).

Advice or information

- 4.6.13 G In the *FSA's* view, advice requires an element of opinion on the part of the adviser which steers or is intended to steer a borrower or potential borrower in the direction of one or more particular

mortgages. In effect, it is a recommendation as to a course of action. Information on the other hand, involves objective statements of facts and figures.

- 4.6.14 G In general terms, simply giving balanced and neutral information without making any comment or value judgement on its relevance to decisions which a borrower may make is not advice.
- 4.6.15 G Information relating to entering into *regulated mortgage contracts* may often involve one or more of the following:
- (1) an explanation of the terms and conditions of a *regulated mortgage contract*, whether given orally or in writing or by providing leaflets and brochures;
  - (2) a comparison of the features and benefits of one *regulated mortgage contract* with another;
  - (3) the production of scripted questions for the borrower to use in order to exclude options that would fail to meet his requirements; such questions may often go on to identify a range of *regulated mortgage contracts* with characteristics that appear to meet the borrower's requirements and to which he might wish to give detailed consideration (scripted questioning is considered in more detail in *PERG* 4.6.21G to *PERG* 4.6.25G (Scripted questioning (including decision trees)));
  - (4) tables that compare the interest rates and other features of different mortgages;
  - (5) leaflets or illustrations that help borrowers to decide which type of mortgage to take out;
  - (6) the provision, in response to a request from a borrower who has identified the main features of the type of mortgage he seeks, of several leaflets together with an indication that all the *regulated mortgage contracts* described in them have those features.
- 4.6.16 G In the *FSA*'s opinion, however, such information is likely take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation as described in *PERG* 4.6.10G. Examples of situations where information provided by a *person* ('P') are likely to take the form of advice are given below.
- (1) P provides information on a selected, rather than balanced and neutral, basis that would tend to influence the decision of the borrower. This may arise where P offers to provide information about mortgages that contain features specified by the borrower but then exercises discretion as to which mortgages to offer to

the borrower.

- (2) P, as a result of going through the sales process, discusses the merits of one *regulated mortgage contract* over another, resulting in advice to enter into or not enter into a particular one.

Advice must relate to the merits (of entering into as borrower or varying)

- 4.6.17 G Advice under article 53A must relate to the pros or cons of *entering into a regulated mortgage contract* as borrower.
- 4.6.18 G A neutral and balanced explanation of the implications under a *regulated mortgage contract* of, for example, exercising certain rights or failing to make interest payments on time, need not, itself, involve advice on the merits of entering into that contract or varying its terms.
- 4.6.19 G Neither does advice on the merits of using a particular mortgage broker or adviser in his capacity as such amount to advice for the purposes of article 53A. It is not advice on the merits of *entering into* or varying the terms of a *regulated mortgage contract*.
- 4.6.20 G Without explicit or implicit advice on the merits of entering into as borrower or varying the terms of a *regulated mortgage contract*, advice will not fall under article 53A if it is advice on the likely meaning of uncertain provisions in a *regulated mortgage contract* or on how to complete an application form.

Scripted questioning (including decision trees)

- 4.6.21 G Scripted questioning involves using any form of sequenced questions in order to extract information from a *person* with a view to facilitating the selection by that *person* of a mortgage or other product that meets his needs. A decision tree is an example of scripted questioning. The process of going through the questions will usually narrow down the range of options that are available. Scripted questions must be prepared in advance of their actual use.
- 4.6.22 G Undertaking the process of scripted questioning gives rise to particular issues concerning advice. These mainly involve two aspects of this *regulated activity*. These are that advice must relate to a particular *regulated mortgage contract* (see *PERG* 4.6.5G) and the distinction between information and advice (see *PERG* 4.6.13G). Whether or not scripted questioning in any particular case is *advising on regulated mortgage contracts* will depend on all the circumstances. If the process involves identifying one or more particular *regulated mortgage contracts* then, in the *FSA's* view, to avoid *advising on regulated mortgage contracts*, the critical factor is likely to be whether the process is limited to, and likely to be

perceived by the borrower as, assisting the borrower to make his own choice of product which has particular features which the borrower regards as important. The questioner will need to avoid making any judgement on the suitability of one or more products for the borrower. See also *PERG* 4.6.4G for other matters that may be relevant.

- 4.6.23 G The potential for variation in the form, content and manner of scripted questioning is considerable, but there are two broad types. The first type involves providing questions and answers which are confined to factual matters (for example, whether a borrower wishes to pay a fixed or variable rate of interest or the size of deposit available). In the *FSA's* view, this does not of itself amount to *advising on regulated mortgage contracts*, as it involves the provision of information rather than advice. There are various possible scenarios, including the following:
- (1) the questioner may go on to identify several *regulated mortgage contracts* which match features identified by the scripted questioning; provided these are presented in a balanced and neutral way (for example, they identify all the matching *regulated mortgage contracts*, without making a recommendation as to a particular one) this need not of itself involve *advising on regulated mortgage contracts*;
  - (2) the questioner may go on to advise the borrower on the merits of one particular *regulated mortgage contract* over another; this would be *advising on regulated mortgage contracts*;
  - (3) the questioner may, before or during the course of the scripted questioning, give a recommendation or opinion which influences the choice of mortgage contract and, following the scripted questioning, identify one or more particular *regulated mortgage contracts*; the key issue then is whether the advice can be said to relate to a particular *regulated mortgage contract* (see further *PERG* 4.6.22G)).
- 4.6.24 G The second type of scripted questioning involves providing questions and answers incorporating opinion, judgement or recommendations (for example, whether a repayment mortgage or interest-only mortgage is a better option or whether interest rates are likely to rise). There are various possible scenarios, including the following:
- (1) the scripted questioning may not lead to the identification of any particular *regulated mortgage contract*; in this case, the questioner has provided advice, but it is generic advice and does not amount to *advising on regulated mortgage contracts*;  
or

- (2) the scripted questioning may lead to the identification of one or more particular *regulated mortgage contracts*; the key issue then is whether the advice can be said to relate to a particular *regulated mortgage contract* (see further *PERG 4.6.22G*).

4.6.25 G In the scenarios identified in *AUTH 4.6.23G(3)* and *AUTH 4.6.24G(2)*, the *FSA* considers that it is necessary to look at the process and outcome of scripted questioning as a whole. It may be that the element of advice incorporated in the questioning may properly be viewed as generic advice if it were considered in isolation. But, although the actual advice may be generic, the process has ended in identifying one or more particular *regulated mortgage contracts*. The combination of the generic advice and the identification of a particular or several particular *regulated mortgage contracts* to which it leads may well, in the *FSA's* view, cause the questioner to be *advising on regulated mortgage contracts*. Factors that may be relevant in deciding whether the process involves *advising on regulated mortgage contracts* may include:

- (1) any representations made by the questioner at the start of the questioning relating to the service he is to provide;
- (2) the context in which the questioning takes place;
- (3) the stage in the questioning at which the opinion is offered and its significance;
- (4) the role played by any questioner who guides a *person* through the scripted questions;
- (5) the outcome of the questioning (whether particular *regulated mortgage contracts* are highlighted, how many of them, who provides them, their relationship to the questioner and so on); and
- (6) whether the scripted questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party (for example, the *FSA*), and all that the questioner has done is help the borrower understand what the questions or options are and how to determine which option applies to his particular circumstances.

Medium used to give advice

4.6.26 G With the exception of periodicals, broadcasts and other news or information services (see *PERG 4.6.30G* (Exclusion: periodical publications, broadcasts and websites)) the medium used to give advice should make no material difference to whether or not the advice is caught by article 53A.

- 4.6.27 G Advice can be provided in many ways including:
- (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.
- 4.6.28 G Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problems. The same principles apply as with a paper version (see *PERG 4.6.21G* to *PERG 4.6.25G* (Scripted questioning (including decision trees))).
- 4.6.29 G Advice in publications, broadcasts and websites is subject to a special regime – see *PERG 4.6.30G* (Exclusion: periodical publications, broadcasts and websites) and *PERG 7* (Periodical publications, news services and broadcasts: applications for certification).

Exclusion: periodical publications, broadcasts and websites

- 4.6.30 G The main exclusion from *advising on regulated mortgage contracts* relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54 of the *Regulated Activities Order* (Advice given in newspapers etc)). The exclusion applies if the principal purpose of any of these is neither to give advice of the kind to which article 53 (Advising on investments) or article 53A applies nor to lead or enable *persons* to:
- (1) acquire or dispose of *securities* or *contractually based investments*; or
  - (2) enter as borrower into *regulated mortgage contracts* or vary the terms of *regulated mortgage contracts* entered into by such *persons* as the borrower.

This is explained in greater detail, together with the provisions on the granting of certificates, in *PERG 7* (Periodical publications, news services and broadcasts: applications for certification).

Exclusion: advice in the course of administration by authorised person

- 4.6.31 G Article 54A of the *Regulated Activities Order* excludes from *advising on regulated mortgage contracts* certain activities of an *unauthorised*

*person* which is taking advantage of the exclusion from *administering a regulated mortgage contract* in article 62 (see *PERG* 4.8.4G).

#### Other exclusions

- 4.6.32 G The *Regulated Activities Order* contains a number of other exclusions which have the effect of preventing certain activities from amounting to *advising on regulated mortgage contracts*. These are referred to in *PERG* 4.10 (Exclusions applying to more than one regulated activity).

#### 4.7 Entering into a regulated mortgage contract

##### Definition of 'entering into a regulated mortgage contract'

- 4.7.1 G Article 61(1) of the *Regulated Activities Order* makes *entering into a regulated mortgage contract* as lender a *regulated activity*.

##### Exclusions

- 4.7.2 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *entering into a regulated mortgage contract*. This is referred to in *PERG* 4.10 (Exclusions applying to more than one regulated activity). There is also an exclusion where both the lender and borrower are overseas, which is referred to in *PERG* 4.11 (Link between activities and the United Kingdom).

#### Transfer of lending obligations

- 4.7.3 G A *person* who provides credit to a borrower under a *regulated mortgage contract* will enter into a *regulated mortgage contract*, even if the lending obligations under that contract are subsequently transferred to a third party. Consequently, a *person* who acts as a so-called 'correspondent lender' in the mortgage market will need to seek *authorisation*.

#### 4.8 Administering a regulated mortgage contract

##### Definition of 'administering a regulated mortgage contract'

- 4.8.1 G Article 61(2) of the *Regulated Activities Order* makes *administering a regulated mortgage contract* a *regulated activity* 'where the contract was entered into by way of business' on or after 31 October 2004.
- 4.8.2 G The definition does not include administration of a *regulated mortgage contract* which was not entered into by way of business.

See *PERG 4.3.3G* for a discussion of the 'by way of business' test. The definition also does not include administration of a mortgage which was entered into before 31 October 2004. See, however, *PERG 4.4.4G* and *PERG 4.4.13G* for a discussion of how a variation of a mortgage contract entered into before 31 October 2004 could amount to the entry into a new *regulated mortgage contract* on or after 31 October 2004.

- 4.8.3 G Under article 61(3)(b) of the *Regulated Activities Order*, *administering a regulated mortgage contract* is defined as either or both of:
- (1) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and
  - (2) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;

but does not include merely having or exercising a right to take action to enforce the *regulated mortgage contract*, or to require that action is or is not taken.

Exclusion: arranging administration by authorised persons

- 4.8.4 G Article 62 of the *Regulated Activities Order* provides that a *person* who is not an *authorised person* does not *administer a regulated mortgage contract* if he:
- (1) arranges for a *firm* with *permission* to administer a *regulated mortgage contract* (a '*mortgage administrator*') to administer the contract; or
  - (2) administers the *regulated mortgage contract* itself, provided that the period of administration is no more than one month after the arrangement in (1) has come to an end.
- 4.8.5 G This exclusion may be of a particular interest to a special purpose vehicle which administers *regulated mortgage contracts* transferred to it as part of a *securitisation* transaction.
- 4.8.6 G If an *unauthorised administrator* makes *arrangements* for a *mortgage administrator* to administer its *regulated mortgage contracts*, the exclusion may cease to be available because the *mortgage administrator* ceases to have the required *permission*, or because the arrangement is terminated. The exclusion gives the *unauthorised administrator* a one-month grace period during which it may administer the contracts itself. If the period of administration exceeds one month, the *unauthorised administrator* will be in breach of the *general prohibition*, and the *FSA* may take proceedings in respect of

the breach. However:

- (1) under section 23(3) of the *Act*, it is a defence in such proceedings for a *person* to show that 'he took all reasonable precautions and exercised all due diligence to avoid committing the offence';
- (2) the *FSA* would consider whether a *person* had taken 'all reasonable precautions and exercised all due diligence' on a case-by-case basis; what is reasonable is a matter for the senior management of the *unauthorised* administrator to decide in each case, taking account of, for example, the financial standing of the *mortgage administrator* and its ability to perform its obligations under the administration contract;
- (3) factors that the *FSA* would take into account in assessing whether an *unauthorised* administrator has taken 'all reasonable precautions and exercised all due diligence' would include:
  - (a) the level of the *person's* preparedness for a *mortgage administrator* to cease providing administration services; and
  - (b) the reasons for, and the circumstances of, the termination of *arrangements* with a *mortgage administrator*;
- (4) whether any agreement made by an unauthorised administrator would be enforceable under section 26 of the *Act* (Agreements made by unauthorised persons) depends on whether the court is satisfied that this would be just and equitable; in this context, the court may have regard to the extent to which the administrator has complied with the *FSA's guidance*.

Exclusion: administration pursuant to agreement with authorised person

- 4.8.7 G Under article 63 of the *Regulated Activities Order*, a *person* who is not an *authorised person* does not *administer a regulated mortgage contract* if he administers the contract under an agreement with a *firm* with *permission to administer a regulated mortgage contract*. A *firm* with *permission to administer a regulated mortgage contract* may thus outsource or delegate the administration function to an *unauthorised* third party. A *firm* that proposes to do this should however note, as set out in SYSC 3.2.4G(1), that the *FSA* will continue to hold it responsible for the way in which the administration is carried on.

Other exclusions

- 4.8.8 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and

personal representatives from amounting to *administering regulated mortgage contracts*. This is referred to in *PERG 4.10* (Exclusions applying to more than one regulated activity). There is also an exclusion where both the administrator and borrower are overseas, which is referred to in *PERG 4.11* (Link between activities and the United Kingdom).

#### 4.9 Agreeing to carry on a regulated activity

4.9.1 G Under article 64 of the *Regulated Activities Order* (Agreeing to carry on specific kinds of activity), in addition to the *regulated activities* of *arranging (bringing about)*, *making arrangements with a view to*, *advising on*, *entering into* and *administering regulated mortgage contracts*, agreeing to do any of these things is itself a *regulated activity*. In the FSA's opinion, this activity concerns the entering into of a legally binding agreement to provide the services that it concerns. So a *person* is not carrying on a *regulated activity* involving agreeing merely because he makes an offer to do so.

4.9.2 G To the extent that an exclusion applies in relation to a *regulated activity*, then 'agreeing' to carry on an activity within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order*.

#### 4.10 Exclusions applying to more than one regulated activity

Exclusion: Activities carried on in the course of a profession or non-investment business

4.10.1 G The exclusion in article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business) applies to the *regulated activities* of *arranging (bringing about)*, *making arrangements with a view to* and *advising on regulated mortgage contracts*. *PERG 4.14* contains further guidance on mortgage activities carried on by *professional firms*.)

4.10.2 G *Arranging (bringing about)*, *making arrangements with a view to* and *advising on regulated mortgage contracts* are excluded if they are carried on by a *person* in the course of carrying on a profession or business (other than a *regulated activity*). This is the case if it may reasonably be regarded as necessary for him to make the arrangements or give the advice in order to provide his professional or other services and he is not separately paid for making the arrangements or giving the advice.

4.10.3 G In the FSA's view, for arranging or advice to be a necessary part of other services it must, as a general rule, be the case that it is not possible for the other services to be provided unless the arranging or advising are also provided.

4.10.4 G Situations where this exclusion might apply, in the *FSA's* view, are set out below:

- (1) Advice by solicitors: the provision of legal services may involve a solicitor advising his client on the legal effects and consequences of entering into a particular *regulated mortgage contract*. To the extent that this may involve advice on the merits of entering into the contract it is likely to be a necessary part of the legal advice. But it would not be necessary for the solicitor to go on to recommend that his client would be better to enter into a different particular *regulated mortgage contract*.
- (2) Advice by licensed conveyancers: as a necessary part of conveyancing work and under their duty of care to the client, a licensed conveyancer may state that the mortgage the client has applied for is right for them or not. If the client has already applied for a mortgage and the conveyancer just says that their choice is right or wrong but does not recommend alternatives, then that advice is likely to be excluded. But if the conveyancer recommends an alternative then that advice is unlikely to be excluded.
- (3) Conveyancing as arranging: the provision of pure conveyancing services (whether performed by a solicitor or a licensed conveyancer) will, themselves, be arrangements within the scope of article 25A. So they will be excluded under article 67. But if the client does not yet have a mortgage, an introduction to or other arrangement involving a lender is unlikely to be a necessary part of conveyancing services.
- (4) Debt counselling services: The provision of debt counselling services may involve the counsellor advising his client on the merits of varying the terms of an existing *regulated mortgage contract* and, in certain cases, assisting a distressed borrower in corresponding with a lender. Such advice and arrangements are likely to be a necessary part of the debt counselling services. But it would not be a necessary part of those services for the counsellor to offer advice on the merits of his client entering into a new particular *regulated mortgage contract*.

Exclusion: Trustees, nominees and personal representatives

4.10.5 G There are exclusions that apply, in certain circumstances, in relation to each of the *regulated mortgage activities* if the *person* carrying on the activity is acting in the capacity of trustee or personal representative. Article 66 of the *Regulated Activities Order* (Trustees, nominees and personal representatives) sets out the circumstances in which the exclusions apply. The terms of these differ slightly depending on the *regulated activity*.

- 4.10.6 G For each of the *regulated activities* of *arranging (bringing about), making arrangements with a view to* and *advising on regulated mortgage contracts*, the exclusions apply if the trustee or personal representative is acting in that capacity and:
- (1) the arrangements he makes concern the entering into or variation of *regulated mortgage contracts* and the contracts are to be entered into or varied either by himself and a fellow trustee or personal representative or by the beneficiary under the trust, will or estate on behalf of which he is acting; or
  - (2) the advice is given to such trustees or personal representatives or beneficiaries.
- 4.10.7 G For each of the *regulated activities* of *entering into a regulated mortgage contract* and *administering a regulated mortgage contract*, the exclusions apply if the trustee or personal representative is acting in that capacity and the borrower is a beneficiary under the trust, will or estate on behalf of which he is acting.
- 4.10.8 G In every case, the trustee or personal representative must not receive any remuneration that is additional to any he receives for acting in his capacity as trustee or personal representative. But a *person* is not to be regarded as receiving additional remuneration merely because his remuneration as trustee or personal representative is calculated by reference to time spent.

#### 4.11 Link between activities and the United Kingdom

##### Introduction

- 4.11.1 G Section 19 of the *Act* (The general prohibition) provides that the requirement to be *authorised* under the *Act* only applies in relation to *regulated activities* which are carried on 'in the *United Kingdom*'. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example because a borrower is outside the *United Kingdom* or because some other element of the activity happens outside the *United Kingdom*, the question may arise as to where the activity is carried on. This section describes the legislation that is relevant to this question and gives the *FSA*'s views on various scenarios.
- 4.11.2 G Even if a *person* concludes that he is not carrying on a *regulated activity* in the *United Kingdom*, he will need to ensure that he does not contravene other provisions of the *Act* that apply to *unauthorised persons*. These include the controls on *financial promotion* (section 21 (Financial promotion) of the *Act*) (see *PERG 8* (Financial promotion and related activities)), and on giving the impression that a *person* is authorised (section 24 (False claims to be authorised or

exempt)).

Legislative provisions: definition of "regulated mortgage contract"

- 4.11.3 G A contract is only a *regulated mortgage contract* if the land is in the *United Kingdom* (see *PERG 4.4.5G* (Land in the United Kingdom)).

Legislative provisions: section 418 of the Act

- 4.11.4 G Section 418 of the *Act* deals with the carrying on of *regulated activities* in the *United Kingdom*. It extends the meaning that 'carry on a *regulated activity* in the *United Kingdom*' would ordinarily have by setting out additional cases. The *Act* states that in these cases a *person* who is carrying on a *regulated activity* but 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*.

- 4.11.5 G For the purposes of *regulated mortgage activities*, sections 418(2), (4), (5), (5A) and (6) are relevant, as follows:

- (1) Section 418(2) refers to a case where a *UK-based person* carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*. The only *Single Market Directive* which is relevant to mortgages is the *Banking Consolidation Directive*.
- (2) Section 418(4) refers to the case where a *UK-based person* carries on a *regulated activity* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*.
- (3) Section 418(5) refers to the case where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an *establishment* maintained by him in the *United Kingdom*.
- (4) Section 418(5A) refers to the case where an *electronic commerce activity* is carried on with or for a *person* in an *EEA State* from an establishment in the *United Kingdom*. See further *PERG 4.11.21G* (E-Commerce Directive).
- (5) Section 418(6) makes it clear that for the purposes of sections 418(2) to (5A), it is irrelevant where the *person* with whom the activity is carried on is situated.

Legislative provisions: overseas persons exclusion

- 4.11.6 G The exclusions in article 72(5A) to (5F) of the *Regulated Activities Order* (Overseas persons) provide that an *overseas person* does not

carry on the *regulated activities* of:

- (1) *arranging (bringing about) or making arrangements with view to a regulated mortgage contract;*
- (2) *entering into a regulated mortgage contract; or*
- (3) *administering a regulated mortgage contract;*

if the borrower (and each of them, if more than one) is an individual and is normally resident overseas. In the case of arranging a variation of, or administration of, an existing *regulated mortgage contract*, each borrower must be an individual who was normally resident overseas when he entered into the contract. In the *FSA's* view, normal residence for the purposes of this exclusion envisages physical presence with a degree of continuity, making allowance for occasional temporary absences (e.g. holiday). An *overseas person* under article 3 of the *Regulated Activities Order* (Interpretation) is a *person* who carries on certain *regulated activities* albeit not from a permanent place of business maintained by him in the *United Kingdom*.

- 4.11.7 G An *overseas person* might advise a *person* in the *United Kingdom* on an *endowment assurance* at the same time as advising on a *regulated mortgage contract*. If so, whilst the *overseas person* exclusion in article 72(5) will apply in relation to the advice on the *endowment assurance*, there will be no 'overseas persons exclusion' for the advice on the *regulated mortgage contract*.

Territorial scenarios: general

- 4.11.8 G The *FSA's* view of the effect of the *Act* and *Regulated Activities Order* in various territorial scenarios is set out in the remainder of this section. In those scenarios:
- (1) the term "service provider" is used to describe a *person* carrying on any of the *regulated mortgage activities*;
  - (2) the term "borrower" refers to a borrower who is an individual and not a trustee; the position of a borrower acting as a trustee is not considered; and
  - (3) it is assumed that the activity is not an *electronic commerce activity* (as to which, see *PERG* 4.11.21G (E-Commerce Directive)).

*PERG* 4.11.9G contains a simplified tabular summary of those views, which should be used only in conjunction with the more detailed analysis.

- 4.11.9 G Simplified summary of the territorial scope of the regulated mortgage activities, to be read in conjunction with the rest of this section.

This table belongs to *PERG* 4.11.8G

		Individual borrower resident and located:	
		in the <i>UK</i>	outside the <i>UK</i>
Service provider carrying on <i>regulated activity</i> from establishment:	in the <i>UK</i>	Yes	Yes
	outside the <i>UK</i>	Yes	No

Yes = *authorisation* or exemption required

No = *authorisation* or exemption not required

#### Service provider in the United Kingdom

- 4.11.10 G Where a *person* is carrying on any of the *regulated mortgage activities* from an establishment maintained by him in the *United Kingdom*, that *person* will be 'carrying on a *regulated activity* in the *United Kingdom*'. The location and residence of the borrower is irrelevant. That is the practical effect of sections 418(4), (5) and (6) of the *Act*.
- 4.11.11 G There may also be situations where a lender, who does not maintain an *establishment* in the *United Kingdom*, provides services in the *United Kingdom*. For instance, a lender might attend a property exhibition in the *United Kingdom* at which he sets up a loan with a borrower. A lender might also attend the offices of its *UK*-based lawyers, or appoint them as its agent, to enter into a contract with a borrower. In these cases, the overseas lender would only be carrying on a *regulated activity* in the *United Kingdom* if he subsequently enters into a *regulated mortgage contract* with a *UK* resident. This is because *arrangements* made with borrowers at the exhibition would be subject to the exclusion in article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party) (see *AUTH* 4.5.7G). As regards *entering into a regulated mortgage contract* with a borrower resident overseas, this would be subject to the *overseas persons* exclusion.

#### Service provider overseas: general

4.11.12 G If a service provider is overseas, the question of whether that *person* is carrying on a *regulated activity* in the *United Kingdom* will depend upon:

- (1) the type of *regulated activity* being carried on;
- (2) section 418 of the *Act*;
- (3) the residence and location of the borrower;
- (4) the application of the *overseas persons* exclusion in article 72(5A) to (5F) of the *Regulated Activities Order*; and
- (5) whether the service provider is carrying on an *electronic commerce activity*.

The factors in (1), (3) and (4) are considered in relation to each *regulated activity* in *PERG* 4.11.13G to *PERG* 4.11.20G. The factor in (5) is considered in *PERG* 4.11.21G.

#### Service provider overseas: arranging regulated mortgage contracts

4.11.13 G When a *person* is *arranging (bringing about) regulated mortgage contracts* or *making arrangements with a view to regulated mortgage contracts* from overseas, the question of whether he will be carrying on *regulated activities* in the *United Kingdom* will depend on the relevant circumstances. In the *FSA's* view, factors to consider include:

- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation only applies if the land is in the *United Kingdom*;
- (2) the *overseas persons* exclusion in article 72(5A) to (5C) of the *Regulated Activities Order*; and
- (3) where the arrangements are in fact made.

4.11.14 G In the *FSA's* view:

- (1) if the borrower is *normally resident* in the *United Kingdom*, the clear territorial limitation in the definition of *regulated mortgage contract* carries most weight in determining where regulation should apply; it is likely that the arranger will be carrying on *regulated activities* in the *United Kingdom*;
- (2) if the borrower is *normally resident* overseas, the arrangements

are excluded by the *overseas persons* exclusion.

In the case of *arranging (bringing about) regulated mortgage contracts*, the normal residence of the borrower at the time the arrangements are made is the determining factor, except in the case of *arranging (bringing about) a variation of a contract*, in which case it is the normal residence of the borrower at the time that the *regulated mortgage contract* was entered into. In the case of *making arrangements with a view to regulated mortgage contracts*, the *normal residence* of the borrower at the time he participates in the arrangements is the determining factor.

Service provider overseas: advising on regulated mortgage contracts

- 4.11.15 G In the FSA's view, *advising on regulated mortgage contracts* is carried on where the borrower receives the advice. Accordingly:
- (1) if the borrower is located in the *United Kingdom*, a person advising that borrower on *regulated mortgage contracts* is carrying on a *regulated activity* in the *United Kingdom*; but
  - (2) if the service provider and borrower are both located overseas, the *regulated activity* is not carried on in the *United Kingdom*.

Service provider overseas: entering into a regulated mortgage contract

- 4.11.16 G The effect of article 72(5D) of the *Regulated Activities Order* is that an *overseas person* does not carry on the *regulated activity* of *entering into a regulated mortgage contract* if the borrower is resident overseas at the time the contract is entered into.
- 4.11.17 G In the FSA's view, in circumstances other than those excluded by article 72(5D) of the *Regulated Activities Order*, an overseas lender is likely to carry on the *regulated activity* of *entering into regulated mortgage contracts* in the *United Kingdom*. This is because of:
- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation applies only if the land is in the *United Kingdom*;
  - (2) the general principle and practice that contracts relating to land are usually governed by the law of the place where the land is situated;
  - (3) practical issues of conveyancing; a lender is likely to use the services of a solicitor or licensed conveyancer operating from the *United Kingdom*, who enters into the *regulated mortgage contract* as agent for the lender in the *United Kingdom*; and

- (4) the existence of the *overseas persons* exclusion in article 72(5D).

Service provider overseas: administering a regulated mortgage contract

- 4.11.18 G The effect of article 72(5E) and (5F) of the *Regulated Activities Order* is that an *overseas person* who administers a *regulated mortgage contract*, where the borrower was resident overseas at the time that the contract was entered into, does not carry on the *regulated activity of administering a regulated mortgage contract*.
- 4.11.19 G In the *FSA's* view, in circumstances other than those excluded by article 72(5E) of the *Regulated Activities Order*, an overseas administrator is likely to carry on the *regulated activity of administering a regulated mortgage contract* in the *United Kingdom*. This is because:
- (1) the territorial limitation in the definition of *regulated mortgage contract* means that regulation applies only if the land is in the *United Kingdom*;
  - (2) when administrators notify borrowers resident in the *United Kingdom* of matters pursuant to a *regulated mortgage contract*, such notification is likely to be carried on in the *United Kingdom*;
  - (3) the steps involved in collecting or recovering payments will generally include giving notice to the borrower at his *UK* address;
  - (4) legal action to recover sums due under *regulated mortgage contracts* will in many cases require proceedings before courts in the *United Kingdom*, either to enforce *regulated mortgage contracts* subject to the jurisdiction of these courts or to register and enforce judgements obtained elsewhere, in the case of contracts subject to non-UK jurisdictions; and
  - (5) of the existence of the exclusion in article 72(5E) (*Overseas persons*).

Service provider: agreeing to carry on a regulated activity

- 4.11.20 G In most cases, there will be no preliminary agreement to enter into a *regulated mortgage contract* in advance of entering into the contract itself. Moreover, the exclusions relevant to a *regulated activity* are taken into account to determine whether a *person* is *agreeing to carry on* that *regulated activity*. So, for example, agreeing to arrange *regulated mortgage contracts* in cases where borrower and service provider are overseas, would not be *regulated activities* because the

activities themselves are outside the scope of regulation. Otherwise, in the FSA's view, the issue of where agreeing to carry on a *regulated activity* takes place will depend on such factors as a contractual analysis of where the agreement is entered into, including where appropriate the general position at common law (see, for example, *PERG* 4.11.17G).

#### E-Commerce Directive

- 4.11.21 G The *E-Commerce Directive* removes restrictions on the cross-border provision of services by electronic means, introducing a *country of origin* approach to regulation. This requires *EEA States* to impose their requirements on the outward provision of such services and to lift them from inward providers. The *E-Commerce Directive* contains only a few exceptions, termed derogations, from this principle. The *E-Commerce Directive* defines an e-commerce service (termed an information society service) as any service, normally provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service. So, for example, it includes services provided over the internet, by solicited e-mail, and interactive digital television. Further *guidance* is contained in the FSA's E-Commerce Directive sourcebook (*ECO*).

#### Distance marketing directive

- 4.11.22 G The FSA will be responsible for implementing the *Distance Marketing Directive* for those firms and activities it regulates. The FSA and the Treasury agree that the *Distance Marketing Directive* is intended to operate on a *country of origin* basis, except where a firm is *marketing* into the UK from an establishment in an *EEA State* which has not implemented the Directive.

#### 4.12 Appointed representatives

What is an appointed representative?

- 4.12.1 G Section 39 of the *Act* makes provision exempting *appointed representatives* from the need to obtain *authorisation*. An *appointed representative* is a *person* who is a party to a contract with an *authorised person* which permits or requires the *appointed representative* to carry on certain regulated activities. *SUP* 12 (Appointed representatives) contains *guidance* relating to *appointed representatives*.
- 4.12.2 G A *person* who is an *authorised person* cannot be an *appointed representative* (see section 39(1) of the *Act* (Exemption of appointed representatives)).

Business for which an appointed representative is exempt

- 4.12.3 G An *appointed representative* can carry on only those *regulated activities* which are specified in the *Appointed Representatives Regulations*. As respects *regulated mortgage contracts*, these are *arranging (bringing about), making arrangements with a view to and advising on regulated mortgage contracts* (as well as agreeing to do so).

Persons who are not already appointed representatives

- 4.12.4 G A *person* who is not already an *appointed representative* for *designated investment business* activities, and who may wish to become one in relation to the *regulated activities* of *arranging (bringing about), making arrangements with a view to or advising on regulated mortgage contracts*, can do so. He must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities*, and who accepts responsibility for the *appointed representative's* actions when acting for him. SUP 12.4 (What must a firm do when it appoints an appointed representative?) and SUP 12.5 (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made.

Persons who are already appointed representatives

- 4.12.5 G Where a *person* is already an *appointed representative* (in relation to any non-mortgage activities) and he proposes to carry on any *regulated mortgage activities*, he will need to consider the following matters.
- (1) He must become *authorised* if his proposed mortgage activities include either *entering into a regulated mortgage contract* or *administering a regulated mortgage contract*. These activities may not be carried on by *appointed representatives* and the *Act* does not permit any *person* to be exempt for some activities and *authorised* for others. Once *authorised*, the *person* may only carry on the *regulated activities* that are covered by his *permission*. He will therefore need to apply for a *permission* to cover all the *regulated activities* that he proposes to carry on.
  - (2) If he proposes to carry on the *regulated activities* of *arranging (bringing about), making arrangements with a view to or advising on regulated mortgage contracts*, he may be able to do so as an *appointed representative*. But this will depend on a number of issues.
    - (a) He will need to be appointed by an *authorised person* who is prepared to accept responsibility for the *appointed representative's regulated mortgage activities* when acting for him. The *authorised person* must have *permission* to carry on these *regulated mortgage*

*activities.*

- (b) If these *regulated mortgage activities* are to be carried on for the same *authorised person* who has already appointed him for his *non-mortgage regulated activities*, the contract between them will need to be amended to reflect the additional activities. Other amendments to the contract may be required.
- (c) It may be that these *regulated mortgage activities* are to be carried on for a different *person*.
- (d) If the *regulated mortgage activities* relating to *arranging* are to be limited to making introductions, he may be able to operate within the exclusion for introducers described at *PERG 4.5.10G*. This is different from the exclusions for introductions relating to *securities* and *contractually based investments*, which are described at *PERG 8.33*.

#### 4.13 Other exemptions

4.13.1 G Certain named *persons* are exempted by the *Exemption Order* from the need to obtain *authorisation*. The following bodies are exempt in relation to carrying on by them of any of the *regulated mortgage activities*:

- (1) local authorities (paragraph 47 of the Schedule to the *Exemption Order*) but not their *subsidiaries*;
- (2) registered social landlords in England and Wales within the meaning of Part I of the Housing Act 1996 (paragraph 48(a) of the Schedule to the *Exemption Order*) but not their subsidiaries;
- (3) registered social landlords in Scotland within the meaning of the Housing (Scotland) Act 2001 (paragraph 48(2)(b) of the Schedule to the *Exemption Order*) but not their subsidiaries;
- (4) The Housing Corporation (paragraph 48(c) of the Schedule to the *Exemption Order*);
- (5) Scottish Homes (paragraph 48(d) of the Schedule to the *Exemption Order*); and
- (6) The Northern Ireland Housing Executive (paragraph 48(e) of the Schedule to the *Exemption Order*).

#### 4.14 Mortgage activities carried on by professional firms

##### Introduction

- 4.14.1 G *Professional firms* (broadly, firms of solicitors, accountants and actuaries) may carry on *regulated mortgage activities* in the course of their usual professional activities. The *regulated activities* of *advising on, arranging (bringing about), making arrangements with a view to and administering regulated mortgage contracts* are those most likely to be relevant.
- 4.14.2 G In the FSA's view, the following exclusions are likely, in many cases, to exclude the normal activities of *professional firms* from amounting to *regulated mortgage activities*:
- (1) article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business), which applies in relation to the advising and arranging activities (see *PERG 4.10.1G*);
  - (2) article 66 of the *Regulated Activities Order* (Trustees, nominees and personal representatives) which applies in relation to each of the *regulated mortgage activities* (see *PERG 4.10.5G*); and
  - (3) article 63 of the *Regulated Activities Order* (Administration pursuant to agreement with authorised person) which applies in relation to *administering a regulated mortgage contract* (see *PERG 4.8.7G*); in the FSA's view, this would exclude steps taken by a solicitor to recover payments due under a *regulated mortgage contract* if his instructions come from an *authorised person* with *permission* to administer a *regulated mortgage contract*.
- 4.14.3 G In addition, a *professional firm* may, in certain circumstances, be able to use the *Part XX exemption* to avoid any need for *authorisation*. *PROF 2* (Status of exempt professional firm) contains general *guidance* on the *Part XX exemption*. In particular, *PROF 2.1.9G* explains that the Treasury have specified certain *regulated activities* to which the *Part XX exemption* cannot apply in the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities Order 2001 ("the Non-Exempt Activities Order")). *PERG 4.14.4G* to *4.14.6G* explain which of the *regulated activities* relating to *regulated mortgage contracts* have been so specified.

Part XX exemption: arranging regulated mortgage contracts

- 4.14.4 G *Arranging (bringing about) a regulated mortgage contract and making arrangements with a view to a regulated mortgage contract* have not been specified in the *Non-Exempt Activities Order*. Accordingly, a *professional firm* may carry on these *regulated activities* without *authorisation*, provided the other conditions of the *Part XX exemption* are complied with.

#### Part XX exemption: advising on regulated mortgage contracts

- 4.14.5 G *Advising on regulated mortgage contracts* has been specified in the *Non-Exempt Activities Order*. However, a *professional firm* is prevented from using the *Part XX exemption* to advise on *regulated mortgage contracts* only if the advice it gives consists of a recommendation. This will be the case if the recommendation is made to an individual to enter into a *regulated mortgage contract* with a lender who would, in entering into the contract, carry on the *regulated activity of entering into a regulated mortgage contract*, irrespective of whether the lender is an *authorised* or *exempt person* or would carry on the activity by way of business. However, a *professional firm* is allowed to give advice that involves a recommendation of this kind provided the advice endorses a corresponding recommendation given to the borrower by an *authorised person* who has *permission to advise on regulated mortgage contracts* or an *exempt person* whose exemption covers that activity.

#### Part XX exemption: entering into and administering a regulated mortgage contract

- 4.14.6 G *Entering into a regulated mortgage contract* and *administering a regulated mortgage contract* have both been specified in the *Non-Exempt Activities Order*. As an exception, a *professional firm* is allowed under the *Part XX exemption* to carry on these *regulated activities* if the firm is acting as a trustee or personal representative. But this is provided that the borrower is a beneficiary under the trust, will or intestacy.

#### 4.15 Mortgage activities carried on by 'packagers'

##### Introduction

- 4.15.1 G The term 'packagers' is used variously to describe a range of intermediaries and their different activities in the mortgage process. Depending on the nature of their activities, these intermediaries may carry on *regulated mortgage activities*. The *regulated activities* likely to be of most relevance are *arranging (bringing about)* or *making arrangements with a view to regulated mortgage contracts* (described in more detail at *PERG 4.5*) and *advising on regulated mortgage contracts* (described in more detail at *PERG 4.6*). It is important to note that it is the nature of the relevant activities and not an entity's own description of itself or its activities that will determine the need for *authorisation*. This section describes the activities of various types of 'packagers'.

#### Mortgage Clubs (sometimes called mortgage wholesalers)

4.15.2 G So-called 'mortgage clubs' or 'wholesalers' essentially act as a distribution function for lenders, providing information to intermediaries about current deals available from a range of lenders. They provide information (often through an electronic sourcing system) in a way that helps intermediaries search the market effectively and, as such, do not deal directly with individual borrowers. If only engaged in these activities and without direct contact with individual borrowers, in the *FSA's* view these entities are unlikely to carry on a *regulated mortgage activity* because they will not:

- (1) *arrange (bring about) regulated mortgage contracts*; their involvement is too indirect to bring about the contract;
- (2) *make arrangements with a view to regulated mortgage contracts*; borrowers will not be participating in the arrangements which they make; or
- (3) *advise on regulated mortgage contracts*, because they provide information not advice and the information is, in any event, directed to intermediaries rather than borrowers.

#### Mortgage packaging companies

4.15.3 G So-called 'mortgage packaging companies' may undertake certain parts of the mortgage process for lenders on an outsourced basis, ensuring that a complete set of documentation is collated and sent to the lender. This might include receiving application forms from intermediaries, undertaking credit reference checks and instructing a valuer. Other activities might include a product placement service for other intermediaries who provide product advice or recommendations to their clients. In the *FSA's* view, mortgage packaging companies engaged in these activities are unlikely to be carrying on a *regulated activity* where they have no direct contact or contract with potential borrowers (for the reasons given in *PERG 4.15.2G*).

#### Broker packagers (sometimes called 'intermediary brokers')

4.15.4 G The term 'broker packagers' is typically used to describe intermediaries who either market their services directly to borrowers or who offer other intermediaries a complete mortgage outsourcing service. They are often involved in the sales and advice process, including helping the borrower complete application forms. In the *FSA's* view, broker packagers carrying on these types of activity in direct contact with the borrower are likely to be carrying on the *regulated activities* of *arranging (bringing about)* and *making arrangements with a view to regulated mortgage contracts*. They may also be *advising on regulated mortgage contracts* depending on the circumstances.

## 4.16 Mortgage activities

### Introduction

- 4.16.1 G It is common practice in the mortgage industry for the original lender which makes the loan to pass on ownership of the loan to a third party through *securitisation*. *Securitisation* transactions take different forms, but the essence is that the original lender sells the beneficial interest (with or without the legal interest) in a mortgage portfolio to a special purpose vehicle ('SPV'), which raises finance to pay for the portfolio by selling its own *securities*. The original lender may (or may not) retain the first legal charge on each mortgage in the portfolio. There may also be other parties to the transaction, for example a security trustee to whom the SPV in turn charges the portfolio. Invariably, the SPV will also appoint either the original lender or a third party to administer the portfolio on its behalf. This section discusses whether, on a typical *securitisation* transaction, a SPV (and similarly a security trustee) carries on a *regulated mortgage activity*.
- 4.16.2 G The government's intention behind the regulatory regime for mortgages was "to ensure that, at any one time, it would be possible for each mortgage to be linked to one and only one FSA authorised firm (with mortgage permission) to have the ongoing regulatory responsibility towards consumers" (HM Treasury, Regulating Mortgages, February 2002, paragraph 47). In other words, it should be possible to arrange a *securitisation* transaction so that the SPV and other third parties do not carry on *regulated activities*, so long as an *authorised person* (with appropriate *permission*) is involved.

### Entering into a regulated mortgage contract

- 4.16.3 G A SPV does not carry on the *regulated activity* of *entering into a regulated mortgage contract* (or agreeing to do so), merely by acquiring the legal or beneficial interest in the contract from the original lender, or by providing funding to the original lender. If the contract is subsequently varied, a SPV should take care to avoid the original contract being replaced with a new *regulated mortgage contract* (see *PERG* 4.4.4G and *PERG* 4.4.13G). The original lender is, of course, likely to require *authorisation*.

### Administering, arranging and advising on a regulated mortgage contract

- 4.16.4 G If an unauthorised SPV arranges for an *authorised person* with *permission* to administer a *regulated mortgage contract* to administer its *regulated mortgage contracts*, it can avoid carrying on the *regulated activities* of:

- (1) *administering a regulated mortgage contract*, because of the

exclusion in article 62 of the *Regulated Activities Order* (described in *PERG* 4.8.4G);

- (2) *arranging (bringing about) or making arrangements with a view to regulated mortgage contracts*, because any arrangements that may be made by the *authorised person* in *administering* the contract are excluded, for the SPV, by article 29A of the *Regulated Activities Order* (referred to at *PERG* 4.5.9G); in addition, making the original *securitisation* arrangements is unlikely to be a *regulated activity*, as it is unlikely to "bring about" the entering into of the contract and the borrower is unlikely to participate in the arrangements;
- (3) *advising on regulated mortgage contracts*, because any advice given by the *authorised person* in administering the contract is excluded, for the SPV, by article 54A of the *Regulated Activities Order* (referred to at *PERG* 4.6.28G); and
- (4) *agreeing to carry on* any of the activities in (1) to (3) because agreeing to carry on an activity is only a *regulated activity* if the activity to be carried on would itself be a *regulated activity*.

#### 4.17 Interaction with the Consumer Credit Act

##### Entering into and administering a regulated mortgage contract

- 4.17.1 G Article 90 of the *Regulated Activities Order* essentially carves out *regulated mortgage contracts* from regulation under the Consumer Credit Act 1974 (CCA). Many loans that fall within the *regulated mortgage contract* definition are already exempt from much of the detail required under the CCA.
- 4.17.2 G Some loans that will fall within the *regulated mortgage contract* definition are also currently classified as regulated agreements under the CCA. In these cases, the impact of the carve-out in article 90 of the *Regulated Activities Order* is likely to be more significant. In particular, most of the CCA controls in respect of entering into, operation and termination of agreements will not apply. Article 90 also, however, provides that section 126 of the CCA (Enforcement of land mortgages) and other provisions relating to it, apply to agreements which would otherwise be regulated agreements. In the *FSA's* view, it follows that section 126 of the CCA and related provisions including sections 129, 130, 131, 135 and 136 (dealing amongst other things with extension of time and protection of property pending proceedings) will apply to these *regulated mortgage contracts*.
- 4.17.3 G *Regulated mortgage contracts* that were in place at 31 October 2004 and which are subject to the CCA will remain subject to that regime and will come within the *FSA's* remit. But there may be instances

where a variation of an existing contract amounts to entering into a new *regulated mortgage contract* (see *PERG 4.4.4G* and *PERG 4.4.13G*).

- 4.17.4 G Unsecured loans, as well as loans secured on second charges on property, are not subject to the article 90 carve-out. Many of these loans are currently covered by the CCA and the position will not change.
- 4.17.5 G In some cases, lenders may provide a flexible mortgage product comprising both a secured first charge loan and unsecured borrowing, for example credit card facilities. In this example, in addition to considering the need for *authorisation*, the lender will also require a CCA licence in respect of the unsecured lending, even where the product is sold under a single agreement.

#### Advising on and arranging a regulated mortgage contract

- 4.17.6 G The CCA also regulates *persons* who carry on certain types of ancillary credit business including "credit brokerage", "debt-adjusting" and "debt-counselling", as defined by section 145 of the CCA. One aspect of the CCA regime is that a licence is required for these activities. Article 20 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (SI 2003/1475) adds new exceptions to section 145 of the CCA in relation to these activities.
- 4.17.7 G Article 20(2) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 amends section 146 of the CCA (Exceptions from section 145) so that it is not "credit brokerage" for a *person* to introduce an individual seeking to obtain credit if the introduction is made (a) to an *authorised person* who has *permission* to enter as lender into "relevant agreements"; or (b) to a "qualifying broker", with a view to that individual obtaining credit under a "relevant agreement".
- 4.17.8 G Amended section 146 of the CCA defines "relevant agreement" as meaning a consumer credit agreement secured by a land mortgage, where entering into that agreement as lender is a *regulated activity*. "Qualifying broker" is defined in the same section as meaning a *person* who may effect introductions of the kind mentioned in *PERG 4.17.7G* without contravening the *general prohibition* under section 19 of the *Act*. "Credit brokerage" itself includes introducing an individual seeking to obtain credit to finance the acquisition of a dwelling to be occupied by himself or his relatives, to any *person* carrying on a business in the course of which he provides credit secured on land (for full definition see section 145(2) of the CCA).
- 4.17.9 G In addition to the provisions of the exception under amended section 146 of the CCA, introducers are referred to the *guidance* in *PERG*

4.5.10G dealing with the provisions relating to introducing in the *Regulated Activities Order*.

- 4.17.10 G Article 20(2) amends section 146 of the CCA by providing that it is not "debt adjusting" to carry on an activity which would otherwise be "debt adjusting" under section 146(5) of the CCA if (a) the debt in question is due under a "relevant agreement"; and (b) that activity constitutes a *regulated activity*. "Debt adjusting" includes in relation to debts due under consumer credit agreements (a) negotiating with the creditor, on behalf of the debtor, terms for discharge of the debt, or (b) taking over, in return for payments by the debtor, his obligation to discharge a debt, or (c) any similar activity concerned with the liquidation of the debt (see full definition in section 145(5) of the CCA).
- 4.17.11 G In addition to the provisions of the exception under amended section 146 of the CCA, debt adjusters and arrangers are referred to the *guidance* in *PERG 4.5* dealing with the provisions relating to *arranging* and, in particular, *PERG 4.5.1G(1)(b)* dealing with varying a *regulated mortgage contract*.
- 4.17.12 G Article 20(2) amends section 146 CCA by providing that it is not "debt-counselling" for a *person* to give advice to debtors if (a) the debt in question is due under a "relevant agreement"; and (b) giving that advice constitutes a *regulated activity*. "Debt-counselling" includes the giving of advice to debtors about the liquidation of debts due under consumer credit agreements (see the full definition in section 145(6) of the CCA).
- 4.17.13 G In addition to the provisions of the exception under amended section 146 of the CCA, debt counsellors and advisers are referred to the *guidance* in *PERG 4.6* dealing with *advising on regulated mortgage contracts* and, in particular, *PERG 4.6* (Definition of 'advising on regulated mortgage contracts') dealing with varying a *regulated mortgage contract*.
- 4.17.14 G The CCA's licensing regime will still apply to credit brokers, debt adjusters and debt counsellors in respect of non-regulated mortgages and other loans, as well as to *authorised persons* or *appointed representatives* who carry on ancillary credit business in addition to *regulated activities*. Accordingly, *mortgage intermediaries* requiring *authorisation* may also need to retain their CCA licences.

#### Financial Promotion and advertisements

- 4.17.15 G Articles 90 and 91 of the *Regulated Activities Order* include provisions that have the effect of removing from CCA regulation *financial promotions* about *qualifying credit*. Such promotions will not therefore be subject to Part IV of the CCA or regulations made

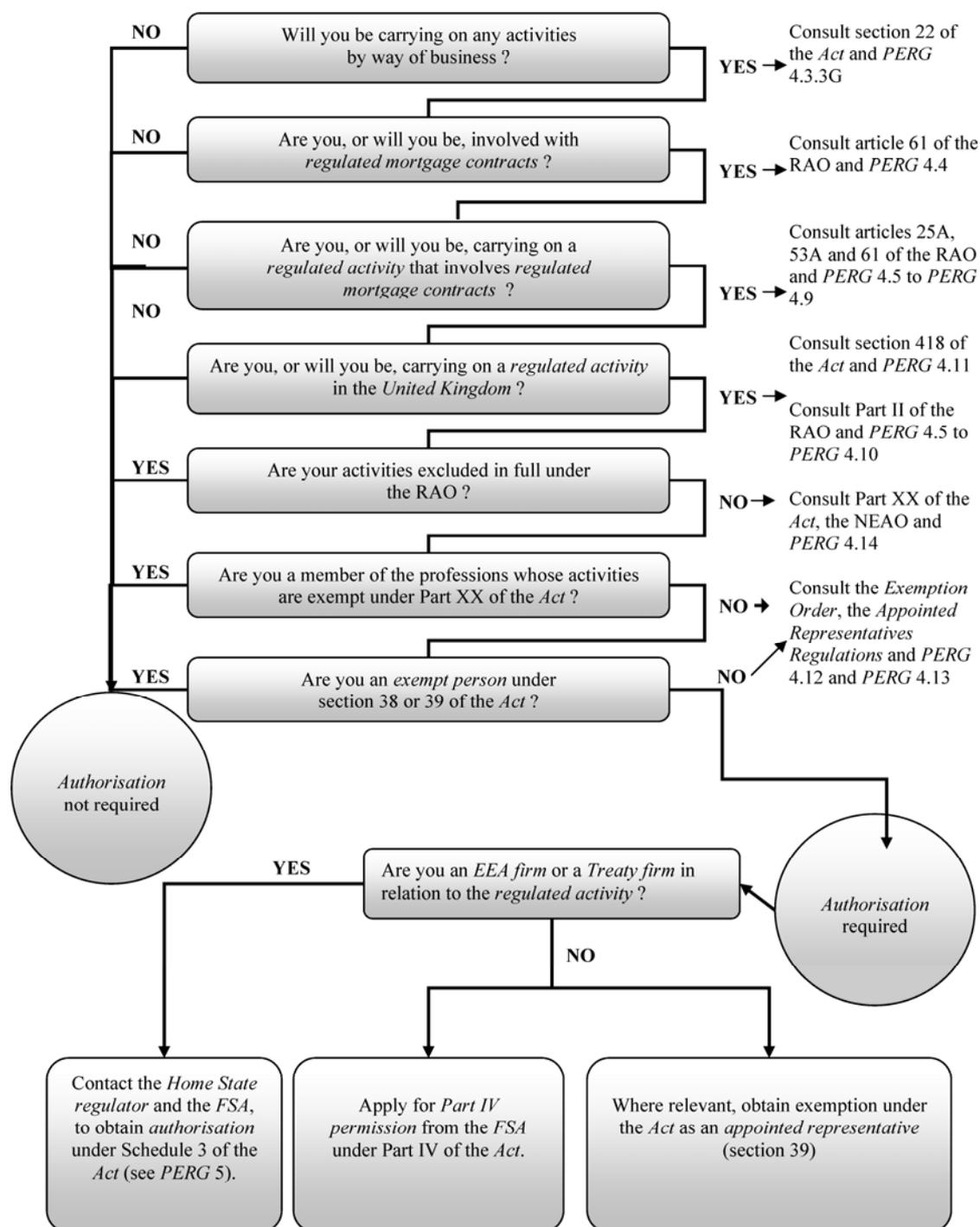
under that Part.

4.17.16 G For more detailed *guidance* concerning the interface between the *financial promotion* regime and the regulation of credit advertisements under the CCA, see *PERG* 8.17.17G.

4.18 Regulated activities related to mortgages: flowchart

4.18 Do you need authorisation?

## Do you need authorisation?



### Key to Abbreviations:

NEAO = The Financial Services and Markets Act 2001 (Professions) (Non Exempt Activities) Order 2001

RAO = The Financial Services and Markets Act 2001 (Regulated Activities) Order 2001.

## GUIDANCE ON INSURANCE MEDIATION ACTIVITIES

### 5 Guidance on insurance mediation activities

#### 5.1 Application and purpose

##### Application

5.1.1 G This chapter applies principally to any *person* who needs to know whether he carries on *insurance mediation activities* and is thereby subject to *FSA* regulation. As such it will be of relevance among others to:

- (1) insurance brokers;
- (2) insurance advisers;
- (3) *insurance undertakings*; and
- (4) other *persons* involved in the sale and administration of *contracts of insurance*, even where these activities are secondary to their main business.

##### Purpose of guidance

5.1.2 to 5.1.5 G [not used]

5.1.6 G The purpose of this *guidance* is to help *persons* consider whether they need *authorisation* or a variation of their *Part IV permission*. Businesses new to regulation who act only as introducers of *insurance business* are directed in particular to *PERG* 5.6.2G (article 25(1): arranging (bringing about) deals in investments) to *PERG* 5.6.9G (Exclusion: Article 72C (Provision of information on an incidental basis)) and *PERG* 5.15.6G (Flow chart: Introducers) to help consider whether they require *authorisation*. This *guidance* also explains the availability to *persons* carrying on *insurance mediation activities* of certain exemptions from *FSA* regulation, including the possibility of becoming an *appointed representative* (see *PERG* 5.13.1G to *PERG* 5.13.6G (Appointed representatives)).

##### Effect of guidance

5.1.7 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* and the circumstances contemplated by it, then the *FSA* will proceed on the footing that the *person* has complied with aspects of the requirement to which the *guidance* relates.

5.1.8 G 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, 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)).

5.1.9 G A *person* reading this *guidance* should refer to the *Act* and 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*. A *person* may need to seek his own legal advice.

5.1.10 G [not used]

#### Guidance on other activities

5.1.11 G A *person* may wish to carry on activities related to other forms of *investment* in connection with *contracts of insurance*, such as *advising on* and *arranging regulated mortgage contracts*. Such a *person* should also consult the *guidance* in *PERG 2* (Authorisation and Regulated Activities), *PERG 4* (Regulated activities connected with mortgages) and *PERG 8* (Financial Promotion and Related Activities).

## 5.2 Introduction

5.2.1 G This *guidance* is based on the statutory instruments made as part of implementing the *IMD* in the *United Kingdom*. This legislation includes the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (S.I. 2003/1476), which amends among others the *Regulated Activities Order*, the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2003/1217), the Non-Exempt Activities Order and the Business Order. Other legislation that forms the basis of this *guidance* includes the Financial Services and Markets Act 2000 (Exemption) (Amendment) (No.2) Order 2003 (S.I. 2003/1675), the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2003 (S.I. 2003/1676) and the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473). For ease of reference, references to the *Regulated Activities Order* below adopt the revised *Regulated Activities Order* numbering indicated in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003.

#### Requirement for authorisation or exemption

5.2.2 G Any *person* who carries on a *regulated activity* in the *United Kingdom* by way of business must either be an *authorised person* or exempt from the need for *authorisation*. Otherwise, the *person* commits a criminal offence and certain agreements may be

unenforceable. *PERG 2.2* (Authorisation and regulated activities) has further *guidance* on these consequences. To be *authorised*, a *person* must either:

- (1) hold a *Part IV permission* given by the *FSA* (see *AUTH 1.3* (The Authorisation manual) and *AUTH 3* (Applications for Part IV Permission)); or
- (2) qualify for *authorisation* (see *AUTH 5* (Qualifying for Authorisation under the Act)); for example, if the *person* is an *EEA firm* or a *Treaty firm*.

Questions to be considered to decide if authorisation is required

5.2.3 G A *person* who is concerned to know whether his proposed *insurance mediation activities* may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flow chart in *PERG 5.15.2G* (Flow chart: regulated activities related to insurance mediation – do you need authorisation?):

- (1) will the activities relate to *contracts of insurance* (see *PERG 5.3* (Contracts of insurance))?
- (2) if so, will I be carrying on any *insurance mediation activities* (see *PERG 5.5* (The regulated activities: dealing in contracts as agent) to *PERG 5.11* (Other aspects of exclusions))?
- (3) if so, will I be carrying on my activities by way of business (see *PERG 5.4* (The business test))?
- (4) if so, is there the necessary link with the *United Kingdom* (see *PERG 5.12* (Link between activities and the United Kingdom))?
- (5) if so, will any or all of my activities be excluded (see *PERG 5.3.7G* (Connected contracts of insurance) to *PERG 5.3.8G* (Large risks); *PERG 5.6.5G* (Exclusion: article 72C provision of information on an incidental basis) to *PERG 5.6.23G* (Other exclusions); *PERG 5.7.7G* (Exclusions); *PERG 5.8.24G* (Exclusion: periodical publications, broadcasts and web-sites) to *PERG 5.8.26G* (Other exclusions); *PERG 5.11* (Other aspects of exclusions) and *PERG 5.12.9G* to *PERG 5.12.10G* (Overseas persons))?
- (6) if it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under Part XX of the *Act* (see *PERG 5.14.1G* to *PERG 5.14.4G* (Professionals))?
- (7) if not, am I exempt as an *appointed representative* (see *PERG 5.13* (Appointed representatives))?

- (8) if not, am I otherwise an exempt *person* (see *PERG 5.14.5G* (Other exemptions))?

If a *person* gets as far as question (8) and the answer to that question is "no", that *person* requires *authorisation* and should refer to *AUTH 3* (Application for Part IV Permission). The order of these questions considers firstly whether a *person* is carrying on *insurance mediation activities* before dealing separately with the questions "will I be carrying on my activities by way of business?" (3) and "if so, will any or all of my activities be excluded?" (5).

- 5.2.4 G It is recognised pursuant to section 22 of the *Act* that a *person* will not be carrying on *regulated activities* in the first instance, including *insurance mediation activities*, unless he is carrying on these activities by way of business. Similarly, where a *person's* activities are excluded he cannot, by definition, be carrying on *regulated activities*. To this extent, the content of the questions above does not follow the scheme of the *Act*. For ease of navigation, however, the questions are set out in an order and form designed to help *persons* consider more easily, and in turn, issues relating to:
- (1) the new activities;
  - (2) the business test; and
  - (3) the exclusions.

#### Approach to implementation of the IMD

- 5.2.5 G The *IMD* imposes requirements upon *EEA States* relating to the regulation of *insurance* and *reinsurance mediation*. The *IMD* defines "insurance mediation" and "reinsurance mediation" as including the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance and reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim (the text of article 2.3 *IMD* is reproduced in full in *PERG 5.16.2G* (article 2.3 of the Insurance Mediation Directive)).
- 5.2.6 G The *United Kingdom's* approach to implementing the *IMD* by domestic legislation is, in part, through secondary legislation, which will apply pre-existing *regulated activities* (slightly amended) in the *Regulated Activities Order* to the component elements of the *insurance mediation* definition in the *IMD* (see *PERG 5.2.5G* and the text of article 2.3 *IMD* in *PERG 5.16.2G* (article 2.3 of the Insurance Mediation Directive)).
- 5.2.7 G The effect of the *IMD* and its implementation described in *PERG 5.2.5G* to *PERG 5.2.6G* is to vary the application of the existing *regulated activities* set out in *PERG 5.2.8G* (1) to (3), (5) and (6), principally by applying these *regulated activities* to *general insurance contracts* and *pure protection contracts* and by making

changes to the application of the various exclusions to these *regulated activities*. These *regulated activities* applied prior to 14 January 2005 to qualifying contracts of insurance (as defined by article 3 of the *Regulated Activities Order* and referred to in the *Handbook* as *life policies* (which includes *pension policies*)). The legislation implementing the *IMD* introduced a new *regulated activity* set out in *PERG* 5.2.8G (4), which potentially applies to all *contracts of insurance*.

- 5.2.8 G It follows that each of the *regulated activities* below potentially apply to any *contract of insurance*:
- (1) *dealing in investments as agent* (article 21 (Dealing in investments as agent));
  - (2) *arranging (bringing about) deals in investments* (article 25(1) (Arranging deals in investments));
  - (3) *making arrangements with a view to transactions in investments* (article 25(2) (Arranging deals in investments));
  - (4) *assisting in the administration and performance of a contract of insurance* (article 39A (Assisting in the administration and performance of a contract of insurance));
  - (5) *advising on investments* (article 53 (Advising on investments));
  - (6) agreeing to carry on any of the above *regulated activities* (article 64 (Agreeing to carry on specified types of activity)).

- 5.2.9 G It is the scope of the *Regulated Activities Order* rather than the *IMD* which will determine whether a *person* requires *authorisation* or exemption. However, the scope of the *IMD* is relevant to the application of certain exclusions under the *Regulated Activities Order* (see, for example, the commentary on article 67 in *PERG* 5.11.9G (Activities carried on in the course of a profession or non-investment business)).

#### Financial promotion

- 5.2.10 G An *unauthorised person* who intends to carry on activities connected with *contracts of insurance* will need to comply with section 21 of the *Act* (Restrictions on financial promotion). This *guidance* does not cover *financial promotions* that relate to *contracts of insurance*. *Persons* should refer to the general *guidance* on *financial promotion* in *PERG* 8 (Financial promotion and related activities). (See in particular *PERG* 8.17A (Financial promotions concerning insurance mediation activities) for information on *financial promotions* that relate to *insurance mediation activities*.)

#### 5.3 Contracts of insurance

- 5.3.1 G A *person* who is concerned to know whether his proposed activities

may require *authorisation* will wish to consider whether those activities relate to *contracts of insurance* or contracts of *reinsurance*, or to *insurance business* or *reinsurance business*, which is the business of *effecting* or *carrying out contracts of insurance* or *reinsurance as principal*.

#### Definition

- 5.3.2 G The *Regulated Activities Order* does not attempt an exhaustive definition of a 'contract of insurance'. Instead, article 3(1) of the order (Interpretation) makes some specific extensions and limitations to the general common law meaning of the concept. For example, article 3(1) expressly extends the concept to fidelity bonds and similar contracts of guarantee, which are not contracts of insurance at common law, and it excludes certain *funeral plan contracts*, which would generally be contracts of insurance at common law.
- 5.3.3 G One consequence of this is that common law judicial decisions about whether particular contracts amount to 'insurance' or their being effected or carried out amounts to 'insurance business' are relevant in defining the regulatory scope of the *Act*.
- 5.3.4 G As with any other contract, a *contract of insurance* that is not effected by way of a deed will only be legally binding if, amongst other things, it is entered into for valuable consideration. Determining what amounts to sufficient consideration in any given case is a matter for the courts. In practice, however, the legal definition of consideration is very wide. In particular, just because a *contract of insurance* is 'free' in the colloquial sense does not mean that there is no consideration for it. In the vast majority of cases, therefore, 'free' insurance policies (such as policies that act as loss leaders for an *insurance undertaking*) will be binding contracts and will amount to *specified investments* and therefore be subject to *FSA* regulation.
- 5.3.5 G The *Regulated Activities Order* does not define a *reinsurance* contract. The essential elements of the common law description of a *contract of insurance* are also the essential elements of a *reinsurance* contract. Whilst the *IMD* addresses insurance and *reinsurance* separately, throughout this *guidance* the term 'contract of insurance' (italicised or otherwise) also applies to contracts of *reinsurance*.
- 5.3.6 G *Guidance* describing how the *FSA* identifies *contracts of insurance* is in *PERG 6* (Guidance on the Identification of Contracts of Insurance).

#### Connected contracts of insurance

- 5.3.7 G Article 72B of the *Regulated Activities Order* (Activities carried on by a provider of relevant goods or services) excludes from *FSA* regulation certain *regulated activities* carried on by providers of non-motor goods and services related to travel in relation to *contracts of insurance* that satisfy a number of conditions. Details about the scope

of this exclusion can be found at *PERG 5.11.13G* to *PERG 5.11.15G* (Activities carried on by a provider of relevant goods or services).

#### Large risks

- 5.3.8 G Large risks situated outside the *EEA* are also excluded (described in more detail at *PERG 5.11.16G* (Large risks)). The location of the risk or commitment may be determined by reference to the *EEA State* in which the risk is situated, defined in article 2(d) of the Second Non-Life Directive (88/357/EEC) or the *EEA State* of the commitment, defined in article 1(1)(g) of the Consolidated Life Directive (2002/83/EC). Broadly put, this is:
- (1) for insurance relating to buildings and/or their contents, the *EEA State* in which the property is situated;
  - (2) for insurance relating to vehicles, the *EEA State* of registration;
  - (3) for policies of four months or less duration covering travel or holiday risks, where the *policy* was taken out;
  - (4) in all other cases (including those determined by reference to the *EEA State* of the commitment), the *EEA State* where the policyholder has his habitual residence, or if the policyholder is a legal person, where his establishment, to which the contract relates, is situated.

#### Specified investments

- 5.3.9 G For an activity to be a *regulated activity*, it must be carried on in relation to 'specified investments' (see section 22 of the Act Regulated activities) and Part III of the Regulated Activities Order (Specified investments)). For the purposes of *insurance mediation activity*, *specified investments* include the following '*relevant investments*' defined in article 3(1) of the *Regulated Activities Order* (Interpretation):
- (1) rights under any *contract of insurance* (see article 75 (Contracts of insurance)); and
  - (2) rights to or interests in rights under *life policies* (see article 89 (Rights to or interests in investments)).

'*Relevant investments*' is the term used in articles 21 (Dealing in investments as agent), 25 (Arranging deals in investments) and 53 (Advising on investments) of the *Regulated Activities Order* to help define the types of investment to which the activities in each of these articles relate.

- 5.3.10 G A *person* will have rights under a *contract of insurance* when he is a *policyholder*. The question of whether a *person* has rights under a *contract of insurance* may require careful consideration in the case of group policies (with reference to the *Glossary* definition of

*policyholder*). In the case, in particular, of *general insurance contracts* and *pure protection contracts*, the existence or otherwise of rights under such policies may be relevant to whether a *person* is carrying on *insurance mediation activities*.

- 5.3.11 G A *person* may also have rights to or interests in rights under a *life policy* where he is not a *policyholder*, but this will again depend on the terms of the individual *policy*.
- 5.4 The business test
- 5.4.1 G A *person* will only need *authorisation* or exemption if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated Activities)).
- 5.4.2 G There is power in the *Act* for the Treasury to specify the circumstances in which a *person* is or is not to be regarded as carrying on *regulated activities* by way of business. The *Business Order* has been made using this power (partly reflecting differences in the nature of the different activities). As such, the business test for *insurance mediation activity* is distinguished from the standard test for 'investment business' in article 3 of the *Business Order*. Under article 3(4) of the *Business Order*, a *person* is not to be regarded as carrying on by way of business any *insurance mediation activity* unless he takes up or pursues that activity for remuneration. Accordingly, there are two principal elements to the business test in the case of *insurance mediation activities*:
- (1) does a *person* receive remuneration for these activities?
  - (2) if so, does he take up or pursue these activities by way of business?
- 5.4.3 G As regards *PERG 5.4.2G(1)*, the *Business Order* does not provide a definition of 'remuneration', but, in the *FSA's* view, it has a broad meaning and covers both monetary and non-monetary rewards. This is regardless of who makes them. For example, where a *person* pays discounted premiums for his own insurance needs in return for bringing other business to an *insurance undertaking*, the discount would amount to remuneration for the purposes of the *Business Order*. Remuneration can also take the form of an economic benefit which the *person* expects to receive as a result of carrying on *insurance mediation activities*. In the *FSA's* view, the remuneration does not have to be provided or identified separately from remuneration for other goods or services provided. Nor is there a minimum level of remuneration.
- 5.4.4 G As regards *PERG 5.4.2G(2)*, in the *FSA's* view, for a *person* to take up or pursue *insurance mediation activity* by way of business, 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 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:

- (1) it is not necessarily the case that services provided free of charge will not amount to a business; for example, advice (including advice available on a website) may be provided free of charge to potential *policyholders* but in the course of a business funded by commission payments; and
- (2) the 'by way of business' test may very occasionally be satisfied by an activity undertaken on an isolated occasion (provided that the activity would be regarded as done 'by way of business' in other respects, for example, because of the size of reward received or its relevance to other business activities).

5.4.5 G It follows that whether or not any particular *person* is acting 'by way of business' for these purposes will depend on his individual circumstances. However, a typical example of where the applicable business test would be likely to be satisfied by someone whose main business is not *insurance mediation activities*, is where a *person* recommends or arranges specific insurance *policies* in the course of carrying on that other business and receives a fee or commission for doing so.

5.4.6 G Some typical examples of where the business test is unlikely to be satisfied, assuming that there is no direct financial benefit to the arranger, include:

- (1) arrangements which are carried out by a *person* for himself, or for members of his family;
- (2) where employers provide insurance benefits for staff; and
- (3) where affinity groups or clubs set up insurance benefits for members.

5.4.7 G *PERG 5.4.8G* contains a table that summarises the main issues surrounding the business test as applied to *insurance mediation activities* and that may assist *persons* to determine whether they will need *authorisation* or exemption. The approach taken in the table involves identifying factors that, in the *FSA's* view, are likely to play a part in the analysis. Indicators are then given as to the significance of each factor to the *person's* circumstances. By analysing the indicators as a whole, a picture can be formed of the likely overall position. The table provides separate indicators for the two elements of remuneration and by way of business. As a *person* has to satisfy both elements, a clear overall indication against either element being satisfied should mean that the test is failed. This approach cannot be expected to provide a clear conclusion for everyone. But it should enable *persons* to assess the relevant aspects of their activities and to identify where changes could, if necessary, be made so as to make

their position clearer. The *person* to whom the indicators are applied is referred to in the table as 'P'.

5.4.8 G Table: Carrying on insurance mediation activities 'for remuneration' and 'by way of business'

Carrying on insurance mediation activities 'for remuneration' and 'by way of business'		
'For remuneration'		
Factor	Indicators that P <u>does not</u> carry on activities "for remuneration"	Indicators that P <u>does</u> carry on activities "for remuneration"
Direct remuneration, whether received from the customer or the insurer/broker (cash or benefits in kind such as tickets to the opera, a reduction in other insurance premiums, a remission of a debt or any other benefit capable of being measured in money's worth)	P does not receive any direct remuneration specifically identified as a reward for his carrying on <i>insurance mediation activities</i> .	P receives direct remuneration specifically identified as being a reward for his carrying on <i>insurance mediation activities</i> .

<p>Indirect remuneration (such as any form of economic benefit as may be explicitly or implicitly agreed between P and the insurer/broker or P's customer – including, for example, through the acceptance of P's terms and conditions or mutual recognition of the economic benefit that is likely to accrue to P). An indirect economic benefit can include expectation of making a profit of some kind as a result of carrying on <i>insurance mediation activities</i> as part of other services.</p>	<p>P does not obtain any form of indirect remuneration through an economic benefit other than one which is not likely to have a material effect on P's ability to make a profit from his other activities.</p>	<p>P obtains an economic benefit that: (a) is explicitly or implicitly agreed between P and the insurer/broker or P's customer; and (b) has the potential to go beyond mere cost recovery through fees or other benefits received for providing a package of services that includes <i>insurance mediation activities</i> but where no particular part of the fees is attributable to <i>insurance mediation activities</i>. This could include where <i>insurance mediation activities</i> are likely to:</p> <ul style="list-style-type: none"> <li>• play a material part in the success of P's other business activities or in P's ability to make a profit from them; or</li> <li>• provide P with a materially increased opportunity to provide other goods or services; or</li> <li>• be a major selling point for P's other business activities; or</li> <li>• be essential for P to provide other goods or services.</li> </ul> <p>P charges his customers a greater amount for other goods or services than would be the case if P were not also carrying on <i>insurance mediation activities</i> for those customers and this:</p> <ul style="list-style-type: none"> <li>• is explicitly or implicitly agreed between P and the insurer/broker or P's customer; and</li> <li>• has the potential to go beyond mere cost recovery.</li> </ul>
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Recovery of costs	P receives no benefits of any kind (direct or indirect) in respect of his <i>insurance mediation activities</i> beyond the reimbursement of his actual costs incurred in carrying on the activity (including receipt by P of a sum equal to the insurance premium that P is to pass on to the <i>insurer</i> or broker).	P receives benefits of any kind (direct or indirect) in respect of his <i>insurance mediation activities</i> which go beyond the reimbursement of his actual costs incurred in carrying on the activity.
'By way of business'		
Factor	Indicators that P <u>does not</u> carry on activities "by way of business"	Indicators that P <u>does</u> carry on activities "by way of business"
Regularity/ frequency	<p>Involvement is one-off or infrequent (for instance, once or twice a year) provided that the transaction(s) is not of such size and importance that it is essential to the success of P's other business activities.</p> <p>Transactions do not result from formal arrangements (for instance, occasional involvement purely as a result of an unsolicited approach).</p>	<p>Involvement is frequent (for instance, once a week).</p> <p>Involvement is infrequent but the transactions are of such size or importance that they are essential to the success of P's other business activities.</p> <p>P has formal arrangements which envisage transactions taking place on a regular basis over time (whether or not such transactions turn out in practice to be regular).</p>

Holding out	P does not hold himself out as providing a professional service that includes <i>insurance mediation activities</i> (by professional is meant not the services of a layman).	P holds himself out as providing a professional service that includes <i>insurance mediation activities</i> .
Relevance to other activities/ business	<p><i>Insurance mediation activities:</i></p> <ul style="list-style-type: none"> <li>• have no relevance to P's other activities; or</li> <li>• have some relevance but could easily be ceased without causing P any difficulty in carrying on his main activities; or</li> <li>• would be unlikely to result in a material reduction in income from P's main activities if ceased</li> </ul>	<p><i>Insurance mediation activities:</i></p> <ul style="list-style-type: none"> <li>• are essential to P in carrying on his main activities; or</li> <li>• would cause a material disruption to P carrying on his main activities if ceased; or</li> <li>• would be likely to reduce P's income by a material amount.</li> </ul>
Commercial benefit	<p>P receives no direct or indirect pecuniary or economic benefit.</p> <p>P is a layman and acting in that capacity.</p> <p>P would not obtain materially less income from his main activities if they did not include <i>insurance mediation activities</i>.</p>	<p>P receives a direct or indirect pecuniary or economic benefit from carrying on <i>insurance mediation activities</i> – such as a fee, a benefit in kind or the likelihood of materially enhanced sales of other goods or services that P provides.</p> <p>P would obtain materially less income from his main activities if they did not include <i>insurance mediation activities</i>.</p>

- 5.5 The regulated activities: dealing in contracts as agent
- 5.5.1 G Article 21 of the *Regulated Activities Order* (Dealing in investments as agent) makes dealing in *contracts of insurance* as agent a *regulated activity*. The activity is defined in terms of *buying, selling, subscribing for or underwriting contracts as agent*, that is, on behalf of another. Examples include:
- (1) where an intermediary, by accepting on the *insurance undertaking's* behalf to provide the insurance, commits an *insurance undertaking* to provide insurance for a prospective policyholder; or
  - (2) where the intermediary agrees, on behalf of a prospective *policyholder*, to *buy an insurance policy*.
- 5.5.2 G Intermediaries with delegated authority to bind *insurance undertakings* are likely to be *dealing in investments as agent*. It should be noted, in particular, that this is a *regulated activity*:
- (1) whether or not any advice is given (see *PERG 5.8* (The regulated activities: advising on contracts of insurance)); and
  - (2) whether or not the intermediary deals through an *authorised person* (for example, where he instructs another agent who is an *authorised person* to enter into a *contract of insurance* on his *client's* behalf).
- 5.5.3 G There are also certain exclusions which are relevant to whether a *person* is carrying on the activity of *dealing in investments as agent* (see *PERG 5.11* (Other aspects of exclusions)).
- 5.6 The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance
- 5.6.1 G Article 25 of the *Regulated Activities Order* (Arranging deals in investments) describes two types of *regulated activities* concerned with arranging deals in respect of *contracts of insurance*. These are:
- (1) *arranging (bringing about) deals in investments* (article 25(1) (Arranging deals in investments)); and
  - (2) *making arrangements with a view to transactions in investments* (article 25(2) (Arranging deals in investments)).
- Article 25(1): arranging (bringing about) deals in investments
- 5.6.2 G The activity in article 25(1) is carried on only if the arrangements bring about, or would bring about, the transaction to which the arrangement relates. This is because of the exclusion in article 26 of the *Regulated Activities Order* (Arrangements not causing a deal). Article 26 excludes from article 25(1) arrangements which do not bring about or would not bring about the transaction to which the

arrangements relate. In the *FSA's* view, a *person* would bring about a *contract of insurance* if his involvement in the chain of events leading to the *contract of insurance* were important enough that, without it, there would be no policy. Examples of this type of activity would include negotiating the terms of the *contract of insurance* on behalf of the customer with the *insurance undertaking* and vice versa, or assisting in the completion of a proposal form and sending it to the *insurance undertaking*. Other examples include where an *insurance undertaking* enters into a *contract of insurance* as *principal* or an intermediary enters into a *contract of insurance* as agent.

Article 25(2): making arrangements with a view to transactions in investments

- 5.6.3 G The activity within article 25(2) contrasts with article 25(1) in that it is not limited by the requirement that the arrangements would bring about the transaction to which they relate.
- 5.6.4 G Article 25(2) may, for instance, include activities of *persons* who help potential *policyholders* fill in or check application forms in the context of ongoing arrangements between these *persons* and *insurance undertakings*. A further example of this activity would be a *person* introducing customers to an intermediary either for *advice* or to help arrange an insurance *policy*. The introduction might be oral or written. By contrast, the *FSA* considers that a mere passive display of literature advertising insurance (for example, leaving leaflets advertising insurance in a dentist's or vet's waiting room and doing no more) would not amount to the article 25(2) activity.

Exclusion: article 72C (Provision of information on an incidental basis)

- 5.6.5 G The *Regulated Activities Order* provides an important potential exclusion, however, for *persons* whose principal business is other than *insurance mediation activities*.
- 5.6.6 G In broad terms, article 72C of the *Regulated Activities Order* excludes from the activities of *arranging* and *assisting in the administration and performance of a contract of insurance* activities that:
- (1) consist of the provision of information to the *policyholder* or potential *policyholder*;
  - (2) are carried on by a *person* carrying on any profession or business which does not otherwise consist of *regulated activities*; and
  - (3) amount to the provision of information that may reasonably be regarded as being incidental to that profession or business.
- 5.6.7 G In the *FSA's* view, 'incidental' in this context means that the activity must arise out of, be complementary to or otherwise be sufficiently closely connected with the profession or business. In other words,

there must be an inherent link between the activity and the firm's main business. For example, introducing dental insurance may be incidental to a dentist's activities; introducing pet insurance would not be incidental to his activities. In addition, to be considered 'incidental', in the FSA's view, the activity must not amount to the carrying on of a business in its own right.

5.6.8 G This exclusion applies to a *person* whose profession or business does not otherwise consist of *regulated activities*. In the FSA's view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. So, the exclusion may be of relevance to *exempt professional firms*. It might also, for example, be relied on by doctors, vets and dentists as well as many businesses in the non-financial sector, even if they have *permission* to carry on *regulated activities* or are *appointed representatives*. This is assuming that their activities for which they are seeking to use the exclusion in article 72C are limited to providing information in a way which is incidental to their main profession or business. The exclusion only extends to information given to the *policyholder* or potential *policyholder* and not to the *insurance undertaking*. An intermediary who forwards a proposal form to an *insurance undertaking* would not be able to take the benefit of the exclusion. Similarly, where a *person* does more than provide information (for example, by helping a potential *policyholder* fill in an application form), he cannot take the benefit of this exclusion. Nor does it cover the activity of advising a customer under article 53 of the *Regulated Activities Order* (Advising on investments).

5.6.9 G The exclusion will be of assistance to introducers who would otherwise be carrying on the *regulated activity of making arrangements with a view to transactions in investments* (assuming, as mentioned in PERG 5.6.8G, that they provide information only to *policyholders* or potential *policyholders*, and not to the intermediary or *insurance undertaking* to whom they introduce these *policyholders* or potential *policyholders*). In order to assist such *introducers* determine whether or not they are likely to require *authorisation*, a simplified flowchart is included in PERG 5.15.6G (Flow chart: *introducers*). *Introducers* may also find the *guidance* at PERG 5.9.2G (The regulated activities: agreeing to carry on a regulated activity) helpful. PERG 5.6.17G (Exclusion from article 25(2) for introducing) has *guidance* to assist *persons* determine whether their introducing activities amount to *making arrangements with a view to transactions in investments*.

Exclusion from article 25(2): arrangements enabling parties to

communicate

- 5.6.10 G Article 27 of the *Regulated Activities Order* (Enabling parties to communicate) contains an exclusion that applies to arrangements which might otherwise bring within article 25(2) those who merely provide the means by which one party to a transaction (or potential transaction) is able to communicate with other parties. Simply providing the means by which parties to a transaction (or potential transaction) are able to communicate with each other is excluded from article 25(2) only. This will ensure that *persons* such as internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to fall within article 25(2)).
- 5.6.11 G In the *FSA's* view, the crucial element of the exclusion in article 27 is the inclusion of the word 'merely'. When 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). Further detailed *guidance* relating to the scope of the exclusion in article 27 is contained in *PERG 2.8.6G(2)* (Arranging deals in investments) and *PERG 8.32.6G* to *PERG 8.32.11G* (Arranging deals in investments).

Exclusion from article 25(2): transactions to which the arranger is a party

- 5.6.12 G Article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party) excludes from the *regulated activities* in article 25(1) and 25(2) arrangements made for or with a view to *contracts of insurance* when:
- (1) the *person* (P) making the arrangements is the only *policyholder*; or
  - (2) P, as a result of the transaction, would become the only *policyholder*.
- 5.6.13 G Market makers in traded endowment policies may be able to rely on this exclusion to avoid the need to be *authorised*. They must ensure, however, that where they are carrying on the *regulated activity of dealing in investments as principal* (article 14) they are also able to rely on the exclusions in articles 15 or 16 (see the *guidance* in *PERG 2.8.4G* (Dealing in investments as principal)).
- 5.6.14 G *Insurance undertakings* do not fall within the terms of this exclusion and so will be *arranging contracts of insurance*, in addition to *effecting* and *carrying out contracts of insurance*.
- 5.6.15 G In some cases, a *person* may make arrangements to enter into a *contract of insurance* as *policyholder* on its own behalf and also arrange that another *person* become a *policyholder* under the same *contract of insurance*. If so, the *person* should be aware that the effect of the narrower exclusion in article 28 as part of

implementation of the *IMD* is that he may be *arranging* on behalf of the other *policyholder*. This may be relevant, for example, to a *company* which arranges insurance for itself (not *arranging*) as well as other *companies* in a *group* or loan syndicate (potentially *arranging*).

- 5.6.16 G The restriction in the scope of article 28 raises an issue where there is a trust with co-trustees, where each trustee will be a *policyholder* with equal rights and obligations. If the activities of one of the trustees include *arranging* in respect of *contracts of insurance*, that trustee could be viewed as *arranging* on behalf of his co-trustees who will also be *policyholders*. Similar issues also arise in respect of trustees *assisting in the administration and performance of a contract of insurance*. The *FSA* is of the view, however, that trustees should not be regarded as carrying on *regulated activities* where they are acting as joint *policyholders* in *arranging* or *assisting in the administration and performance of a contract of insurance*. In this respect, trustees differ from *policyholders* under a group policy, where each *person* covered under the group policy may make claims on the policy in relation to his own risks. In that situation, a *policyholder* who is providing services to other *policyholders* of *arranging* or *assisting in the administration and performance of a contract of insurance* will be carrying on a *regulated activity*.

Exclusion from article 25(2) for introducing

- 5.6.17 G Article 33 of the *Regulated Activities Order* (Introducing) excludes arrangements which would otherwise fall under article 25(2) 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;
  - (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; and
  - (4) the arrangements do not relate to transactions relating to *contracts of insurance*.

- 5.6.18 G The effect of *PERG* 5.6.17G(4) is that some *persons* who, in making

introductions, are *making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order*, cannot use the introducing exclusion. This is if, in general terms, the arrangements for making introductions relate to *contracts of insurance* (*PERG 5.6.19G* has further *guidance* on when arrangements for introductions may be regarded as relating to *contracts of insurance*). However, this does not mean that all introducers whose introductions relate directly or indirectly to *contracts of insurance* will necessarily require *authorisation* if they cannot use the exclusion in article 72C of the *Regulated Activities Order* for merely passing information. For this to be the case, a *person* must first be carrying on the business of *making arrangements with a view to transactions in investments*. In the *FSA's* view, the following points will be relevant in determining whether this is the case.

- (1) Article 25(2) applies to ongoing arrangements made with a view to transactions taking place from time to time as a result of *persons* having taken part in the arrangements. So, they will not apply to one-off introductions or introductions that are not part of an ongoing pre-existing arrangement between introducer and introducee. An introducer who merely suggests to a *person* that he seeks advice or assistance from an *authorised person* or an *exempt person* with whom the introducer has no pre-existing agreement that anticipates introductions will be made, will not be making arrangements at all. He will simply be offering general advice or information.
- (2) The purpose of the arrangements must be for the *person* who is introduced to, in general terms, enter into a transaction to *buy or sell securities or relevant investments*. So, arrangements for introducing *persons* for advice only will not be caught (for example, introductions to a financial planner or to the publisher of an investment newsletter). In other cases, it may be likely that transactions will be entered into following the provision of advice. Provided the introducer is completely indifferent as to whether or not a *contract of insurance* may ultimately be bought (or sold) as a result of the advice given to the *person* he has introduced, the introducer will not be *making arrangements with a view to transactions in investments*. This is likely to be the case where the introducer does not receive any pecuniary reward that is linked to the volume of business done as a result of his introductions.

5.6.19 G Where a *person* is *making arrangements with a view to transactions in investments* by way of making introductions, and he is not completely indifferent to whether or not transactions may result, it may still be the case that the exclusion in article 33 will apply. In the *FSA's* view, this is where:

- (1) the introduction is for independent advice on *investments*

generally; and

- (2) the introducer is indifferent as to whether or not a *contract of insurance* may ultimately be bought (or sold) rather than any other type of *investment*.

This is because the arrangements for making introductions do not specifically relate to a *contract of insurance* or to any other type of *investment* but to *investments* generally. Whether or not a *person* is making arrangements for introductions for the purpose of the provision of independent advice on *investments* generally will depend on the facts in any particular case. But, in the *FSA*'s view, it is very unlikely that article 33 could apply where introductions are made to a *person* for the purposes of that *person* giving advice on and then *arranging general insurance*.

- 5.6.20 G The table in *PERG 5.6.21G* has examples of the application of article 33 to arrangements for making introductions.
- 5.6.21 G Application of article 33 to arrangements for making introductions. This table belongs to *PERG 5.6.20G*.

	Type of introduction	Applicability of exclusion
1	Introductions are purely for the purpose of the provision of independent advice – Introducer is completely indifferent to whether or not transactions take place after advice has been given.	Exclusion not relevant as introducer is not <i>arranging</i> under article 25(2).
2	Introduction is one-off or otherwise not part of pre-existing ongoing arrangements that envisage such introduction being made.	Exclusion not relevant as introducer is not <i>arranging</i> under article 25(2).
3	Introducer is not indifferent to whether or not transactions take place after advice has been given, but is indifferent to whether or not the transactions may involve a <i>contract of insurance</i> .	Exclusion will be available provided the introduction was made with a view to the provision of independent advice on <i>investments</i> generally.
	Introducer is not indifferent to	

	Type of introduction	Applicability of exclusion
4	whether or not transactions take place after advice has been given (for example, because he expects to receive a percentage of the commission), and introductions specifically relate to <i>contracts of insurance</i> .	Exclusion is not available.  If introducer is an <i>unauthorised person</i> , he will need <i>authorisation</i> or exemption as an <i>appointed representative</i> .  If introducer is an <i>authorised person</i> (such as an IFA introducing to a <i>general insurance broker</i> ), he will need to vary his <i>Part IV permission</i> accordingly. If introducer is an <i>appointed representative</i> , he will need to ensure that his agreement covers making such arrangements.

Exclusion from article 25(2): arrangements for the provision of finance

- 5.6.22 G An *unauthorised person* who makes arrangements with a view to a *person* who participates in the arrangements *buying* or *selling contracts of insurance* may be excluded from article 25(2) by article 32 of the *Regulated Activities Order* (Provision of finance). This is provided the sole purpose of the arrangements is the provision of finance to enable the *person* to *buy the contract of insurance*. Premium finance companies may be able to rely on this exclusion provided the arrangements they put in place, taken as a whole, have as their sole purpose the provision of finance to fund premiums.

Other exclusions

- 5.6.23 G The *Regulated Activities Order* contains some other exclusions which have the effect of narrowing or limiting the application of *regulated activities* within article 25 by preventing certain activities from amounting to *regulated activities*. These are referred to in *PERG* 5.11.8G (Exclusions applying to more than one regulated activity).
- 5.7 The regulated activities: assisting in the administration and performance of a contract of insurance
- 5.7.1 G The *regulated activity of assisting in the administration and performance of a contract of insurance* (article 39A) relates, in broad terms, to activities carried on by intermediaries after the conclusion of a *contract of insurance* and for or on behalf of *policyholders*, in particular in the event of a claim. Loss assessors acting on behalf of *policyholders* in the event of a claim are, therefore, likely in many cases to be carrying on this *regulated activity*. By contrast, claims

management on behalf of certain insurers is not a *regulated activity* (see *PERG 5.7.7G (Exclusions)*).

- 5.7.2 G Neither assisting in the administration nor assisting in the performance of a contract alone will fall within this activity. Generally, an activity will either amount to assisting in the administration or assisting in the performance but not both. Occasionally, however, an activity may amount to both *assisting in the administration and performance of a contract of insurance*. For example, where a *person* assists a claimant in filling in a claims form, in the *FSA's* view this amounts to assisting in the administration of a *contract of insurance*. In some instances, however, this may also amount to assisting in the performance of a *contract of insurance*. In the *FSA's* view, an example of when a *person* may be assisting in the performance of a contract is where a *person* fills in the whole or a significant part of a claims form on behalf of a claimant. This is because, by helping complete a claims form, a *person* may be assisting the *policyholder* to perform his contractual obligation to notify the *insurance undertaking* in the event of a claim and provide details of the claim in the manner and form required by the contract.
- 5.7.3 G Put another way, where an intermediary's assistance in filling in a claims form is material to whether performance takes place of the contractual obligation to notify claims, it is more likely to amount to *assisting in the administration and performance of a contract of insurance*. Conversely, in the *FSA's* view, a *person* who merely gives pointers about how to fill in the claims form or merely supplies information in support of a claim will not be assisting in the performance of a *contract of insurance*. Instead, the *person* will only be facilitating rather than assisting in the performance of a *contract of insurance*.
- 5.7.4 G More generally, an example of an activity that, in the *FSA's* view, is likely to amount to assisting a *policyholder* in both the administration and the performance of a *contract of insurance* is notifying a claim under a *policy* and then providing evidence in support of the claim, or helping negotiate its settlement on the *policyholder's* behalf. Notifying an *insurance undertaking* of a claim assists the *policyholder* in discharging his contractual obligation to do so (assisting in the performance); providing evidence in support of the claim or negotiating its settlement assists management of the claim (assisting in the administration).
- 5.7.5 G On the other hand, where a *person* does no more than advise a *policyholder* generally about making a claim or provide evidence in support of a claim, this is unlikely to amount to both assisting in the administration and performance. Similarly, the mere collection of premiums from *policyholders* is unlikely, without more, to amount to *assisting in the administration and performance of a contract of insurance*. The collection of premiums from customers or clients at the pre-contract stage, however, may amount to *arranging* (see

example in *PERG 5.15.4G* (Types of activity – are they regulated activities and, if so, why?)).

- 5.7.6 G Where a *person* receives funds on behalf of a *policyholder* in settlement of a claim, in the *FSA's* view, the act of receipt is likely to amount to assisting in the performance of a contract. By giving valid receipt, the *person* assists the *insurance undertaking* to discharge its contractual obligation to provide compensation to the *policyholder*. He may also be assisting the *policyholder* to discharge any obligations he may have under the contract to provide valid receipt of funds, upon settlement of a claim. Where a *person* provides valid receipt for funds received on behalf of the *policyholder*, he is also likely to be assisting in the administration of a *contract of insurance* (for example, making prior arrangements relating to transmission and receipt of payment).

#### Exclusions

- 5.7.7 G By article 39B of the *Regulated Activities Order* (Claims management on behalf of an insurer etc):
- (1) loss adjusting on behalf of a relevant insurer (see *PERG 5.7.8G*);
  - (2) expert appraisal; and
  - (3) managing claims for a relevant insurer;
- are also excluded from the *regulated activity of assisting in the administration and performance of a contract of insurance*. This is where the activity is carried on in the course of carrying on any profession or business (see also *PERG 5.14* (Exemptions)). In determining whether they are carrying on the *regulated activity of assisting in the administration and performance of a contract of insurance*, therefore, *persons* should consider whether they are acting on behalf of the relevant insurer and not the *policyholder*.
- 5.7.8 G A 'relevant insurer' for the purposes of article 39B means:
- (1) an *authorised person* who has *permission* for *effecting and carrying out contracts of insurance*; or
  - (2) a member of the Society of Lloyd's or the members of the Society of Lloyd's taken together; or
  - (3) an *EEA firm* that is an *insurer*; or
  - (4) a reinsurer, being a *person* whose main business consists of accepting risks ceded by a *person* falling under (1), (2) or (3) or a *person* who is established outside the *United Kingdom* and who carries on the activity of *effecting and carrying out contracts of insurance*.

So, a *person* whose activities are excluded under article 12 of the *Regulated Activities Order* (Breakdown insurance) will not be a relevant insurer for these purposes and any *person* who performs loss adjusting or claims management on behalf of such a *person* will not be able to use the exclusion in article 39B.

5.8 The regulated activities: advising on contracts of insurance

5.8.1 G Article 53 of the *Regulated Activities Order* (Advising on Investments) makes advising on *contracts of insurance* a *regulated activity*. This covers advice which is both:

- (1) given to a *person* in his capacity as an insured or potential insured, or as agent for an insured or a potential insured; and
- (2) advice on the merits of the insured or his agent:
  - (a) *buying, selling*, subscribing for or underwriting a particular *contract of insurance*; or
  - (b) exercising any right conferred by a *contract of insurance* to *buy, sell*, subscribe for or underwrite a *contract of insurance*.

5.8.2 G For advice to fall within article 53, it must:

- (1) relate to a particular *contract of insurance* (that is, one that a *person* may enter into);
- (2) be given to a *person* in his capacity as an investor or potential investor;
- (3) be advice (that is, not just information); and
- (4) relate to the merits of a *person buying, selling*, subscribing for or underwriting (or exercising any right to do so) a *contract of insurance* or rights to or interests in *life policies*.

5.8.3 G Each of these aspects is considered in greater detail in the table in *PERG 5.8.5G*. Where an activity is identified as not amounting to *advising on investments* it could still form part of another *regulated activity*. This will depend upon whether a *person's* activities, viewed as a whole, amount to *arranging*. Additionally, it should be borne in mind that the provision of advice or information may involve the communication of a *financial promotion* (see *PERG 8* (Financial promotion and related activities)).

Advice must relate to a particular contract of insurance

5.8.4 G Advice about *contracts of insurance* will come within the *regulated activity* in article 53 of the *Regulated Activities Order* only if it relates to a particular *contract of insurance*. So, generic or general advice will not fall under article 53. In particular:

- (1) advice would come within article 53 if it took the form of a recommendation that a *person* should *buy* the ABC Insurers motor insurance;
- (2) advice would not relate to a particular contract if it consists of a recommendation only that a *person* should take out insurance of a particular class without identifying any particular *insurance undertaking*, or with ABC Insurers provided that the kind of insurance is not specified (either expressly or by implication): a recommendation only that a *person* should *buy* insurance from ABC Insurers could amount to advice if a specific insurance *policy* would be implied from the context;
- (3) the table in *PERG 5.8.5G* identifies several typical recommendations and indicates whether they will be regarded as advice under article 53.

5.8.5 G Typical recommendations and whether they will be regulated as advice on contracts of insurance under article 53 of the *Regulated Activities Order*. This table belongs to *PERG 5.8.4G*

Recommendation	Regulated under article 53 or not?
I recommend you take the ABC Insurers motor insurance <i>policy</i>	Yes
I recommend that you take out the GHI Insurers life insurance <i>policy</i>	Yes
I recommend that you do not take out the ABC Insurers motor insurance <i>policy</i>	Yes
I recommend that you do not take out the GHI Insurers life insurance <i>policy</i>	Yes
I recommend that you take out either the ABC Insurers motor insurance <i>policy</i> or the DEF Insurers motor insurance <i>policy</i>	Yes
I recommend that you take out either the GHI Insurers life insurance <i>policy</i> or the JKL Insurers life insurance <i>policy</i>	Yes
I recommend that you take out	Possibly (depending on whether

Recommendation	Regulated under article 53 or not?
(or do not take out) insurance with ABC Insurers	or not the circumstances relating to the recommendation, including the range of possible products, is such that this amounts to an implied recommendation of a particular <i>policy</i> )
I recommend that you take out (or do not take out) contents insurance	No, unless a specific insurance <i>policy</i> is implied by the context
I recommend that you take out (or do not take out) life insurance	No, unless a specific insurance <i>policy</i> is implied by the context

Advice given to a person in his capacity as an investor or potential investor

- 5.8.6 G For the purposes of article 53, advice must be given to a *person* in his capacity as an investor or potential investor (which, in the context of *contracts of insurance*, will mean as *policyholder* or potential *policyholder*). So, article 53 will not apply where advice is given to *persons* who receive it as:
- (1) an adviser who will use it only to inform advice given by him to others; or
  - (2) a journalist or broadcaster who will use it only for journalistic purposes.

- 5.8.7 G Advice will still be covered by article 53 even though it may not be given to any particular *policyholder* (for example, advice given in a periodical publication or on a website).

Advice or information

- 5.8.8 G 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 facts or figures.
- 5.8.9 G In general terms, simply giving information, without making any comment or value judgement on its relevance to decisions which a *person* may make, is not advice. In this respect, it is irrelevant that a *person* may be providing information on a single *contract of insurance* or on two or more. This means that a *person* may provide information on a single *contract of insurance* without necessarily being regarded as giving advice on it. *PERG 5.8.11G* has *guidance*

on the circumstances in which information can assume the form of advice.

- 5.8.10 G In the case of article 53, information relating to *buying* or *selling contracts of insurance* may often involve one or more of the following:
- (1) an explanation of the terms and conditions of a *contract of insurance* whether given orally or in writing or by providing leaflets and brochures;
  - (2) a comparison of the features and benefits of one *contract of insurance* compared to another;
  - (3) the production of pre-purchase questions for a *person* to use in order to exclude options that would fail to meet his requirements; such questions may often go on to identify a range of *contracts of insurance* with characteristics that appear to meet the *person's* requirements and to which he might wish to give detailed consideration (pre-purchase questioning is considered in more detail in *PERG 5.8.15G* to *PERG 5.8.19G* (Pre-purchase questioning (including decision trees)));
  - (4) tables that compare the costs and other features of different *contracts of insurance*;
  - (5) leaflets or illustrations that help *persons* to decide which type of *contract of insurance* to take out; and
  - (6) the provision, in response to a request from a *person* who has identified the main features of the type of *contract of insurance* he seeks, of several leaflets together with an indication that all the *contracts of insurance* described in them have those features.
- 5.8.11 G In the *FSA's* opinion, however, such information is likely to take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. Examples of situations where information provided by a *person* (P) might take the form of advice are given below.
- (1) P may provide information on a selected, rather than balanced and neutral, basis that would tend to influence the decision of a *person*. This may arise where P offers to provide information about *contracts of insurance* that contain features specified by the *person*, but then exercises discretion as to which complying *contract of insurance* to offer to that *person*.
  - (2) P may, as a result of going through the sales process, discuss the merits of one *contract of insurance* over another, resulting in advice to enter into a particular one. In contrast, advice on how to complete an application form, without an explicit or implicit recommendation on the merits of *buying* or *selling* the

*contract of insurance* whilst 'advice' in the general sense of the word, is not, in the view of the FSA, advice within the meaning of article 53. Such advice may, however, amount to *arranging* (for which see *PERG 5.6.1G* to *PERG 5.6.4G* (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance)).

Advice must relate to the merits (of buying or selling a contract of insurance)

- 5.8.12 G Advice under article 53 relates to the advantages and disadvantages of *buying, selling*, subscribing for or underwriting a particular *contract of insurance*. It is worth noting that, in this context, 'buying' and 'selling' are defined widely under article 3 of the *Regulated Activities Order* (Interpretation). 'Buying' includes acquiring for valuable consideration, and 'selling' includes surrendering, assigning or converting rights under a *contract of insurance*.
- 5.8.13 G The requirements imposed by the *IMD* (see *PERG 5.2.5G* (Approach to implementation of the *IMD*)) and the text of article 2.3 *IMD* in *PERG 5.16.1G* (article 2.3 of the Insurance Mediation Directive) are narrower than the scope of the *Regulated Activities Order* (see *PERG 5.2.7G* (Approach to implementation of the *IMD*)). This is that, unlike the *Regulated Activities Order*, they do not relate to the assignment of *contracts of insurance*. This is of relevance to, amongst others, *persons* involved in the 'second-hand' market for *contracts of insurance* such as traded endowment policies and certain viatical instruments (that is, arrangements by which a terminally ill person can obtain value from his *life policy*) (see also *PERG 5.6.12G* (Exclusion from article 25(2): transactions to which the arranger is a party)). *Persons* advising on or arranging assignments of these *contracts of insurance* are therefore potentially carrying on *regulated activities* although they may be able to take the benefit of article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business) in certain circumstances (see *PERG 5.11.9G* to *PERG 5.11.12G* (Activities carried on in the course of a profession or non-investment business)).
- 5.8.14 G Generally speaking, advice on the merits of using a particular *insurance undertaking*, broker or adviser in their capacity as such, does not amount to advice for the purpose of article 53. It is not advice on the merits of *buying* or *selling* a particular *contract of insurance* (unless, in the circumstances, the advice amounts to an implied recommendation of a particular *policy*).

Pre-purchase questioning (including decision trees)

- 5.8.15 G Pre-purchase questioning involves putting a sequence of questions in order to extract information from a *person* with a view to facilitating the selection by that *person* of a *contract of insurance* or other product that meets his needs. A decision tree is an example of pre-purchase questioning. The process of going through the questions

will usually narrow down the range of options that are available.

5.8.16 G A key issue for those *firms* proposing to use pre-purchase questioning is whether the specific questioning used may amount to advice. There are two main aspects:

- (1) advice must relate to a particular *contract of insurance* (see *PERG 5.8.4G* (Advice must relate to a particular contract of insurance)); and
- (2) the distinction between information and advice (see *PERG 5.8.8G* to *PERG 5.8.11G* (Advice or information)).

Whether or not pre-purchase questioning in any particular case is advising on *contracts of insurance* will depend on all the circumstances. The process may involve identifying one or more particular *contracts of insurance*. If so, to avoid advising on *contracts of insurance*, the critical factor is likely to be whether the process is limited to, and likely to be perceived by the *person* as, assisting the *person* to make his own choice of product which has particular features which the *person* regards as important. The questioner will need to avoid providing any judgement on the suitability of one or more products for that *person* and in this respect should have regard to the factors set out in *PERG 5.8.2G* to *PERG 5.8.4G* (Advice must relate to a particular contract of insurance) and the table in *PERG 5.8.5G*. See also *PERG 5.8.12G* to *PERG 5.8.14G* (Advice must relate to the merits (of buying or selling a contract of insurance)) for other matters that may be relevant.

5.8.17 G The potential for variation in the form, content and manner of pre-purchase questioning is considerable, but there are two broad types. The first type involves providing questions and answers which are confined to factual matters (for example, the amount of the cover). In the *FSA's* view, this does not itself amount to advising on *contracts of insurance*, if it involves the provision of information rather than advice. There are various possible scenarios, including the following:

- (1) the questioner may go on to identify one or more particular *contracts of insurance* which match features identified by the pre-purchase questioning; provided these are selected in a balanced and neutral way (for example, they identify all the matching *contracts of insurance* available without making a recommendation as to a particular one) this need not involve advising on *contracts of insurance*; and
- (2) the questioner may go on to advise a *person* on the merits of one particular *contract of insurance* over another; this would be advising on *contracts of insurance*.

5.8.18 G The second type of pre-purchase questioning involves providing questions and answers incorporating opinion, judgement or recommendation. There are various possible scenarios, including the

following:

- (1) the pre-purchase questioning may not lead to the identification of any particular *contract of insurance*; in this case, the questioner has provided advice, but it is generic advice and does not amount to advising on *contracts of insurance*; and
- (2) the pre-purchase questioning may lead to the identification of one or more particular *contracts of insurance*; the key issue then is whether the advice can be said to relate to a particular *contract of insurance* (see further *PERG 5.8.4G* (Advice must relate to a particular contract of insurance)).

5.8.19 G In the case of *PERG 5.8.18G(2)* and similar scenarios, the *FSA* considers that it is necessary to look at the process and outcome of pre-purchase questioning as a whole. It may be that the element of advice incorporated in the questioning can properly be viewed as generic advice if it were considered in isolation. But although the actual advice may be generic, the process has ended in identifying one or more particular *contracts of insurance*. The combination of the generic advice and the identification of a particular or several particular *contracts of insurance* to which it leads may well, in the *FSA's* view, cause the questioner to be advising on *contracts of insurance*. Factors that may be relevant in deciding whether the process involves advising on *contracts of insurance* may include:

- (1) any representations made by the questioner at the start of the questioning relating to the service he is to provide;
- (2) the context in which the questioning takes place;
- (3) the stage in the questioning at which the opinion is offered and is significant;
- (4) the role played by the questioner who guides a *person* through the pre-purchase questions;
- (5) the outcome of the questioning (whether particular *contracts of insurance* are highlighted, how many of them, who provides them, their relationship to the questioner and so on); and
- (6) whether the pre-purchase questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party, and all that the questioner has done is help the *person* understand what the questions or options are and how to determine which option applies to his particular circumstances.

Medium used to give advice

5.8.20 G With the exception of:

- (1) periodicals, broadcasts and other news or information services

(see *PERG 5.8.24G* to *PERG 5.8.25G* (Exclusion: periodical publications, broadcasts and web-sites)); and

- (2) situations involving an overseas element (see, generally, *PERG 5.12* (Link between activities and the United Kingdom) and, in particular, *PERG 5.12.8G* (Where is insurance mediation carried on?));

the use of the medium itself to give advice should make no material difference to whether or not the advice is caught by article 53.

5.8.21 G Advice can be provided in many ways including:

- (1) face to face;
- (2) orally to a group;
- (3) by telephone;
- (4) by correspondence (including e-mail);
- (5) in a publication, broadcast or web-site; and
- (6) through the provision of an interactive software system.

5.8.22 G Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problem. The same principles apply as with a paper version (see *PERG 5.8.15G* to *PERG 5.8.19G* (Pre-purchase questioning (including decision trees))).

5.8.23 G Advice in publications, broadcasts and web-sites is subject to a special regime (see *PERG 5.8.24G* (Exclusion: periodical publications, broadcasts and web-sites) and *PERG 7* (Periodical publications, news services and broadcasts: applications for certification)).

Exclusion: periodical publications, broadcasts and web-sites

5.8.24 G An important exclusion from advising on *contracts of insurance* relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54 of the *Regulated Activities Order* (Advice given in newspapers etc)). The exclusion applies if the principal purpose of the publication or service taken as a whole (including any advertising content) is neither to give advice of a kind mentioned in article 53 (Advising on investments) or article 53A (Advising on regulated mortgage activities) nor to lead or enable *persons* to *buy, sell*, subscribe for or underwrite *relevant investments* or, as borrower, to enter into or vary the terms of a *regulated mortgage contract*.

5.8.25 G This is explained in greater detail, together with the provisions on the granting of certificates by the *FSA* on the application of the proprietor of a periodical publication or news or information service or broadcast, in *PERG 7* (Periodical publications, news services and

broadcasts: applications for certification).

Other exclusions

5.8.26 G The *Regulated Activities Order* contains other limited exclusions which have the effect of preventing certain activities from amounting to advice on *contracts of insurance*. These are referred to in *PERG* 5.11.8G (Exclusions applying to more than one regulated activity) to *PERG* 5.11.16G (Large risks).

5.9 The Regulated Activities: agreeing to carry on a regulated activity

5.9.1 G Under article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity), in addition to the *regulated activities* of:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments;*
- (3) *making arrangements with a view to transactions in investments;*
- (4) *assisting in the administration and performance of a contract of insurance; and*
- (5) *advising on investments;*

agreeing to do any of these things is itself a *regulated activity*. In the FSA's opinion, this activity concerns the entering into of a legally binding agreement to provide the services to which the agreement relates. So, a *person* is not carrying on a *regulated activity* under article 64 merely because he makes an offer to do so.

5.9.2 G To the extent that an exclusion applies in relation to a *regulated activity*, 'agreeing' to carry on an activity within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order* (Specified activities: general). So, for example, a vet can, without carrying on a *regulated activity*, enter into an agreement with an *insurance undertaking* to distribute marketing literature provided that the vet can rely on the exclusion in article 72C (Provision of information on an incidental basis) in relation to the activity of distributing the literature (see also *PERG* 5.6.6G and *PERG* 5.6.9G (Exclusion: article 72C (Provision of information on an incidental basis))). However, to be able to rely on the exclusion in article 72C, the vet must not be viewed as providing information to the *insurance undertaking*. More specifically, an unauthorised *introducer* can enter into standing arrangements with *insurance undertakings* or brokers to make introductions, provided that these arrangements do not envisage subsequent provision of information to these *insurance undertakings* or brokers with a view to *arranging (bringing about) deals in investments* or *making arrangements with a view to transactions in investments*.

## 5.10 Renewals

5.10.1 G It must be emphasised that activities which concern invitations to renew *policies* and the subsequent effecting of renewal of *policies* are likely to fall within *insurance mediation activity*. Those considering the need for *authorisation* or variation of their *permissions* will wish to consider whether a process of tacit renewal operates: that is, where a *policyholder* need take no action if he wishes to maintain his insurance cover by having his *policy* 'renewed'. This process will typically result in the issue of a new *contract of insurance*, not an extension of the period of the existing one. It may involve the activities of *advising on investments, arranging and dealing in investments as agent*. More specifically, preparing a 'tacit renewal' letter on behalf of an *insurance undertaking* is likely to amount to *arranging*. Where it contains a recommendation to renew existing cover this is likely to constitute *advising on investments* (under article 53 of the *Regulated Activities Order*). If the contract takes effect on the date stipulated in the renewal letter, a contract is concluded with the effect that the letter writer may be *dealing in investments as agent*. The process may also involve a *regulated activity* under article 64 (Agreeing to carry on a regulated activity).

## 5.11 Other aspects of exclusions

5.11.1 G This part of the *guidance* deals with:

- (1) exclusions which are disapplied where the *regulated activity* relates to *contracts of insurance*;
- (2) exclusions which are disapplied where a *person* carries on *insurance mediation*; and
- (3) the following exclusions applying to more than one *regulated activity*:
  - (a) activities carried on in the course of a profession or non-investment business (article 67 (Activities carried on in the course of a profession or non-investment business));
  - (b) activities carried on by a provider of relevant goods or services (article 72B (Activities carried on by a provider of relevant goods or services)); and
  - (c) large risks (article 72D (Large risks contracts where risk situated outside the EEA)).

5.11.2 G There are a number of 'pre-*IMD*' exclusions that have the effect of restricting the scope of the *regulated activities* referred to in this *guidance*. Several of these are disapplied or modified as part of implementation of the *IMD*.

### Exclusions disapplied where activities relate to contracts of insurance

5.11.3 G The exclusions outlined in (1) to (7) were available to intermediaries (and in some cases *insurance undertakings*) acting in connection with

*life policies* before 14 January 2005. In essence, however, the following exclusions do not apply if they concern transactions relating to *contracts of insurance*:

- (1) *dealing in investments as agent* with or through *authorised persons* (article 22 of the Regulated Activities Order (Deals with or through authorised persons));
- (2) *arranging* transactions to which the *arranger* is to be a party, where the *arranger* enters into or is to enter into the transaction:
  - (a) as agent for another *person*; or
  - (b) as *principal*, unless the *arranger* is the only *policyholder* or will, as a result of the transaction, become the only *policyholder* (article 28 (Arranging transactions to which the arranger is a party));
- (3) *arranging deals* with or through *authorised persons* (article 29 (Arranging deals with or through authorised persons));
- (4) *introducing* (article 33 (Introducing));
- (5) activities carried on in connection with the sale of goods and supply of services (article 68 (Activities carried on in connection with the sale of goods and supply of services));
- (6) *groups and joint enterprises* (article 69 (Groups and joint enterprises)) (see *PERG 5.11.6G*); and
- (7) activities carried on in connection with the sale of a *body corporate* (article 70 (Activities carried on in connection with the sale of a body corporate)).

5.11.4 G The restrictions placed on the exclusions listed in *PERG 5.11.3G* on 14 January 2005 have the following effects.

- (1) *Unauthorised persons* who:
  - (a) introduce clients or customers to an independent financial adviser with a view to a transaction; or
  - (b) deal as agent on behalf of their clients or customers with or through an *authorised person*; or
  - (c) arrange for their clients or customers to enter into a transaction with or through an *authorised person*;will not be able to rely on articles 29 or 33 to avoid the need for *authorisation* where the transaction relates to a *contract of insurance*.
- (2) *Unauthorised persons* may, however, be able to rely on the exclusion for the provision of information on an incidental basis in article 72C to continue to avoid the need for

*authorisation* (see *PERG 5.6.5G* to *PERG 5.6.9G* (Exclusion: article 72C (Provision of information on an incidental basis))).

- (3) *Authorised persons* who themselves introduce clients or customers to others for the purposes of *buying* or *selling* any kind of *contract of insurance* are likely to require a variation of their *Part IV permission*, as neither article 33 nor generally, article 72C (see *PERG 5.6.5G* to *PERG 5.6.9G* (Exclusion: article 72C (Provision of information on an incidental basis))) will apply where this activity amounts to *arranging*.

5.11.5 G *Insurance undertakings* are referred to *PRU 9.4* (Insurance undertakings and mortgage lenders using insurance or mortgage mediation services) as regards their obligations relating to the use of intermediaries generally.

- 5.11.6 G (1) The removal of the exclusion for *groups* and *joint enterprises* in article 69 of the *Regulated Activities Order* (Groups and joint enterprises) may have implications for a *company* providing services for:
- (a) other members of its *group*; or
  - (b) other participants in a *joint enterprise* of which it is a participant.
- (2) Such *companies* might typically provide risk or treasury management or administration services which may include *regulated activities* relating to a *contract of insurance*. If so, such companies will need *authorisation* or exemption if they conduct the activities by way of business (see *PERG 5.4* (The business test) generally and (3) and (4)). This is unless another exclusion applies.
- (3) In the *FSA's* view, particular issues arise in applying the by way of business test to group *companies*. Recital 11 of the *Insurance Mediation Directive* states that the Directive should apply to *persons* whose activity consists in providing insurance mediation services to third parties for remuneration. This suggests that the Directive is intended to apply only where the service is provided to a third party. The expression 'third party' is not defined in the Directive. The *FSA* considers that a group *company* that is providing services solely for the benefit of other group *companies* would not normally be regarded as providing services to a third party. The *FSA* also considers that, as a result, a group *company* providing services solely for the benefit of other group *companies* should not normally be regarded as satisfying the requirement that it be remunerated for providing insurance mediation services to third parties. Were a group *company* to be remunerated other than by another group *company*, however, the situation may be different. For example, if the group *company* receives commission from an insurer or broker, the fact would tend to suggest that the

*company* has been rewarded for providing a service to the insurer or broker. In the *FSA's* view, it is appropriate to apply this principle to a *group* as defined in section 421 (Group) of the *Act*.

- (4) The *FSA* considers that similar principles to those applied to a *group company* in (2) may be applied to the participants in a *joint enterprise*. This would be where one participant in the *joint enterprise* is providing services solely for the benefit of another participant and for the purposes of the *joint enterprise* and who provides insurance mediation services to one or more participants for the purposes of or in connection with the *joint enterprise*.

#### Exclusions disapplied in connection with insurance mediation

5.11.7 G Article 4(4A) of the *Regulated Activities Order* (Specified activities: general) disapplies certain exclusions where a *person*, for remuneration, takes up or pursues *insurance mediation* (as defined in article 2.3 of the *IMD* (see *PERG 5.2.5G* (Approach to implementation of the *IMD*) and *PERG 5.16.2G* (Text of article 2.3 of the *Insurance Mediation Directive*)) in relation to a risk or commitment located in an *EEA* state. The relevant exclusions which are disapplied are:

- (1) arrangements in connection with lending on the security of insurance policies (article 30 of the *Regulated Activities Order* (Arranging transactions in connection with lending on the security of insurance policies));
- (2) activities carried on by trustees, nominees and personal representatives (article 66 (Trustees, nominees and personal representatives)); and
- (3) activities carried on in the course of a profession or non-investment business (article 67 (Activities carried on in the course of a profession or non-investment business)) (This exclusion is considered in further detail in *PERG 5.11.9G* to *PERG 5.11.12G* (Activities carried on in the course of a profession or non-investment business)).

#### Exclusions applying to more than one regulated activity

5.11.8 G Chapter XVII of the *Regulated Activities Order* (Exclusions applying to several specified kinds of activity) contains various exclusions applying to several kinds of activity. Three exclusions of relevance in relation to *contracts of insurance* are dealt with in this section and a fourth, *overseas persons*, in *PERG 5.12* (Link between activities and the United Kingdom).

Activities carried on in the course of a profession or non-investment business

5.11.9 G Article 67 excludes from the activities of *dealing as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance and advising on investments*, any activity which:

- (1) is carried on in the course of carrying on any profession or business which does not otherwise consist of the carrying on of *regulated activities* in the *United Kingdom*; and
- (2) may reasonably be regarded as a necessary part of other services provided in the course of that profession or business.

In the *FSA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business.

5.11.10 G Although the article 67 exclusion is disapplied (by article 4(4A) of the *Regulated Activities Order* (Specified investments: general)) when a *person* takes up or pursues *insurance mediation or reinsurance mediation* as defined by articles 2.3 and 2.5 of the *IMD*, there may be cases where a *person* is not carrying on activities that amount to *insurance mediation*. For example, where a *person's* activities amount simply to the provision of information on an incidental basis in the context of another professional activity, these may fall outside the scope of article 2.3 of the *IMD* (see *PERG* 5.16.2G (article 2.3 of the Insurance Mediation Directive)) and the exclusion in article 67 may then operate to exclude these activities. Also, it is possible that a professional *person's* activities may not amount to a *regulated activity* at all. For example, a doctor who provides a medical report to an *insurer* may be regarded as making arrangements with a view to providing an expert medical opinion rather than with a view to transactions in *contracts of insurance*. In such cases, article 67 will not be needed.

5.11.11 G Article 67 may also apply to activities relating to assignments of insurance *policies*, as, in the *FSA's* view, article 2.3 of the *IMD* applies essentially to the creation of new *contracts of insurance* and not the assignment of rights under existing *policies*. As such, where a solicitor or licensed conveyancer arranges an assignment of a *contract of insurance*, the exclusion in article 67 remains of potential application. For similar reasons, trustees advising on or arranging assignments of *contracts of insurance* may, in certain circumstances, be able to rely on the exclusions in article 66 of the *Regulated Activities Order*.

- 5.11.12 G For article 67 to apply in these cases, in addition to *PERG 5.11.9G(1)* and (2), the activity in question must not be remunerated separately from other services (article 67(2) of the *Regulated Activities Order*).

Activities carried on by a provider of relevant goods or services

- 5.11.13 G Article 72B (see also *PERG 5.3.7G* (Connected contracts of insurance)) may be of relevance to *persons* who supply non-motor goods or provide services related to travel in the course of carrying on a profession or business which does not otherwise consist of carrying on *regulated activities*. In the *FSA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. For example, a travel agent might carry on *insurance mediation activities* in relation to some *contracts of insurance* that satisfy the conditions of the article 72B and some that do not. The former contracts will be excluded from regulation even though the travel agent must seek *authorisation* or become an *appointed representative* to be permitted to sell the latter contracts. The exclusion applies to *insurance mediation activities* when carried on in relation to 'connected contracts of insurance'. In broad terms, a 'connected contract of insurance' is a *contract of insurance* which:

- (1) is not a contract of long-term insurance (as defined by article 3 of the *Regulated Activities Order* (Interpretation));
- (2) has a total duration (including rights to renewal) of five years or less;
- (3) has an annual premium (or the equivalent of annual premium) of €500 or less;
- (4) covers the risk of:
  - (a) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or
  - (b) damage to, or loss of, baggage and other risks linked to travel booked with the provider ('travel risks');
- (5) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract);
- (6) is complementary to the non-motor goods being supplied or service being provided by the provider; and
- (7) is of such a nature that the only information that a *person* requires in order to carry on one of the *insurance mediation*

*activities* is the cover provided by the contract.

- 5.11.14 G In the *FSA's* view, the liability risks referred to in *PERG* 5.11.13G(5) cover risks in relation to liabilities that the *policyholder* might have to others (that is, third party claims). Many *policies* will provide this sort of cover and so fall outside the scope of the exclusion. For example, a *policy* that covers the cost of unauthorised calls made when a mobile telephone is stolen includes 'liability risks' and would not be a 'connected contract of insurance'. By contrast, travel *policies* which provide cover in respect of the *policyholder's* personal liability while travelling may fall within the exclusion by virtue of *PERG* 5.11.13G(5), where sold as part of a package by travel agents and other providers of services related to travel.
- 5.11.15 G In the *FSA's* view, the condition in *PERG* 5.11.13G(7) is likely to be satisfied where the *insurance mediation activities* relate to a standard form *contract of insurance*, the terms of which (other than the cost of the premium) are not subject to negotiation.

#### Large risks

- 5.11.16 G Article 72D (Large risks contracts where risk situated outside the EEA) provides an exclusion for large risks situated outside the *EEA*. Broadly speaking, these are risks relating to:
- (1) railway rolling stock, aircraft, ships, goods in transit, aircraft liability and shipping liability;
  - (2) credit and suretyship where relating to the *policyholder's* commercial or professional liability;
  - (3) land vehicles, fire and natural forces, property damage, motor vehicle liability where the *policyholder* is a business of a certain size.

For a fuller definition of *contracts of large risks* see the definition in the *Glossary*.

## 5.12 Link between activities and the United Kingdom

### Introduction

- 5.12.1 G Section 19 of the *Act* (The general prohibition) provides that the requirement to be *authorised* under the *Act* only applies in relation to *regulated activities* which are carried on 'in the *United Kingdom*'. In many cases, it will be quite straightforward to identify where an activity is carried on. But, when there is a cross-border element, for example because a *customer* is outside the *United Kingdom* or because some other element of the activity happens outside the *United Kingdom*, the question may need careful consideration. *PERG* 5.15.8G (Flow chart: am I carrying on regulated activities in the United Kingdom?) has a flow chart setting out the questions a *person* needs to consider in determining whether or not his *regulated*

*activities* are carried on 'in the *United Kingdom*'.

- 5.12.2 G Even if a *person* concludes that he is not carrying on a *regulated activity* in the *United Kingdom*, he will need to ensure that he does not contravene other provisions of the *Act* that apply to *unauthorised persons*. These include the controls on *financial promotion* (section 21 (Financial promotion) of the *Act*) (see *PERG* 8 (Financial promotion and related activities)), and on giving the impression that a *person* is *authorised* (section 24 (False claims to be authorised or exempt)).
- 5.12.3 G The table in *PERG* 5.12.4G is a very simplified summary of territorial issues relating to overseas insurance intermediaries carrying on the business of *insurance mediation activities* in or into the *United Kingdom* for remuneration.
- 5.12.4 G Table Territorial issues relating to overseas insurance intermediaries carrying on *insurance mediation activities* in or into the *United Kingdom*

	Needs Part IV permission	Schedule 3 EEA passport rights available	Overseas persons exclusion available
Registered <i>EEA</i> -based intermediary with <i>UK</i> branch (registered office or head office in another <i>EEA State</i> )	No	Yes	No
Registered <i>EEA</i> -based intermediary with no <i>UK</i> branch providing <i>cross-border</i> services	No	Yes	Potentially available [see Note]
Third country intermediary operating from branch in the <i>UK</i>	Yes	No	No
Third country intermediary providing services in (or into) the <i>UK</i>	Yes unless <i>overseas persons</i> exclusion applies	No	Potentially available
This does not, however, affect the <i>firm's</i> authorisation under Schedule 3 to the <i>Act</i> (see <i>PERG</i> 5.12.9G to <i>PERG</i> 5.12.10G (Passporting)).			

Where are insurance mediation activities carried on?

- 5.12.5 G *Persons* carrying on *insurance mediation activities* from a registered office or head office in the *United Kingdom* will clearly be carrying on *regulated activities* in the *United Kingdom*. However, a *person* may be considered to be carrying on *regulated activities* in the *United Kingdom* even where not carrying on the activity from a registered office or head office in the *United Kingdom*. This is explained further in *PERG 5.12.6G* to *PERG 5.12.8G*.
- 5.12.6 G In determining the location of an activity, and hence whether it is carried on in the *United Kingdom*, various factors need to be taken into account in turn, notably:
- (1) section 418 of the *Act* (Carrying on regulated activities in the *United Kingdom*);
  - (2) the nature of the activity; and
  - (3) the *overseas persons* exclusion (see *PERG 5.12.9G* to *PERG 5.12.10G* (*Overseas persons*)).
- 5.12.7 G Section 418 of the *Act* extends the meaning that 'carry on regulated activity in the *United Kingdom*' would normally have by setting out additional cases in which a *person* who would not otherwise be regarded as carrying on the activity in the *United Kingdom* is to be regarded as doing so. Each of the following cases thus amounts to carrying on a *regulated activity* in the *United Kingdom*:
- (1) where a *UK-based person* carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*;
  - (2) where a *UK-based person* carries on a *regulated activity* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*;
  - (3) where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an establishment maintained by him in the *United Kingdom*; and
  - (4) where an *electronic commerce activity* is carried on with or for a *person* in an *EEA State* from an establishment in the *United Kingdom*.

In each of these cases it is irrelevant where the *person* with whom the activity is carried on is situated.

- 5.12.8 G Otherwise, where the cases in *PERG 5.12.7G* (1) to (4) do not apply, it is necessary to consider further the nature of the activity in order to determine where *insurance mediation* is carried on. *Persons* that arrange *contracts of insurance* will usually be considered as carrying on the activity of *arranging* in the location where these activities take

place. As for dealing activities, the location of the activities will depend on factors such as where the acceptance takes place, which in turn will depend on the method of communication used. In the case of advising, this is generally considered to take place where the advice is received.

#### Overseas persons

5.12.9 G Article 72 of the *Regulated Activities Order* (Overseas persons) provides a potential exclusion for *persons* with no permanent place of business in the *United Kingdom* from which *regulated activities* are conducted or offers to conduct *regulated activities* are made. Where these *persons* carry on *insurance mediation activities* in the *United Kingdom*, they may be able to take advantage of the exclusions in article 72 of the *Regulated Activities Order*. In general terms, these apply where the *overseas person* either:

- (1) deals or arranges deals with or through *authorised* or *exempt persons* only; or
- (2) enters into deals with (or on behalf of) a *person* in the *United Kingdom* or gives advice on investments in the *United Kingdom*, in each case as a result of a 'legitimate approach'.

A 'legitimate approach', for the purposes of (2), is one that results from an unsolicited approach by a *person* (for example, a *customer*) or otherwise is a result of an approach by, or on behalf of, an *overseas person* which complies with the restriction on *financial promotion* under section 21 of the *Act* (see *PERG* 8.3.1G (Financial promotion)).

5.12.10 G The *overseas person* exclusion is available to *persons* who do not have a permanent place of business in the *United Kingdom* and so is of relevance to third country intermediaries (that is, non *EEA*-based intermediaries) who carry on *insurance mediation activities* in, or into, the *United Kingdom* (for example with or through *authorised* insurance brokers and insurance *undertakings* operating in the Lloyd's market).

#### How should persons be authorised?

5.12.11 G *UK*-based *persons* must obtain *Part IV permission* in relation to their *insurance mediation activities* in the *United Kingdom* as one of the following:

- (1) a *body corporate* whose registered office is situated in the *United Kingdom*; or
- (2) a *partnership* or unincorporated association whose head office is situated in the *United Kingdom*; or
- (3) an individual (that is, a sole trader) whose residence is situated in the *United Kingdom*.

The *United Kingdom* will, in each case, be the *Home State* for the purposes of the *IMD* for insurance or reinsurance intermediaries (see further in connection with the *E-Commerce Directive* in *PERG* 5.12.15G to *PERG* 5.12.17G (E-Commerce Directive)).

- 5.12.12 G Non-UK-based *persons* wishing to carry on *insurance mediation activities* in the *United Kingdom* must:
- (1) qualify for *authorisation* by exercising passport rights (see section 31 (Authorised persons) and schedule 3 (EEA passport rights) to the Act and *PERG* 5.12.13G to *PERG* 5.12.14G (Passporting)); or
  - (2) make use of the *overseas persons* exclusion (which then has the effect that activities are deemed not to be *regulated activities* carried on in the *United Kingdom*); or
  - (3) seek *Part IV permission*.

#### Passporting

- 5.12.13 G The effect of the *IMD* is that any *EEA*-based insurance intermediaries must first be registered in their home *EEA State* before carrying on *insurance mediation* in that *EEA State* or other *EEA States*. For these purposes, an *EEA*-based insurance intermediary is either:
- (1) a legal *person* with its registered office or head office in an *EEA State* other than the *United Kingdom*; or
  - (2) a natural *person* resident in an *EEA State* other than the *United Kingdom*.

Registered *EEA*-based insurance intermediaries wishing to establish branches in the *United Kingdom* or provide services on a cross-border basis into the *United Kingdom* can do so by notifying their *Home State regulator* which in turn notifies the *FSA*. This enables the intermediary to acquire passporting rights under Schedule 3 to the Act (EEA passporting rights) (see Schedule 3(13) and (14) of the Act as amended by the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003). *AUTH* 5 (Qualifying for authorisation under the Act) has general *guidance* on the exercise of passporting rights by *EEA firms*.

- 5.12.14 G On the other hand, non-*EEA*-based insurance intermediaries wishing to establish a branch in the *UK* for the purpose of carrying on *insurance mediation activities* may only do so with *Part IV permission*.

#### E-Commerce Directive

- 5.12.15 G The *E-Commerce Directive* removes restrictions on the cross-border provision of services by electronic means, introducing a *country of origin* approach to regulation. This requires *EEA States* to impose

certain requirements on the outward provision of such services and to lift them from inward providers. The *E-Commerce Directive* defines an e-commerce service (termed an *information society service*) as any service, normally provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service. So, for example, it includes services provided over the internet, by solicited e-mail, and interactive digital television. Further *guidance* is contained in *ECO*.

5.12.16 G The *E-Commerce Directive* does not remove the *IMD* requirement for *persons* taking up or pursuing *insurance mediation* for remuneration to be registered in their *Home State*. Nor does it remove the requirement for *EEA*-based intermediaries to acquire passporting rights in order to establish branches in the *United Kingdom* (see *PERG* 5.12.7G (Where is insurance mediation carried on?) in relation to *electronic commerce activity* carried on from an establishment in the *United Kingdom*) or provide services on a cross-border basis into the *United Kingdom* where the relevant activity is carried on in the *United Kingdom*. An example of *electronic commerce activity* provided on a cross-border basis into the *United Kingdom* could be a recommendation in a (solicited) e-mail from an *EEA*-based intermediary to a *UK*-based customer to *buy* a particular *contract of insurance*.

5.12.17 G Put shortly, the *E-Commerce Directive* relates to services provided into the *United Kingdom* from other *EEA States* and from the *United Kingdom* into other Member States. In broad terms, such cross-border insurance mediation services provided by an *EEA firm* into the *United Kingdom* (via *electronic commerce activity* or distance means) will generally be subject to *IMD* registration in, and conduct of business regulation of, the intermediary's *EEA State* of origin. By contrast, insurance mediation services provided in the *United Kingdom* will be subject to *UK* conduct of business regulation, although the requirement for registration will again depend upon the intermediary's *EEA State* of origin.

## 5.13 Appointed representatives

What is an appointed representative?

5.13.1 G Section 39 of the *Act* (Exemption of appointed representatives) exempts *appointed representatives* from the need to obtain *authorisation*. An *appointed representative* is a *person* who is party to a contract with an *authorised person* which permits or requires him to carry on certain *regulated activities* (see *Glossary* for full definition). *SUP* 12 (Appointed representatives) contains *rules* and *guidance* relating to *appointed representatives*.

5.13.2 G A *person* who is an *authorised person* cannot be an *appointed representative* (see section 39(1) of the *Act* (Exemption of appointed representatives)).

Business for which an appointed representative is exempt

- 5.13.3 G An *appointed representative* can carry on only those *regulated activities* which are specified in the *Appointed Representatives Regulations*. The *regulated activities* set out in the table in PERG 5.13.4G are included in those regulations. As set out in the table, the *insurance mediation activities* that can be carried on by an *appointed representative* differ depending on the type of *contracts of insurance* in relation to which the activities are carried on.
- 5.13.4 G Insurance mediation activities able to be carried on by an appointed representative. This table belongs to PERG 5.13.3G.

Type of contract of insurance	Regulated activities an appointed representative can carry on
<i>General insurance contract</i>	<ul style="list-style-type: none"> <li>• <i>dealing in investments as agent;</i></li> <li>• <i>arranging;</i></li> <li>• <i>assisting in the administration and performance of a contract of insurance;</i></li> <li>• <i>advising on investments;</i> and</li> <li>• <i>agreeing to carry on these regulated activities.</i></li> </ul>
<i>Pure protection contract</i>	<ul style="list-style-type: none"> <li>• <i>dealing in investments as agent (but only where the contract is not a long-term care insurance contract);</i></li> <li>• <i>arranging;</i></li> <li>• <i>assisting in the administration and performance of a contract of insurance;</i></li> <li>• <i>advising on investments;</i> and</li> <li>• <i>agreeing to carry on these regulated activities.</i></li> </ul>
<i>Life policy</i>	<ul style="list-style-type: none"> <li>• <i>arranging;</i></li> <li>• <i>assisting in the administration and performance of a contract of insurance;</i></li> <li>• <i>advising on investments;</i> and</li> <li>• <i>agreeing to carry on these regulated activities</i></li> </ul>

Persons who are not already appointed representatives

- 5.13.5 G A *person* who is not already an *appointed representative* may wish to

become one in relation to the *regulated activities* specified in the *Appointed Representatives Regulations* (see table in *PERG 5.13.4G*). If so, he must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities* and who accepts responsibility for the *appointed representative's* actions when acting for him. *SUP 12.4* (What must a firm do when it appoints an appointed representative?) and *SUP 12.5* (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made. In particular, an *appointed representative* will not be able to commence an *insurance mediation activity* until he is included on the *FSA Register* for such activities.

Persons who are already appointed representatives

- 5.13.6 G Where a *person* is already an *appointed representative* and he proposes to carry on any *insurance mediation activities*, he will need to consider the following matters.
- (1) He must become *authorised* if his proposed *insurance mediation activities* include activities that do not fall within the table in *PERG 5.13.4G* (for example, *dealing as agent in pure protection contracts*) and he wishes to carry on these activities. The *Act* does not permit any *person* to be exempt for some activities and *authorised* for others. He will, therefore, need to apply for *permission* to cover all the *regulated activities* that he proposes to carry on.
  - (2) If he proposes to carry on other *regulated activities* specified in the *Appointed Representatives Regulations* in relation to *contracts of insurance* (see the table in *PERG 5.13.4G*), he may be able to do so as an *appointed representative* bearing in mind the following.
    - (a) He will need to be appointed by an *authorised person* prepared to accept responsibility for his *insurance mediation activities* when acting for him. The *authorised person* must have *permission* to carry on these *regulated activities*.
    - (b) If these *insurance mediation activities* are to be carried on for the same *authorised person* who has already appointed him for his other *regulated activities*, the contract between them will need to be amended to reflect the additional activities. Other amendments to the contract will be required (see *SUP 12.5.6AR*).
    - (c) The effect of amendments to the *Appointed Representatives Regulations* is that an *appointed representative* cannot commence an *insurance mediation activity* until he is included on the *FSA Register* as carrying on such activities.

- (d) An *appointed representative* would be entitled to have more than one *principal* subject to certain restrictions. In relation to *non-investment insurance contracts (general insurance contracts and pure protection contracts)*, an *appointed representative* may have an unlimited number of *principals*. In relation to *regulated mortgage contracts and designated investment business*, an *appointed representative* is limited in the number of *principals* he may have. In any case where an *appointed representative* has multiple *principals*, those *principals* are required to enter into a multiple-*principal* agreement (see SUP 12.4.5DR to SUP 12.4.5GG (Appointment of an appointed representative (other than an introducer appointed representative))).
- (e) If the activities of the *appointed representative* are limited to introducing, he should consider the specific *Handbook* provisions relating to *introducer appointed representatives* (see SUP 12 (What must a firm do when it appoints an appointed representative?)).

## 5.14 Exemptions

### Professionals

- 5.14.1 G *Professional firms* (broadly firms of solicitors, accountants and actuaries) may carry on *insurance mediation activities* in the course of their professional activities. *Exempt professional firms* carrying on *insurance mediation activities* may continue to be able to use the *Part XX exemption* to avoid any need for *authorisation*. *PROF 2* (Status of exempt professional firm) contains *guidance* on the *Part XX exemption*. They will, however, need to be shown on the *FSA Register* as carrying on *insurance mediation activities*, in order to benefit from this exemption. The task of registration is the responsibility of the *designated professional bodies* who will need to inform the *FSA* both of member firms carrying on *insurance mediation activities* and individuals within firms' management responsible for these activities.
- 5.14.2 G *Professional firms* with practices that involve acting for claimants in litigation against *insurance undertakings* are likely to be carrying on the *regulated activity* of *assisting in the administration and performance of a contract of insurance*. *Exempt professional firms* whose practices contain a material element of such activity should consider whether they can continue to take advantage of the *Part XX exemption* to avoid any need for *authorisation*, having regard to the relevant provisions of the *Act*, in particular section 327 (Exemption from the general prohibition) and the *guidance* in *PROF 2.1.14G* (Exempt regulated activities).
- 5.14.3 G *Professional firms* should be aware of the disapplication of the exclusions for trustees (article 66) and activities carried on in the

course of a profession or non-investment business (article 67) outlined in *PERG 5.11.7G* (Exclusions disapplied in connection with insurance mediation) where their activities would amount to *insurance mediation*. Where they do not, they will still be able to rely upon article 67. Otherwise, the *Nonexempt Activities Order* imposes limitations on the extent to which *professional firms* can give advice to individuals. In particular, a *professional firm* cannot recommend to a *private client* that he *buy a life policy*, unless he is endorsing a corresponding recommendation given to the *client*. The recommendation he endorses must be one given by an *authorised person* permitted to advise on *life policies*, or an *exempt person* for these purposes. No such restrictions apply, however, in relation to *contracts of insurance* other than *life policies*.

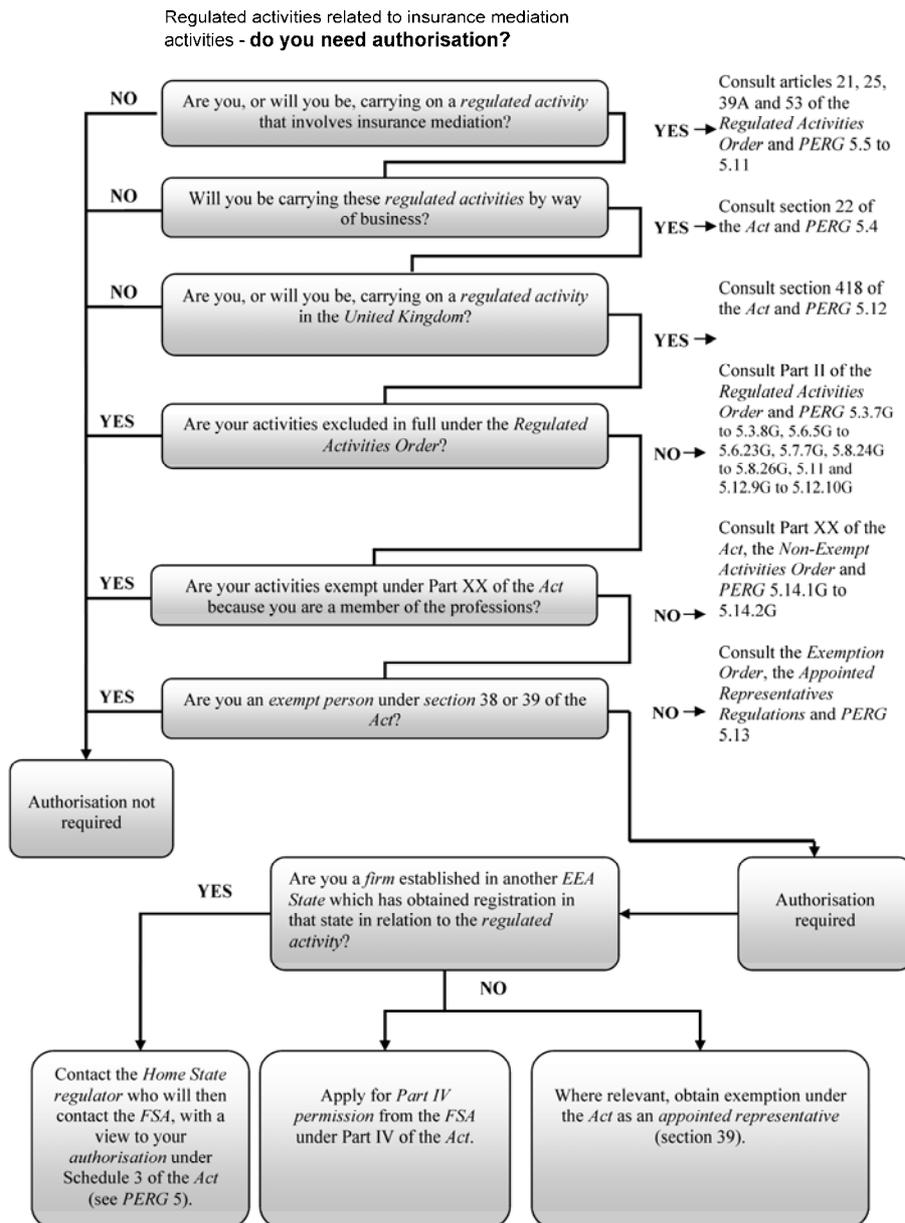
- 5.14.4 G As indicated in *PERG 5.6.8G*, the article 72C exclusion (Provision of information on an incidental basis) is potentially available to *unauthorised professional firms* including *exempt professional firms*. This may be relevant to *professional firms* arranging *contracts of insurance* for *clients* on an individual basis.

#### Other exemptions

- 5.14.5 G In addition to certain named *persons* exempted by the *Exemption Order* from the need to obtain *authorisation*, the following bodies are exempt in relation to *insurance mediation activities* that do not relate to *life policies*:
- (1) local authorities but not their subsidiaries;
  - (2) registered social landlords in England and Wales within the meaning of Part I of the Housing Act 1996 but not their subsidiaries;
  - (3) registered social landlords in Scotland within the meaning of the Housing (Scotland) Act 2001 but not their subsidiaries;
  - (4) the Housing Corporation;
  - (5) Scottish Homes; and
  - (6) The Northern Ireland Housing Executive.

#### 5.15 Illustrative tables

- 5.15.1 G This flow chart sets out the matters a *person* will need to consider to see if he will need *authorisation* for carrying on *insurance mediation activities*. It is referred to in *PERG 5.2.3G* (Questions to be considered to decide if authorisation is required).
- 5.15.2 G Flow chart: regulated activities related to insurance mediation activities – do you need authorisation?



5.15.3 G The table in *PERG 5.15.4G* is designed as a short, user-friendly guide but should be read in conjunction with the relevant sections of the text of this *guidance*. It is not a substitute for consulting the text of this *guidance* or seeking professional advice as appropriate (see *PERG 5.1.4G* to *PERG 5.1.6G* on the effect of this *guidance*). References in this table to articles are to articles of the *Regulated Activities Order*. In this table, it is assumed that each of the activities described is carried on by way of business (see *PERG 5.4*). Save where otherwise indicated, it is assumed that the intermediary is carrying on activities in respect of *policies* where he is not the *policyholder*. Also, that this table does not provide an exhaustive list

of all of the exclusions or exemptions that are of relevance to each type of activity. For a full explanation of the exclusions and exemptions under the *Regulated Activities Order* and their applicability see generally *PERG 5.3.7G to PERG 5.3.8G*, *PERG 5.6.5G to PERG 5.6.23G*, *PERG 5.7.7G*, *PERG 5.8.24G to PERG 5.8.26G*, *PERG 5.11*, *PERG 5.12.9G to PERG 5.12.10G*, *PERG 5.13* and *PERG 5.14*. This Table is referred to in *PERG 5.7.5G* (The regulated activities: assisting in the administration and performance of a contract of insurance).

5.15.4 G Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
<b>MARKETING AND EFFECTING INTRODUCTIONS</b>		
Passive display of information -for example, medical insurance brochures in doctor’s surgery (whether or not remuneration is received for this activity)	No.	Merely displaying information does not constitute making arrangements under article 25(2) (see <i>PERG 5.6.4G</i> ).
Recommending a broker/ <i>insurance undertaking</i> and providing customer with contact details (whether by phone, fax, e-mail, face-to-face or any other means of communication)	Yes, but article 72C may be available.	This will constitute making arrangements under article 25(2). But, the exclusion in article 72C will apply if all the intermediary does is supply information to the customer and the conditions of article 72C are otherwise met (see <i>PERG 5.6.5G to PERG 5.6.9G</i> ). Generally, this will not amount to advice under article 53 unless there is an implied recommendation of a particular <i>policy</i> (see <i>PERG 5.8.4G</i> ), in which case article 72C

		would not be available.
Providing an <i>insurance undertaking</i> /broker with contact details of customer	Yes.	This will constitute making arrangements under article 25(2) when undertaken in the context of regular or ongoing arrangements for introducing customers. Article 72C will not apply because the information is supplied to someone other than the <i>policyholder</i> or potential <i>policyholder</i> .
Marketing on behalf of <i>insurance undertaking</i> to intermediaries only (for example, broker consultants)	Yes.	This amounts to work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). Article 72C is not available because this activity does not involve provision of information to the <i>policyholder</i> or potential <i>policyholder</i> only.
Telemarketing services (that is, companies specialising in marketing an <i>insurance undertaking's</i> products/services to prospective customers)	Yes.	This amounts to introducing and/or other work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). This could also involve article 25(1) <i>arranging</i> where the telemarketing company actually <i>sells</i> a particular <i>policy</i> and could involve <i>advising on investments</i> . Article 72C will not be

		available where the provision of information is more than incidental to the telemarketing company's main business or where the telemarketing company is <i>advising on investments</i> .
<b>PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE</b>		
Discussion with client about need for insurance generally/need to take out a particular type of insurance	Generally, no. Article 72C available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to <i>arranging</i> . If so, article 72C might be of application (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G).
Advising on the level of cover needed	Generally, no. Article 72C available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to making arrangements under article 25(2) (see <i>PERG</i> 5.8.3G). If so, article 72C might be of application (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G).
Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several	Yes. Subject to article 72 C exclusion where available.	This will constitute <i>arranging</i> although article 72C may be of application (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G). If there is no express or implied

<i>policies</i> which suit the answers given)		recommendation of a particular <i>policy</i> , this activity will not amount to advice under article 53 (see <i>PERG</i> 5.8.15G to <i>PERG</i> 5.8.19G).
Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies	Possibly. Article 72C available.	This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve <i>advising on investments</i> (see <i>PERG</i> 5.8.8G (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i> , and does not involve <i>advising on investments</i> , article 72C may be of application (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G), and where information is provided by a professional in the course of a profession, article 67 may apply (see <i>PERG</i> 5.11.9G to <i>PERG</i> 5.11.12G).
Advising that a customer take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53 (see <i>PERG</i> 5.8.4G to <i>PERG</i> 5.8.5G).
Advising that a customer does not take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53 (see <i>PERG</i> 5.8.4G to <i>PERG</i> 5.8.5G).
Advice by journalists in newspapers,	Generally, no because of the article 54 exclusion.	Article 54 provides an exclusion for advice given in newspapers etc (see <i>PERG</i> 5.8.24G to

broadcasts etc.		<i>PERG 5.8.25G</i> ).
Giving advice to a customer in relation to his <i>buying</i> a consumer product, where insurance is a compulsory secondary purchase and/or a benefit that comes with <i>buying</i> the product	Not necessarily but depends on the circumstances.	Where the advice relates specifically to the merits of the consumer product, it is possible that references to the accompanying insurance may be seen to be information and not advice. If, however, the advice relates, in part, to the merits of the insurance element, then it will be <i>regulated activity</i> .
<b>ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS</b>		
Providing information to customer who fills in application form	Possibly. Subject to article 67 or 72C exclusions where available.	This activity may amount to <i>arranging</i> although the exclusions in article 67 (see <i>PERG 5.11.9G</i> to <i>PERG 5.11.12G</i> ) and article 72C (see <i>PERG 5.6.5G</i> to <i>PERG 5.6.9G</i> ) may be of application.
Helping a potential <i>policyholder</i> fill in an application form	Yes.	This activity amounts to <i>arranging</i> . Article 72C will not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see <i>PERG 5.6.5G</i> to <i>PERG 5.6.9G</i> ).
Receiving completed proposal forms for checking and forwarding to an <i>insurance undertaking</i> (for example, an administration outsourcing service	Yes.	This amounts to <i>arranging</i> . Article 72C does not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i>

provider that receives and processes proposal forms)		(see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G).
Assisting in completion of proposal form and sending to <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> . Article 72C does not apply because this activity goes beyond the mere provision of information (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G).
NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE		
Negotiating terms of <i>policy</i> on behalf of a customer with the <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> (see <i>PERG</i> 5.6.2G).
Negotiating terms of <i>policy</i> on behalf of <i>insurance undertaking</i> with the customer and signing proposal form on his behalf	Yes.	These activities amount to both <i>arranging</i> and <i>dealing in investments as agent</i> .
Concluding a <i>contract of insurance</i> on insurance company's behalf, for example, motor dealer who has authority to conclude insurance contract on behalf of <i>insurance undertaking</i> when <i>selling</i> a car	Yes.	A <i>person</i> carrying on this activity will be <i>dealing in investments as agent</i> . He will also be <i>arranging</i> (as the article 28 exclusion only applies in the limited circumstances envisaged under article 28(3)) (see <i>PERG</i> 5.6.12G).
Agreeing, on behalf of a prospective <i>policyholder</i> , to <i>buy</i> a <i>policy</i> .	Yes.	A <i>person</i> who, with authority, enters into a <i>contract of insurance</i> on behalf of another is <i>dealing in investments</i>

		<i>as agent</i> under article 21, and will also be <i>arranging</i> .
Providing compulsory insurance as a secondary purchase	Yes. It will amount to <i>dealing in investments as agent</i> or <i>arranging</i> .	The fact that the insurance is secondary to the primary product does not alter the fact that arranging the package involves <i>arranging</i> the insurance.
COLLECTION OF PREMIUMS		
Collection of cheque for premium from the customer at the pre-contract stage.	Yes (as part of <i>arranging</i> ).	This activity is likely to form part of <i>arranging</i> . But the mere collection/receipt of premiums from the customer is unlikely, without more, to amount to <i>arranging</i> .
Collection of premiums at post-contract stage	No.	The mere collection of premiums from <i>policyholders</i> is unlikely, without more, to amount to <i>assisting in the administration and performance of a contract of insurance</i> .
MID-TERM ADJUSTMENTS AND ASSIGNMENTS		
Solicitors or licensed conveyancers discharging client instructions to assign <i>contracts of insurance</i> .	Not where article 67 applies.	As the assignment of rights under a <i>contract of insurance</i> (as opposed to the creation of new <i>contracts of insurance</i> ) does not fall within the <i>IMD</i> , article 67 is of potential application (see <i>PERG</i> 5.11.9G to <i>PERG</i> 5.11.12G).
Making mid-term adjustments to a <i>policy</i> , for example, property manager	Yes.	Assuming the freeholder (as <i>policyholder</i> ) is obliged under the terms of the

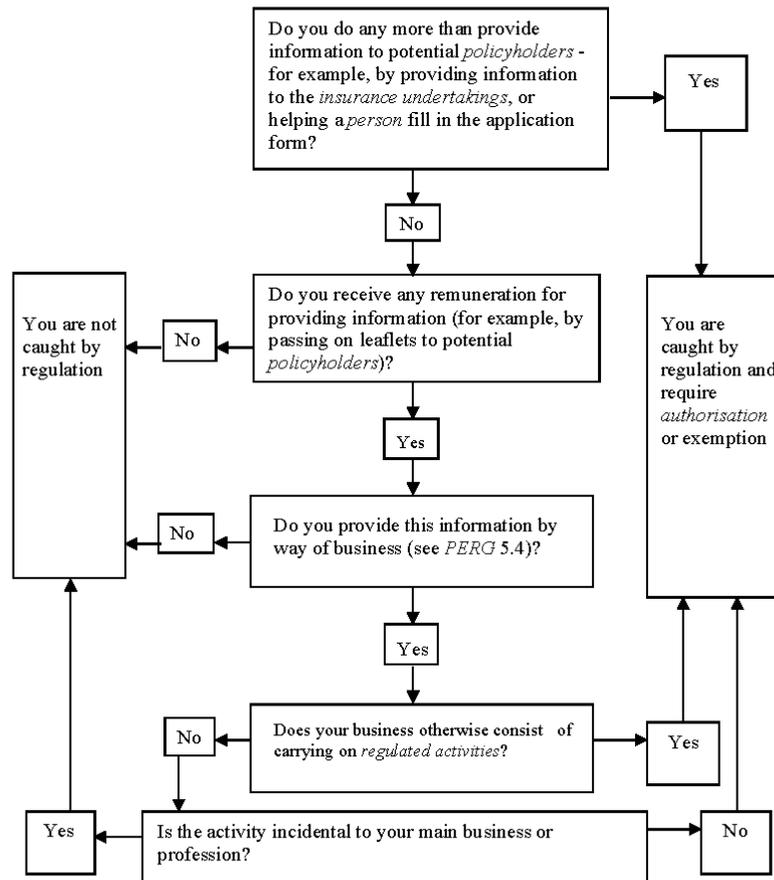
notifies changes to the names of the leaseholders registered as “interested parties” in the <i>policy</i> in respect of the property.		<i>policy</i> to notify the <i>insurance undertaking</i> of changes to the identity of the leaseholders, the property manager is likely to be <i>assisting in the administration and the performance of the contract of insurance</i> .
<b>TRADED ENDOWMENT POLICIES (“TEPs”)</b>		
Making introductions for the purposes of <i>selling</i> TEPs	Yes, unless article 72C applies.	Making introductions for these purposes is <i>arranging</i> unless article 72C applies (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G). The exclusions in article 29 (Arranging deals with or through authorised persons) and 33 (Introducing) no longer apply to <i>arranging contracts of insurance</i> .
Market makers in TEPs	Yes, although the exclusion in article 28 may apply.	Unauthorised market makers can continue to make use of the exclusions in articles 15 (Absence of holding out etc.) and 16 (Dealing in contractually based investments), where appropriate. In order to avoid the need for <i>authorisation</i> in respect of <i>arranging</i> they may be able to rely upon article 28 (see <i>PERG</i> 5.6.12G).
<b>ASSISTING POLICYHOLDER WITH MAKING A CLAIM</b>		
Merely providing information to the insured to help him complete a claim	No.	Of itself, this is likely to amount to assisting in the administration but not the performance

form		of a <i>contract of insurance</i> . In the FSA's view, the provision of information in these circumstances is more akin to facilitating performance of a <i>contract of insurance</i> rather than assisting in the performance (see PERG 5.7.3G to PERG 5.7.5G)
Completion of claim form on behalf of insured	Potentially.	This activity amounts to assisting in the administration of a <i>contract of insurance</i> . Whether this activity amounts to <i>assisting in the administration and performance of a contract of insurance</i> will depend upon whether a <i>person's</i> assistance in filling in a claims form is material to whether performance of the contractual obligation to notify a claim takes place (see PERG 5.7.2G to PERG 5.7.3G).
Notification of claim to <i>insurance undertaking</i> and helping negotiate its settlement on the <i>policyholder's</i> behalf	Yes.	This activity amounts to <i>assisting in the administration and performance of a contract of insurance</i> (see PERG 5.7.4G).
<b>ASSISTING INSURANCE UNDERTAKING WITH CLAIMS BY POLICYHOLDERS</b>		
Negotiation of settlement of claims on behalf of an <i>insurance undertaking</i>	No.	Claims management on behalf of an <i>insurance undertaking</i> does not amount to <i>assisting in the administration and performance of a contract of insurance</i>

		by virtue of the exclusion in article 39B (see <i>PERG 5.7.7G</i> ).
Providing information to <i>an insurance undertaking</i> in connection with its investigation or assessment of a claim	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> .
Loss adjusters and claims management services (for example, by administration outsourcing providers)	Potentially.	These activities may amount to <i>assisting in the administration and performance of a contract of insurance</i> . Article 39B excludes these activities, however, when undertaken on behalf of an <i>insurance undertaking</i> only (see <i>PERG 5.7.7G</i> ).
Providing an expert appraisal of a claim	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> whether carried out on behalf of an <i>insurance undertaking</i> or otherwise.
Jeweller repairs customer's jewellery pursuant to a <i>policy</i> which permits the jeweller to carry out repairs	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> . It amounts to managing claims on behalf of an <i>insurance undertaking</i> and so falls within the exclusion in article 39B (see <i>PERG 5.7.7G</i> ).

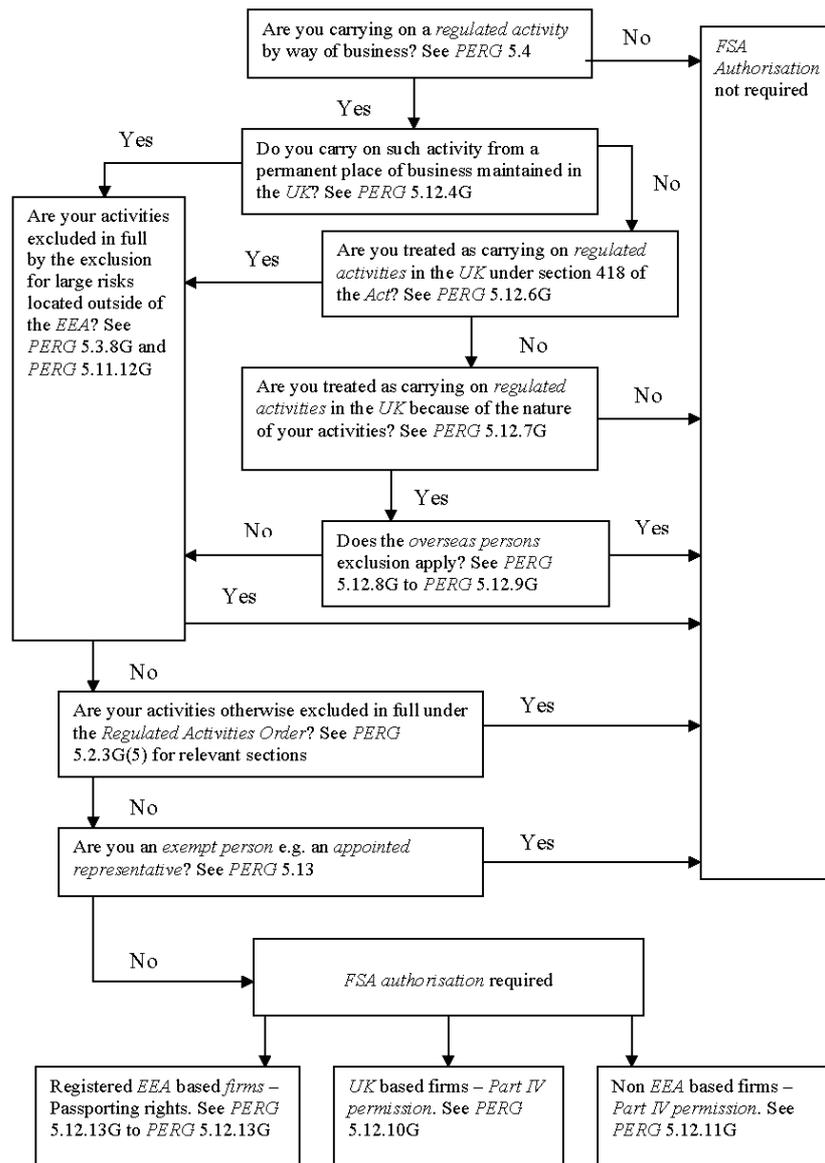
5.15.5 G The flow chart in *PERG 5.15.6G* sets out the matters a *person* whose introducing activities potentially amount to *making arrangements with a view to transactions in investments* will need to consider if he can use the exclusion in article 72C (Provision of information on an incidental basis). It is referred to in *PERG 5.1.6G* (Purpose of guidance) and *PERG 5.6.9G* (Exclusion: article 72C (Provision of information on an incidental basis)).

5.15.6 G Flow Chart: Introdurers.



5.15.7 G The flow chart in *PERG 5.15.8G* sets out the questions a *person* needs to consider in determining whether or not his *regulated activities* are carried on 'in the *United Kingdom*'.

5.15.8 G Flow chart: am I carrying on regulated activities in the United Kingdom?



## 5.16 Meaning of 'insurance mediation'

5.16.1 G *PERG 5.16.2G* sets out the text of article 2.3 of the *Insurance Mediation Directive*. It is referred to in *PERG 5.2.5G* and *PERG 5.2.5G* (Approach to implementation of the IMD), *PERG 5.11.7G* (Exclusions disapplied in connection with insurance mediation) and *PERG 5.11.10G* (Activities carried on in the course of a profession or non-investment business).

5.16.2 G Text of article 2.3 of the Insurance Mediation Directive

"'Insurance mediation' means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the

event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation."

## GUIDANCE ON THE IDENTIFICATION OF CONTRACTS OF INSURANCE

- 6 Guidance on the Identification of Contracts of Insurance
  - 6.1 Application
    - 6.1.1 G This chapter is relevant to any *person* who needs to know what activities fall within the scope of the *Act*.
  - 6.2 Purpose of guidance
    - 6.2.1 G The purpose of this *guidance* is to set out:
      - (1) at *PERG* 6.5G the general principles; and
      - (2) at *PERG* 6.6G the range of specific factors;that the *FSA* regards as relevant in deciding whether any arrangement is a *contract of insurance*.
    - 6.2.2 G This *guidance* includes (at *PERG* 6.7) a number of examples, showing how the factors have been applied to reach conclusions with respect to specific categories of business. Further examples may be published from time-to-time.
  - 6.3 Background
    - 6.3.1 G The business of *effecting or carrying out contracts of insurance* is subject to prior *authorisation* and regulation by the *FSA*. (There are some limited exceptions to this requirement, for example, for breakdown insurance.)
    - 6.3.2 G The *Regulated Activities Order*, which sets out the activities for which *authorisation* is required, does not attempt an exhaustive definition of a '*contract of insurance*'. Instead, it makes some specific extensions and limitations to the general common law meaning of the concept. For example, it expressly extends the concept to fidelity bonds and similar contracts of guarantee, which are not *contracts of insurance* at common law, and it excludes certain *funeral plan contracts*, which would generally be *contracts of insurance* at common law. Similarly, the *Exemption Order* excludes certain trade union provident business, which would also be insurance at common law. One consequence of this is that common law judicial decisions about whether particular contracts amount to 'insurance' or 'insurance business' are relevant in defining the scope of the *FSA's authorisation* and regulatory activities, as they were under predecessor legislation.
    - 6.3.3 G The courts have not fully defined the common law meaning of 'insurance' and 'insurance business', since they have, on the whole, confined their decisions to the facts before them. They have,

however, given useful guidance in the form of descriptions of *contracts of insurance*.

- 6.3.4 G The best established of these descriptions appears in the case of *Prudential v. Commissioners of Inland Revenue* [1904] 2 KB 658. This case, read with a number of later cases, treats as insurance any enforceable contract under which a 'provider' undertakes:
- (1) in consideration of one or more payments;
  - (2) to pay money or provide a corresponding benefit (including in some cases services to be paid for by the provider) to a 'recipient';
  - (3) in response to a defined event the occurrence of which is uncertain (either as to when it will occur or as to whether it will occur at all) and adverse to the interests of the recipient.

#### 6.4 Limitations of this guidance

- 6.4.1 G Although what appears below is the *FSA*'s approach, it cannot state what the law is, as that is a matter for the courts. Accordingly, this *guidance* is not a substitute for adequate legal advice on any transaction.
- 6.4.2 G The list of principles and factors is not closed and this *guidance* by no means covers all types of insurance-like business.
- 6.4.3 G The *FSA* will consider each case on its facts and on its merits.
- 6.4.4 G In some cases transactions with the same commercial purpose or economic effect may be classified differently, ie some as insurance and some as non-insurance.

#### 6.5 General principles

- 6.5.1 G The starting point for the identification of a *contract of insurance* is the case of *Prudential v. Commissioners of Inland Revenue* [1904] 2 KB 658, from which the description set out in *PERG* 6.3.4G is drawn. Any contracts that fall outside that description are unlikely to be *contracts of insurance*.
- 6.5.2 G The *FSA* will interpret and apply the description in *PERG* 6.3.4G in the light of applicable legislation and common law, including case law.
- 6.5.3 G In particular, if the common law is unclear as to whether or not a particular contract is a *contract of insurance*, the *FSA* will interpret and apply the common law in the context of and in a way that is consistent with the purpose of the *Act* as expressed in the *FSA*'s statutory objectives.

- 6.5.4 G The *FSA* will apply the following principles of construction to determine whether a contract is a *contract of insurance*.
- (1) In applying the description in *PERG* 6.3.4G, more weight attaches to the substance of the contract, than to the form of the contract. The form of the contract is relevant (see *PERG* 6.6.8G(3) and (4)) but not decisive of whether a contract is a *contract of insurance*: *Fuji Finance Inc. v. Aetna Life Insurance Co. Ltd* [1997] Ch. 173 (C.A.).
  - (2) In particular, the substance of the provider's obligation determines the substance of the contract: *In re Sentinel Securities* [1996] 1 WLR 316. Accordingly, the *FSA* is unlikely to treat the provider's or the customer's intention or purpose in entering into a contract as relevant to its classification.
  - (3) The contract must be characterised as a whole and not according to its 'dominant purpose' or the relative weight of its 'insurance content': *Fuji Finance Inc. v. Aetna Life Insurance Co. Ltd* [1997] Ch. 173 (C.A.).
  - (4) Since only contracts of marine insurance and certain *contracts of insurance* effected without consideration are required to be in writing, a *contract of insurance* may be oral or may be expressed in a number of documents.

## 6.6 The factors

- 6.6.1 G Contracts under which the provider has an absolute discretion as to whether any benefit is provided on the occurrence of the uncertain event, are not *contracts of insurance*. This may be the case even if, in practice, the provider has never exercised its discretion so as to deny a benefit: *Medical Defence Union v. Department of Trade and Industry* [1979] 2 W.L.R. 686. The degree of discretion required and the matters to which it must relate are illustrated in *PERG* 6.7.1G (Example 1: discretionary medical schemes).
- 6.6.2 G The 'assumption of risk' by the provider is an important descriptive feature of all *contracts of insurance*. The 'assumption of risk' has the meaning in (1) and (3), derived from the case law in (2) and (4) below. The application of the 'assumption of risk' concept is illustrated in *PERG* 6.7.2G (Example 2: disaster recovery business).
- (1) Case law establishes that the provider's obligation under a *contract of insurance* is an enforceable obligation to respond (usually, by providing some benefit in the form of money or services) to the occurrence of the uncertain event. This *guidance* describes the assumption of that obligation as the 'assumption' by the provider of (all or part of) the insured risk. 'Transfer of risk' has the same meaning in this *guidance*.

- (2) The case law referred to in (1) is *Prudential v. Commissioners of Inland Revenue* [1904] 2 KB 658, read with *Hampton v. Toxteth Co-operative Provident Society Ltd* [1915] 1 Ch. 721 (C.A.), *Department of Trade and Industry v. St Christopher Motorists Assoc. Ltd* [1974] 1 All E.R. 395, *Medical Defence Union v. Department of Trade and Industry* [1979] 2 W.L.R. 686 and *Wooding v. Monmouthshire and South Wales Mutual Indemnity Soc. Ltd* [1939] 4 All E.R. 570 (H.L.).
- (3) The *FSA* recognises that there is a line of case law in relation to *long-term insurance business* that establishes that a contract may be a *contract of insurance* even if, having effected that contract, the provider 'trades without any risk'. The *FSA* accepts that the insurer's risk of profit or loss from insurance business is not a relevant descriptive feature of a *contract of insurance*. But in the *FSA*'s view that is distinct from and does not undermine the different proposition in (1).
- (4) The case law referred to in (3) is *Flood v. Irish Provident Assurance Co. Ltd* [1912] 2 Ch. 597 (C.A.), *Fuji Finance Inc. v. Aetna Life Insurance Co. Ltd* [1995] Ch. 122, *Re Barrett; Ex parte Young v. NM Superannuation Pty Ltd*, (1992) 106 A.L.R. 549, *Fuji Finance Inc. v. Aetna Life Insurance Co. Ltd* [1997] Ch. 173 (C.A.).
- 6.6.3 G Contracts, under which the amount and timing of the payments made by the recipient make it reasonable to conclude that there is a genuine pre-payment for services to be rendered in response to a future contingency, are unlikely to be regarded as insurance. In general, the *FSA* expects that this requirement will be satisfied where there is a commercially reasonable and objectively justifiable relationship between the amount of the payment and the cost of providing the contract benefit.
- 6.6.4 G Contracts under which the provider undertakes to provide periodic maintenance of goods or facilities, whether or not any uncertain or adverse event (in the form of, for example, a breakdown or failure) has occurred, are unlikely to be *contracts of insurance*.
- 6.6.5 G Contracts under which, in consideration for an initial payment, the provider stands ready to provide services on the occurrence of a future contingency, on condition that the services actually provided are paid for by the recipient at a commercial rate, are unlikely to be regarded as insurance. Contrast *PERG* 6.7.21G (Example 7: solicitors' retainers) with *PERG* 6.7.22G (Example 8: time and distance cover).
- 6.6.6 G The recipient's payment for a *contract of insurance* need not take the form of a discrete or distinct premium. Consideration may be part of some other payment, for example the purchase price of goods (*Nelson v. Board of Trade* (1901) 17 T.L.R. 456). Consideration may

also be provided in a non-monetary form, for example as part of the service that an employee is contractually required to provide under a contract of employment (*Australian Health Insurance Assoc. Ltd v. Esso Australia Pty Ltd* (1993) 116 A.L.R. 253).

6.6.7 G Under most commercial contracts with a *customer*, a provider will assume more than one obligation. Some of these may be insurance obligations, others may not. The *FSA* will apply the principles in *PERG* 6.5.4G, in the way described in (1) to (3) to determine whether the contract is a *contract of insurance*.

(1) If a provider undertakes an identifiable and distinct obligation that is, in substance an insurance obligation as described in *PERG* 6.5.4G, then, other things being equal, the *FSA* is likely to find that by undertaking that obligation the provider has effected a *contract of insurance*.

(2) The presence of an insurance obligation will mean that the contract is a *contract of insurance*, whether or not that obligation is 'substantial' in comparison with the other obligations in the contract.

(3) The presence of an insurance obligation will mean that the contract is a *contract of insurance*, whether or not entering into that obligation forms a significant part of the provider's business. The *FSA* generally regards a provider as undertaking an obligation 'by way of business' if he takes on an obligation in connection with or for the purposes of his core business, to realise a commercial advantage or benefit.

6.6.8 G The following factors are also relevant.

(1) A contract is more likely to be regarded as a *contract of insurance* if the amount payable by the recipient under the contract is calculated by reference to either or both of the probability of occurrence or likely severity of the uncertain event.

(2) A contract is less likely to be regarded as a *contract of insurance* if it requires the provider to assume a speculative risk (ie a risk carrying the possibility of either profit or loss) rather than a pure risk (ie a risk of loss only).

(3) A contract is more likely to be regarded as a *contract of insurance* if the contract is described as insurance and contains terms that are consistent with its classification as a *contract of insurance*, for example, obligations of the utmost good faith.

(4) A contract that contains terms that are inconsistent with obligations of good faith may, therefore, be less likely to be classified as a *contract of insurance*; however, since it is the

substance of the provider's rights and obligations under the contract that is more significant, a contract does not cease to be a *contract of insurance* simply because the terms included are not usual insurance terms.

## 6.7 Examples

### Example 1: discretionary medical schemes

- 6.7.1 G Medical schemes under which an employer operates or contributes to a fund, from which the employee has a right to a benefit (for example, a payment) on the occurrence of a specified illness or injury, are likely to be insurance schemes. This will be the case whether the employee makes any contribution to the fund, or the scheme is funded by the employer as an emolument. The scheme would not be insurance, however, if the employer has an absolute discretion whether or not to provide any benefit to the employee. Absolute discretion requires, for example, that the employer has an unfettered discretion both as to whether the employee will receive a benefit and as to the amount of that benefit. The absolutely discretionary nature of the benefits should also be clear from the terms of the scheme and any literature published about or in relation to it. If these requirements are met, it may not be relevant that, in practice, the employer has never refused to meet a valid claim under the scheme.

### Example 2: disaster recovery business

- 6.7.2 G The disaster recovery provider sets up and maintains a range of IT and related facilities (PABX etc). The disaster recovery contracts so far considered by the *FSA* give the recipient, subject to certain conditions including an up front payment, priority access to all or a specified part of these facilities if a 'disaster' causes the failure of a similar business system on which the recipient relies. The provider sells access to the same facilities to a number of different recipients, both for use in response to 'disasters' and, more usually, for use in testing and refining the recipient's ability to switch to alternative systems in the event of a disaster.
- 6.7.3 G In principle, a significant part of disaster recovery business could potentially fall within the description of a *contract of insurance* set out in *PERG* 6.3.4G. The provider undertakes, in consideration of a payment, to provide the recipient with services (alternative facilities) in response to a defined event (a disaster), which is adverse to the interests of the recipient and the occurrence of which is uncertain. The risk dealt with under the disaster recovery contract is a pure risk (see *PERG* 6.6.8G(2)) and, at least at the commencement of the contract, the provider assumes that risk, within the terms of *PERG* 6.6.2G.
- 6.7.4 G However, the disaster recovery contracts considered by the *FSA* had

two key features.

- (1) Priority access to facilities in the event of a disaster was expressed to be on a 'first come, first served' basis. The contracts provided expressly that if the facilities needed by recipient A were already in use, following an earlier invocation by recipient B, the provider's obligation to recipient A was reduced to no more than an obligation of 'best endeavours' to meet A's requirements. The entry into additional contracts of this kind did not increase the probability that the provider's existing resources would be inadequate to meet all possible claims. The terms of the contract were such that there was no pattern of claims that would cause the provider to have to pay claims from its own resources.
- (2) In general, the contracts were priced so that the total consideration collected from the recipient over the life of the contract bore a reasonable and justifiable relationship to the commercial cost of the services actually provided to the recipient (see *PERG 6.6.5G*). This was achieved, for example, by post-invocation charges levied according to the actual usage of services.

6.7.5 G Based on these features, the *FSA* reached the conclusion, with which the other terms of the contracts were consistent (*PERG 6.6.8G(3)*), that these disaster recovery contracts were not *contracts of insurance*.

6.7.6 G An important part of the conclusion in *PERG 6.7.5G* was that, although the provider assumed a risk at the outset of the contract, looking at the contract as a whole and interpreting the common law in the context of the *FSA*'s objectives (see *PERG 6.5.2G* and *PERG 6.5.3G*) there was no relevant assumption of risk.

- (1) The presence or absence of an assumption of risk is an important part of the statutory rationale for the prudential regulation of insurance.
- (2) In *Medical Defence Union v. Department of Trade and Industry* [1979] 2 W.L.R. 686, the court accepted that since there was no common law definition of a *contract of insurance*, the meaning of the term 'fell to be construed in its context according to the general law'. The court recognised that in deciding whether a contract was a *contract of insurance* for the purposes of the Insurance Companies Act 1974, the 'context' included the purpose of the regulatory statute.
- (3) Accordingly, when the common law is unclear, the *FSA* will assess the desirability of regulating a particular contract as insurance in the light of the statutory objectives in the *Act*. The *FSA* will use that assessment as an indicator of whether or not a sufficient assumption of risk is present for the contract to be

classified as a *contract of insurance* at common law.

- (4) In the case of disaster recovery contracts, the fact that there was no pattern of claims that would cause the provider to have to pay claims from its own resources led the *FSA* to conclude that there was no relevant assumption of risk by the disaster recovery provider.

#### Example 3: manufacturers' and retailers' warranties

- 6.7.7 G Under a simple manufacturer's or retailer's warranty the purchase price of the goods includes an amount, in consideration of which the manufacturer undertakes an obligation (the warranty) to respond (without further expense to the purchaser) to specified defects in the product that emerge within a defined time after purchase. When the warranty operates, the manufacturer or retailer provides repairs or replacement products in response to a defined event (the emergence of a latent defect in the product), which is adverse to the interests of the purchaser and the occurrence of which is uncertain. In summary, therefore, a simple manufacturer's or retailer's warranty is an identifiable and distinct obligation that is similar to and capable of being described as an insurance obligation in substance under *PERG* 6.3.4G.
- 6.7.8 G Notwithstanding *PERG* 6.7.7G, the *FSA*'s view is that an obligation that is of the same nature as a seller's or supplier's usual obligations as regards the quality of the goods or services is unlikely to be an insurance obligation in substance.
- 6.7.9 G The *FSA* is unlikely to classify a contract containing a simple manufacturer's or retailer's warranty as a *contract of insurance*, if the *FSA* is satisfied that the warranty does no more than crystallise or recognise obligations that are of the same nature as a seller's or supplier's usual obligations as regards the quality of the goods or services.
- 6.7.10 G For the purpose of *PERG* 6.7.9G, an obligation is likely to be of the same nature as the seller's or supplier's usual obligations as regards the quality of goods or services if it is an obligation of the seller to the buyer, assumed by the seller in consideration of the purchase price, which:
- (1) implements, or bears a reasonable relationship to, the seller's statutory or common law obligations as regards the quality of goods or services of that kind; or
  - (2) is a usual obligation relevant to quality or fitness in commercial contracts for the sale of goods or supply of services of that kind.

#### Example 4: separate warranty transactions and extended warranties

- 6.7.11 G It follows from *PERG* 6.7.10G that the *FSA* is unlikely to be satisfied that an obligation in a contract of sale or supply is of the same nature as the seller's or supplier's usual obligations as regards the quality of goods or services, if that obligation has one or more of the following features:
- (1) it is assumed by a person other than the seller or supplier (a 'third party'); or
  - (2) it is significantly more extensive in content, scope or duration than a seller's usual obligations as to the quality of goods or services of that kind.
- 6.7.12 G Other things being equal, the *FSA* is likely to classify a contract of sale containing a warranty that has one or more of the features in *PERG* 6.7.11G as a *contract of insurance*. The features in *PERG* 6.7.11G(1) and (2) typically distinguish a 'third party' warranty and an 'extended warranty' from a 'simple' manufacturer's or retailer's warranty.
- 6.7.13 G If a warranty is provided by a third party, the *FSA* will usually treat this as conclusive of the fact that there are different transactions and an assumption or transfer of risk. This conclusion would not usually depend on whether the provider is (or is not) a part of the same group of companies as the manufacturer or retailer. But it will be the third party (who assumes the risk) that is potentially effecting a *contract of insurance*.
- 6.7.14 G A manufacturer or retailer may undertake a warranty obligation to his customer in a separate contract with the customer, distinct from the contract of sale or supply of goods or services. The *FSA* will examine the separate contract to see if it is a *contract of insurance*. But the mere existence of a separate warranty contract is unlikely to be conclusive by itself.
- 6.7.15 G A manufacturer or retailer may undertake an obligation to ensure that the customer becomes a party to a separate *contract of insurance* in respect of the goods sold. This would include, for example, a contract for the sale of a freezer, with a simple warranty in relation to the quality of the freezer, but also providing insurance (underwritten by an *insurer* and in respect of which the customer is the *policyholder*) covering loss of frozen food if the freezer fails. The *FSA* is unlikely to treat a contract containing an obligation of this kind as a *contract of insurance*. However, the manufacturer or retailer may be in the position of an intermediary and may be liable to regulation in that capacity.
- 6.7.16 G The *FSA* distinguishes the contract in *PERG* 6.7.15G from a contract under which the manufacturer or retailer assumes the obligation to provide the customer with an indemnity against loss or damage if the freezer fails, but takes out insurance to cover the cost of having to

provide the indemnity to the customer. The obligation to indemnify is of a different nature from the seller's or supplier's usual obligations as regards the quality of goods or services and is an insurance obligation. By assuming it, other things being equal, the manufacturer or retailer effects a *contract of insurance*. The fact that the manufacturer or retailer may take out insurance to cover the cost of having to provide the indemnity is irrelevant.

Example 5: typical warranty schemes administered by motor dealers

- 6.7.17 G The following are examples of typical warranty schemes operated by motor dealers. Provided that, in each case, the *FSA* is satisfied that the obligations assumed by the dealer are not significantly more extensive in content, scope or duration than a dealer's usual obligations as to the quality of motor vehicles of that kind, the *FSA* would not usually classify the contracts embodying these transactions as *contracts of insurance*.
- (1) The dealer gives a verbal undertaking to the purchaser that during a specified period (usually 3 months) he will rectify any fault occurring with the vehicle. No money changes hands, and the dealer is responsible for meeting the warranty obligation.
  - (2) The dealer undertakes warranty obligations to his customer. The warranty obligations are either included in the contract for the sale of the vehicle or are set out in a separate contract between dealer and customer at the time of sale. The dealer administers his own warranty scheme and does not employ a separate company (for example a subsidiary) to run the scheme. In the event of a fault, the purchaser must contact the dealer, who is responsible for meeting the warranty obligation. The dealer decides whether or not to put money aside to meet potential claims.
  - (3) The dealer purchases proprietary warranty booklets issued by an administration company. These booklets contain 'terms and conditions' under which the dealer undertakes warranty obligations to the customer. The dealer sells these 'products' to his customer under a separate contract or inflates the price of the vehicle to include them as part of the sale of the vehicle. The administration company administers any claims that arise. The financial arrangements are that the dealer charges his customer for the warranty, passing a fee to the administration company for the purchase of the booklet and any administration relating to the processing of claims. The dealer retains all monies (less administration fee) received from the sale of the warranties and keeps any surplus after claims have been paid. The dealer is responsible for meeting the warranty obligation.
  - (4) The dealer undertakes warranty obligations to his customer. The warranty obligations are either included in the contract for

the sale of the vehicle or are set out in a separate contract between dealer and customer at the time of sale. The dealer employs an administration company to handle all the claims and associated administrative work. The administration company usually has access to a bank account, funded by the dealer and specifically set aside to meet warranty claims. The administration company authorises and pays warranty claims from the bank account in accordance with the dealer's instructions. The dealer ultimately decides on the amount of claims payable from this account and retains all surplus monies. The dealer is responsible for meeting the warranty obligation.

#### Example 6: tax investigation schemes

- 6.7.18 G When self-assessment for income tax was first introduced, a number of providers set up schemes connected with their tax accounting and tax advisory services. In consideration of an annual fee, the provider undertakes to deal with any enquiries or investigations that HM Revenue and Customs might launch into the self-assessment that the provider completes for the recipient. The event covered by these schemes (an investigation) is both uncertain and adverse to the interests of the recipient, who would, if the scheme were not in place, have to devote resources to dealing with the investigation. Accordingly, these schemes fall within the description of a *contract of insurance* (see *PERG 6.3.4G*).
- 6.7.19 G Some providers argued that these schemes amount to nothing more than a 'manufacturer's warranty' of their own work, within the scope of *PERG 6.7.7G* (Example 3: manufacturers' and retailers' warranties). However, HM Revenue and Customs is expected to make a significant number of random checks of self-assessment forms, irrespective of the quality of the work done by the provider. These random checks are also covered by the schemes. The *FSA* concluded, therefore, that these schemes were not analogous to manufacturers' warranties and that the better view was that they were *contracts of insurance*.

#### Example 7: solicitors' retainers

- 6.7.20 G A contract under which a provider undertakes, in consideration of an initial payment, to stand ready to provide, or to procure the provision of, legal services on the occurrence of an uncertain event (for example, if the recipient is sued), is capable of being construed as a *contract of insurance* (see *PERG 6.3.4G*). Indeed, *legal expenses insurance* is commonplace.
- 6.7.21 G If, however, a contract of this kind were structured so that the recipient was charged at a commercial rate for any legal services in fact provided, the *FSA*'s approach will be to treat the arrangement as non-insurance. This is principally because, by taking on obligations

of this kind, the provider does not assume a relevant risk (see *PERG* 6.7.6G). The position might be different if the solicitor carries the additional obligation to pay for alternative legal services to be provided if the solicitor is unable to act. In that case, the *FSA*'s approach will be to examine all the elements of the contract to determine whether the substance of the solicitor's obligation (see *PERG* 6.5.4G(2)) is to insure, or to give legal advice for a fee.

Example 8: contracts providing for ultimate repayment of any indemnity ('time and distance cover')

- 6.7.22 G A contract under which a provider agrees to meet a specified obligation on behalf of the recipient (for example an obligation to pay for the re-purchase of shares or to meet a debt) immediately that obligation falls due, subject to later reimbursement by the recipient, would be a *contract of insurance* if in all other respects it fell within the description of such contract (see *PERG* 6.3.4G). This is principally because the provider assumes the risk that an immediate payment will be required and, depending on the terms of the contract, may also assume the risk that the recipient will be unable to make future repayments (see *PERG* 6.6.2G).

PERIODICAL PUBLICATIONS, NEWS SERVICES AND BROADCASTS:  
APPLICATIONS FOR CERTIFICATION

7 Periodical publications, news services and broadcasts: applications for certification

7.1 Application and purpose

Application

7.1.1 G This chapter applies to anyone involved in publishing periodicals, or in providing news services or broadcasts, who gives (or proposes to give) advice about *securities*, *relevant investments* or *regulated mortgage contracts* and who wishes to determine whether he will be carrying on the *regulated activities* of *advising on investments* or *advising on regulated mortgage contracts*.

Purpose

7.1.2 G The purpose of this chapter is to provide *guidance* as to:

- (1) when a *person* involved in publishing periodicals, or in providing news services or broadcasts, requires *authorisation* to carry on the *regulated activities* of *advising on investments* or *advising on regulated mortgage contracts* (see *PERG 7.3* (Does the activity require authorisation));
- (2) if he does, whether he qualifies for the exclusion from those activities that applies to a periodical publication, a regularly updated news or information service or a television or radio service (see *PERG 7.4* (Does the article 54 exclusion apply));
- (3) if he does, whether his circumstances are an appropriate case for a certificate given by the *FSA* as conclusive evidence that he does qualify (see *PERG 7.5* (When is it appropriate to apply for a certificate));
- (4) how to apply for a certificate (see *PERG 7.6.1G* to *PERG 7.6.5G*); and
- (5) how the *FSA* will use its power to give certificates (see *PERG 7.6.6G* to *PERG 7.6.10G*).

7.1.3 G This *guidance* is issued under section 157 of the *Act*. The *guidance* represents the *FSA's* views and does not bind the courts, for example in relation to 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 section 19 (The general prohibition) of the *Act* (see section 26 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 section 28(3) of the *Act*). Anyone reading this *guidance* should refer to the *Act* and to the Financial Services and Markets Act 2000 (Regulated activities) Order 2001 (SI 2001/544) (the Regulated activities *Order*) to find out the precise scope and effect of any particular provision referred to in the *guidance* and should consider seeking legal advice if doubt remains. If a *person* acts in accordance with the *guidance* in the circumstances contemplated 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.

## 7.2 Introduction

### Exclusion for advice given in certain publications and services

7.2.1 G Advice is excluded by article 54 of the *Regulated Activities Order* from the *regulated activities* of *advising on investments* and *advising on regulated mortgage contracts* if:

- (1) the advice is given in a publication or service that is in one of three formats (see *PERG 7.4.3G* and *PERG 7.4.4G*); and
- (2) the principal purpose of the particular format is neither to give certain advice nor to lead to (or enable) certain transactions to be carried out (see *PERG 7.4.5G* and *PERG 7.4.10G*).

### Certificate that the exclusion applies

7.2.2 G If a *person* would, but for the exclusion, be carrying on the *regulated activities* of *advising on investments* or *advising on regulated mortgage contracts*, or both, and will be doing so as a business in the *United Kingdom* (see *PERG 7.3*), he may wish to apply to the *FSA* for a certificate that the exclusion applies (see *PERG 7.6*). However, a *person* does not need a certificate to get the benefit of the exclusion. In many cases it will be clear that the exclusion in article 54 applies and a certificate is not called for. A certificate may be appropriate, however, where the exclusion appears to apply but there may be an element of doubt. The granting of a certificate would remove any such doubt.

### Certificates under the Financial Services Act 1986

7.2.3 G Certificates given under paragraph 25 of Schedule 1 to the Financial Services Act 1986 (Exclusion for periodical publications giving investment advice) ceased to have effect on 1 December 2001. Holders of such certificates must consider their position under the

terms of the new exclusion. If a *person* considers that a certificate might be appropriate, a new application must be made.

7.3 Does the activity require authorisation?

Advising on investments and advising on regulated mortgage contracts

7.3.1 G Under article 53 of the *Regulated Activities Order* (Advising on investments), advising a *person* is a specified kind of activity if:

- (1) the advice is given to the *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) it is advice on the merits of his doing any of the following (whether as *principal* or agent):
  - (a) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security* or a *relevant investment*; or
  - (b) exercising any right conferred by such an *investment* to *buy, sell*, subscribe for or underwrite such an *investment*.

7.3.1A G Under article 53A of the *Regulated Activities Order* (Advising on regulated mortgage contracts), advising a *person* is a specified kind of activity if:

- (1) the advice is given to the *person* in his capacity as a borrower or potential borrower; and
- (2) it is advice on the merits of his doing any of the following:
  - (a) entering into a particular *regulated mortgage contract*; or
  - (b) varying the terms of a *regulated mortgage contract* entered into by him after *mortgage day* in such a way as to vary his obligations under that contract.

7.3.2 G Articles 53 and 53A of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see *PERG 8* (Financial promotion and related activities) and *PERG 4* (Guidance on regulated activities connected with mortgages).

Carrying on the regulated activity by way of business

7.3.3 G Under section 22 of the *Act* (Regulated activities), for an activity to be a *regulated activity* it must be carried on 'by way of business'.

There is power in the *Act* for the Treasury to change the meaning of the business test by including or excluding certain things. It has exercised this power (through the Financial Services and Markets Act 2000 (Carrying on Regulated activities by Way of Business) Order 2001 (SI 2001/1177) (the Business Order). This has been amended by article 18 of the Financial Services and Markets Act 2000 (Regulated activities) (Amendment) (No 2) Order 2003 (SI 2003/1476) as explained in *PERG 7.3.3AG*.

7.3.3A G The result of the amendments made to the meaning of the business test in section 22 of the *Act* is that the test differs depending on the activity in question. Where the *regulated activities* of *advising on investments* and *advising on regulated mortgage contracts* are concerned, the business test is not to be regarded as satisfied unless a *person* carries on the business of engaging in those activities. This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right. Where the advice relates to a *contract of insurance*, the business test is not to be regarded as satisfied unless the *person* carrying on the activity of giving the advice is taking up or pursuing the activity for remuneration. *PERG 2.3* (The Business element) and *PERG 2.4* (Link between activities and the United Kingdom) together with *PERG 5.4* (The business test) provide further detail on this.

7.3.4 G In the *FSA's* view, for a *person* to be carrying on the business of *advising on investments* or *advising on regulated mortgage contracts* he will usually need to be doing so with a degree of regularity and for commercial purposes – that is to say, he will normally be expecting to gain some kind of a direct or indirect financial benefit. But, in the *FSA's* view it is not necessarily the case that advice provided free of charge will not amount to a business. Advice is often given 'free' by a journalist or presenter, or in a publication or website, in the sense that no charge is made or commission received. For example, a newspaper may reply to readers' letters to generate goodwill or to generate a supply of further material that it can publish or a website that is 'free' to the user will be sponsored or paid for by advertising. In such cases, if advice on *securities*, *relevant investments* or *regulated mortgage contracts* is given, then in the *FSA's* view the business of *advising on investments* or *advising on regulated mortgage contracts* is being carried on. In addition, non-commercial motives may be relevant in determining whether a *person* can be said to be carrying on the business of giving advice. For example, an investigative journal or journalist may occasionally feel that it is necessary to warn investors against the purchase of a particular *investment* because there are suspicions of fraud in connection with that *investment*. The *FSA* takes the view that, in such circumstances, the journal or journalist would not be regarded as carrying on the business of *advising on investments* or *advising on regulated mortgage contracts* as he would be acting to prevent crime rather

than in the carrying on of a business.

#### Carrying on the regulated activity in the United Kingdom

- 7.3.5 G Advice given in periodicals published from an establishment in the *United Kingdom* is regarded by the *FSA* as given in the *United Kingdom*. A similar approach is taken to advice given in, or by way of, a service provided from such an establishment.
- 7.3.6 G In other circumstances, advice issued remotely may still be given in the *United Kingdom*. For example, the *FSA* considers that advice is given in the *United Kingdom* if:
- (1) it is contained in a non-UK periodical that is posted in hard copy to *persons* in the *United Kingdom*;
  - (2) it is contained in a non-UK periodical (or given in or by way of a service) which is made available electronically to such *persons*.
- 7.3.7 G But even if advice is given in the *United Kingdom*, the *general prohibition* will not be contravened if the giving of advice does not amount to the carrying on, in the *United Kingdom*, of the business of *advising on investments* or *advising on regulated mortgage contracts*. Also, the *general prohibition* will not be contravened if the exclusion for *overseas persons* in article 72 of the *Regulated Activities Order* (*Overseas persons*) applies. That exclusion applies in relation to the giving of advice on *securities* or *relevant investments* by an *overseas person* as a result of a 'legitimate approach' (defined in article 72(7)). In many cases where publications or services are provided from outside the *United Kingdom* it is likely that they will fall within the terms of this exclusion. For example, this will exclude any advice in a publication or service from being a *regulated activity* if it is given in response to an approach that has not been solicited in any way. It should be noted, however, that the exclusions in article 72 only apply to the *regulated activity* of *advising on regulated mortgage contracts* where both the lender and the borrower are outside the *United Kingdom*. The effect of this is that, where the *principal* purpose of an overseas periodical publication is to offer advice on *securities* or *relevant investments* and *regulated mortgage contracts*, the exclusion for an *overseas person* who provides advice to *persons* in the *United Kingdom* as a result of a legitimate approach will not apply to the advice concerning *regulated mortgage contracts*.

#### Exclusions and exempt persons

- 7.3.8 G If a *person* is carrying on the business of *advising on investments* in the *United Kingdom*, he will not require *authorisation* if:

- (1) he is able to rely on an exclusion; in addition to the exclusions already mentioned (in articles 54 and 72 of the *Regulated Activities Order*), other exclusions that may be relevant are in Chapter XVII of Part II of the *Regulated Activities Order*; or
- (2) he is an *exempt person* (see *PERG 2.11 (What to do Now?)*); since *persons* are exempt only in relation to specified *regulated activities*, his exemption must apply to the *regulated activity* of *advising on investments*.

Which person is required to be authorised?

7.3.9 G Many people may be involved in the production of a periodical publication, news service or broadcast. But if the *regulated activity* of *advising on investments* is being carried on so that *authorisation* is required, the *FSA's* view is that the *person* carrying on the activity (and who will require *authorisation*) is the *person* whose business it is to have the editorial control over the content. In the case of a periodical publication, this will often be the proprietor. But particular circumstances may vary so that the responsibility for content and editorial control rests with a freelance journalist rather than with the proprietor. In such cases it may well be that the journalist may properly be viewed as carrying on his own business, using the periodical publication as the vehicle for doing so – in which case it is likely to be the journalist alone who needs the *authorisation*.

7.3.10 G Similar principles apply to news services and broadcasts.

7.4 Does the article 54 exclusion apply?

The formats

7.4.1 G The exclusion applies to advice given in one of the following formats:

- (1) advice in writing or other legible form which is contained in a newspaper, journal, magazine, or other periodical publication;
- (2) advice in writing or other legible form which is given by way of a service comprising regularly updated news or information;
- (3) advice given in any service consisting of the broadcast or transmission of a television or radio programme.

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:

- (1) to advise on *securities* or *relevant investments* or *regulated mortgage contracts*: or

- (2) to lead or enable *persons*:
  - (a) to *buy, sell*, subscribe for or underwrite *securities* or *relevant investments*; or (as the case may be);
  - (b) to enter as borrower into *regulated mortgage contracts*, or vary the terms of *regulated mortgage contracts* entered into by the *persons* to whom the advice is given as borrower.

#### Formats in writing or other legible form

- 7.4.3 G (1) There are two specified formats for advice appearing in writing or other legible form.
- (2) The first is that of a newspaper, journal, magazine or other periodical publication. For these purposes it does not matter what form the periodical publication takes as long as it can be read. This will include, for example, a newspaper appearing as a hard copy or electronically on a website. It will also include any periodical published on an intranet site.
- (3) The second is that of a regularly updated news or information service. As with periodical publications, it does not matter how the service is accessed by, or delivered to, the user as long as it can be read. This will include, for example, a service provided through teletext, a fax retrieval system or a website (including websites that are used through handheld devices). The fact that it must be a 'regularly updated' service means that the provision of up-to-date news or information must be a primary feature of the service (for example, where it is likely to be of commercial value to the recipient). But, in the *FSA's* view, a news or information 'service' is not restricted to the giving of only news or information since this would not generally constitute the *regulated activity* of *advising on investments* (see *PERG 8.28* (Advice or information)) or *advising on regulated mortgage contracts* (see *PERG 4.6.13G* to *PERG 4.6.16G* (Advice or information)). So the exclusion applies to services providing material in addition to news or information, such as comment or advice.

#### Television and Radio

- 7.4.4 G The third specified format is for advice in any service consisting of the broadcast or transmission of television or radio programmes. This will encompass the transmission through cable of interactive television programmes. In the *FSA's* view, 'service' in this context goes beyond any particular series of programmes broadcast or transmitted through a given medium. It refers instead to the

administrative system (usually aimed at a particular audience) through which a range of different programmes is provided, for example any particular TV or radio channel. In the *FSA's* view, it is unlikely that a TV or radio service will have one of the *principal* purposes that would prevent its being able to rely on the exclusion unless the complete service is designed to focus on financial or *investment* matters.

The principal purpose test

- 7.4.5 G The exclusion applies only if the principal purpose of the publication or service is not:
- (1) to give advice on *securities, relevant investments* or *regulated mortgage contracts* (see *PERG 7.3.1G*); or
  - (2) to lead or enable *persons* to:
    - (a) *buy, sell*, subscribe for or underwrite *securities* or *relevant investments*; or
    - (b) to enter as borrower into *regulated mortgage contracts*, or vary the terms of *regulated mortgage contracts* entered into by *persons* to whom the advice is given as borrower.

References to leading or enabling *persons* to do the things mentioned in (2)(a) or (b) are abbreviated in *PERG 7.4.9G* and *PERG 7.4.11G* as leading or enabling *persons* 'to engage in a relevant transaction'.

- 7.4.6 G Any assessment of the principal purpose of a periodical publication, news service or broadcast needs to be carried out against the background that:
- (1) they all share the characteristic of being available over a sustained period and, within that period, appearing from time to time with a different content;
  - (2) the same periodical publication will have many different editions;
  - (3) the regular updating of the news or information service will produce differences in the material provided, comparing the content of the service as it appears at any one time with its content as it appears at any other; and
  - (4) the programmes in a TV or radio service are bound to have a different content from each other.
- 7.4.7 G To address this feature of variation in content, article 54 requires that the principal purpose of a publication or service is to be assessed by

looking at the publication or service taken as a whole and including any advertisements or other promotional material contained in it. This requirement of an overall assessment of purpose or purposes goes beyond the content of any particular example of the publication or service (such as a particular edition or programme). It fixes instead on the characteristic content of the publication or service looked at over time. This judgment depends on the overall impression of content. One way of approaching this is to consider what an average consumer of a publication or service might expect to find when making a decision whether to buy a particular edition or to use the service.

7.4.8 G Looking at the first disqualifying purpose set out in the exclusion, all the matters relevant to whether the *regulated activities* of *advising on investments* or *advising on regulated mortgage contracts* are being carried on must be taken into account (see *PERG* 8.24 (Advising on investments)). If the principal purpose of a publication or service is to give to *persons*, in their capacity as investors (or potential investors) or as borrowers (as the case may be), advice as referred to in *PERG* 7.4.5G(1), then the publication or service will not be able to benefit from this exclusion.

7.4.9 G For the second disqualifying purpose, the focus switches to assessing whether the principal purpose of a publication or service is to lead a *person* to engage in a relevant transaction or enable him to do so. This disqualifying purpose is an alternative to the first. So it extends to material not covered by the first. In this respect:

- (1) material in a publication or service that invites or seeks to procure *persons* to engage in a relevant transaction can be said to "lead" to those transactions even if it would not constitute the *regulated activities* of *advising on investments* or *advising on regulated mortgage contracts*; this includes, for example, material that consists of generic *buy* or *sell* recommendations, corporate brochures or invitations to invest in particular products or with a particular broker or fund manager; and
- (2) material enables *persons* to engage in a relevant transaction if it facilitates the transactions, for example by giving a user the forms that enable him to carry out relevant transactions; so this limb of the second disqualifying purpose would apply to the material providing an online dealing facility on an interactive website or to facilities for on-screen dealing through digital television.

In the *FSA's* view, material will not lead or enable a *person* to engage in a relevant transaction where the material is intended merely to raise people's awareness of matters relating to *securities*, *relevant investments* or *regulated mortgage contracts*.

- 7.4.10 G The test for determining the principal purpose of any publication that appears on a website, or of any news or information service on a website, is no different from any other medium. An overall view will need to be taken of all the contents of the publication or service, including any features such as chatrooms, advertisements or other promotional material.
- 7.4.11 G In the context of the second disqualifying purpose, whether or not the presence of a hypertext link to another website indicates that the purposes of a publication or service include leading to relevant transactions (or enabling them to be entered into) will depend on all the circumstances. It will, in particular, be necessary to consider the form of the link and the content of the destination website. In the *FSA's* view, the presence on a host publication or service of a hypertext link which is only the name or logo of another website is unlikely itself to indicate that a purpose of the host website is to lead to relevant transactions (or enable them to be entered into). But if more sophisticated links, such as banners or changeable text, contain promotional material inviting or seeking to procure *persons* to enter into relevant transactions, those links will have to be weighed in the balance in determining the principal purpose of the publication or service hosting the link. The same applies if the host publication or service hosting the link itself contains material inviting *persons* to activate the link with a view to entering into relevant transactions.
- 7.4.12 G In reaching a view of the principal purpose of the publication or service as a whole, all the material that falls within either the first or second disqualifying purpose must be considered together.

Who can benefit from the exclusion?

- 7.4.13 G The *persons* who directly benefit from the exclusion will be the *persons* who would otherwise require *authorisation* (see *PERG* 7.3.9G), that is, the *person* whose business it is to have editorial control over the content of the publication or service. The exclusion will apply regardless of the legal form of the *person* giving the advice so, for example, it will extend to advice given by a *company* through its employees.

7.5 When is it appropriate to apply for a certificate?

- 7.5.1 G To decide whether the exclusion in article 54 applies, three assessments need to be made:
- (1) first, an assessment whether the vehicle for giving the advice is a newspaper, journal, magazine or other periodical publication, a service comprising regularly updated news or information or a service consisting of the broadcast or transmission of television or radio programmes;

- (2) second, an assessment of the purpose or purposes of any particular publication or service; and
  - (3) third, an assessment of the relative significance of each purpose compared with any others.
- 7.5.2 G Because opinions may differ in circumstances close to the borderline, giving rise to doubt as to whether or not the exclusion applies, the *Regulated Activities Order* makes provision for a certification process. The purpose of this process is not to provide certification for every publication or service to which the exclusion in article 54 applies.
- 7.5.3 G In many cases it will be clear whether or not a publication or service benefits from the exclusion. A publication or service may provide reports on such a wide range of matters that it is not possible to say that it has any purpose other than to provide coverage of a wide range of matters. Alternatively, it may be clear that the principal purpose of a publication or service is something other than those specified in the article 54 exclusion. Examples of cases where, in the *FSA's* view, the exclusion is capable of applying include:
- (1) national or local newspapers providing the normal range of non-financial news and coverage of other matters (such as sports, arts and leisure) and which simply contain financial journalism (such as reports on particular *investments* or markets) as one element of their all-round coverage;
  - (2) weekly or monthly journals aimed at a particular subject (such as computing or sport) but which have some coverage of, or promotional material relating to, *investments* and financial matters;
  - (3) websites which provide financial news or information;
  - (4) closed user group communication systems specialising in financial or *investment* matters; and
  - (5) television or radio channels dedicated to consumer affairs which devote a small number of programmes to financial planning.
- 7.5.4 G It is only where there are grounds to think that there is a significant doubt as to the principal purpose of a publication or service that the question of whether or not to apply to the *FSA* for a certificate under article 54 of the *Regulated Activities Order* is expected to arise. For example, this may happen where a publication or service has several significant purposes and one of them is a disqualifying purpose referred to in the exclusion in article 54. It may on occasion be

difficult to assess the relative importance of the purposes compared with each other, particularly given that over time there will be a variation in the content of the publication or service. In such cases, an application for a certificate would be appropriate.

## 7.6 Applications for a certificate

### Pre-application contact

- 7.6.1 G A *person* considering applying for a certificate should, before sending in any application, contact the Firm Contact Centre of the *FSA* (email: [fcc@fsa.gov.uk](mailto:fcc@fsa.gov.uk)) to discuss whether a certificate may be appropriate.

### Form of application

- 7.6.2 G (1) An application should be made by the proprietor of the relevant publication or service using a form which can be obtained from the Firm Contact Centre of the *FSA* (email: [fcc@fsa.gov.uk](mailto:fcc@fsa.gov.uk)). The form asks for general information about the applicant and gives *guidance* notes on completion and other details of how the *FSA* can help.
- (2) An applicant will be asked to state his own view of the principal purpose of the publication or service. This should include an explanation why the applicant believes that he qualifies for the exclusion and why he believes that a certificate may be called for.
- (3) The applicant will be asked to define the extent of the publication or service for which he is seeking a certificate.
- (4) The applicant will be asked to supply material to demonstrate the content of the publication or service or, in the case of a new publication or service, its proposed content. For an existing publication or service, past samples should be supplied in the form most appropriate to the medium for which certification is sought. The samples should be chosen on the basis that they are representative of the publication or service as a whole and as it appears from time to time. The applicant will be asked to justify the selection of the particular samples as being representative. For a new publication or service, samples of proposed content should be supplied. These should be as comprehensive as possible.
- (5) The applicant will be asked to supply material to demonstrate that the principal purpose is not liable to change over the foreseeable future. This may, for example, include business plans, a statement of editorial policy and marketing literature.

- (6) The application must be accompanied by the application fee (see *PERG 7.6.5G*).

#### Requests for further information

- 7.6.3 G After an application is sent in, the *FSA* may, on occasion, need to obtain additional information from the applicant or elsewhere to enable it to process the application.

#### Time for processing applications

- 7.6.4 G The *Act* does not specify a time limit for processing the application but the *FSA* intends to deal with an application as quickly as possible. The more complete and relevant the information provided by an applicant, the more quickly a decision can be expected. But on occasion it may be necessary to allow time in which the *FSA* can monitor the content of the service. This might happen where, for example, a service is in a form that makes record keeping difficult (such as a large website with a number of hypertext links).

#### Application Fee

- 7.6.5 G The fee for an application for a certificate under article 54 of the *Regulated Activities Order* is £2,000 (see *AUTH 4 Annex 1R*).

#### The *FSA*'s approach to considering applications

- 7.6.6 G The *FSA* will consider any application for a certificate on its merits.
- 7.6.7 G Before it gives a certificate, the *FSA* must be satisfied that the principal purpose of the publication or service is neither of the purposes referred to in the exclusion (see *PERG 7.4.5G*). If there is insufficient evidence, a certificate cannot be given.
- 7.6.8 G The *FSA* will form an overall view as to the purpose (or purposes) underlying the publication or service. It will then determine whether the principal purpose is neither of those referred to in article 54 of the *Regulated Activities Order*. Because the possible range of subject matter covered by different publications or services is very wide it is not possible to apply standard tests. The *FSA* will form a judgment as to the overall impression created by the publication or service. For example, the proportion of advice, compared with other material in the publication or service, will be relevant in determining the principal purpose of the publication or service. But this will not necessarily be conclusive one way or the other. The purpose of a publication or service may still be to give advice even if only a small proportion of the space is devoted to advice as such. This might happen if, for example, a publication were marketed primarily on the basis that it contains advice on *investments*.

- 7.6.9 G In reaching a view, the *FSA* will take into account both editorial and promotional material in the publication or service. It will also have regard to the stated purpose of the publication or service and to any other material relevant to its purpose.
- 7.6.10 G Other factors relevant to an assessment of purpose or content of the publication or service may vary depending on the nature of the publication or service. For example, if a service is provided by a website, consideration of the content of the publication or service will take account of hypertext links and other features such as e-mail addresses, bulletin boards and chat rooms.

#### Grant of application

- 7.6.11 G If the *FSA* decides to grant the application it will issue a certificate. The certificate will normally be granted for an indefinite period. It will state what it is that the *FSA* considers constitutes the periodical or service in relation to which the *FSA* is satisfied that the exclusion in article 54 of the *Regulated Activities Order* applies. In many cases this will be self-evident. But it may sometimes be necessary to include further details in the certificate indicating what the certificate covers. For example, in the case of a large website, a distinct publication or service may form part of the website. In such a case a certificate may be given for that part only.

#### Refusal of application

- 7.6.12 G An application may be refused on the grounds that the *FSA* is not satisfied that the principal purpose of the publication or service is neither of those mentioned in article 54(1)(a) or (b) of the *Regulated Activities Order* (see *PERG 7.4.5G*). An application may also be refused on the grounds that the *FSA* considers that the vehicle through which advice is to be given is not a newspaper, journal, magazine or other periodical publication, a regularly updated news or information service or a service consisting of the broadcast or transmission of television or radio programmes. Where an application is refused, the *FSA* will issue a notice which will give a statement of the reasons for the refusal in that case. If the application is refused, the applicant, if he is an *unauthorised person*, will need to consider whether it is appropriate to continue to publish the periodical or provide the service without *authorisation* or exemption.

#### 7.7 Post-certification issues

##### Ongoing monitoring

- 7.7.1 G If a certificate is granted then, until it is revoked, it is conclusive evidence that the exclusion under article 54 of the *Regulated Activities Order* applies. A *person* to whom a certificate is given

should notify the *FSA* of any significant changes to the purpose or nature of the content of the relevant publication or service. The *FSA* will need to keep the content of the publication or service in question under review.

- 7.7.2 G An annual fee of £1,000 will be charged to meet the costs of ongoing monitoring (see *SUP 20 Annex 3R*).

#### Revocation of certificate

- 7.7.3 G The *FSA* may revoke a certificate at the request of its holder or on the *FSA's* own initiative if the *FSA* considers that it is no longer justified. If the *FSA* revokes a certificate on its own initiative, it would normally expect to give advance notice to the holder of the certificate together with a statement of the reasons for the proposed revocation, and give the holder of the certificate an opportunity to make representations. Where a certificate is revoked, the holder of the certificate, if he is an *unauthorised person*, will need to consider whether it is appropriate to continue to publish the periodical or provide the service without *authorisation* or exemption.

#### Publication of details of certificate holders

- 7.7.4 G The fact of a *person* holding a certificate granted under article 54(3) is information which may be of relevance to other *persons* (including investors or potential investors). For this reason, the *FSA* considers it appropriate that details of certificates granted under article 54(3) should be included in a list on the public record which the *FSA* is required to maintain under section 347 of the *Act* (The record of authorised persons, etc).

#### Further information

- 7.7.5 G For further information contact the Firm Contact Centre of the *FSA* (email: [fcc@fsa.gov.uk](mailto:fcc@fsa.gov.uk)).

## FINANCIAL PROMOTION AND RELATED ACTIVITIES

### 8 Financial promotion and related activities

#### 8.1 Application and purpose

##### Application

- 8.1.1 G This chapter 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

- 8.1.2 G 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*.

- 8.1.3 G In particular, this *guidance* covers:

- (1) invitations and inducements (see *PERG* 8.4);
- (2) meaning of 'in the course of business' (see *PERG* 8.5);
- (3) meaning of '*communicate*' (see *PERG* 8.6);
- (4) meaning of '*engage in investment activity*' (see *PERG* 8.7);
- (5) meaning of 'having an effect in the *United Kingdom*' (see *PERG* 8.8);
- (6) circumstances where the restriction in section 21 does not apply (see *PERG* 8.9);
- (7) types of *financial promotion*, including:

- (a) meaning of '*real time financial promotion*' (see *PERG* 8.10.2G); and
  - (b) meaning of '*unsolicited real time financial promotion*' (see *PERG* 8.10.8G);
- (8) types of exemption under the *Financial Promotion Order*, including:
- (a) exemption for certain one-off promotions (see *PERG* 8.14.3G);
  - (b) exemption for *financial promotions* not directed at the *United Kingdom* (see *PERG* 8.12.2G);
  - (c) exemptions for *financial promotions* by journalists and in broadcasts (see *PERG* 8.12.23G);
- (9) *financial promotions* concerning *deposits* and *contracts of insurance* other than *life policies* (see *PERG* 8.13);
- (10) *financial promotions* concerning promotions by members of the professions (see *PERG* 8.15);
- (11) *financial promotions* concerning funeral plans (see *PERG* 8.16);
- (12) *financial promotions* concerning the Lloyd's market (see *PERG* 8.18);
- (13) additional restrictions on the promotion of:
- (a) *life policies* (see *PERG* 8.19);
  - (b) *collective investment schemes* (see *PERG* 8.20);
- (14) *company* statements, announcements and briefings (see *PERG* 8.21);
- (15) *financial promotions* made on the Internet (see *PERG* 8.22);
- (16) *regulated activities*:
- (a) *advising on investments* (see *PERG* 8.24);
  - (b) *making arrangements with a view to transactions in investments* (see *PERG* 8.32); and

(17) the business test for *regulated activities* (see *PERG* 8.34).

8.1.4 G 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.

## 8.2 Introduction

8.2.1 G 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.

8.2.2 G 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.

8.2.3 G 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*, *ICOB 3*, or *MCOB 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* (for example, see *COB 3.2.4R* and *COB 3.2.5R(2)*).

8.2.4 G A *person* who is concerned to know whether his communications will require *approval* or, if he is an *authorised person*, whether *COB 3*, *ICOB 3*, or *MCOB 3* 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 *PERG 8.6*);
- (2) if so, is it an invitation or inducement? (see *PERG 8.4*);
- (3) if so, does the invitation or inducement relate to a *controlled investment*? (see *PERG 8.7*);
- (4) if so, is the invitation or inducement to *engage in investment activity*? (see *PERG 8.7*);
- (5) if so, is it made in the course of business? (see *PERG 8.5*);
- (6) if so, and the *financial promotion* originates outside the *United Kingdom*, is it capable of having an effect in the *United Kingdom*? (see *PERG 8.8*);
- (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 *PERG 8.12* to *PERG 8.15* and *PERG 8.21*);
- (8) if not, am I an *authorised person* ?

8.2.5 G If the answer to *PERG 8.2.4G(8)* is yes then *COB 3*, *ICOB 3*, or *MCOB 3* will apply (subject to additional exemptions in, for example, *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*). *PERG 8.36.1G* contains a flowchart explaining these steps.

8.2.6 G 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.

8.2.7 G 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.

8.2.8 G There are extensive exemptions in the *Financial Promotion Order*. This is explained in greater detail in *PERG* 8.11 to *PERG* 8.15 and *PERG* 8.21.

### 8.3 Financial promotion

8.3.1 G 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).

8.3.2 G 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*.

8.3.3 G 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 *PERG* 8.4);
- (2) 'in the course of business' (see *PERG* 8.5);
- (3) '*communicate*' (see *PERG* 8.6);
- (4) '*engage in investment activity*' (see *PERG* 8.7); and
- (5) 'having an effect in the *United Kingdom*' (see *PERG* 8.8).

- 8.3.4 G The *FSA's* views as to the meaning of these are explained in *PERG* 8.4 to *PERG* 8.8.
- 8.3.5 G 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*.
- 8.4 Invitation or inducement
- Promotional element
- 8.4.1 G 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.
- 8.4.2 G 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."
- 8.4.3 G 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 *PERG* 8.4.2G. 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] AC 593.

8.4.4 G 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

8.4.5 G 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.

- 8.4.6 G 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

- 8.4.7 G 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*.
- 8.4.8 G *PERG* 8.4.9G to *PERG* 8.4.34G apply the principles in *PERG* 8.4.4G to *PERG* 8.4.7G 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

- 8.4.9 G 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 representative 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. *PERG 8.6* 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)

- 8.4.10 G 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 *PERG* 8.12.21G). 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

- 8.4.11 G 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 *PERG* 8.12.14G).

#### Banner advertisements on a website

- 8.4.12 G 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 *PERG* 8.4.11G will be relevant.

#### Publication or broadcast of prices of investments (historic or live)

- 8.4.13 G 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

- 8.4.14 G 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*. *PERG* 8.21 contains detailed *guidance* on the various exemptions which may apply in this area.

#### Journalism

- 8.4.15 G 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 *PERG* 8.12.23G and *PERG* 8.12.14G). 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 *PERG* 8.21.10G.

#### Performance tables

- 8.4.16 G 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.
- 8.4.17 G 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 *PERG* 8.4.16G 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 *PERG* 8.12.23G). 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

- 8.4.18 G 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 *PERG* 8.12.23G).

#### Investment agreements, share purchase agreements and customer agreements

- 8.4.19 G 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

- 8.4.20 G 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

- 8.4.21 G 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 *PERG 8.4.7G* 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

- 8.4.22 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*.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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 *PERG* 8.12.14G). 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 *PERG* 8.33(Introducing)) or *making arrangements with a view to regulated mortgage contracts* under article 25A(2) of the *Regulated Activities Order* (see *PERG* 4.5 (Arranging regulated mortgage contracts)). It is most likely to apply where the *financial promotion* relates to *deposits* or *contracts of insurance* which are not *contractually based investments*.

- (6) The journalists' exemption in article 20 of the *Financial Promotion Order* (Communications by journalists) may be relevant where the introduction is made through or in a publication, broadcast or regularly updated news or information service (see *PERG 8.12.23G*).
- (7) Article 15 (Introductions) may apply where the introduction is a *real time financial promotion* (see *PERG 8.12.11G*). In addition, article 28B (Real time communications: introductions in connection with qualifying credit) may apply where an introduction is a *real time qualifying credit promotion* (see *PERG 8.17.12G*).

#### Distributors

- 8.4.23 G 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. *PERG 8.6* 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 *PERG 8.12.18G*). 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

- 8.4.24 G 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 *PERG 8.12.14G*).

#### Invitations to attend meetings or to receive telephone calls or visits

- 8.4.25 G 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. *PERG 8.4.7G* 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

- 8.4.26 G 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 *PERG* 8.14.3G).

#### Enquiries about a person's status or intentions

- 8.4.27 G 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; or
  - (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), article 50 (Sophisticated investors) or article 50A (self-certified sophisticated investors) may, where the answer is positive, be followed by a *financial promotion*. That *financial promotion* can then rely on article 48, 50 or 50A as the case may be.

#### Solicited and accompanying material

- 8.4.28 G 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 *PERG 8.4.29G* to *PERG 8.4.30G*.
- 8.4.29 G *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.
- 8.4.30 G The *person* who responds to the request for the material in the circumstances in *PERG 8.4.29G* 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

- 8.4.31 G 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 *PERG* 8.12.12G).

#### Personal illustrations

- 8.4.32 G 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 *PERG* 8.14.3G). *Authorised persons* should note that, where personal quotations or illustrations do amount to a *financial promotion COB 3, ICOB 3* or *MCOB 3* will not usually apply to them (see, for example, *COB* 3.2.5R (6)).

#### Instructions or guidance on how to invest

- 8.4.33 G 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

- 8.4.34 G 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, for example, 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).

## 8.5 In the course of business

- 8.5.1 G 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.
- 8.5.2 G 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) (SI 2001/1177). 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.

8.5.3 G 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).

8.5.4 G 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 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 *PERG* 8.14.3G).

8.5.5 G *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 *PERG* 8.4)). 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. *PERG 8.4.34G* provides further *guidance* on this.

## 8.6 Communicate

- 8.6.1 G 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 *PERG 8.6.5G*), 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 *PERG 8.5*)). 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

- 8.6.2 G 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

- 8.6.3 G 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

- 8.6.4 G 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.
- 8.6.5 G 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 *PERG* 8.12.18G).

#### Website operators

- 8.6.6 G 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 *PERG* 8.22.

#### Application of exemptions to persons causing a communication

- 8.6.7 G A general point arises about causing and *communicating* on whether a particular exemption that applies to a communication made by a specified *person* also applies to a *person* who is causing that communication to be made. 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

- 8.6.8 G 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'

- 8.6.9 G 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.

8.6.10 G In the *FSA's* opinion, the matters in *PERG* 8.6.9G 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 *PERG* 8.10.2G 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*.

## 8.7 Engage in investment activity

8.7.1 G 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*.

8.7.2 G *Controlled activity* and *controlled investment* are defined in Schedule 1 to the *Financial Promotion Order* and are listed in *PERG* 8.36.3G and *PERG* 8.36.4G. 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* and between *controlled investments* and *specified investments*. This is most notable where the *financial promotion* is about:

- (1) certain credit agreements (see *PERG* 8.17 (Financial promotions concerning agreements for qualifying credit));
- (2) *funeral plan contracts* (see *PERG* 8.16 (Financial promotions concerning funeral plans)); and
- (3) *contracts of insurance* other than *life policies* (see *PERG* 8.17A (Financial promotions concerning insurance mediation activities)).

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. 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.

- 8.7.3 G 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*.

- 8.7.4 G So a *financial promotion* will not include an invitation or inducement to:
- (1) refrain from doing any of the things in *PERG 8.7.3G*; 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*.

- 8.7.5 G 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*. *PERG 8.6.10G* gives more *guidance* on this.

## 8.8 Having an effect in the United Kingdom

- 8.8.1 G 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.
- 8.8.2 G 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 *PERG* 8.12.2G) prevents section 21 from applying to communications which are not directed at *persons* in the *United Kingdom*.

- 8.8.3 G 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 *E-Commerce Directive* 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 *PERG* 8.12.38G. 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*.

## 8.9 Circumstances where the restriction in section 21 does not apply

- 8.9.1 G 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, *ICOB* 3 or *MCOB* 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 *PERG* 8.20). 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.

- 8.9.2 G 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*, *ICOB 3* or *MCOB 3* may apply wholly or partially to any such *financial promotion*.
- 8.9.3 G 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)*).
- 8.9.4 G 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. *PERG 8.4.28G* offers *guidance* about when accompanying material may be part of a *financial promotion*.
- 8.9.5 G 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 *PERG 8.12* to *PERG 8.15* and *PERG 8.21*. *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);
  - (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);
  - (5) the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (SI 2002/2157);
  - (6) the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2003 (SI 2003/1676);
  - (7) the Financial Services and Markets Act 2000 (Financial Promotion and Promotion of Collective Investment Schemes) (Miscellaneous Amendments) Order 2005 (SI 2005/270).

A consolidated version of the *Financial Promotion Order* is available on the Treasury website [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk) under Documents/Financial Services/Regulating Financial Services/FSMA/Secondary legislation ordered by date of laying.

## 8.10 Types of financial promotion

- 8.10.1 G 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

- 8.10.2 G 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.

*PERG* 8.6.9G explains the meaning of 'made to' and 'directed at'.

8.10.3 G In the *FSA's* view, the matters identified in *PERG* 8.10.2G 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, the communication will be deemed to be non-real time. In this case, publications include newspapers, journals, magazines or other periodical publications, websites or similar systems for the electronic display of information, television or radio programmes and teletext services.

8.10.4 G 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.

8.10.5 G 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 *PERG* 8.12.37G). 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 *PERG* 8.10.2G and *PERG* 8.10.3G(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.

8.10.6 G 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.

- 8.10.7 G 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 *PERG* 8.10.2G and *PERG* 8.10.3G(2). Broadcasters may be able to use the exemption for journalists in article 20 of the *Financial Promotion Order* (see *PERG* 8.12.23G). 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 *PERG* 8.12.32G).

#### Solicited v unsolicited real time financial promotions

- 8.10.8 G 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.
- 8.10.9 G 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.
- 8.10.10 G 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.

8.10.11 G *PERG* 8.6.9G 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 whom 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*.

8.10.12 G 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.
- 8.10.13 G There will be occasions when *financial promotions* are received by *persons* other than those in *PERG 8.10.11G(1)* or *PERG 8.10.11G(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 *PERG 8.6.10G*, 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.
- 8.10.14 G 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.
- 8.11 Types of exemption under the Financial Promotion Order
- 8.11.1 G 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).
- 8.11.2 G Each individual exemption indicates the type of *financial promotion* (for example, non-real time) to which it relates. *PERG 8.36.6G* 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*.
- 8.11.3 G 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.

8.11.4 G 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*.

8.11.5 G 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.

8.11.6 G 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*; or
- (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.

## 8.12 Exemptions applying to all controlled activities

8.12.1 G Part IV of the *Financial Promotion Order* contains several exemptions which apply to all *controlled activities*. These are summarised in *PERG* 8.12.2G to *PERG* 8.12.38G.

### Financial promotions to overseas recipients (article 12)

8.12.2 G This exemption concerns *financial promotions* which are made to or directed only at *overseas persons* (except in the circumstances referred to in *PERG* 8.12.8G).

8.12.3 G 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*.

8.12.4 G The exemption 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*. 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*.

8.12.5 G Articles 12(3) and (4) of the *Financial Promotion Order* (subject to article 12(5) – see *PERG* 8.12.8G) 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*.

8.12.6 G 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.

8.12.7 G Where a *financial promotion* is directed from within the *United Kingdom*, articles 12(3) and (4) also state (subject to article 12(5) – see *PERG* 8.12.8G) 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 *PERG* 8.12.5G(1) and *PERG* 8.12.5G(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*.

8.12.8 G In any case, some but not all of the conditions referred to in *PERG* 8.12.5G(1) to *PERG* 8.12.5G(2) and *PERG* 8.12.7G(1) to *PERG* 8.12.7G(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 *PERG* 8.12.5G(1) to *PERG* 8.12.5G(2) and *PERG* 8.12.7G(1) to *PERG* 8.12.7G(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. *PERG* 8.11.4G

explains how article 12 may be combined with other exemptions.

Financial promotions from customers and potential customers (article 13)

- 8.12.9 G *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)

- 8.12.10 G *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 *PERG 8.14.21G* and *PERG 8.14.27G*), 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)

- 8.12.11 G This exemption applies only to a *real time financial promotion* that is made with a view to or for the purposes of introducing the recipient to certain kinds of *person*. These are *authorised persons* who carry on the *controlled activity* to which the *financial promotion* relates, or *exempt persons* where the *financial promotion* relates to a *controlled activity* that is also a *regulated activity* in relation to which he is an *exempt person*. 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)

- 8.12.12 G 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.

8.12.13 G 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, ICOB 3* or *MCOB 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)

8.12.14 G 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.

8.12.15 G The exemption can also be used in certain circumstances where an intermediary is advertising its services as an intermediary. This is because advising on and arranging *deposits* and *contracts of insurance* other than *life policies* are not *controlled activities*. This

means that an unauthorised intermediary offering to find the best rates on *deposits* may identify himself in the *financial promotion* as he will not be carrying on a *controlled activity*. This is provided that the *financial promotion* does not identify any particular deposit-taker. The same considerations would apply to an *authorised* intermediary who offers to advise on the best available motor insurance.

- 8.12.16 G 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*.
- 8.12.17 G 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 *PERG* 8.12.23G).

#### Mere conduits (article 18 and 18A)

- 8.12.18 G 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. *PERG* 8.6.5G 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 *PERG* 8.12.19G and *PERG* 8.12.20G). 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.
- 8.12.19 G 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*.

- 8.12.20 G 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 *PERG* 8.6) simply because he chooses to provide a chatroom or bulletin board for the use of his customers.

#### Investment professionals (article 19)

- 8.12.21 G *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*.

8.12.22 G 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 *PERG* 8.12.6G 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)

8.12.23 G 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*.

8.12.24 G 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.

8.12.25 G 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 No 2) 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 relevant investments*. See *PERG 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.

8.12.26 G Provided the conditions in *PERG 8.12.25G* 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 *PERG 8.12.27G*). 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'.

8.12.27 G 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; or
  - (b) the Programme Code 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.

8.12.28 G The effect of *PERG* 8.12.27G(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.

8.12.29 G The effect of *PERG* 8.12.27G(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 *PERG* 8.12.6G), 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 *PERG* 8.12.27G(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.

8.12.30 G *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 *PERG* 8.12.29G 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.

8.12.31 G 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 (article 20A)

- 8.12.32 G 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 *PERG* 8.12.25G and *PERG* 7). Readers of this section should also refer to the *guidance on company statements* in *PERG* 8.21.
- 8.12.33 G 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 *PERG* 8.12.25G). 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.
- 8.12.34 G 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. *PERG* 8.14.4G(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 *PERG* 8.21.

- 8.12.35 G The exemption also requires that the director or employee is identified as such in the *financial promotion* before it is *communicated*.
- 8.12.36 G The first part of the exemption (referred to in *PERG* 8.12.34G(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.
- 8.12.37 G The second part of the exemption (referred to in *PERG* 8.12.34G(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 *PERG* 8.12.25G). 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.

#### Incoming electronic commerce communications (article 20B)

- 8.12.38 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*; or

- (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.

- 8.13 Exemptions applying to financial promotions concerning deposits and certain contracts of insurance
- 8.13.1 G 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.
- 8.13.2 G 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)).
- 8.13.3 G 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.
- 8.13.4 G Intermediaries involved with *arranging* and advising on *deposits* may be *unauthorised persons* as such activities do not amount to *regulated activities* (other than where they involve *giving basic advice on a stakeholder product* (article 52A of the *Regulated Activities Order*

(Giving basic advice on a stakeholder product))) 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 *PERG* 8.12.14G – and follow up communications – see *PERG* 8.12.10G) 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*. *Guidance* on the application of these exemptions to *financial promotions* about *insurance mediation activities* is in *PERG* 8.17A (Financial promotions concerning insurance mediation activities).

#### 8.14 Other financial promotions

- 8.14.1 G 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*. *PERG* 8.36.6G contains a table showing which types of *financial promotion* are covered by each individual exemption.
- 8.14.2 G *PERG* 8.14.3G to *PERG* 8.14.42G 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)

- 8.14.3 G 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.

8.14.4 G The *FSA* considers the effect of each of the conditions in *PERG* 8.14.3G(1) to *PERG* 8.14.3G(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 *PERG* 8.14.6G).
- (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.

8.14.5 G In the *FSA*'s opinion, the indicators referred to in *PERG* 8.14.4G 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.

8.14.6 G 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.

8.14.7 G A *financial promotion* may fail to satisfy all of the indicators referred to in *PERG* 8.14.4G 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.

- 8.14.8 G 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.
- 8.14.9 G 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.
- 8.14.10 G 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.
- 8.14.11 G 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.

8.14.12 G 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 *PERG* 8.14.4G(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.

8.14.13 G 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; or
- (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)

- 8.14.14 G 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*.
- 8.14.15 G 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*.
- 8.14.16 G 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.
- 8.14.17 G 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)

- 8.14.18 G 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 *rules* in *COB 3* or *MCOB 3* (as relevant). Care should be taken as any failure to satisfy any of the relevant requirements of these rules 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)

- 8.14.19 G 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.

- 8.14.20 G 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)

8.14.21 G 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 *person* who the communicator believes on reasonable grounds to be a certified high net worth individual and which 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.

8.14.22 G A certified high net worth individual is an individual who has signed a statement in the form prescribed in Part I (Statement for certified high net worth individuals) of Schedule 5 to the *Financial Promotion Order*. This requires the individual to certify that he has 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. Where the *financial promotion* is an *outgoing electronic commerce communication*, the earnings or net assets may be of an equivalent amount in another currency. For the exemption to apply, the certificate must have been signed within twelve months of the date on which the communication is made. The validity of the statement is not affected by a defect in its wording or form provided the defect does not alter its meaning or involve failure to place certain paragraphs in bold.

8.14.23 G In addition, the *financial promotion* must be accompanied by:

- (1) a warning in the terms prescribed in article 48(5) and which satisfies certain conditions regarding its form as set out in article 48(6) – this warning must either be given in legible form at the time the communication is made or given orally at that time and a copy in legible form sent to the recipient within two business days; and

(2) certain indications as set out in article 48(7).

- 8.14.24 G 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 *PERG* 8.14.21G may then be sent to him under article 48. *PERG* 8.4.27G offers further *guidance* on this.

High net worth companies, unincorporated associations and trusts (article 49)

- 8.14.25 G 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.
- 8.14.26 G 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 (articles 50 and 50A)

- 8.14.26A G There are two exemptions that relate to sophisticated investors. The

first (article 50 (Sophisticated investors)) applies to *persons* who are certified by an *authorised person* and to a broad range of *specified investments*. The second (article 50A (Self-certified sophisticated investors)) is similar to the exemption for certified high net worth individuals and applies where the investor has self-certified himself and to a narrower range of *specified investments*. *PERG* 8.14.27G to *PERG* 8.14.28DG describe these exemptions in greater detail.

8.14.27 G To be a sophisticated investor for the purposes of article 50, 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. 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' 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 validity of the statement is not affected by a defect in its wording provided the defect does not alter its meaning. The exemption applies to all kinds of *financial promotion* made to a certified sophisticated investor. However, it does not, unlike articles 48 and 50A, provide for the communicator to have reasonable belief that the recipient is a certified sophisticated investor. 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*.

8.14.28 G 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.

- 8.14.28A G The second exemption in article 50A disapplies 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 *person* who the communicator believes on reasonable grounds to be a self-certified sophisticated investor and which relate to one or more of the *specified investments* in *PERG* 8.14.21G (1) to (3) (Certified high net worth individuals (article 54)).
- 8.14.28B G A self-certified sophisticated investor is an individual who has signed a statement in the form prescribed in Part II (Statement for certified sophisticated investor) of Schedule 5 to the *Financial Promotion Order*. This requires the individual to certify that one or more of the following statements apply to him:
- (1) he is a member of a network or syndicate of business angels and has been so for at least the last six months prior to the date on which the certificate was signed; or
  - (2) he has made more than one investment in an unlisted *company* in the two years prior to that date; or
  - (3) he is working, or has worked in the two years prior to that date, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises; or
  - (4) he is currently, or has been in the two years prior to that date, a director of a *company* with an annual turnover of at least £1 million.
- 8.14.28C G For the exemption to apply, the certificate must have been signed within twelve months of the date on which the communication is made. The validity of the statement is not affected by a defect in its wording or form provided the defect does not alter its meaning or involve failure to place certain paragraphs in bold.
- 8.14.28D G In addition, the *financial promotion* must be accompanied by:

- (1) a warning in the terms prescribed in article 50A(5) and which satisfies certain conditions regarding its form as set out in article 50A(6) – this warning must either be given in legible form at the time the communication is made or given orally at that time and a copy in legible form sent to the recipient within two business days; and
- (2) certain indications as set out in article 50A(7).

Associations of high net worth or sophisticated investors (article 51)

- 8.14.29 G 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)

- 8.14.30 G 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*.
- 8.14.31 G 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.

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*.

- 8.14.32 G In line with other exemptions, article 52 contains indicators which, if all are met, mean that the *financial promotion* is directed at relevant *persons*.
- 8.14.33 G 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).
- 8.14.34 G 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; or
  - (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)

- 8.14.35 G 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*.

8.14.36 G 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)

8.14.37 G In the *FSA's* view, a main aim of the exemption (see *PERG* 8.14.35G(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.

8.14.38 G In any case where the conditions referred to in *PERG* 8.14.35G(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 *PERG* 8.14.35G(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.

- 8.14.39 G Where the nature of the parties test (see *PERG* 8.14.35G(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; or
  - (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*).
- 8.14.40 G 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 Treasury, in its consultative document "Financial Services and Markets Act two year review: Changes to secondary legislation Proposals for change, February 2004" proposed changes to article 62 aimed primarily at limiting its scope in relation to the objective test referred to in *PERG* 8.14.35G. In its response to the comments received during the consultation, the Treasury announced, in its document "Financial Services and Markets Act two year review: Changes to secondary legislation Government response, November 2004" that it intends to make certain changes to article 62 in due course.

#### Other issues

- 8.14.41 G 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.
- 8.14.42 G 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.

8.15 Financial promotions by members of the professions (articles 55 and 55A)

Real time financial promotions by professional firms

8.15.1 G 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*).

8.15.2 G 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.

8.15.3 G The *FSA* considers that, to satisfy the condition in *PERG* 8.15.2G(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*.

- 8.15.4 G One of the effects of the requirements in *PERG* 8.15.2G concerns *financial promotions* which relate 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

- 8.15.5 G 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 *PERG* 8.15.6G and *PERG* 8.15.7G as 'Part XX activities'); and
  - (2) contains a specified statement and is limited in its content to the matters referred to in *PERG* 8.15.6G.
- 8.15.6 G 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.

- 8.15.7 G 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 *PERG 8.14.3G*)) is available in respect of any subsequent *financial promotions*.

## 8.16 Financial promotions concerning funeral plans

- 8.16.1 G 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 as provider into a funeral plan contract* under article 59 of the *Regulated Activities Order* (see *PERG 2.8.14G*). 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*.

## 8.17 Financial promotions concerning agreements for qualifying credit

- 8.17.1 G [not used]

### Introduction

- 8.17.1A G Section 21 applies to *financial promotions* concerning agreements for *qualifying credit* (*qualifying credit promotions*). In this respect, it not only covers *financial promotions* about *regulated mortgage contracts* but also *financial promotions* about certain other types of credit agreement. This is explained in more detail in *PERG 8.17.2G* to *PERG 8.17.3G*.

### Controlled investment: agreement for qualifying credit

- 8.17.2 G Rights under an agreement for *qualifying credit* are a *controlled investment*. *Qualifying credit* is defined in paragraph 10 of Schedule 1 to the *Financial Promotion Order* (Controlled activities) as credit provided pursuant to an agreement under which:
- (1) the lender is a *person* who carries on the *regulated activity* of *entering into a regulated mortgage contract* (whether or not he

is an *authorised or exempt person* under the Act); and

- (2) the obligation of the borrower to repay is secured (in whole or in part) on land.

8.17.3 G An agreement for *qualifying credit* includes the following types of loan in addition to those that would be a *regulated mortgage contract*, but in each case only if the lender carries on the *regulated activity of entering into regulated mortgage contracts*:

- (1) loans secured by a second or subsequent charge;
- (2) secured loans for buy-to-let or other purely investment purposes;
- (3) loans secured on land situated outside the *United Kingdom*;
- (4) loans that include some unsecured credit such as a flexible mortgage that includes an unsecured credit card; and
- (5) commercial mortgages.

#### Controlled activities

8.17.4 G There are four controlled activities involving *qualifying credit*:

- (1) *providing qualifying credit*;
- (2) *arranging qualifying credit*;
- (3) *advising on qualifying credit*; and
- (4) agreeing to carry on any of (1) to (3).

8.17.5 G *Providing qualifying credit* is a *controlled activity* under paragraph 10 of Schedule 1 to the *Financial Promotion Order*. In the FSA's view, 'providing' means, in this context, providing as lender; an intermediary does not 'provide' *qualifying credit*.

8.17.6 G *Arranging qualifying credit* is a *controlled activity* under paragraph 10A of Schedule 1 to the *Financial Promotion Order*; that is, making arrangements:

- (1) for another *person* to enter as borrower into an agreement for *qualifying credit*; or
- (2) for a borrower under a *regulated mortgage contract* entered into on or after 31 October 2004 to vary the terms of that contract in such a way as to vary his obligations under that

contract.

This means that invitations and inducements relating to the services of mortgage arrangers will potentially be within the scope of section 21 of the *Act*.

8.17.7 G *Advising on qualifying credit* will be a *controlled activity* under paragraph 10B of Schedule 1 to the *Financial Promotion Order*; that is, advising a *person* if the advice is:

- (1) given to the *person* in his capacity as a borrower or potential borrower; and
- (2) advice on the merits of his doing any of the following:
  - (a) entering into an agreement for *qualifying credit*; or
  - (b) varying the terms of a *regulated mortgage contract* entered into by him on or after 31 October 2004 in such a way as to vary his obligations under that contract.

This means that invitations and inducements relating to the services of mortgage advisers will potentially be within the scope of Section 21 of the *Act*.

8.17.8 G Agreeing to carry on each of these three *controlled activities* will also be a *controlled activity* under paragraph 11 of Schedule 1 to the *Financial Promotion Order*.

Application of exemptions to financial promotions about agreements for qualifying credit

8.17.9 G The exemptions in Part IV of the *Financial Promotion Order* (Exempt communications: all controlled activities) will apply to *financial promotions* about *qualifying credit* (*qualifying credit promotions*). Some of the exemptions in Part VI of the *Financial Promotion Order* (Exempt communications: certain controlled activities) will also apply. Those of particular note are referred to in *PERG* 8.7.10G to *PERG* 8.17.12G.

8.17.10 G Article 46 (Qualifying credit to bodies corporate) exempts any *financial promotion* about providing *qualifying credit* if it is:

- (1) made to or directed at *bodies corporate* only; or
- (2) accompanied by an indication that the *qualifying credit* to which it relates is only available to *bodies corporate*.

8.17.11 G Article 28(4) (One off non-real time communications and solicited real time communications) sets aside the general rule that exemptions

in Parts V and VI of the *Financial Promotion Order* cannot be combined by permitting the combination of article 28 and article 23 (Deposits: real time communications) where the *financial promotion*:

- (1) is a one-off *solicited real time financial promotion*; and
- (2) is about *providing qualifying credit*.

8.17.12 G Article 28B (Real time communications: introductions in connection with qualifying credit) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about *regulated mortgage contracts*. The exemption is subject to the following conditions being satisfied:

- (1) the *financial promotion* must be made for the purpose of, or with a view to, introducing the recipient to a *person* ('N') who is:
  - (a) an *authorised person* who carries on the *controlled activity* to which the communication relates; or
  - (b) an *appointed representative*, where the *controlled activity* is also a *regulated activity* in respect of which the *appointed representative* is exempt; or
  - (c) an overseas person who carries on the *controlled activity* to which the communication relates; for this purpose, an 'overseas person' is a *person* who carries on any of the *controlled activities* about *qualifying credit* but does not do so, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*; and
- (2) the *person* ('M') communicating the *financial promotion*:
  - (a) must not receive any money paid by the recipient in connection with any transaction that the recipient enters into with or through N as a result of the introduction, other than money payable to M on M's own account; and
  - (b) before making the introduction, must disclose to the borrower the following information where it applies to M:
    - (i) whether M is a member of the same *group* as N;
    - (ii) details of any payment which M will receive from N, by way of fee or commission, for introducing the recipient to N; and
    - (iii) an indication of any other reward or advantage

arising out of M's introducing to N.

- 8.17.13 G Introducers can check whether a *person* is an *authorised person* or an *appointed representative* by visiting the *FSA's* register at <http://www.fsa.gov.uk/register/>. If an *authorised person* has *permission* to carry on a *regulated activity* (which can be checked on the *FSA's* register) it is reasonable, in the *FSA's* view, to conclude that the *authorised person* carries on that activity (but not a *controlled activity* which is not a *regulated activity*). The *FSA* would normally expect introducers to request and receive confirmation of other facts necessary to satisfy the condition in *PERG* 8.17.12G(1), prior to proceeding with an introduction.
- 8.17.14 G In the *FSA's* view, money payable to an introducer on his own account includes money legitimately due to him for services rendered to the borrower, whether in connection with the introduction or otherwise. It also includes sums payable in connection with transfer of property to an introducer (for example, a housebuilder) by a borrower. For example, article 28B allows a housebuilder to receive the purchase price on a property that he sells to a borrower, whom he previously introduced to an *authorised person* or *appointed representative* to help him finance the purchase in return for a fee payable by the borrower, and still take the benefit of the exclusion. This is because the sums that the housebuilder receives in connection with the introduction and the sale of his property to the borrower are both 'payable to him on his own account'. The housebuilder could also receive a commission from the *person* introduced to.
- 8.17.15 G In the *FSA's* view, the provision of details of fees or commission referred to in *PERG* 8.17.12G(2)(b)(ii) does not require an introducer to provide an actual sum to the borrower, where it is not possible to calculate the full amount due prior to the introduction. This may arise in cases where the fee or commission is a percentage of the eventual loan taken out and the amount of the required loan is not known at the time of the introduction. In these cases, it would be sufficient for the introducer to disclose the method of calculation of the fee or commission, for example the percentage of the eventual loan to be made by N.
- 8.17.16 G In the *FSA's* view, the information condition in *PERG* 8.17.12G(2)(b)(iii) requires the introducer to indicate to the borrower any other advantages accruing to him as a result of ongoing arrangements with N relating to the introduction of borrowers. This may include, for example, indirect benefits such as office space, travel expenses, subscription fees. This and other relevant information may, where appropriate, be provided on a standard form basis to the borrower. The *FSA* would normally expect an introducer to keep a written record of disclosures made to the borrower under article 33A of the *Regulated Activities Order* including those cases where disclosure is made on an oral basis only.

## Interaction with the Consumer Credit Act

- 8.17.17 G Most credit advertisements are, with various exceptions, regulated under the Consumer Credit Act 1974. However, article 90(3) (Consequential amendments of the Consumer Credit Act 1974) and Article 91(1) (Consequential amendments to subordinate legislation under the Consumer Credit Act 1974) of the *Regulated Activities Order* disapply the provisions of the Consumer Credit Act 1974 to any *financial promotion* other than an exempt generic communication. An exempt generic communication is a *financial promotion* that is exempt under article 17 of the *Financial Promotion Order* (Generic promotions) (see *PERG* 8.12.14G (Generic promotions (article 17))). Hence, an advertisement about credit of any kind will either be regulated under Section 21 of the *Act* or under the Consumer Credit Act 1974. Such an advertisement will only be subject to regulation under both statutes if it is about secured and unsecured lending. Typical examples showing which statute regulates particular types of credit advertisements are given in the table in *PERG* 8.17.18G (Table – Guide to the application of the Act and the Consumer Credit Act 1974 to credit advertisements).
- 8.17.18 G Guide to application of the Act and the Consumer Credit Act 1974 to credit advertisements. This table belongs to *PERG* 8.17.17G

	Subject of advertising or promotion	FSMA regulated	CCA regulated
(1)	<i>regulated mortgage contracts</i>	Yes	No
(2)	other loans secured on land where the lender also enters into <i>regulated mortgage contracts</i> as lender	Yes	No
(3)	loans not secured on land whether or not the lender also enters into <i>regulated mortgage contracts</i> as lender	No	Yes
(4)	loans not secured on land but which form part of a loan product that is otherwise secured on land and where the lender enters into <i>regulated mortgage contracts</i> as lender	Yes	No
(5)	loans as in (1), (2) or (4)	Yes	No

	but where the advertisement is subject to exemptions under the <i>Financial Promotion Order</i> other than article 17 (Generic promotions)		
(6)	loans as in (1), (2) or (4) but where the advertisement is exempt under article 17 of the <i>Financial Promotion Order</i> (Generic Promotions)	No	Yes
(7)	loans with features as in (1), (2), (4) or (5) promoted in combination with other loans	Yes	Yes

8.17A Financial promotions concerning insurance mediation activities

8.17A.1 G The application of section 21 of the *Act* and of exemptions in the *Financial Promotion Order* to invitations or inducements about *insurance mediation activities* will vary depending on the type of activity. The implementation of the *Insurance Mediation Directive* has not led to any changes in the definitions of a *controlled investment* or a *controlled activity* under the *Financial Promotion Order*. So:

- (1) rights under any *contract of insurance* are a *controlled investment*;
- (2) rights to or interests in rights under *life policies* are *controlled investments* but rights to or interests in rights under other *contracts of insurance* are not;
- (3) the activities of:
  - (a) *dealing in investments as agent*;
  - (b) *arranging (bringing about) deals in investments*;
  - (c) *making arrangements with a view to transactions in investments*; and
  - (d) *advising on investments*;

where they relate to *contracts of insurance*, are *controlled*

*activities only where the contract of insurance is a life policy;*  
and

- (4) *the activity of assisting in the administration and performance of a contract of insurance is not a controlled activity.*

8.17A.2 G This means that an *insurance intermediary* will not be *communicating a financial promotion*:

- (1) *where the only activity to which the promotion relates is assisting in the administration and performance of a contract of insurance; or*
- (2) *purely by reason of his inviting or inducing persons to make use of his advisory or arranging services where they relate only to general insurance contracts or pure protection contracts or both.*

But as regards (2), an intermediary will be *communicating a financial promotion* if he is also inviting or inducing *persons* to enter into a *contract of insurance*. This is because the making and performance of the contract by the insurer will be a *controlled activity* (of *effecting and carrying out a contract of insurance*). *Insurance intermediaries* will, however, be able to use the exemptions in Part V of the *Financial Promotion Order* (see PERG 8.13 (Exemptions applying to financial promotions concerning deposits and certain contracts of insurance) where they promote a *general insurance contract* or a *pure protection contract*. Where an *insurance intermediary* is promoting *life policies*, he will be able to use any exemptions in Part VI of the *Financial Promotion Order* that apply to a *contractually based investment*.

8.18 Financial promotions concerning the Lloyd's market

8.18.1 G 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*); or
- (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*); or
- (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); or

- (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*).

8.18.2 G Most *persons* making *financial promotions* as referred to in are likely to be *authorised persons*. As such they will be subject to COB 3 or ICOB 3. Any *persons* who are making *financial promotions* as referred to in PERG 8.18.1G and who do not need to be *authorised persons* will need to ensure that their *financial promotions* are approved by an *authorised person* or that a specific exemption applies (see PERG 8.13).

8.19 Additional restriction on the promotion of life policies

8.19.1 G 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*; or
- (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; or
- (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; or
- (4) a *company* authorised in one of the following countries or states to carry on the class of *insurance business* being promoted:
  - (a) Guernsey; or
  - (b) the Isle of Man; or
  - (c) Pennsylvania; or
  - (d) Iowa;

(e) Jersey.

*COB 3.13.1R* imposes a similar restriction on *authorised persons* concerning their *communicating* or *approving financial promotions* in the precluded circumstances.

8.20 Additional restriction on the promotion of collective investment schemes

8.20.1 G 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 *PERG 8.20.2G*. A *regulated collective investment scheme* is:

- (1) an *authorised unit trust scheme*; or
- (2) an *investment company with variable capital*; or
- (3) a *scheme* recognised under section 264 of the *Act* (Schemes constituted in other EEA States); or
- (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).

8.20.2 G 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); or
- (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.

- 8.20.3 G The Treasury has made an order under section 238(6). This is the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (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* 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 *PERG 8* 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 *PERG 8.14.3G(2)* and *PERG 8.14.4G(2)*).
- 8.20.4 G 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 5R* and referred to in *COB 3.11*. To date, the Treasury has not made an order exempting single property schemes under section 239.
- 8.21 Company statements, announcements and briefings
- 8.21.1 G 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, *PERG 8.4.14G* 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.
- 8.21.2 G 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.

- 8.21.3 G *PERG 8.21.4G to PERG 8.21.21G* 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 *PERG 8.21.17G*) 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 *PERG 8.21.6G*), 59 (see *PERG 8.21.11G*), and 69 (see *PERG 8.21.17G*).

#### Article 17: Generic promotions

- 8.21.4 G 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 *PERG 8.12.14G*). 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

- 8.21.5 G 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 *PERG 8.12.21G*). 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 *PERG 8.6.9G*). 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

- 8.21.6 G *PERG 8.12.32G* 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

- 8.21.7 G 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 *PERG 8.14.3G* about one-off *financial promotions* are relevant.

#### Article 43: Members and creditors of certain bodies corporate

- 8.21.8 G 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;

- (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 *PERG 8.21.9G(2)*). C and G must not be *open-ended investment companies*.

8.21.9 G A 'relevant investment' in article 43 means:

- (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

8.21.10 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.

Article 59: Annual accounts and directors' report

8.21.11 G Article 59 is capable of applying to *financial promotions* in *company* statements and briefings where they are accompanied by:

- (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.

8.21.12 G Article 59 imposes certain conditions.

- (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

8.21.13 G 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* that are *exempt persons* under article 36 of the *Exemption Order*, together with various other overseas markets (including OFEX (UK)). 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.

8.21.14 G 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.

- 8.21.15 G 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 *PERG* 8.21.16G.

Article 68: Promotions in connection with admission to certain EEA markets

- 8.21.16 G 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 (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
- (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

- 8.21.17 G Article 69 is similar to article 59 in the conditions it imposes (see *PERG* 8.21.12G). 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 *PERG* 8.21.13G).

8.21.18 G 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'.

8.21.19 G 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

8.21.20 G 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 *PERG* 8.21.14G about when something is required or permitted to be published apply also to (5).

#### General issues

8.21.21 G 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*. *PERG* 8.4 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 *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.

#### 8.22 The Internet

8.22.1 G 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*.

8.22.2 G 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 *PERG 8.12.18G*).

8.22.3 G 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 *PERG 8*, especially *PERG 8.4* (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*.

8.23 Regulated activities

8.23.1 G 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.

8.23.2 G 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 *PERG 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.

8.23.3 G The *regulated activities* which are likely to be conducted in the circumstances referred to in *PERG 8.23.2G* are:

(1) giving advice on certain investments (articles 53 (Advising on investments), 53A (Advising on regulated mortgage contracts) 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)) or *making arrangements with a view to regulated mortgage contracts* (article 25A(2) of the *Regulated Activities Order* (Arranging regulated mortgage contracts)) - 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)).

8.23.4 G The *guidance* that follows is concerned with the *regulated activities of making arrangements with a view to transactions in and advising on investments. Guidance on the regulated activities of making arrangements with a view to and advising on regulated mortgage contracts* is in *PERG 4* (Guidance on regulated activities connected with mortgages).

## 8.24 Advising on investments

8.24.1 G 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 *relevant investment* or exercising any right conferred by such an *investment* to *buy, sell*, subscribe for or underwrite such an *investment*.

8.24.2 G The effect of advice being given in the circumstances referred to in *PERG 8.24.1G* is that:

- (1) it must relate to an *investment* which is a *security* or a *relevant 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*.

8.24.3 G Each of the aspects referred to in *PERG 8.24.2G* is considered in greater detail in *PERG 8.25* to *PERG 8.29*. In addition, under article 52A of the *Regulated Activities Order*, *providing basic advice on a stakeholder product* is a *regulated activity* and 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*.

- 8.25 Advice must relate to an investment which is a security or contractually based investment
- 8.25.1 G For the purposes of article 53 of the *Regulated Activities Order*, a *security* or *relevant 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) *contracts of insurance*;
  - (12) *funeral plan contracts*;
  - (13) rights to or interests in such *investments*.
- 8.25.2 G Article 53 does not apply to advice given on any of the following:
- (1) *deposit* or other *bank* or *building society* accounts (but note that *providing basic advice on a stakeholder product* including stakeholder deposit accounts is a separate *regulated activity* under article 52A of the *Regulated Activities Order* - see the *guidance in PERG 2.7.14AG (Providing basic advice on stakeholder products)*);
  - (2) interests under the trusts of an *occupational pension scheme* (but rights under an *occupational pension scheme* that is a *stakeholder pension scheme* will be *securities*);
  - (3) mortgages or other loans (but note that *advising on regulated mortgage contracts* is a separate *regulated activity* under article

53A of the *Regulated Activities Order* – see the *guidance in PERG 4* (Regulated activities connected with mortgages));

- (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*.

8.26 The investment must be a particular investment

8.26.1 G 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 *PERG 8.4*).

8.26.2 G 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.

8.26.3 G 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*.

- 8.26.4 G 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 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.
- 8.27 Advice to be given to persons in their capacity as investors (on the merits of their investing as principal or agent)
- 8.27.1 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). Where the *investment* is a risk-only *contract of insurance* such as house contents insurance, the *policyholder* or prospective *policyholder* is regarded as an investor.
- 8.27.2 G Article 53 does not apply where the advice is given to *persons* who receive it as:
- (1) an adviser who may use it to inform advice given by him to *persons* for whom he does not act as agent; or
  - (2) a journalist or broadcaster; or
  - (3) an employer (for example, on setting up a pension scheme).
- 8.27.3 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.

8.27.4 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:

- (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.

8.27.5 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.

8.28 Advice or information

8.28.1 G 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.

8.28.2 G 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.

8.28.3 G Information may often involve:

- (1) listings of *share* and *unit* prices; or
- (2) company news or announcements; or
- (3) an explanation of the terms and conditions of an *investment*; or
- (4) a comparison of the benefits and risks of one *investment* as compared to another; or
- (5) league tables showing the performance of *investments* of a particular kind against set published criteria; or
- (6) details of directors’ dealings in the *shares* of their own companies; or
- (7) alerting *persons* to the happening of certain events (for

example, XYZ shares reaching a certain price).

- 8.28.4 G 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.
- 8.29 Advice must relate to the merits (of buying or selling a particular investment)
- 8.29.1 G Advice must relate to the *buying* or *selling* of an *investment* – in other words, the pros or cons of doing so.
- 8.29.2 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.
- 8.29.3 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 article 53. This is because it is not advice on the merits of *buying* or *selling* an *investment*.
- 8.29.4 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.
- 8.29.5 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:
- (1) the likely meaning of uncertain provisions in an investment agreement; or
  - (2) how to complete an application form; or

- (3) the value of *investments* for which there is no ready market; or
  - (4) the effect of contractual terms and their commercial consequences; or
  - (5) how to structure a transaction to comply with regulatory, competition and taxation requirements; or
  - (6) terms which are commonly accepted in the market.
- 8.29.6 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.
- 8.30 Medium used to give advice or information
- 8.30.1 G With the exception of periodicals, broadcasts and other news or information services (see *PERG* 8.31.2G), the medium used to give advice should make no difference to whether or not it is caught by article 53.
- 8.30.2 G Advice can be provided in many ways including:
- (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.
- 8.30.3 G 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.
- 8.30.4 G Advice in publications, broadcasts and websites is subject to a special regime – see *PERG* 8.31.2G and *PERG* 7.
- 8.30.5 G 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.

- 8.31 Exclusions for advising on investments
- 8.31.1 G The *Regulated Activities Order* contains a number of exclusions which prevent certain activities from being a *regulated activity*.
- 8.31.2 G 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 *PERG 7*.
- 8.31.3 G 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.
- 8.31.4 G For example, it may be necessary for a *person* referred to in *PERG 8.31.3G(1)* or *PERG 8.31.3G(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.
- 8.31.5 G Certain of the exclusions in the *Regulated Activities Order* that apply to the *regulated activity* of *advising on investments* are not available where the advice either relates to a *contract of insurance* or amounts to *insurance mediation* or *reinsurance mediation*. This results from the requirements of the *Insurance Mediation Directive* and is explained in more detail in *PERG 5* (Insurance mediation activities).
- 8.32 Arranging deals in investments

- 8.32.1 G 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 *relevant 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 PERG 8.32.1G(1) (a) to (c) (whether as principal or agent).
- 8.32.2 G 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*.
- 8.32.3 G 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.
- 8.32.4 G 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.

- 8.32.5 G 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).
- 8.32.6 G 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.

- 8.32.7 G 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.
- 8.32.8 G 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*.
- 8.32.9 G 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.
- 8.32.10 G 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 *PERG* 8.33).
- 8.32.11 G 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.

- 8.32.12 G Where *persons* are making arrangements concerning *contracts of insurance* or are carrying on *insurance mediation* or *reinsurance mediation*, certain exclusions to article 25 are not available. This results from the requirements of the *Insurance Mediation Directive* and is explained in more detail in *PERG 5.6* (Insurance mediation activities The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

### 8.33 Introducing

- 8.33.1 G 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.

- 8.33.2 G 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 (*PERG 8.12.11G* gives *guidance* on when a *person* will be regarded as having received reward from someone other than his client).

- 8.33.3 G 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.

8.33.4 G 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.

8.33.5 G 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.

8.33.6 G The exclusions in Articles 29 and 33 of the *Regulated Activities Order* are not available where the *investment* is a *contract of insurance*. However, certain other exclusions do apply. This results from implementation of the requirements of the *Insurance Mediation Directive* and is explained in more detail in *PERG 5.6* (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

8.34 The business test

8.34.1 G *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 (as amended).

8.34.2 G 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.

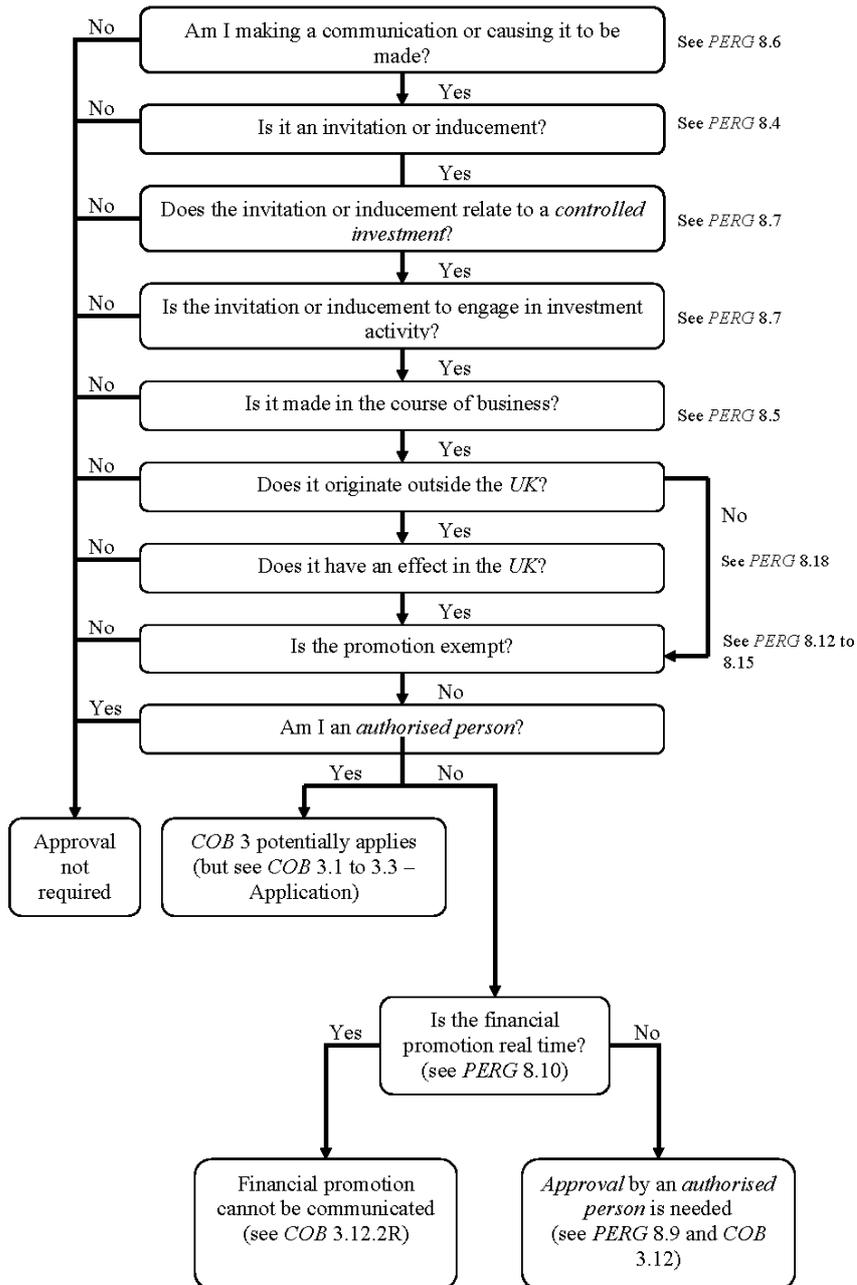
## 8.35 Authorisation and exemption

8.35.1 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.

8.36 Illustrative tables

Financial Promotions: flowchart

8.36.1 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 *PERG* 8.2.5G.



## Controlled activities and controlled investments

8.36.2 G These tables list the activities that are *controlled activities* and the *investments* that are *controlled investments* under the *Financial Promotion Order*. It is referred to in *PERG 8.7.2G*.

8.36.3 G Table Controlled activities

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
10.	Providing qualifying credit
10A.	Arranging qualifying credit etc
10B.	Advising on qualifying credit etc
11.	Agreeing to do anything in 3 to 10B above

8.36.4 G Table Controlled investments

1.	A deposit.
2.	Rights under a contract of insurance.
3.	Shares etc.
4.	Instruments creating or acknowledging indebtedness (referred to in the Glossary as debentures).
5.	Government and public securities.

6.	Instruments giving entitlement to investments (referred to in the Glossary as warrants).
7.	Certificates representing certain securities.
8.	Units in a collective investment scheme.
9.	Rights under a stakeholder pension scheme.
10.	Options.
11.	Futures.
12.	Contracts for differences etc.
13.	Lloyd's syndicate capacity and syndicate membership.
14.	Funeral plan contracts
15.	Agreements for qualifying credit
16.	Rights to or interests in anything falling under 1 to 15 above.

#### Application of exemptions to forms of financial promotion

8.36.5 G This table identifies the types of *financial promotion* to which each exemption in the *Financial Promotions Order* applies. It is referred to in *PERG 8.11.2G* and *PERG 8.14.1G*.

8.36.6 G Table Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG 8</i> reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
12	Communications to overseas recipients (8.12.2G)	* <sup>1</sup>	*	*

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
13	Communications from customers and potential customers (8.12.9G)	*	*	*
14	Follow up non-real time communications and solicited real time communications (8.12.10G)		*	*
15	Introductions (8.12.11G)	*	*	
16	Exempt persons (8.12.12G)	* <sup>2</sup>	* <sup>3</sup>	* <sup>3</sup>
17	Generic promotions (8.12.14G and 8.21.4G)	*	*	*
18	Mere conduits (8.12.18G)	*	*	*
18A	Outgoing electronic commerce communications: mere conduits, caching and hosting	*	*	*
19	Investment professionals (8.12.21G and 8.21.5G)	*	*	*
20	Communications by journalists (8.12.23G)			*

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
20A	Promotion broadcast by company director etc (8.12.23G and 8.21.6G)	*	*	*
20B	Incoming electronic commerce communications (8.12.38G)	*	*	*
22	Deposits : non-real time communications (8.13)			*
23	Deposits : real time communications (8.13)	*	*	
24	Relevant insurance activity : non-real time communications (8.13)			*
25	Relevant insurance activity : non-real time communications : reinsurance and large risks (8.13)			*
26	Relevant insurance activity : real time communications (8.13)	*	*	

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 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 (8.14.3G)		*	*
28A	One-off unsolicited real time communications (8.14.11G)	*		
29	Communications required or authorised by enactments	*	*	*
30	Overseas communicators: solicited real time communications (8.14.15G)		*	
31	Overseas communicators: non-real time communications to previously overseas customers (8.14.17G)			*
32	Overseas communicators: unsolicited real time communications to previously overseas customers (8.14.16G)	*		

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
33	Overseas communicators: unsolicited real time communications to knowledgeable customers (8.14.16G)	*		
34	Governments, central banks etc		*	*
35	Industrial and provident societies		*	*
36	Nationals of the EEA States other than United Kingdom (8.14.18G)		*	*
37	Financial markets		*	*
38	Persons in the business of placing promotional material	*	*	*
39	Joint enterprises (8.14.19G)	*	*	*
40	Participants in certain recognised collective investment schemes		*	*
41	Bearer instruments: promotions required or permitted by market rules (8.14.42G)		*	*

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
42	Bearer instruments: promotions to existing holders (8.14.42G)		*	*
43	Members and creditors of certain bodies corporate (8.14.41G and 8.21.8G)		*	*
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 (8.21.10G)	*	*	*
48	Certified high net worth individuals (8.14.21G)		*	*
49	High net worth companies, unincorporated associations etc (8.14.25G)	*	*	*
50	Sophisticated investors (8.14.27G)	*	*	*

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
50A	Self-certified sophisticated investors {8.14.28AG)		*	*
51	Associations of high net worth or sophisticated investors (8.14.29G)		*	*
52	Common interest group of a company (8.14.30G)		*	*
53	Settlors, trustees and personal representatives	*	*	*
54	Beneficiaries of trust, will or intestacy	*	*	*
55	Communications by members of professions (8.15.1G)	*	*	
55A	Non-real time communication by members of the professions. (8.15.5G)			*
56	Remedy following report by Parliamentary Commissioner for Administration	*	*	*

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 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 (8.21.11G)	*	*	*
60	Participation in employee shares schemes	*	*	*
61	Sale of goods and supply of services		*	*
62	Sale of body corporate (8.14.35G)	*	*	*
64	Takeovers of relevant unlisted companies	*	*	*
65	Takeovers of relevant unlisted companies: warrants etc	*	*	*
66	Takeovers of relevant unlisted companies: application forms	*	*	*

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
67	Promotions required or permitted by market rules (8.21.13G)		*	*
68	Promotions in connection with admission to certain EEA markets (8.21.16G)		*	*
69	Promotions of securities already admitted to certain markets (8.21.17G)		*	*
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 (8.21.20G)			*
73	Material relating to prospectus for public offer of unlisted securities			*
74	Approval of communication prior to Order coming into force	* 4	* 4	*

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
<sup>1</sup> in limited circumstances only – see article 12(2) of the <i>Financial Promotion Order</i>				
<sup>2</sup> for the purpose of article 16 (2) only				
<sup>3</sup> for the purpose of article 16 (1) only				
<sup>4</sup> 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 COB 3. Such advertisements and communications are likely to be non-real time communications.				

## MEANING OF OPEN-ENDED INVESTMENT COMPANY

### 9 Meaning of open-ended investment company

#### 9.1 Application and Purpose

##### Application

- 9.1.1 G This *guidance* 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

- 9.1.2 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 *PERG 9.3* (The definition)) and describe its three main elements:
  - (a) an *open-ended investment company* must be a *collective investment scheme* (see *PERG 9.4* (Collective investment scheme (section 235 of the *Act*)));
  - (b) it must satisfy the ‘property’ condition in section 236(2) of the *Act* (see *PERG 9.5* (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 *PERG 9.6* (The *investment* condition (section 236(3) of the *Act*): general) to *PERG 9.9* (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 *PERG 9.10* (Significance of being an open-ended investment company)).

##### Effect of guidance

- 9.1.3 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

- 9.1.4 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'). *COLL 2* (Authorised fund applications) and *CIS 16* (Application and notification) contain *rules* and *guidance* on forming such *bodies corporate*. An open-ended *body corporate* whose head office is in Northern Ireland should refer to the Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (Statutory Rule of Northern Ireland 2004/335).
- 9.1.5 G *Open-ended investment companies* constituted in other *EEA States* which are seeking to exercise rights conferred by the *UCITS Directive* should refer to *COLL 9* (Recognised schemes) and *CIS 17* (Recognised Schemes) for *guidance* on the requirements of section 264 of the *Act* (Schemes constituted in other EEA States).
- 9.1.6 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*).
- 9.2 Introduction
- 9.2.1 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.

- 9.2.2 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 *PERG 9.4.5G* (Collective investment scheme (section 235 of the *Act*))).
- 9.2.3 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 *PERG 9.10.1G* to *PERG 9.10.6G* (Marketing of shares or securities issued by a *body corporate*)). In addition, the *regulated activities* that require *permission* may differ (see *PERG 9.10.7G* to *PERG 9.10.10G* (Implications for regulated activities)).
- 9.2.4 G *Guidance* on the application of the definition in particular circumstances is in *PERG 9.11* (Frequently asked questions)).
- 9.3 The definition
- 9.3.1 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).
- 9.3.2 G Each of these aspects of the definition is considered in greater detail in *PERG 9.4* (Collective investment scheme (section 235 of the *Act*)) to *PERG 9.9* (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 *PERG* 9.6.3G and *PERG* 9.6.4G (The investment condition (section 236(3) of the Act: general))).

- 9.3.3 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).
- 9.3.4 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.
- 9.3.5 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.
- 9.3.6 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.
- 9.4 Collective investment scheme (section 235 of the Act)

- 9.4.1 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*.
- 9.4.2 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).
- 9.4.3 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 *PERG 9.7.5G* (The investment condition: the 'reasonable investor') for further *guidance* on this point).
- 9.4.4 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 *PERG 9.4.2G*. 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*).

- 9.4.5 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 *PERG* 9.2.2G (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.
- 9.4.6 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.
- 9.5 The property condition (section 236(2) of the *Act*)
- 9.5.1 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.
- 9.5.2 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 *PERG 9.9* (The investment condition: the ‘satisfaction test’ (section 236(3)(b) of the Act))).

- 9.5.3 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.
- 9.5.4 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.
- 9.5.5 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.
- 9.6 The investment condition (section 236(3) of the Act): general
- 9.6.1 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.
- 9.6.2 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 *PERG 9.6.1G(1)* and *PERG 9.6.1G(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’.

- 9.6.3 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.
- 9.6.4 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*. *PERG 9.8.8G* (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’.
- 9.6.5 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).
- 9.6.6 G The *FSA* considers that the reference in *PERG 9.6.5G*(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).

- 9.6.7 G The *FSA*'s views on the following three elements of the investment condition are explained separately:
- (1) the 'reasonable investor' (see *PERG* 9.7 (The investment condition: the 'reasonable investor'));
  - (2) the 'expectation' test (see *PERG* 9.8 (The investment condition: the 'expectation test' (section 236(3)(a) of the Act)); and
  - (3) the 'satisfaction' test (see *PERG* 9.9 (The investment condition: the 'satisfaction test' (section 236(3)(b) of the Act)).

9.7 The investment condition: the 'reasonable investor'

- 9.7.1 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*.
- 9.7.2 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.

- 9.7.3 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.

- 9.7.4 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.
- 9.7.5 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).
- 9.7.6 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.
- 9.8 The investment condition : the 'expectation test' (section 236(3)(a) of the Act)
- 9.8.1 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 *PERG 9.7.2G* (The investment condition: the 'reasonable investor').

## ‘Realisation’ of investment

- 9.8.2 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.
- 9.8.3 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 *PERG 9.9.4G* to *PERG 9.9.6G* (Effect of realisation on a market).
- 9.8.4 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’

- 9.8.5 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).

- 9.8.6 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'

- 9.8.7 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 *PERG 9.6.3G* (The investment condition (section 236(3) of the Act): general).
- 9.8.8 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 *PERG 9.6.4G* (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 *PERG 9.8.9G*).

- 9.8.9 G As indicated in *PERG 9.3.5G* (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*.
- 9.9 The investment condition : the ‘satisfaction test’ (section 236(3)(b) of the Act)

- 9.9.1 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.
- 9.9.2 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 *PERG* 9.6.3G (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.
- 9.9.3 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 *PERG* 9.9.4G (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 *PERG* 9.9.4G (Effect of realisation on a market)).

#### Effect of realisation on a market

- 9.9.4 G *PERG* 9.9.3G(2) and *PERG* 9.9.3G(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.

- 9.9.5 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 *PERG* 9.9.4G, 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*.
- 9.9.6 G The fact that the definition must be applied to BC as a whole (see *PERG* 9.6.3G (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’

- 9.9.7 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.

## 9.10 Significance of being an open-ended investment company

### Marketing of shares or securities issued by body corporate

- 9.10.1 G 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 *PERG* 9.10.2G) or an *authorised person* (see *PERG* 9.10.3G to *PERG* 9.10.6G). 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*.
- 9.10.2 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 *PERG* 8 (Financial promotion and related activities).
- 9.10.3 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 *PERG* 8.20). 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.

9.10.4 G The restrictions mentioned in *PERG* 9.10.3G 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 *COLL* 9 (Recognised schemes) and *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 *PERG* 9.1.4G (Other guidance that may be relevant)).

9.10.5 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 *PERG* 8.20.3G (Additional restriction on the promotion of collective investment schemes).

9.10.6 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 *PERG* 9.10.4G). The circumstances in which such a communication or approval is allowed are explained in *COB* 3 Ann 5R (which is introduced by *COB* 3.11).

#### Implications for regulated activities

9.10.7 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).

9.10.8 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 *PERG 2.7* and *PERG 2.8* (Authorisation and regulated activities)).

9.10.9 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*.

9.10.10 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*.

## 9.11 Frequently Asked Questions

9.11.1 G Table 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 *PERG 9.2.4G* (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</i> 's 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 treated as <i>units</i> of a <i>collective investment scheme</i> for the purpose of the <i>Act</i> . A <i>body corporate</i> formed in another jurisdiction may,

Question	Answer
	however, be regarded as open-ended under the laws of that jurisdiction but not come within the definition of an <i>open-ended investment company</i> in section 236 (and vice versa).
2	Can an <i>open-ended investment company</i> become closed-ended (or a closed-ended body become open-ended)?
	In the <i>FSA's</i> view, the answer to this question is 'yes'. A <i>body corporate</i> 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 <i>open-ended investment company</i> 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 <i>PERG 9.7.5G</i> .
3	Does the liquidation of a <i>body corporate</i> affect the assessment of whether or not the body is an <i>open-ended investment company</i> ?
	The <i>FSA</i> considers that the possibility that a <i>body corporate</i> that would otherwise be regarded as closed-ended may be wound up has no effect at all on the nature of the <i>body corporate</i> before the winding up. The fact that, on a winding up, the shares or securities of any investor in the <i>body corporate</i> may be converted into cash or money on the winding up (and so 'realised') would not, in the <i>FSA's</i> view, affect the outcome of applying the expectation test to the <i>body corporate</i> when looked at as a whole. The answer to Question 4 explains that investment in a closed-ended fixed term <i>company</i> shortly before its winding up does not, in the <i>FSA's</i> view, change the closed-ended nature of the <i>company</i> . For <i>companies</i> with no fixed term, the theoretical possibility of a winding up at some uncertain future point is not, in the <i>FSA's</i> 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

Question		Answer
		reasonable period.
4	Does a fixed term closed-ended investment <i>company</i> become an <i>open-ended investment company</i> simply because the fixed term will expire?	<p>In the <i>FSA's</i> view, the answer to this is 'no'. The termination of the <i>body corporate</i> is an event that has always been contemplated (and it will appear in the <i>company's</i> constitution). Even as the date of the expiry of the fixed term approaches, there is nothing about the <i>body corporate</i> 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).</p>
5	In what circumstances will a <i>body corporate</i> that issues a mixture of redeemable and non-redeemable shares or securities be an <i>open-ended investment company</i> ?	<p>In the <i>FSA's</i> view, the existence of non-redeemable shares or securities will not, of itself, rule out the possibility of a <i>body corporate</i> falling within the definition of an <i>open-ended investment company</i>. All the relevant circumstances will need to be considered (see <i>PERG</i> 9.6.4G, <i>PERG</i> 9.2.8.8G and <i>PERG</i> 9.8.9G). So the following points need to be taken into account.</p> <p>(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.</p> <p>(2) The proportions of the different share</p>

Question		Answer
		<p>classes will be relevant to the impression the reasonable investor forms of the <i>body corporate</i>. A <i>body corporate</i> that issues only a minimal amount of redeemable shares or securities will not, in the <i>FSA</i>'s view, be an <i>open-ended investment company</i>. A <i>body corporate</i> that issues a minimal amount of non-redeemable shares or securities will be likely to be an <i>open-ended investment company</i>. A <i>body corporate</i> that falls within the definition of an <i>open-ended investment company</i> is likely to have (and to be marketed as having) mainly redeemable shares or securities. However, whether or not the <i>body corporate</i> 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.</p> <p>(3) Where shares or securities are only redeemable after the end of a stated period, this factor will make it more likely that the <i>body corporate</i> is open-ended than if the shares or securities are never redeemable.</p>
6	<p>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 <i>recognised investment exchange</i> because of usual market practice that the shares trade at a discount to asset value?</p>	<p>In the <i>FSA</i>'s view, the answer is 'no' (for the reasons set out in <i>PERG 9.9.4G</i> to <i>PERG 9.9.6G</i>).</p>

Question		Answer
7	Does the practice of UK investment trust companies buying back <i>shares</i> result in them becoming <i>open-ended investment companies</i> ?	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>PERG</i> 9.6.5G.
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> ?	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>PERG</i> 9.8 and, in particular, <i>PERG</i> 9.8.9G which sets out the kind of factors that may need to be considered in applying the test).
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?	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>PERG</i> 9.6.3G). 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>PERG</i> 9.8.9G).

**PERIMETER GUIDANCE (HANDBOOK AMENDMENT) INSTRUMENT 2005****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of its powers under section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (“the Act”).

**Commencement**

- B. This instrument comes into force on 1 July 2005.

**Amendments to the Handbook**

- C. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COB)	Annex B
Insurance: Conduct of Business sourcebook (ICOB)	Annex C
Mortgages: Conduct of Business sourcebook (MCOB)	Annex D
Authorisation manual (AUTH)	Annex E
New Collective Investment Schemes sourcebook (COLL)	Annex F

**Citation**

- D. This instrument may be cited as the Perimeter Guidance (Handbook Amendment) Instrument 2005.

By order of the Board  
16 June 2005

**Annex A**  
**Amendments to the Glossary of definitions**

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

Add or amend, in the correct alphabetical position, the following definitions.

PERG            the Perimeter Guidance manual.

*sending dematerialised instructions*            the *regulated activity*, specified in article 45(1) of the *Regulated Activities Order*, of sending, on behalf of another *person*, dematerialised instructions relating to a *security*, where those instructions are sent by means of a relevant system in respect of which an operator is approved under the ~~1995~~ 2001 Regulations;

in this definition:

(a)        "the ~~1995~~ 2001 Regulations" means the Uncertificated Securities Regulations ~~1995 (SI 1995/3272)~~ 2001 (SI 2001/3755);

(b)        "dematerialised instruction" and "operator" have the meaning given by regulation 3 of the ~~1995~~ 2001 Regulations.

**Annex B**  
**Amendments to the Conduct of Business sourcebook**

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

- 3.2.1 G (1) The *rules* in this chapter adopt various concepts from the restriction on *financial promotion* by *unauthorised persons* in section 21(1) of the *Act* (Restrictions on financial promotion). *Guidance* on that restriction is contained in ~~AUTH App 1~~ PERG 8 (Financial promotion and related activities) and that *guidance* will be relevant to interpreting these *rules*. In particular, *guidance* on the meaning of:
- (a) "*communicate*" is in ~~AUTH App 1.6~~ PERG 8.6 (Communicate);
  - (b) "*invitation or inducement*" and "*engage in investment activity*" (two elements which, with "*communicate*", make up the definition of "*financial promotion*") is in ~~AUTH App 1.4~~ PERG 8.4 (Invitation and inducement) and ~~AUTH App 1.7~~ PERG 8.7 (Engage in investment activity).
- ...
- 3.2.7 G (1) Under *COB 3.2.5R(1)* a *financial promotion* which is *communicated* only to *market counterparties* or *intermediate customers* is exempt. See *COB 3.5.6R* and *COB 3.5.7R* which amplify this exemption. A *firm* will need to take particular note of the conditions in *COB 3.5.7R* when designing *financial promotions* for trade publications which may be available also to *private customers*.
- ...
- (2) (a) A table summarising some of the main exemptions contained in the *Financial Promotion Order*, and therefore relevant to *COB 3.2.5R(2)*, is in *COB 3 Ann 1*. *Guidance* on certain exemptions is contained in ~~AUTH App 1~~ PERG 8 (Financial promotion and related activities).
  - (b) ...
  - (3) In *COB 3.2.5R*:
    - (a) ... Such mailshots must meet the requirements of this chapter. ~~AUTH App 1.14.3G~~ PERG 8.14.3G (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* or its *appointed representative* may include its name, address and telephone number in accordance with items 5(a) and (c). ~~AUTH App 1.4.20G~~ PERG 8.4.20G (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~~ PERG 8.4.13G (Publication or broadcast of prices of investments (historic or live)) provides *guidance* on when the display of prices may involve a *financial promotion*.
  - (d) Item (8) exempts *financial promotions* that are decision trees if the decision tree satisfies the requirements of *COB 6.5.8R*. 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.
- (4) A company's annual report and accounts issued in accordance with a requirement of the Companies Act 1985 (or corresponding Northern Ireland or *EEA* provisions) are exempt under item (2) and article 59 of the *Financial Promotion Order*. 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~~ PERG 8.21.11G (Article 59: Annual accounts and directors' report) provides further *guidance* on the scope of the exemption in article 59.
- (5) A *financial promotion* included in a newspaper, magazine or periodical which is printed and published overseas, but which may be brought into the *United Kingdom* and made available to *persons* in the *United Kingdom*, 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~~ PERG 8.12.2G (Financial promotions to overseas recipients (article 12))).
- (6) This chapter does not apply in relation to a *financial promotion* the *communication* of which by a *firm* would contravene section 238(1) of the *Act* (Restrictions on promotion of unregulated collective investment schemes) (see *COB 3.11.4R* and ~~AUTH App 1.20~~ PERG 8.20 (Additional restriction on the promotion of collective investment schemes)).

...

- 3.3.2 G (1) ...
- (2) The exemptions in *COB 3.2.5R* (Application: what?; Exemptions) also incorporate some territorial elements. In particular, the exemption for *financial promotions* originating outside the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see *COB 3.2.5R(2)* and ~~*AUTH App 1.12.2G*~~ *PERG 8.12.2G* (Financial promotions to overseas recipients (article 12)), the exemptions for overseas communicators (see *COB 3.2.5R(3)* and ~~*AUTH App 1.14.14G*~~ *PERG 8.14.14G* (Overseas communications (articles 30 to 33)) and the exemption for *incoming electronic commerce communications* (see ~~*AUTH App 1.12.38G*~~ *PERG 8.12.38G* (article 20B)).
- ...
- ...
- 3.4.1 G ...
- (3) Sections 238 and 240 of the *Act* (Restrictions on promotion/approval) impose restrictions on the *communication* and *approval* by *firms* of *financial promotions* relating to *unregulated collective investment schemes*. See further *COB 3.11* (Unregulated collective investment schemes) and ~~*AUTH App 1.20*~~ *PERG 8.20* (Additional restriction on the promotion of collective investment schemes).
- 3.4.2 G (1) The purpose of this chapter is to provide *rules* and *guidance* for a *firm* which wishes to *communicate* or *approve* a *financial promotion*. *COB 3.5.2G* provides a guide to the topics covered in this chapter. ~~*AUTH App 1*~~ *PERG 8* (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*.
- ...
- ...
- 3.5.4 G This chapter draws a distinction between a *real time* and a *non-real time financial promotion*. *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*~~ *PERG 8.10* (Types of financial promotion).
- ...
- 3.10.2 G *COB 3.10.1R* is based on article 8 of the *Financial Promotion Order*. *Guidance* on whether a *real time financial promotion* is

solicited is contained in ~~AUTH App 1.10~~ PERG 8.10 (Types of financial promotion).

...

3.11.1 G ...

(5) ~~AUTH App 1.20~~ PERG 8.20 (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).

...

3.12.1 G (1) Section 21(1) of the *Act* (Restrictions on financial promotion) prohibits an *unauthorised person* from *communicating a financial promotion*, in the course of business, unless an exemption applies or the *financial promotion* is *approved* by a *firm*. 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~~ PERG 8 (Financial promotion and related activities), in particular, ~~AUTH App 1.9~~ PERG 8.9 (Circumstances where the restriction in section 21 does not apply).

...

...

3.14.2 G Any material which meets the definition of a *financial promotion*, including any video or moving image material incorporated in any website containing a *financial promotion*, should comply with the *rules* in this chapter. See ~~AUTH App 1.1.22~~ PERG 8.1.22G (The Internet) for further *guidance* on *financial promotions* on the internet, including the treatment of hyperlinks and banners.

...

COB Ann 1 G An overview of some of the main exemptions contained in the Financial Promotion Order

Article no. and name of exemption	Type of promotion: Unsolicited real time, solicited real time, non-real time	Controlled activity/control led investment	Other conditions

...			
48 Certified high net worth individuals	Solicited real time Non-real time	Note 2	(1) Made to a <i>person</i> who the <u>communicator</u> reasonably believes to be a certified high net worth individual (as defined by article 48(2)); and <del>(2) does not invite or induce the recipient to engage in investment activity with the person who signed the certificate of high net worth;</del> and (3 <u>2</u> ) accompanied by an <del>indication of the matters</del> <u>the giving of a warning as specified by article 48(4)</u>
...			
50 Sophisticated investors	...	...	...
<u>50A Self-certified sophisticated investors</u>	<u>All</u>	<u>Note 2</u>	(1) Made to a <i>person</i> who the <u>communicator</u> reasonably believes to be a self-certified sophisticated investor (as defined by article 50A (1)); and <u>(2) accompanied by the giving of a warning as specified by article 50A (4)</u>
...			

## Annex C

### Amendments to the Insurance: Conduct of Business sourcebook

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

Application to insurers where the intermediary is unauthorised or where the sale involves a connected contract

- 1.2.7 G (1) An *insurer* must comply with the following *ICOB* requirements, which are applicable to *insurers* as *product providers*, if its *non-investment insurance contracts* are sold through an intermediary to whom *ICOB* does not apply (because the intermediary is not a *firm*) or if its *non-investment insurance contracts* are *connected contracts*:
- (a) *ICOB* 2 (General rules (including unfair inducements));
  - (b) *ICOB* 3 (Financial promotion) if the *insurer communicates* or *approves a financial promotion*;
  - (c) *ICOB* 4.7 (Unsolicited services);
  - (d) *ICOB* 5 (Product disclosure) as explained in *ICOB* 5.2;
  - (e) *ICOB* 6 (Cancellation) except for *general insurance contracts* and *connected contracts* that are not *distance contracts* *ICOB* 6.1.5R(5) and (6)); and
  - (f) *ICOB* 7 (Claims handling).
- (2) The circumstances in (1) may occur where article 72B of the *Regulated Activities Order* excludes certain *regulated activities* from regulation when carried on by providers of non-motor goods and services related to travel in relation to *connected contracts*. Guidance on the conditions that need to be satisfied by *connected contracts* is contained in ~~*AUTH App 5.11.13G*~~ *PERG 5.11.13G* to ~~*AUTH App 5.11.15G*~~ *PERG 5.11.15G*.

...

- 3.1.2 G Financial Promotion Order exemptions.

This table belongs to <i>ICOB</i> 3.1.1G(2). In this table references to 'relevant insurance activity' are to <i>effecting</i> and <i>carrying out a non-investment insurance contract as principal</i> .	
Financial Promotion Order article no. and name of exemption	Summary of exemption

Article 17 (Generic promotions)	... For further <i>guidance</i> see <del>AUTH App 1.12.14</del> <u>PERG 8.12.14G</u> to <del>AUTH App 1.12.17</del> <u>PERG 8.12.17G</u> .
Article 24 (Relevant insurance activity: non-real time communications)	...
Article 25 (Relevant insurance activity: non-real time communications: reinsurance and large risks)	...
Article 26 (Relevant insurance activity: real time communications)	... For further <i>guidance</i> see <del>AUTH App 1.10.2</del> <u>PERG 8.10.2G</u> .

...

What do "communicate" and "non-investment financial promotion" mean?

3.3.1 G The *rules* in this chapter adopt various concepts from the restriction on *financial promotion* by *unauthorised persons* in section 21(1) of the Act (Restrictions on financial promotion). *Guidance* on that restriction is contained in ~~AUTH App 1~~ PERG 8 (Financial promotion and related activities) and that *guidance* will be relevant to interpreting these *rules*. In particular, *guidance* on the meaning of:

- (1) "communicate" is in ~~AUTH App 1.6~~ PERG 8.6 (Communicate);
- (2) "invitation or inducement" and "*engage in investment activity*" (two elements which, with "communicate", make up the definition of "*financial promotion*") are in ~~AUTH App 1.4~~ PERG 8.4 (Invitation and inducement) and ~~AUTH App 1.7~~ PERG 8.7 (Engage in investment activity).

...

3.3.4 G *Guidance* on the use of the Internet for *communicating non-investment financial promotions* is in *ICOB 3.9* (The Internet and other electronic media) and ~~AUTH App 1.22~~ PERG 8.22 (The Internet).

...

3.3.8 G Guidance on the exemptions

- (1) ...

- (2) ...Such mailshots must meet the requirements of *ICOB* 3. ~~*AUTH App 1.14.3G*~~ *PERG 8.14.3G* (One-off financial promotions (articles 28 and 28A)) provides further *guidance* on the scope of the exemption in article 28.
- (3) ...In addition a *firm* or its *appointed representative* may include its name, address and telephone number in accordance with *ICOB* 3.3.6R(5)(a) and (d). ~~*AUTH App 1.4.20G*~~ *PERG 8.4.20G* (Image advertising) provides *guidance* on when image advertising may involve a *financial promotion*.
- (4) A *non-investment financial promotion* included in a newspaper, magazine or periodical which is printed and published overseas, but which may be brought into the *United Kingdom* and made available to *persons* in the *United Kingdom*, will be exempt provided that the *non-investment financial promotion* is not *communicated to persons* inside the *United Kingdom* (see *ICOB* 3.4 and ~~*AUTH App 1.12.2G*~~ *PERG 8.12.2G* (Financial promotions to overseas recipients (article 12))).

...

- 3.4.2 G (1) ...
- (2) The exemptions in *ICOB* 3.3.6 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 *ICOB* 3.3.6R(2)) and ~~*AUTH App 1.12.2G*~~ *PERG 8.12.2G* (Financial promotions to overseas recipients (article 12)), the exemptions for overseas communicators (see *ICOB* 3.3.6 R(3)) and the exemption for *incoming electronic commerce communications* (see ~~*AUTH App 1.12.38G*~~ *PERG 8.12.38G* (article 20B)).

...

...

- 3.5.2 G (1) The purpose of this chapter is to provide rules and guidance for a firm that wishes to *communicate* or *approve* a *non-investment financial promotion*. ~~*AUTH App 1*~~ *PERG 8* (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*.

...

...

### Approach and general guidance

- 3.9.2 G Any material which meets the definition of a *non-investment financial promotion*, including any video or moving image material incorporated in any website containing a *non-investment financial promotion*, should comply with the *rules* in this chapter. See ~~AUTH App 1.22~~ PERG 8.22 (The Internet) for further *guidance* on *non-investment financial promotions* on the Internet, including the treatment of hyperlinks and banners.

## Annex D

### Amendments to the Mortgages: Conduct of Business sourcebook

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

#### Firm types and the regulated mortgage activities

1.2.2 G ... A single *firm* may fall into more than one of these types. *Guidance* on these *firm* types, the *regulated mortgage activities* which they carry on, a description of what those activities cover and what is excluded is set out in *MCOB 1 Annex 1*. ~~*AUTH App 4*~~ *PERG 4* contains detailed *guidance* on those activities.

...

1.6.1 G *MCOB* applies to *regulated mortgage contracts* entered into on or after 31 October 2004. Variations made on or after that date to contracts entered into before that date are not subject to *FSA* regulation but may be subject to the Consumer Credit Act 1974. ~~*AUTH App 4.4.13*~~ *PERG 4.4.13G* contains *guidance* on the variation of contracts entered into before 31 October 2004.

...

*MCOB 1 Annex 1G* Summary of firm types and of the regulated mortgage activities

G This annex belongs to *MCOB 1.2.2G* and summarises the four *firm* types which are used in *MCOB*, the *regulated mortgage activities* which they carry on, what those activities cover and what is excluded. (See ~~*AUTH App 4*~~ *PERG 4* for detailed *guidance* on *regulated mortgage activities*). References to articles are to articles of the *Regulated Activities Order*.

The exclusions listed in this table are only a summary of the exclusions in the *Regulated Activities Order*. This summary is not a complete explanation of the exclusions and should not be relied on as if it were.

Type of firm	Regulated activity	Description of activity	Summary of exclusions
<i>mortgage lender</i>	...	...	unless: (1) the <i>person</i> providing credit is acting in the capacity of trustee or personal representative (article 66). See <del><i>AUTH App 4.10.5G</i></del> <u><i>PERG 4.10.5G</i></u> to <u><i>4.10.8G</i></u> ; or (2) both the lender and

			borrower are overseas ( <del>AUTH App 4.11</del> <u>PERG 4.11</u> (Link between activities and the United Kingdom)).
<i>mortgage administrator</i>	...	...	...or (4) the <i>person</i> administering the contract is acting in the capacity of trustee or personal representative (article 66). See <del>AUTH App 4.10.5G—4.10.8G</del> <u>PERG 4.10.5G to PERG 4.10.8G</u> ; or (5) both the administrator and borrower are overseas ( <del>AUTH App 4.11</del> <u>PERG 4.11</u> (Link between activities and the United Kingdom)).
<i>mortgage adviser</i>	...	... or (2) varying the terms of a <i>regulated mortgage contract</i> entered into on or after 31 October 2004 in such a way as to vary the borrower's obligations under the contract (see <del>AUTH App 4.6</del> <u>PERG 4.6</u> (Advising on regulated mortgage contracts)).	...or (3) the advice is given by a <i>person</i> carrying on a profession or business (other than a regulated activity) (article 67). See <del>AUTH App 4.10</del> <u>PERG 4.10</u> (Exclusions applying to more than one <i>regulated activity</i> ); or (4) the <i>person</i> giving the advice is acting in the capacity of trustee or personal representative (article 66). See <del>AUTH App 4.10.5G—4.10.8G</del> <u>PERG 4.10.5G to PERG 4.10.8G</u> .
<i>mortgage arranger</i>	...	...or (b) the variation of the terms of a regulated mortgage contract entered into after 31 October 2004, for example brokers making arrangements on behalf of a borrower which go	...or (3) the arrangements are made between a borrower and an <i>authorised person</i> by an <i>unauthorised person</i> if specified conditions as to advice and remuneration are satisfied (article 29) (see

		beyond merely introducing. See <u>AUTH App 4.5.2G PERG 4.5.2G</u> .	<del>AUTH App 4.5.8G PERG 4.5.8G</del> ; or (4) the arrangements are made in the course of administration by an <i>authorised person</i> (article 29A); or (5) the arrangements are made by a <i>person</i> in the course of carrying on a profession or business (other than a <i>regulated activity</i> ) (see <u>AUTH App 4.10 PERG 4.10</u> ) (Exclusions applying to more than one regulated activity); or (6) where the arranger and borrower are overseas ( <del>AUTH App 4.11 PERG 4.11</del> (Link between activities and the United Kingdom)).
	...	... (for example introducing potential borrowers to brokers or lenders). See <u>AUTH App 4.5.3G PERG 4.5.3G</u> .	... (See <del>AUTH App 4.5.10G—4.5.18G PERG 4.5.10G to PERG 4.5.18G</del> ); or (2) ...

...

What do "communicate", "approve" and "financial promotion" mean?

- 3.2.1 G (1) The *rules* in this chapter adopt various concepts from the restriction on *financial promotion by unauthorised persons* in section 21(1) of the *Act* (Restrictions on financial promotion). *Guidance* on that restriction is contained in ~~AUTH App 1 PERG 8~~ (Financial promotion and related activities) and that *guidance* will be relevant to interpreting these *rules*. In particular, *guidance* on the meaning of:
- (a) '*communicate*' is in ~~AUTH App 1.6 PERG 8.6~~ (Communicate); and
  - (b) '*invitation or inducement*' and '*engage in investment activity*' (two elements which, with '*communicate*', make up the definition of '*financial promotion*') is in ~~AUTH App 1.4 PERG 8.4~~ (Invitation or inducement) and ~~AUTH App 1.7 PERG 8.7~~ (Engage in investment

activity).

...

...

3.2.3 G *Guidance* on the use of the Internet for *communicating qualifying credit promotions* is in ~~AUTH App 1.22~~ PERG 8.22 (The Internet)

...

3.3.2 G (1) ...

(2) The exemptions in *MCOB 3.2.5R* (Application: what?; Exemptions) also incorporate some territorial elements. In particular, the exemption for *financial promotions* originating outside the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see *MCOB 3.2.5R(4)*) and the exemptions for overseas communicators (see *MCOB 3.2.5R(4)*) and the exemption for incoming *electronic commerce communications* (see ~~AUTH App 1.12.38G~~ PERG 8.12.38G (Incoming electronic commerce communication (article 20B))).

...

...

'Real time' and 'non-real time' qualifying credit promotions

3.5.4 G This chapter draws a distinction between *real time* and *non-real time qualifying credit promotions*. *Guidance* on the meaning of those expressions, which are based upon article 7 of the *Financial Promotion Order*, is contained in ~~AUTH App 1.10.2G~~ PERG 8.10.2G (Real time v. non-real time promotions).

...

3.7.2 G ~~MCOB 3.7.1 R~~ is based on article 8 of the ~~Financial Promotion Order~~ *Financial Promotion Order*. *Guidance* on whether a ~~real time qualifying credit promotion~~ real time qualifying credit promotion is solicited is contained in ~~AUTH App 1.10.8G~~ PERG 8.10.8G (Solicited v unsolicited real-time promotions). ~~AUTH App 1.10.11G~~ PERG 8.10.11G to ~~AUTH App 1.10.14G~~ PERG 8.10.14G also give *guidance* on who will be considered the 'recipient' of a communication.

...

Approach and general guidance

3.12.2 G Any material, which meets the definition of a *qualifying credit promotion*, including any video or moving image material

incorporated in any website containing a *qualifying credit promotion*, should comply with the *rules* in this chapter. See *AUTH App 4 PERG 8* (The Internet) for further *guidance on financial promotions* on the Internet, including the treatment of hyperlinks and banners.

...

MCOB TP 1 MCOB Transitional Provisions

MCOB TP 1.1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	...	R	...	...	...
2		G	...		
3		G	<p><i>MCOB</i> applies to <i>regulated mortgage contracts</i> entered into on or after 31 October 2004. Variations made on or after that date to mortgage contracts entered into before that date are not subject to <i>FSA</i> regulation but may be subject to the Consumer Credit Act 1974. <i>AUTH App 4.4.13G PERG 4.4.13G</i> contains <del>guidance</del> <u>guidance</u> on the variation of contracts entered into before 31 October 2004.</p>		

...

**Annex E**  
**Amendments to the Authorisation manual**

In this Annex, underlining indicates new text and striking through indicates deleted text. Where entire sections are deleted, these are not shown struck through.

- 1.1.3 G The purpose of this manual is to give *guidance* about:
- (1) the circumstances in which *authorisation* is required, or *exempt person* status is available, including *guidance* on the activities which are regulated under the *Act* and the exclusions which are available; see ~~AUTH 2~~ PERG 2 (Authorisation and regulated activities);
- ...
- 1.2.1 G (1) ...
- (2) ... In general terms, a *regulated activity* is an activity, specified in the Order, carried on in relation to one or more of the *investments* specified in the Order. ~~AUTH 2~~ PERG 2 gives further *guidance* on *regulated activities* and *specified investments*.
- ...
- 1.2.3 G *Exempt persons* are *persons* falling within the following groups:
- ...
- Further information on *exempt persons* is given in ~~AUTH 2.10G~~ PERG 2.10G (Persons carrying on regulated activities who do not need authorisation).
- 1.2.4 G Members of the Society of Lloyd's are not required to obtain *authorisation* to carry out certain insurance market activities unless so directed by the *FSA* (see ~~AUTH 2.10.9G~~ PERG 2.10.9G). In addition, certain *professional firms* (solicitors, accountants and actuaries) are allowed under Part XX of the *Act* (Provision of Financial Services by Members of the Professions) to carry on certain *regulated activities* without *authorisation* subject to their complying with specified conditions (see ~~AUTH 2.10.12G~~ PERG 2.10.12G and *PROF*).
- 1.2.5 G Before any *person* carries on in the *United Kingdom*, by way of business, activities that are *regulated activities*, it will generally need to be an *authorised person* (see ~~AUTH 2.2~~ PERG 2.2). ...

...

- 1.2.6 G (1) ... 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~~ PERG 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 2.4.3G(5)~~ PERG 2.4.3G(5)). The provider should be *authorised* before it starts providing the services.

...

- 1.3.7 G *AUTH 1.3.9G* summarises *AUTH* and parts of *PERG*.

...

- 1.3.9 G Summary of *AUTH* and parts of *PERG*

This table belongs to *AUTH 1.3.7G*

Chapter:	Applicable to:	On:
<del>AUTH 2</del> <u>PERG 2</u> : Authorisation and regulated activities	...	...
...		
<i>AUTH 5</i> : Qualifying for authorisation under the <del>Act</del> <u>Act</u>	...	...
...		
<del>AUTH 7</del> <u>PERG 7</u> : Periodical publications, news services and broadcasts: application for certification	...	...
...		

...

1.6.6 G The first stage in the application process is to establish whether the proposed business will carry on *regulated activities* requiring *permission* under Part IV of the *Act* (Permission to carry on regulated activities). ~~AUTH 2~~ PERG 2 gives a high-level guide to the activities that are regulated under the *Act* and those that are excluded (but this is not a substitute for consulting the legislation itself); further queries may be referred to the *FSA's* Authorisation Enquiries team (see *AUTH 1.9.2G*).

...

1.6.9 G Among other things, the applicant will need to:

- (1) determine the precise scope of the *permission* it wishes to apply for; this should include the *regulated activities* (the *specified activities* and the *specified investments* in respect of which the activities are carried on: see ~~AUTH 2 Annex 2G~~ PERG 2 Annex 2G) and any *limitations* and *requirements* the applicant wishes to apply for to refine the scope of the *regulated activities*; an example includes a *limitation* on the types of *client* it wishes to carry on business with or a *requirement* not to hold or control *client money*;

...

...

1.8.2 G The Authorisation Enquiries team gives assistance by:

- (1) producing *guidance* for *persons* who wish to find out whether they need to be *authorised* (see ~~AUTH 2~~ PERG 2);

...

...

AUTH Chapter 2 is deleted in its entirety.

AUTH 2 [deleted]

...

3.2.1 G (1) ...

- (2) *Authorisation* gives a *firm* the ability to carry on *regulated activities* without breaching the *general prohibition* and incurring criminal liability (see ~~AUTH 2.2.1G~~ PERG 2.2.1G).

...

...

3.3.1 G A *person* will, broadly speaking, be treated as carrying on a *regulated activity* in the *United Kingdom* (and so, under section 20(1), need *permission*), where it is carried on in the circumstances described in [AUTH 2.4 PERG 2.4](#) (Link between activities and the United Kingdom). A *Part IV permission* under Part IV of the *Act* is required before the person carries on *regulated activities* unless the *person* has *permission* resulting from any other provisions in the *Act* (see [AUTH 2.10 PERG 2.10](#) (Persons carrying on regulated activities who do not need authorisation)).

...

3.4.1 G (1) The activities for which an applicant may apply for *Part IV permission* are listed in [AUTH 2 PERG 2 Annex 2G](#) (Regulated activities and the permission regime). The *FSA* has described these activities in the same way as *regulated activities* are specified in the *Regulated Activities Order* (see [AUTH 2.7 PERG 2.7](#) to [AUTH 2.8 PERG 2.8](#)) but with three sub-divisions.

...

...

3.5.1 G The *specified investments* for which an applicant may apply for *Part IV permission* are listed in [AUTH 2 Annex 2 PERG 2 Annex 2G](#). In general, the *FSA* has described these *specified investments* in a way that mirrors the activities specified in the *Regulated Activities Order* (see [AUTH 2.6 PERG 2.6](#)). ...

...

5.1.1 G ...

(3) The provisions implementing the *Single Market Directives* are within the coordinated field (see [AUTH 2.9.18G\(1\) PERG 2.9.18G\(1\)](#)). So, where an *incoming ECA provider* intends to provide *electronic commerce activity* that consists of activities that fall within one of the *Single Market Directives*, the passporting requirements on exercising an *EEA* right in this chapter will apply.

...

5.3.12 G (1) The guidance in [AUTH 2 PERG 2](#) (Authorisation and regulated activities) is relevant to *Treaty firms* to help them determine if they require *authorisation* under the *Act*.

...

...

AUTH 5 G Application of the Handbook to Incoming EEA Firms  
Annex  
3G

1. ...

2. ...

3. For an *incoming EEA firm* which has *permission* for *cross-border services* only, many parts of the *Handbook* apply only if the *firm* carries on *regulated activities* in the *United Kingdom*. Those parts of the *Handbook* will therefore not apply if the *firm* confines its activities to those within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*, or which would not be regarded as carried on in the *United Kingdom*. Further *guidance* may be found in ~~AUTH 2.4~~ PERG 2.4 (Link between activities and the United Kingdom) and ~~AUTH 2.9.15G~~ PERG 2.9.15G to ~~AUTH 2.9.17G~~ PERG 2.9.17G (Overseas persons).

...

AUTH Chapter 7 and AUTH Appendices 1 to 6 are deleted in their entirety.

AUTH 7 [deleted]

...

AUTH App 1 [deleted]

AUTH App 2 [deleted]

AUTH App 3 [deleted]

AUTH App 4 [deleted]

AUTH App 5 [deleted]

AUTH App 6 [deleted]

## Annex F

### Amendments to the New Collective Investment Schemes sourcebook

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

- 6.2.20 G The conditions for *limited redemption arrangements* in *COLL 6.2.19R* should be considered, for *AUTs* as well as for *ICVCs*, in conjunction with ~~*AUTH App 2*~~ *PERG 9* (Meaning of an open-ended investment company) and ~~*AUTH App 2.8*~~ *PERG 9.8* (The investment condition: the ‘expectation test’ (section 236(3)(a) of the *Act*)).

## **RUN-OFF PLANS FOR CLOSED WITH-PROFITS FUNDS INSTRUMENT 2005**

### **Powers exercised**

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

### **Commencement**

- C. This instrument comes into force as follows:
- (1) SUP App 2.15.7G (7)(b), in Annex B to this instrument, comes into force on 31 December 2005;
  - (2) the remainder of this instrument comes into force on 30 June 2005.

### **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 Supervision manual**

- E. The Supervision manual is amended in accordance with Annex B to this instrument.

### **Citation**

- F. This instrument may be cited as the Run-Off Plans for Closed With-Profits Funds Instrument 2005.

By order of the Board  
16 June 2005

## Annex A

### Amendments to the Conduct of Business sourcebook

In this Annex, the text shown is that which results from the Treating With-Profits Policyholders Fairly Instrument 2005 (FSA 2005/4), underlining indicates new text and striking through indicates deleted text.

After COB 6.12.98R, insert the following:

6.12.98A G A firm should also include the information described in SUP App 2.15 in its run-off plan.

...

6.12.101 G ~~A run-off plan submitted to the FSA under COB 6.12.94R (2) should:~~

- ~~(1) identify, and explain, any material differences between the firm's run-off plan and the relevant parts of its PPFM;~~
- ~~(2) identify, and explain, any actual or potential changes in the firm's maturity or surrender payment target ranges and its smoothing policy;~~
- (3) explain how the fact of run-off affects the firm's investment strategy (if it does);
- (4) explain how the firm anticipates capital will become available for distribution to policyholders;
- (5) explain how the costs charged to the with-profits fund may change (if they will);
- (6) detail any new deductions to be made from surrender payments (if any) and explain how they are consistent with Principle 6 (Customers' interests) and COB 6.12.39R to COB 6.12.45R; and
- (7) explain how it plans to address any additional operational risks which might flow from closure. ~~[deleted]~~

6.12.102 G ~~The FSA has powers, for example, under section 165 of the Act (Authority's power to require information), to require a firm that has ceased to effect new contracts of insurance in a with-profits fund to provide information on how it will ensure a full and fair distribution of that fund and its inherited estate (if any). The FSA may use that power if a firm's run-off plan does not provide sufficient evidence of a full and fair distribution or appropriate arrangements for ensuring the protection of the interests and security of its with-profits policyholders. [deleted]~~

## Annex B

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

SUP Appendix 2 Insurers: Scheme of operations and run-off plans

- 2.1.1 R ~~This appendix applies~~ SUP App 2.2 to SUP App 2.14 apply to an *insurer*, unless it is:  
...
- 2.1.2 G This appendix applies to every *friendly society* ~~as a friendly society~~ that is an *insurer*.
- 2.1.3 G SUP App 2.15 applies to an insurer carrying on with-profits business, but only if COB 6.12.94R (Ceasing to effect new contracts of insurance in a with-profits fund) also applies.

After SUP App 2.14 insert the following new section, which is not underlined:

2.15 Run-off plans for closed with-profits funds

- 2.15.1 G The run-off plan required by COB 6.12.94R(2) should include the information described in SUP App 2.15.2G to SUP App 2.15.13G in respect of the relevant *with-profits fund*.

#### Funding

- 2.15.2 G A *firm's* run-off plan should describe how the *firm* proposes to manage the run-off of the *with-profits fund*. That description should include:
- (1) details of the expected duration and costs of fully running off the fund's liabilities;
  - (2) an explanation as to how a solvent run-off will be funded; and
  - (3) details of the *firm's* future strategy for managing the risks associated with the run-off of the fund.

#### Investment risk

- 2.15.3 G A *firm's* run-off plan should include an explanation of its future investment strategy, including:
- (1) its strategy for matching the *with-profits fund's* liabilities with appropriate

assets; and

- (2) any changes it expects to make to the *with-profits fund's* investment strategy as a result of the closure of the *with-profits fund*, including any changes to the proportions of different types of investments.

#### Credit risk

- 2.15.4 G A *firm's* run-off plan should include an explanation of its strategy for managing the *with-profits fund's* counterparty and *credit* risk, both within and external to the *firm's group*.

#### Operational risk

- 2.15.5 G A *firm's* run-off plan should show how it will address any additional operational risks that may flow from the closure of the *with-profits fund*, including:
- (1) any changes that it proposes to make to staffing arrangements for the run-off;
  - (2) an estimate of the cost of proposed operational changes, including redundancy costs; and
  - (3) any *material outsourcing* arrangements it proposes to enter into, explaining how the *firm* will address any specific operational risks created by those arrangements.

#### Reinsurance

- 2.15.6 G A *firm's* run-off plan should explain how it will use and manage *reinsurance* (if it will), including:
- (1) any new inwards or outwards *reinsurance* it proposes to enter into as a result of the closure of the *with-profits fund* identifying, in each case, the proposed counterparty and the counterparty's relationship to the *firm's group* (if any); and
  - (2) how it will manage the risk that the *reinsurance* in (1) will not perform as expected.

#### Governance and impact on policyholders

- 2.15.7 G A *firm's* run-off plan should include:
- (1) details of any changes that will be made to the *firm's* corporate governance arrangements as a consequence of closure;

- (2) an explanation of how costs charged to the *with-profits fund* may change in the light of closure;
- (3) an explanation of any changes it will make, as a consequence of closure, to any charges for guarantees, including:
  - (a) the circumstances in which those charges may be varied in the future; or
  - (b) the manner by which the level of any appropriate variation to those charges may be determined;
- (4) an explanation of any actual or potential changes in the maturity payment or surrender payment target ranges that the *firm* will apply to determine benefits under its *with-profits policies*;
- (5) an explanation of any actual or potential changes in the *firm's* smoothing policy as a consequence of closure;
- (6) an explanation of any changes to the *firm's projection* rates as a consequence of closure;
- (7) details of any new deductions to be made from the *firm's* surrender payments, together with an explanation as to how those deductions are consistent with:
  - (a) *Principle 6* (Customers' interests); and
  - (b) *COB 6.12.39R* to *COB 6.12.45R* (Amounts payable under with-profits policies: Surrender payments);
- (8) if there are groups of unitised *with-profits policies* in the *with-profits fund* with similar market value reduction free dates, an explanation as to whether:
  - (a) the *firm* expects surrenders to peak around any of those dates; and
  - (b) if it does, how it proposes to deal with those peaks;
- (9) details of the information that the *firm* gives to its *with-profits policyholders* about their *open market options* when its *pension policies* vest and any changes that will be made to that information as a result of the closure;
- (10) details of how the *firm* will deal with any potential mis-selling costs that may arise in the future in respect of *contracts of insurance* effected in the *with-profits fund*;
- (11) an explanation of how the *firm*:
  - (a) anticipates capital will become available for distribution to *policyholders* (and shareholders where appropriate); and
  - (b) will ensure a full and fair distribution of the closed *with-profits fund*, including any *inherited estate*;

including details of:

- (c) how the *firm* plans to provide in the long term for *annuity* payments on any *with-profits* and non-profits *policies* under which benefits have vested;
  - (d) how the *firm* will address future adverse circumstances in relation to these (e.g. increased annuitant longevity); and
  - (e) details of the *firm's* plans for distributing the embedded value in any major *subsidiaries* held in or by the closed *with-profits fund*;
- (12) an explanation of any material differences between the *firm's* run-off plan and relevant parts of its *PPFM*, together with details of any changes that will be made to the *PPFM* as a consequence of closure (The *firm* should provide the *FSA* with a copy of the revised sections of its *PPFM* when it submits its run-off plan.);
- (13) an explanation of whether the *firm* will be seeking to expand any other business following closure of the *with-profits fund*. (This explanation should include whether the *firm* will effect any new *with-profits policies* in a different *with-profits fund* and whether it will seek to expand its unit-linked or *non-profit insurance business*. It should also include an explanation of how such plans will impact on the closed *with-profits fund*. For example, will the *firm* offer *policyholders* in the closed *with-profits fund* the opportunity to switch into another *with-profits fund* or into unit-linked business?)

#### Financial projections

2.15.8 G A *firm's* run-off plan should include:

- (1) a forecast summary revenue account for the *with-profits fund*, in the form of *SUP App 2.15.9G Table 1*;
- (2) a forecast summary balance sheet and statement of solvency for the *with-profits fund*, which has been prepared in the form of *SUP App 2.15.9G Table 2* and on a regulatory basis; and
- (3) a forecast summary balance sheet and statement of solvency for the entire *firm*, which has been prepared in the form of *SUP App 2.15.9G Table 3* and on a regulatory basis;

in each case, for at least a three year period, beginning on the date of closure; and

- (4) a description of the assumptions underlying the forecasts at (1) to (3) and the reasons for adopting those assumptions.

2.15.9 G These tables belong to *SUP App 2.15.8G*

Table 1 – forecast summary revenue account for the relevant with-profits fund	
(1)	<i>Premiums and claims</i> (gross and net of <i>reinsurance</i> ) analysed by major <i>class</i> of <i>insurance business</i>
(2)	Investment return
(3)	Expenses
(4)	Other charges and income
(5)	Taxation
(6)	Increase (decrease) in fund in financial year
(7)	Fund brought forward
(8)	Fund carried forward

Table 2 – forecast summary balance sheet and statement of solvency for the relevant with-profits fund	
	Assets analysed by type (excluding <i>implicit items</i> ):
(1)	Equities
(2)	Land and buildings
(3)	Fixed interest investments
(4)	All other assets
(5)	Total assets (excluding <i>implicit items</i> )
(6)	<i>Policyholder</i> liabilities
(7)	Other liabilities
(8)	Total liabilities
(9)	Excess/(deficiency) of assets over liabilities before <i>implicit items</i>
(10)	<i>Implicit items</i> allocated to the <i>with-profits fund</i>
(11)	<i>Long-term insurance capital requirement</i> for the <i>with-profits fund</i>
(12)	<i>Resilience capital requirement</i> for the <i>with-profits fund</i>
(13)	<i>With-profits insurance capital component</i> (for <i>realistic basis life firms</i> only)

(14)	Net excess/(deficiency) of assets in the <i>with-profits fund</i>
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Table 3 – forecast summary balance sheet and statement of solvency for the firm		
L1	Surplus <i>long-term insurance assets, with-profit fund(s)</i>	
L2	Surplus <i>long-term insurance assets, non-profit fund(s)</i>	
L3	Total <i>long-term insurance assets</i>	L1+L2
L4	Total <i>long-term insurance liabilities (excluding resilience capital requirement)</i>	
L5	Total <i>long-term insurance fund surplus</i>	L3-L4
L6	Shareholder fund assets	
L7	<i>Implicit items</i>	
L8	<i>Long-term insurance capital requirement</i>	
L9	Excess of regulatory assets over <i>long-term insurance capital requirement</i>	L5+L6+L7-L8
L10	<i>With-profits insurance capital component</i>	For realistic basis life firms only.
L11	<i>Resilience capital requirement</i>	
L12	Net excess assets	L9-L10-L11
L13	FTSE level at which the <i>long-term insurance capital requirement would be breached</i>	

- 2.15.10 G If a *firm* is a *realistic basis life firm*, its run-off plan should include:
- (1) a realistic balance sheet and statement of solvency position in the form of *SUP App 2.15.9G Table 2*, if the financial position of the relevant *with-profits fund* would, when stated in that form, be materially different from the *firm's* most recent realistic solvency submission for that fund; or
  - (2) a statement that the *firm* is satisfied that the closure of the *with-profits fund* will not materially affect the realistic solvency position of that fund, as reflected in the *firm's* most recent realistic solvency submission for that fund.
- 2.15.11 G A *firm's* run-off plan should include:
- (1) a revised individual capital assessment for the *firm* (see *PRU 2.3*), which reflects the impact of the closure of the relevant *with-profits fund*; or
  - (2) a statement that the *firm* is satisfied that the closure will not materially affect the *firm's* most recent assessment.
- 2.15.12 G A *firm's* run-off plan should include details of any:
- (1) *intra-group* balances held by the *with-profits fund*;
  - (2) *group company* investments held by the *with-profits fund*; and
  - (3) guarantees given by the *firm*;
- which, in each case, have a value in excess of 5% of the *firm's* gross technical provisions.
- 2.15.13 G A *firm's* run-off plan should include any other information that the *firm* considers relevant to the run-off of the closed *with-profits fund*.
- 2.15.14 G The *FSA* may request additional information and explanations from the *firm*. (See section 165 (Authority's power to require information) of the *Act*.)
- 2.15.15 G Significant changes to, or departures from, a *firm's* run-off plan are likely to trigger one or more of the *firm's* obligations to notify the *FSA*. (See, for example, *Principle 11* (Relations with regulators). The guidance in *SUP 15.3* (General notification requirements) may also be relevant.)

**ENFORCEMENT MANUAL (CODE FOR CROWN PROSECUTORS)  
INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of its power under section 157(1) (Guidance) of Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 16 June 2005.

**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 (Code for Crown Prosecutors) Instrument 2005.

By order of the Board  
16 June 2005

## Annex

### Amendments to the Enforcement manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where entire sections of text are being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

- 15.5.1 G When the *FSA* decides whether to bring criminal proceedings in England, Wales or Northern Ireland, or to refer the matter to another prosecuting authority in England, Wales or Northern Ireland (see *ENF* 15.8.1G), it will apply the basic principles set out in the Code for Crown Prosecutors. The ~~current~~ November 2004 edition of the Code is set out in *ENF* 15 Annex 1G.
- 15.5.2 G Under the Code for Crown Prosecutors, the *FSA* will ~~consider~~ in each case apply the Full Code Test (see paragraph 5.1 of *ENF* 15 Annex 1G) whether:
- (1) there is sufficient evidence to provide a realistic prospect of conviction against the defendant on each criminal charge ('the evidential test'); and
  - (2) having regard to the seriousness of the offence and all the circumstances, criminal prosecution is in the public interest ('the public interest test').
- 15.5.3 G The *FSA* will apply the evidential test in accordance with the guidance contained in the Code for Crown Prosecutors (see paragraphs 5.2 to 5.5 of *ENF* 15 Annex 1G). ...
- ...
- 15.5.5 G ... Only if the *FSA* determines that criminal prosecution is in the public interest (see paragraphs ~~6~~5.6 to 5.13 of *ENF* 15 Annex 1G) will it proceed to prosecute.
- ...

Delete existing text in ENF 15 Ann 1G and insert new text as follows:

Code for crown prosecutors

The November 2004 edition of the code is reproduced below by kind permission of the Crown Prosecution Service.

## 1 INTRODUCTION

- 1.1 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case a prosecution has serious implications for all involved — victims, witnesses and defendants. The Crown Prosecution Service applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.
- 1.2 The Code helps the Crown Prosecution Service to play its part in making sure that justice is done. It contains information that is important to police officers and others who work in the criminal justice system and to the general public. Police officers should apply the provisions of this Code whenever they are responsible for deciding whether to charge a person with an offence.
- 1.3 The Code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims, witnesses and defendants fairly, while prosecuting cases effectively.

## 2 GENERAL PRINCIPLES

- 2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which Crown Prosecutors must approach every case.
- 2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, disability, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.
- 2.3 It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 2.4 Crown Prosecutors should provide guidance and advice to investigators throughout the investigative and prosecuting process. This may include lines of inquiry, evidential requirements and assistance in any pre-charge procedures. Crown Prosecutors will be proactive in identifying and, where possible, rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation.
- 2.5 It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.
- 2.6 The Crown Prosecution Service is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.

### 3 THE DECISION TO PROSECUTE

- 3.1 In most cases, Crown Prosecutors are responsible for deciding whether a person should be charged with a criminal offence, and if so, what that offence should be. Crown Prosecutors make these decisions in accordance with this Code and the Director's Guidance on Charging. In those cases where the police determine the charge, which are usually more minor and routine cases, they apply the same provisions.
- 3.2 Crown Prosecutors make charging decisions in accordance with the Full Code Test (see section 5 below), other than in those limited circumstances where the Threshold Test applies (see section 6 below).
- 3.3 The Threshold Test applies where the case is one in which it is proposed to keep the suspect in custody after charge, but the evidence required to apply the Full Code Test is not yet available.
- 3.4 Where a Crown Prosecutor makes a charging decision in accordance with the Threshold Test, the case must be reviewed in accordance with the Full Code Test as soon as reasonably practicable, taking into account the progress of the investigation.

### 4 REVIEW

- 4.1 Each case the Crown Prosecution Service receives from the police is reviewed to make sure that it is right to proceed with a prosecution. Unless the Threshold Test applies, the Crown Prosecution Service will only start or continue with a prosecution when the case has passed both stages of the Full Code Test.
- 4.2 Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Wherever possible, they should talk to the police first if they are thinking about changing the charges or stopping the case. Crown Prosecutors should also tell the police if they believe that some additional evidence may strengthen the case. This gives the police the chance to provide more information that may affect the decision.
- 4.3 The Crown Prosecution Service and the police work closely together, but the final responsibility for the decision whether or not a charge or a case should go ahead rests with the Crown Prosecution Service.

### 5 THE FULL CODE TEST

- 5.1 The Full Code Test has two stages. The first stage is consideration of the evidence. If the case does not pass the evidential stage it must not go ahead no matter how important or serious it may be. If the case does pass the evidential stage, Crown Prosecutors must proceed to the second stage and decide if a prosecution is needed in the public interest. The evidential and public interest stages are explained below.

#### THE EVIDENTIAL STAGE

- 5.2 Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.
- 5.3 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt.
- 5.4 When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

Can the evidence be used in court?

- (a) Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, is there enough other evidence for a realistic prospect of conviction?

Is the evidence reliable?

- (b) Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?
- (c) What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?
- (d) If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?
- (e) Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?
- (f) Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

- 5.5 Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

THE PUBLIC INTEREST STAGE

- 5.6 In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: “It has never been the rule in this country — I hope it never will be — that suspected criminal offences must automatically be the subject of prosecution”. (House of Commons Debates, volume 483, column 681, 29 January 1951.)
- 5.7 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution (see section 8 below).
- 5.8 Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution

- 5.9 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:
- (a) a conviction is likely to result in a significant sentence;
  - (b) a conviction is likely to result in a confiscation or any other order;
  - (c) a weapon was used or violence was threatened during the commission of the offence;
  - (d) the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);
  - (e) the defendant was in a position of authority or trust;
  - (f) the evidence shows that the defendant was a ringleader or an organiser of the offence;
  - (g) there is evidence that the offence was premeditated;
  - (h) there is evidence that the offence was carried out by a group;
  - (i) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
  - (j) the offence was committed in the presence of, or in close proximity to, a child;
  - (k) the offence was motivated by any form of discrimination against the victim’s ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
  - (l) there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;

- (m) the defendant's previous convictions or cautions are relevant to the present offence;
- (n) the defendant is alleged to have committed the offence while under an order of the court;
- (o) there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- (p) the offence, although not serious in itself, is widespread in the area where it was committed; or
- (q) a prosecution would have a significant positive impact on maintaining community confidence.

Some common public interest factors against prosecution

5.10 A prosecution is less likely to be needed if:

- (a) the court is likely to impose a nominal penalty;
- (b) the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing;
- (c) the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- (d) the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- (e) there has been a long delay between the offence taking place and the date of the trial, unless:
  - the offence is serious;
  - the delay has been caused in part by the defendant;
  - the offence has only recently come to light; or
  - the complexity of the offence has meant that there has been a long investigation;
- (f) a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- (g) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;
- (h) the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation); or
- (i) details may be made public that could harm sources of information, international relations or national security.

- 5.11 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

The relationship between the victim and the public interest

- 5.12 The Crown Prosecution Service does not act for victims or the families of victims in the same way as solicitors act for their clients. Crown Prosecutors act on behalf of the public and not just in the interests of any particular individual. However, when considering the public interest, Crown Prosecutors should always take into account the consequences for the victim of whether or not to prosecute, and any views expressed by the victim or the victim's family.
- 5.13 It is important that a victim is told about a decision which makes a significant difference to the case in which they are involved. Crown Prosecutors should ensure that they follow any agreed procedures.

## 6 THE THRESHOLD TEST

- 6.1 The Threshold Test requires Crown Prosecutors to decide whether there is at least a reasonable suspicion that the suspect has committed an offence, and if there is, whether it is in the public interest to charge that suspect.
- 6.2 The Threshold Test is applied to those cases in which it would not be appropriate to release a suspect on bail after charge, but the evidence to apply the Full Code Test is not yet available.
- 6.3 There are statutory limits that restrict the time a suspect may remain in police custody before a decision has to be made whether to charge or release the suspect. There will be cases where the suspect in custody presents a substantial bail risk if released, but much of the evidence may not be available at the time the charging decision has to be made. Crown Prosecutors will apply the Threshold Test to such cases for a limited period.
- 6.4 The evidential decision in each case will require consideration of a number of factors including:
- the evidence available at the time;
  - the likelihood and nature of further evidence being obtained;
  - the reasonableness for believing that evidence will become available;
  - the time it will take to gather that evidence and the steps being taken to do so;
  - the impact the expected evidence will have on the case;
  - the charges that the evidence will support.
- 6.5 The public interest means the same as under the Full Code Test, but will be based on the information available at the time of charge which will often be limited.
- 6.6 The decision to charge and withhold bail must be kept under review. The evidence gathered must be regularly assessed to ensure the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as reasonably practicable.

## 7 SELECTION OF CHARGES

7.1 Crown Prosecutors should select charges which:

- (a) reflect the seriousness and extent of the offending;
- (b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and
- (c) enable the case to be presented in a clear and simple way.

This means that Crown Prosecutors may not always choose or continue with the most serious charge where there is a choice.

7.2 Crown Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

7.3 Crown Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.

## 8 DIVERSION FROM PROSECUTION

### ADULTS

8.1 When deciding whether a case should be prosecuted in the courts, Crown Prosecutors should consider the alternatives to prosecution. Where appropriate, the availability of suitable rehabilitative, reparative or restorative justice processes can be considered.

8.2 Alternatives to prosecution for adult suspects include a simple caution and a conditional caution.

#### Simple caution

8.3 A simple caution should only be given if the public interest justifies it and in accordance with Home Office guidelines. Where it is felt that such a caution is appropriate, Crown Prosecutors must inform the police so they can caution the suspect. If the caution is not administered, because the suspect refuses to accept it, a Crown Prosecutor may review the case again.

#### Conditional caution

8.4 A conditional caution may be appropriate where a Crown Prosecutor considers that while the public interest justifies a prosecution, the interests of the suspect, victim and community may be better served by the suspect complying with suitable conditions aimed at rehabilitation or reparation. These may include restorative processes.

8.5 Crown Prosecutors must be satisfied that there is sufficient evidence for a realistic prospect of conviction and that the public interest would justify a prosecution should

the offer of a conditional caution be refused or the offender fail to comply with the agreed conditions of the caution.

- 8.6 In reaching their decision, Crown Prosecutors should follow the Conditional Cautions Code of Practice and any guidance on conditional cautioning issued or approved by the Director of Public Prosecutions.
- 8.7 Where Crown Prosecutors consider a conditional caution to be appropriate, they must inform the police, or other authority responsible for administering the conditional caution, as well as providing an indication of the appropriate conditions so that the conditional caution can be administered.

## YOUTHS

- 8.8 Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the youth's past behaviour is very important.
- 8.9 Cases involving youths are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate or the youth does not admit committing the offence. Reprimands and final warnings are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert the youth from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against prosecution.

## 9 MODE OF TRIAL

- 9.1 The Crown Prosecution Service applies the current guidelines for magistrates who have to decide whether cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea. Crown Prosecutors should recommend Crown Court trial when they are satisfied that the guidelines require them to do so.
- 9.2 Speed must never be the only reason for asking for a case to stay in the magistrates' courts. But Crown Prosecutors should consider the effect of any likely delay if they send a case to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.

## 10 ACCEPTING GUILTY PLEAS

- 10.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. Crown Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Crown Prosecutors must never accept a guilty plea just because it is convenient.

- 10.2 In considering whether the pleas offered are acceptable, Crown Prosecutors should ensure that the interests of the victim and, where possible, any views expressed by the victim or victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the Crown Prosecutor.
- 10.3 It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.
- 10.4 Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, Crown Prosecutors will consider whether a prosecution is required for that offence. Crown Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review.
- 10.5 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, Crown Prosecutors must bear in mind the fact that ancillary orders can be made with some offences but not with others.

## 11 PROSECUTORS' ROLE IN SENTENCING

- 11.1 Crown Prosecutors should draw the court's attention to:
- any aggravating or mitigating factors disclosed by the prosecution case;
  - any victim personal statement;
  - where appropriate, evidence of the impact of the offending on a community;
  - any statutory provisions or sentencing guidelines which may assist;
  - any relevant statutory provisions relating to ancillary orders (such as anti-social behaviour orders).
- 11.2 The Crown Prosecutor should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. If the defence persist in the assertion, and it appears relevant to the sentence, the court should be invited to hear evidence to determine the facts and sentence accordingly.

## 12 RE-STARTING A PROSECUTION

- 12.1 People should be able to rely on decisions taken by the Crown Prosecution Service. Normally, if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will re-start the prosecution, particularly if the case is serious.
- 12.2 These reasons include:

- (a) rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;
- (b) cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the Crown Prosecutor will tell the defendant that the prosecution may well start again; and
- (c) cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

12.3 There may also be exceptional cases in which, following an acquittal of a serious offence, the Crown Prosecutor may, with the written consent of the Director of Public Prosecutions, apply to the Court of Appeal for an order quashing the acquittal and requiring the defendant to be retried, in accordance with Part 10 of the Criminal Justice Act 2003.

The Code is a public document. It is available on the CPS Website:

Further copies may be obtained from:

Crown Prosecution Service

Communications Branch

50 Ludgate Hill

London

EC4M 7EX

Telephone: 020 7796 8442

Fax: 020 7796 8030

Email: [policy.branch@cps.gov.uk](mailto:policy.branch@cps.gov.uk)

Translations into other languages are available and audio or braille copies are available.

Please contact CPS Communications Branch (above) for details.

## LISTING RULES INSTRUMENT 2005

### 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 73A (Part 6 rules);
  - (2) section 79 (Listing particulars and other documents);
  - (3) section 88(3) (Sponsors);
  - (4) section 89 (Public censure of sponsor);
  - (5) section 96 (Obligations of issuers of listed securities);
  - (6) section 99 (Fees);
  - (7) section 100 (Penalties);
  - (8) section 101 (Listing rules: general provisions);
  - (9) section 157(1) (Guidance); and
  - (10) paragraphs 1 (general), 4 (rules) and 7(fees) of Schedule 7 (The Authority as Competent Authority for Part VI).

### Commencement

- B. This instrument comes into force on 1 July 2005.

### Amendments to the Handbook

- C. The Annex to this instrument inserts into the Handbook the new Listing Rules sourcebook (LR).

### Notes

- D. In the Annex to this instrument, the "notes" (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

### Citation

- E. This instrument may be cited as the Listing Rules Instrument 2005.

By order of the Board  
16 June 2005

## Annex

### The Listing Rules Sourcebook

In this Annex all text is new and is not underlined. Insert the following new sourcebook, Listing Rules (LR).

1 Preliminary

1.1 Introduction

Application

1.1.1 R LR applies as follows:

- (1) all of *LR* (other than *LR* 8.3, *LR* 8.4, *LR* 8.6 and *LR* 8.7) applies to an *issuer*; and
- (2) *LR* 1, *LR* 8.1, *LR* 8.3, *LR* 8.4, *LR* 8.6 and *LR* 8.7 apply to a *sponsor* and a *person* applying for approval as a *sponsor*.

FSA performing functions as competent authority

**Note:** In relation to the *listing rules*, the *FSA* is performing functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

**Note:** When exercising functions as the competent authority under Part VI of the *Act*, the *FSA* may use the name: the UK Listing Authority.

Other relevant parts of Handbook

**Note:** Other parts of the *Handbook* that may also be relevant to *issuers* or *sponsors* include *DR* (the Disclosure Rules sourcebook), *PR* (the Prospectus Rules sourcebook), *COB* (the Conduct of Business sourcebook), *DEC* (the Decision Making manual), Chapter 9 of *SUP* (the Supervision manual), Chapter 21 of *ENF* (the Enforcement manual) and *GEN* (General Provisions).

1.2 Modifying rules and consulting the FSA

Modifying or dispensing with rules

- 1.2.1 R
- (1) The *FSA* may dispense with or modify the *listing rules* in such cases and by reference to such circumstances as it considers appropriate (subject to the terms of EU directives and the *Act*).
  - (2) A dispensation or modification may be either unconditional or subject to specified conditions.

- (3) If an *issuer* or *sponsor* has applied for, or been granted, a dispensation or modification, it must notify the *FSA* immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.
  - (4) The *FSA* may revoke or modify a dispensation or modification.
- 1.2.2 R (1) An application to the *FSA* to dispense with or modify a *listing rule* must be in writing.
- (2) The application must:
- (a) contain a clear explanation of why the dispensation or modification is requested;
  - (b) include details of any special requirements, for example, the date by which the dispensation or modification is required;
  - (c) contain all relevant information that should reasonably be brought to the *FSA's* attention;
  - (d) contain any statement or information that is required by the *listing rules* to be included for a specific type of dispensation or modification; and
  - (e) include copies of all documents relevant to the application.
- 1.2.3 G An application to dispense with or modify a *listing rule* should ordinarily be made:
- (1) for a *listing rule* that is a continuing obligation, at least five *business days* before the proposed dispensation or modification is to take effect; and
  - (2) for any other *listing rule*, at least ten *business days* before the proposed dispensation or modification is to take effect.

#### Companies in severe financial difficulty

- 1.2.4 G If an *issuer* applies to the *FSA* to dispense with or modify a *listing rule* on the basis that it is in severe financial difficulty, the *FSA* would ordinarily expect the *issuer* to comply with the conditions in *LR* 10.8 (to the extent relevant to the particular *rule* for which the dispensation or modification is sought). In particular, the *FSA* would expect the *issuer* to comply with those conditions that are directed at demonstrating that it is in severe financial difficulty.

#### Early consultation with FSA

- 1.2.5 G An *issuer* or *sponsor* should consult with the *FSA* at the earliest possible stage if it:

- (1) is in doubt about how the *listing rules* apply in a particular situation; or
- (2) considers that it may be necessary for the *FSA* to dispense with or modify a *listing rule*.

Address for correspondence

**Note:** The *FSA's* address for correspondence is:

The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London, E14 5HS

Tel: 020 7066 8333  
Fax: 020 7066 8362

<http://www.fsa.gov.uk/Pages/Doing/UKLA/index.shtml>

### 1.3 Information gathering and publication

#### Information gathering

#### 1.3.1 R An *issuer* must provide to the *FSA* as soon as possible:

- (1) any information and explanations that the *FSA* may reasonably require to decide whether to grant an application for *admission*;
- (2) any information that the *FSA* considers appropriate to protect investors or ensure the smooth operation of the market; and [**Note:** Article 16.1 *CARD*]
- (3) any other information or explanation that the *FSA* may reasonably require to verify whether *listing rules* are being and have been complied with.

#### FSA may require issuer to publish information

- #### 1.3.2 R
- (1) The *FSA* may, at any time, require an *issuer* to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market. [**Note:** Article 16.2 *CARD*]
  - (2) If an *issuer* fails to comply with a requirement under paragraph (1) the *FSA* may itself publish the information (after giving the *issuer* an opportunity to make representations as to why it should not be published). [**Note:** Article 16.2 *CARD*]

#### Misleading information not to be published

- 1.3.3 R An *issuer* must take reasonable care to ensure that any information it notifies to a *RIS* or makes available through the *FSA* is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.

#### Notification when a *RIS* is not open for business

- 1.3.4 R If an *issuer* is required to notify information to a *RIS* at a time when a *RIS* is not open for business it must distribute the information as soon as possible to:
- (1) not less than two national newspapers in the *United Kingdom*;
  - (2) two newswire services operating in the *United Kingdom*; and
  - (3) a *RIS* for release as soon as it opens.

### 1.4 Miscellaneous

#### Appointment of sponsor

- 1.4.1 R (1) If it appears to the *FSA* that there is, or there may be, a breach of the *listing rules* by an *issuer* with a *primary listing*, the *FSA* may in writing require the *issuer* to appoint a *sponsor* to advise the *issuer* on the application of the *listing rules*.
- (2) If required to do so under paragraph (1), an *issuer* must, as soon as practicable, appoint a *sponsor* to advise it on the application of the *listing rules*.

**Note:** *LR* 8.2 sets out the various circumstances in which an *issuer* must appoint, or obtain guidance from, a *sponsor*.

#### Overseas companies

- 1.4.2 R If a *listing rule* refers to a requirement in legislation applicable to a *listed company* incorporated in the *United Kingdom*, a *listed overseas company* must comply with the requirement so far as:
- (1) information available to it enables it to do so; and
  - (2) compliance is not contrary to the law in its country of incorporation.
- 1.4.3 R A *listed overseas company* must, if required to do so by the *FSA*, provide the *FSA* with a letter from an independent legal adviser explaining why compliance with a requirement referred to in *LR* 1.4.2R is contrary to the law in its country of incorporation.

#### Equivalent information

1.4.4 R An *issuer* whose *securities* are listed on an *overseas investment exchange* operating in a *non-EEA state*, must notify to a *RIS* information equivalent to that notified to the market of the *non-EEA state* if the information may be of importance to evaluate the *securities listed* by the *FSA*. [**Note:** Articles 69 and 82 *CARD*]

1.4.5 G The information required under *LR 1.4.4R* is in addition to information that is required to be disclosed under the *disclosure rules*.

#### English language

1.4.6 R A *document* that is required under a *listing rule* to be filed, notified to a *RIS*, provided to the *FSA* or sent to *security* holders must be in English.

#### Market abuse safe harbours

1.4.7 R Pursuant to section 118A(5) of the *Act*, behaviour conforming with the *listing rules* specified in *LR 1 Ann 1R* does not amount to market abuse under section 118(1) of the *Act*.

#### Fees

1.4.8 R An *issuer* and a *sponsor* must pay the fees set out in *LR App 2R* to the *FSA* when they are due.

#### Electronic Communication

1.4.9 R If the *listing rules* require an *issuer* to send documents to its *security* holders in the *United Kingdom*, the *issuer* is taken to comply with the requirement for any specific holder if:

- (1) the *issuer* and the *security* holder have agreed to the use of electronic communication for sending copies of documents to the holder and:
  - (a) the documents are documents to which the agreement applies; and
  - (b) copies of the documents are sent using electronic communication to such address, number or other location as may for the time being be notified by the holder to the *issuer* for that purpose; or
- (2) the *issuer* and the *security* holder have agreed to the holder having access to documents on a website (instead of the documents being sent to the holder) and:
  - (a) the documents are documents to which the agreement applies; and
  - (b) the holder is notified in a manner for the time being agreed for the purpose between the holder and the *issuer*, of:

- (i) the publication of the documents on a website;
  - (ii) the address of that website;
  - (iii) the place on that website where the documents may be accessed and how they may be accessed;
  - (iv) the period of time for which the documents will be available on the website, which must be for a period of not less than 21 days from the date of notification or, if later, until the conclusion of any general meeting to which the documents relate; and
- (c) the documents are published on that website throughout the period referred to in paragraph (b)(iv), provided that, if the documents are published on that website for a part but not all of that period, the documents will be treated as published throughout that period if the failure to publish those documents throughout the period is wholly attributable to circumstances which it would not be reasonable to have expected the *issuer* to prevent or avoid.

- 1.4.10 R If an *issuer* makes use of LR 1.4.9R, it must make the documents available during normal business hours to *security* holders for a period of not less than 21 days from the date of communication or notification or, if later, until the conclusion of any general meeting to which the documents relate, in printed form and free of charge in sufficient numbers to satisfy demand from *security* holders at:
- (1) the *issuer's* registered office in the *United Kingdom* (if any); and
  - (2) the offices of any paying agent of the *issuer* in the *United Kingdom*.

## LR 1 Annex 1R

### Market abuse safe harbours

The *listing rules* referred to in LR 1.4.7R are:

- (1) LR 1.3.3R (Misleading information not to be published);
- (2) LR 1.3.4R (Notification when a *RIS* is not open for business);
- (3) Paragraphs 20, 21 and 22 of the Annex to LR 9 (The Model Code)(Dealings by connected persons and investment managers);
- (4) LR 9.6.6R (Notifications relating to capital);
- (5) LR 9.6.7R, LR 9.6.8R and LR 9.6.10R (Notifications of major

- interests in shares);
- (6) *LR 9.7.1R* and *LR 9.7.2R* (Preliminary statement of annual results and dividends);
  - (7) *LR 9.9.3R* ;
  - (8) *LR 12.2.1R* (4) (Prohibition on purchase of own securities).
  - (9) *LR 12.4.6R* (Notification of purchases);
  - (10) *LR 12.5.2R* and *LR 12.5.3R* (Notifications of purchases, early redemptions and cancellations);
  - (11) *LR 13.3.1R* (1) and *LR 13.3.1R* (2) (Contents of all circulars);
  - (12) *LR 14.3.19R* and *LR 14.3.21R* (Notification of major interests in shares);
  - (13) *LR 14.4.10R*; and
  - (14) *LR 17.3.4R* (Annual accounts).

## 2 Requirements for listing

### 2.1 Preliminary

#### Application

- 2.1.1 R This chapter applies to all *applicants* for *admission to listing* (unless a *rule* is specified only to apply to a particular type of *applicant* or *security*).

#### Refusal of applications

- 2.1.2 G Under the *Act*, the *FSA* may not grant an application for *admission* unless it is satisfied that:

- (1) the requirements of the *listing rules* are complied with; and
- (2) any special requirement (see *LR 2.1.4R*) is complied with.

- 2.1.3 G Under the *Act*, the *FSA* may also refuse an application for *admission* if it considers that:

- (1) *admission* of the *securities* would be detrimental to investors' interests; or
- (2) for *securities* already listed in another *EEA State*, the *issuer* has failed to comply with any obligations under that listing.

#### Special requirements

- 2.1.4 R (1) The *FSA* may make the *admission* of *securities* subject to any special requirement that it considers appropriate to protect investors. [**Note:** article 12 *CARD*]
- (2) The *FSA* must explicitly inform the *issuer* of any special requirement that it imposes. [**Note:** article 12 *CARD*]

### 2.2 Requirements for all securities

#### Incorporation

- 2.2.1 R An *applicant* (other than a *public sector issuer*) must be:
- (1) duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment; and
  - (2) operating in conformity with its *constitution*. [**Note:** articles 42 and 52 *CARD*]

## Validity

- 2.2.2 R To be *listed, securities* must:
- (1) conform with the law of the *applicant's* place of incorporation;
  - (2) be duly authorised according to the requirements of the *applicant's constitution*; and
  - (3) have any necessary statutory or other consents. [**Note:** articles 45 and 53 *CARD*]

## Admission to trading

- 2.2.3 R To be *listed, securities* must be admitted to trading on an *RIE's* market for *listed securities*.

## Transferability

- 2.2.4 R (1) To be *listed, securities* must be freely transferable. [**Note:** articles 46, 54 and 60 *CARD*]
- (2) To be *listed, shares* must be fully paid and free from all liens and from any restriction on the right of transfer (except any restriction imposed for failure to comply with a notice under section 212 of the Companies Act 1985 (Company investigations)).
- 2.2.5 G The *FSA* may modify *LR 2.2.4R* to allow partly paid *securities* to be *listed* if it is satisfied that their transferability is not restricted and investors have been provided with appropriate information to enable dealings in the *securities* to take place on an open and proper basis. [**Note:** articles 46 and 54 *CARD*]
- 2.2.6 G The *FSA* may in exceptional circumstances modify or dispense with *LR 2.2.4R* where the *applicant* has the power to disapprove the transfer of *shares* if the *FSA* is satisfied that this power would not disturb the market in those *shares*. [**Note:** article 46 *CARD*]

## Market capitalisation

- 2.2.7 R (1) The expected aggregate market value of all *securities* (excluding *treasury shares*) to be *listed* must be at least:
- (a) £700,000 for *shares*; and
  - (b) £200,000 for *debt securities*.
- (2) Paragraph (1) does not apply to tap issues where the amount of the *debt securities* is not fixed.
- (3) Paragraph (1) does not apply if *securities* of the same *class* are

already *listed*. [**Note:** articles 43 and 48 *CARD*]

- 2.2.8 G The *FSA* may modify *LR 2.2.7R* to admit *securities* of a lower value if it is satisfied that there will be an adequate market for the *securities* concerned. [**Note:** articles 43 and 58 *CARD*]

Whole class to be listed

- 2.2.9 R An application for *listing* of *securities* of any *class* must:
- (1) if no *securities* of that *class* are already *listed*, relate to all *securities* of that *class*, issued or proposed to be issued; or
  - (2) if *securities* of that *class* are already *listed*, relate to all further *securities* of that *class*, issued or proposed to be issued. [**Note:** articles 49, 56 and 62 *CARD*]

Prospectus

- 2.2.10 R (1) This *rule* applies if under the *Act* or under the law of another *EEA State*:
- (a) a *prospectus* must be approved and published for the *securities*; or
  - (b) the *applicant* is permitted and elects to draw up a *prospectus* for the *securities*.
- (2) To be *listed*:
- (a) a *prospectus* must have been approved by the *FSA* and published in relation to the *securities*; or
  - (b) if another *EEA State* is the *Home Member State* for the *securities*, the relevant competent authority must have supplied the *FSA* with:
    - (i) a certificate of approval;
    - (ii) a copy of the *prospectus* as approved; and
    - (iii) (if applicable) a translation of the *summary* of the *prospectus*.

Listing particulars

- 2.2.11 R (1) This *rule* applies if, under *LR 4*, *listing particulars* must be approved and published for *securities*.
- (2) To be *listed*, *listing particulars* for the *securities* must have been approved by the *FSA* and published in accordance with *LR 4*.

#### Convertible securities

- 2.2.12 R *Convertible securities* may be *admitted to listing* only if the *securities* into which they are convertible are already, or will become at the same time:
- (1) *listed securities*; or
  - (2) *securities* listed on a regulated, regularly operating, recognised open market. [**Note:** article 59 *CARD*]
- 2.2.13 G The *FSA* may dispense with *LR 2.2.12R* if it is satisfied that holders of the *convertible securities* have at their disposal all the information necessary to form an opinion about the value of the underlying *securities*. [**Note:** article 59 *CARD*]

#### Warrants or options to subscribe

- 2.2.14 R The requirements for *listing* of warrants to subscribe, or options to subscribe, for *equity securities* (not being options or warrants accompanied by other *securities*) are the same as would apply if the application was for *listing* of the *equity securities* to be subscribed.

### 3 Listing applications

#### 3.1 Application

3.1.1 R This chapter applies to an *applicant* for the *admission of securities*.

#### 3.2 Application for admission to listing

##### Location of official list

3.2.1 G The *FSA* will maintain the *official list* on its website.

##### Method of application

3.2.2 R An *applicant* for *admission* must apply to the *FSA* by:

- (1) submitting, in final form:
  - (a) the documents described in *LR 3.3* in the case of an application in respect of *equity securities*;
  - (b) the documents described in *LR 3.4* in the case of an application in respect of *debt securities* or other *securities*;
  - (c) the documents described in *LR 3.5* in the case of a block listing or a formal application;
- (2) submitting all additional documents, explanations and information as required by the *FSA*;
- (3) submitting verification of any information in such manner as the *FSA* may specify; and
- (4) paying the fee set out in *LR App 2R* at the time the completed Application for Admission of Securities to the Official List is submitted to the *FSA*.

3.2.3 G Before submitting the documents referred to in *LR 3.2.2R(1)*, an *applicant* should contact the *FSA* to agree the date on which the *FSA* will consider the application.

3.2.4 R All documents must be submitted to the Listing Applications team at the *FSA's* address.

##### Grant of an application for admission to listing

- 3.2.5 G The *FSA* may admit *securities* to *listing* if all relevant documents required by *LR 3.3*, *LR 3.4* or *LR 3.5* have been submitted to the *FSA*.
- 3.2.6 G When considering an application for *admission to listing*, the *FSA* may:
- (1) carry out any enquiries and request any further information which it considers appropriate, including consulting with other regulators or exchanges;
  - (2) request that an *applicant*, or its specified representative answer questions and explain any matter the *FSA* considers relevant to the application for *listing*;
  - (3) take into account any information which it considers appropriate in relation to the *application for listing*;
  - (4) request that any information provided by the *applicant* be verified in such manner as the *FSA* may specify; and
  - (5) impose any additional conditions on the *applicant* as the *FSA* considers appropriate.
- 3.2.7 G The *admission* becomes effective only when the *FSA's* decision to admit the *securities* to *listing* has been announced by being either:
- (1) disseminated by a *RIS*; or
  - (2) posted on a notice board designated by the *FSA* should the electronic systems be unavailable.

### 3.3 Equity securities

#### Application

- 3.3.1 R (1) *LR 3.3.2R* to *LR 3.3.7R* apply to an *applicant* which is applying for a *primary listing* of its *equity shares*.
- (2) *LR 3.3.2R* to *LR 3.3.8R* apply to an *applicant* which is applying for:
- (a) a *primary listing* of its *preference shares*; or
  - (b) a *primary listing* of its *securities* that are convertible into *equity shares*; or
  - (c) a *secondary listing* of its *equity securities*.

#### Documents to be provided 48 hours in advance

- 3.3.2 R The following documents must be submitted, in final form, to the *FSA* by

midday two *business days* before the *FSA* is to consider the application:

- (1) a completed Application for Admission of Securities to the Official List;
- (2) one of:
  - (a) the *prospectus*, or *listing particulars*, that has been approved by the *FSA*; or
  - (b) a copy of the *prospectus*, a certificate of approval and (if applicable) a translation of the *summary* of the *prospectus*, if another *EEA State* is the *home Member State* for the *securities*; or
  - (c) where a *prospectus* has not been produced, a written confirmation, signed by a *director* or duly authorised officer of the *issuer* or *offeror* of the *securities* if the *offeror* is not the *issuer* that:
    - (i) a *prospectus* is not required to be published by the *Prospectus Directive*, setting out the exemption on which the *issuer* or *offeror* is relying; and
    - (ii) the *issuer* or *offeror* will not make an *offer of transferable securities to the public* of, or admit to trading on a *regulated market* in the *UK*, the *securities* which are the subject of the application until those *securities* are *admitted* to the *official list*;
- (3) any *circular* that has been published in connection with the application, if applicable;
- (4) any approved *supplementary prospectus* or approved *supplementary listing particulars*, if applicable; and
- (5) a copy of the resolution of the board of the *applicant* allotting the *securities*. [**Note:** If this is not possible, see *LR 3.3.4R*.]

**Note:** The Application for Admission of Securities to the Official List form can be found on the UKLA section of the *FSA*'s website.

Documents to be provided on the day

- 3.3.3 R Either of the following documents must be submitted, in final form, to the *FSA* by 9 a.m. on the day the *FSA* is to consider application:
- (1) a completed Shareholder Statement, signed by a *sponsor*, in the case of an *applicant* that is applying for a *listing* of *equity shares* or *preference shares* for the first time; or [**Note:** see *LR 8.4.3R*.]

- (2) a completed Pricing Statement, signed by a *sponsor*, in the case of a *placing* by an *applicant* of *equity shares* of a *class* already *listed*.  
[**Note:** see LR 8.4.9R.]

**Note:** The Shareholder Statement and the Pricing Statement forms can be found on the UKLA section of the *FSA's* website.

- 3.3.4 R If a copy of the resolution of the board allotting the *securities* cannot be submitted to the *FSA* by the deadline set out in LR 3.3.2R the resolution or a written confirmation from the *applicant* or its *sponsor* that the *securities* have been allotted must be submitted to the *FSA* at least one hour before the *admission to listing* is to become effective.

Other documents to be submitted

- 3.3.5 R The following documents must be submitted in final form to the *FSA* as soon as practicable after the *FSA* has considered the application:
- (1) a statement of the number of *securities* that were issued and, where different from the number which were the subject of the application, the aggregate number of *securities* of that *class* in issue;
  - (2) a completed Issuer's Declaration; and
  - (3) in an issue pursuant to a notice served under section 429 of the Companies Act 1985 (Right of offeror to buy out minority shareholders), a copy of the notice.

**Note:** The Issuer's Declaration form can be found on the UKLA section of the *FSA's* website.

Additional documents

- 3.3.6 R An *applicant* must keep copies of the following for six years after the *admission to listing*:
- (1) any agreement to acquire any assets, business or shares in consideration for or in relation to which the company's *securities* are being issued;
  - (2) any letter, report, valuation, contract or other documents referred to in the *prospectus*, *listing particulars*, *circular* or other document issued in connection with those *securities*;
  - (3) the *applicant's constitution* as at the date of *admission*;
  - (4) the annual report and accounts of the *applicant* and of any guarantor, for each of the periods which form part of the *applicant's* financial record contained in the *prospectus* or *listing particulars*;

- (5) any interim accounts made up since the date to which the last annual report and accounts were made up and prior to the date of *admission*;
- (6) any temporary and definitive documents of title;
- (7) in the case of an application in respect of *securities* issued pursuant to an *employees' share scheme*, the scheme document; and
- (8) where *listing particulars* or another document are published in connection with any scheme requiring court approval, any court order and the certificate of registration issued by the Registrar of Companies.

3.3.7 R An *applicant* must provide to the *FSA* the documents set out in *LR 3.3.6R*, if requested to do so.

Equity securities applications other than applications for the primary listing of equity shares

3.3.8 R An *applicant* which is applying for:

- (1) a *primary listing* of its *preference shares*; or
- (2) a *primary listing* of its *securities* that are convertible into *equity shares*; or
- (3) a *secondary listing* of its *equity securities*;

must comply with *LR 3.3.2R* to *LR 3.3.7R* except that the document required by *LR 3.3.3R(1)* is not required to be signed by a *sponsor*.

3.4 Debt and other securities

Application

3.4.1 R *LR 3.4.4R* to *LR 3.4.7R* apply to an *applicant* that is seeking *admission* of any of the following types of *securities*:

- (1) *debt securities*;
- (2) *asset-backed securities*;
- (3) *certificates representing certain securities*; and
- (4) *specialist securities* of the following types:
  - (a) *convertible securities* which convert to *debt securities*;

- (b) *convertible securities* which convert to *equity securities*; and
- (c) *convertible securities* which are exchangeable for *securities* of another *company*.

3.4.2 R LR 3.4.4R to LR 3.4.8R apply to an *applicant* for the *admission* of a *debt securities* or *asset-backed securities* issuance programme where the *applicant* is.

- (1) a *new applicant*; or
- (2) seeking an *admission to listing* for an issue made more than 12 months after publication of the *base prospectus* or *listing particulars*.

3.4.3 R LR 3.4.9R to LR 3.4.13R apply to an *applicant* that is a *public sector issuer*.

Securities referred to in LR 3.4.1R: documents to be provided 48 hours in advance

3.4.4 R An *applicant* referred to in LR 3.4.1R must submit, in final form, to the *FSA* by midday two *business days* before the *FSA* is to consider the application:

- (1) a completed Application for Admission of Securities to the Official List;
- (2) either:
  - (a) the *prospectus*, or *listing particulars* that has been approved by the *FSA*; or
  - (b) a copy of the *prospectus*, a certificate of approval and (if applicable) a translation of the *summary* of the *prospectus*, if another *EEA State* is the *home Member State* for the *securities*; and
- (3) any approved *supplementary prospectus* or approved *supplementary listing particulars*, if applicable.

**Note:** The Application for Admission of Securities to the Official List form can be found on the UKLA section of the *FSA*'s website.

Securities referred to in LR 3.4.1R: documents to be provided on the day

3.4.5 R An *applicant* referred to in LR 3.4.1R must submit in final form to the *FSA* by 9 a.m. on the *day* the *FSA* is to consider the application:

- (1) a copy of the resolution of the board authorising the issue of the *securities*; or
- (2) written confirmation from the *applicant* that the board has authorised the issue of the *securities*.

Securities referred to in LR 3.4.1R: additional documents

- 3.4.6 R An *applicant* referred to in LR 3.4.1R must keep, for six years after the *admission to listing*, a copy of the items set out in LR 3.3.6R(1) to (6) and must provide any of those documents to the *FSA* if requested to do so.

Procedure for issuance programmes: initial offering

- 3.4.7 R An *applicant* referred to in LR 3.4.2R must comply with LR 3.4.4R to LR 3.4.6R with the following modifications:

- (1) an *applicant* must submit a *supplementary prospectus* or *supplementary listing particulars* instead of the document required by LR 3.4.4R(2) in the case of an increase in the maximum amount of *debt securities* which may be in issue and *listed* at any one time under an issuance programme; and
- (2) if the *FSA* approves the application it will admit to listing all *debt securities* which may be issued under the programme within 12 *months* after the publication of the *base prospectus* or *listing particulars* subject to the *FSA*:
  - (a) being advised of the *final terms* of each issue for which a *listing* is sought;
  - (b) receiving and approving for publication any supplementary documents that may be appropriate; and
  - (c) receiving confirmation that the *debt securities* in question have been authorised.

Issuance programmes: final terms

- 3.4.8 R (1) The *final terms* must be submitted in writing to the *FSA* as soon as possible after they have been agreed and no later than 2 p.m. on the day before *listing* is to become effective.
- (2) The *final terms* may be submitted by:
- (a) the *applicant*; or
  - (b) the *applicant's* agent if a letter of appointment signed by a duly authorised officer of the *applicant* has been delivered to the *FSA*.

- (3) The Application for Admission of Securities to the Official List need not be submitted for issues made after the first issue in any 12 *month* period after publication of the *base prospectus* or *listing particulars*.

**Note:** For further details on *final terms*, see *PR 2.2.9R* and *PR 2.3.2R*.

#### Public sector issuers

- 3.4.9 R A *public sector issuer* of an *EEA State* that seeks *admission of debt securities* referred to in paragraphs 2 and 4 of Schedule 11A of the *Act* must submit to the *FSA* in final form a completed Application for Admission of Securities to the Official List.

**Note:** The Application for Admission of Securities to the Official List form can be found on the UKLA section of the *FSA's* website.

- 3.4.10 R *LR 3.4.11R* to *LR 3.4.13R* apply to applications for *admission to listing of debt securities* by a *public sector issuer* other than one referred to in *LR 3.4.9R*.

- 3.4.11 R An *applicant* referred to in *LR 3.4.10R* must submit to the *FSA* in final form by midday two *business days* before the *FSA* is to consider the application:

- (1) the items set out in *LR 3.4.4R*;
- (2) a copy of any consent, order or resolution, authorising the issue of the *debt securities*; and
- (3) where a regional or local authority has offered *debt securities* for sale to or subscription by the public, a Public Sector Issuer Certificate.

**Note:** The Public Sector Issuer Certificate can be found on the UKLA section of the *FSA's* website.

- 3.4.12 R An *applicant* referred to in *LR 3.4.10R* must submit to the *FSA* as soon as practicable after the *FSA* has considered the application the item set out in *LR 3.3.5R(1)*.

- 3.4.13 R An *applicant* referred to in *LR 3.4.10R* must keep, for six years after the *admission to listing*, a copy of the items set out in *LR 3.3.6R(1)* to (6) and must provide any of those documents to the *FSA* if requested to do so.

### 3.5 Block listing and formal application

#### Application

3.5.1 R This section applies to an *applicant* that wishes to apply for *admission* of *securities* using:

- (1) a block listing; or
- (2) a formal application.

When a block listing or a formal application can be used

3.5.2 G If an *applicant* issues *securities* on a regular basis and in circumstances which do not require the production of a *prospectus* or *listing particulars*:

- (1) the *applicant* may make an application for a specified number of *securities* which may be issued in a particular case (“a block listing”); or
- (2) the *applicant* may adopt a simplified application procedure for each issue (“a formal application”).

3.5.3 G The grant of a block listing constitutes *admission to listing* for the *securities* that are the subject of the block. An *applicant* therefore needs to take this into consideration when applying for *admission* of further *securities* in order to ensure compliance with its obligations under *PR* 1.2.3R(1). Separately, the provisions of *PR* 1.2.2R will need to be considered by the *applicant* when the *securities* that are the subject of the block listing are being issued.

Block listing

3.5.4 R An *applicant* applying for *admission to listing* by way of a block listing must submit in final form the following items at least two *business days* before the *FSA* is to consider each application for *admission*:

- (1) a completed Application for Admission of Securities to the Official List; and
- (2) the item set out in *LR* 3.3.2R(2)(c).

**Note:** The Application for Admission of Securities to the Official List form can be found on the UKLA section of the *FSA*'s website.

3.5.5 R (1) An *applicant* applying for *admission to listing* by way of a block listing must notify an *RIS* of the number and type of *securities* that are the subject of the block listing application and the circumstances of their issue.

(2) The notification in paragraph (1) must be made by 9 a.m. on the *day* the *FSA* is to consider the application.

- 3.5.6 R Every six *months* the *applicant* must notify a *RIS* of the details of the number of *securities* covered by the block listing which have been allotted in the previous six *months*, using the Block Listing Six Monthly Return. A copy of the notification must also be lodged with the *FSA*.

Formal application

- 3.5.7 R An *applicant* applying for *admission to listing* by way of a formal application must submit, at least two *business days* before the consideration of each application for *admission to listing*:
- (1) all the items set out in *LR 3.5.4R*; and
  - (2) the item set out in *LR 3.3.2R(5)*.
- 3.5.8 R *LR 3.5.5R* applies to an *applicant* applying for *admission to listing* by way of a formal application.

4 Listing particulars for professional securities market and certain other securities

4.1 Application and Purpose

Application

4.1.1 R This chapter applies to an *issuer* that has applied for the *admission* of:

- (1) *securities* specified in Schedule 11A of the *Act* (other than *securities* specified in paragraphs 2, 4 or 9 of that Schedule); or
- (2) any other *specialist securities* for which a *prospectus* is not required under the *prospectus directive*.

Purpose

4.1.2 G The purpose of this chapter is to require *listing particulars* to be prepared and published for *securities* that are the subject of an application for *listing* in the circumstances set out in LR 4.1.1R where a *prospectus* is not required under the *prospectus directive*.

Listing particulars to be approved and published

4.1.3 R An *issuer* must ensure that *listing particulars* for *securities* referred to in LR 4.1.1R are approved by the *FSA* and published in accordance with LR 4.3.5R.

**Note:** Under LR 2.2.11R, the *securities* will only be *listed* if *listing particulars* for the *securities* have been approved by the *FSA* and published.

4.2 Contents and format of listing particulars

General contents of listing particulars

4.2.1 G Section 80(1) of the *Act* (general duty of disclosure in listing particulars) requires *listing particulars* submitted to the *FSA* to contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of:

- (1) the assets and liabilities, financial position, profits and losses, and prospects of the *issuer* of the *securities*; and
- (2) the rights attaching to the *securities*.

Summary

4.2.2 R (1) The *listing particulars* must contain a *summary* that complies with the requirements in section 87A(5) and (6) of the *Act* and PR 2.1.4EU to PR 2.1.7R (as if those requirements applied to the *listing*

*particulars*).

- (2) Paragraph (1) does not apply:
  - (a) in relation to *specialist securities* referred to in LR 4.1.1R(2);  
or
  - (b) if, in accordance with PR 2.1.3R, no *summary* would be required in relation to the *securities*.

#### Format of listing particulars

- 4.2.3 R The *listing particulars* must be in a format that complies with the relevant requirements in PR 2.2 and the *PD Regulation* (as if those requirements applied to the *listing particulars*).

#### Minimum information to be included

- 4.2.4 R The following minimum information from the *PD Regulation* must be included in *listing particulars*:
- (1) for an issue of bonds including bonds convertible into the *issuer's shares* or exchangeable into a third party *issuer's shares* or derivative *securities*, irrespective of the denomination of the issue, the minimum information required by the *schedules* applicable to debt and derivative securities with a denomination per unit of at least 50,000 euros;
  - (2) the additional information required by the underlying share *building block* where relevant;
  - (3) for an issue of *asset backed securities*, irrespective of the denomination per unit of the issue, the minimum information required by the *schedules* and *building blocks* applicable to *asset backed securities* with a denomination per unit of at least 50,000 euros;
  - (4) for an issue of *certificates representing shares*, irrespective of the denomination per unit of the issue, the *schedule* applicable to depositary receipts over shares with a denomination per unit of at least 50,000 euros (except that item 13.2 (relating to profit forecasts) in Annex 10 is not to apply);
  - (5) for an issue of *securities* by the government of a *non-EEA State* or a local or regional authority of a *non-EEA State*, the *schedule* applicable to *securities* issued by third countries and their regional and local authorities; and
  - (6) for all issues that are guaranteed, the information in the guarantee *building block*.
- 4.2.5 G For all other issues the *FSA* would expect *issuers* to follow the most

appropriate *schedules* and *building blocks* in the *PD Regulation* to determine the minimum information to be included in *listing particulars*.

#### Incorporation by reference

- 4.2.6 R An *issuer* may incorporate information by reference in the *listing particulars* as if *PR 2.4* and the *PD Regulation* applied to the *listing particulars*.

#### Equivalent information

- 4.2.7 R An *issuer* may include equivalent information in *listing particulars* as if *PR 2.5.1R* applied to the *listing particulars*.

#### English language

- 4.2.8 R *Listing particulars* must be in English.

#### Omission of information

- 4.2.9 G Under section 82 of the *Act* (exemptions from disclosure) the *FSA* may authorise the omission from *listing particulars* of information on specified grounds.

- 4.2.10 R A request to the *FSA* to authorise the omission of specific information in a particular case must:

- (1) be in writing from the *issuer*;
- (2) identify the specific information concerned and the specific reasons for the omission; and
- (3) state why in the *issuer's* opinion one or more of the grounds in section 82 of the *Act* applies.

- 4.2.11 R For the purposes of section 82(1)(g) of the *Act*, *specialist securities* are specified.

#### Responsibility for listing particulars

- 4.2.12 G Part 3 of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001 (SI 2001/2956) sets out the *persons* responsible for *listing particulars*. In particular, in those regulations:

- (1) regulation 6 specifies who is generally responsible for *listing particulars*; and
- (2) regulation 9 modifies the operation of regulation 6 in relation to *specialist securities*.

- 4.2.13 R (1) In the case of *listing particulars* for *specialist securities*:
- (a) the *issuer* must state in the *listing particulars* that it accepts

responsibility for the *listing particulars*;

- (b) the *directors* may state in the *listing particulars* that they accept responsibility for the *listing particulars*; and
- (c) other *persons* may state in the *listing particulars* that they accept responsibility for all or part of the *listing particulars* and in that case the statement by the *issuer* or *directors* may be appropriately modified.

- (2) An *issuer* that is the government of a *non-EEA State* or a local or regional authority of a *non-EEA State* is not required under paragraph (1)(a) to state that it accepts responsibility for the *listing particulars*.

#### 4.3 Approval and publication of listing particulars

##### Approval of listing particulars

- 4.3.1 R An application for approval of *listing particulars* or *supplementary listing particulars* must comply with the procedures in *PR 3.1* (as if those procedures applied to the application), except that the applicant does not need to submit a completed form A.
- 4.3.2 R The *FSA* will approve *listing particulars* or *supplementary listing particulars* if it is satisfied that the requirements of the *Act* and this chapter have been complied with.
- 4.3.3 G The *FSA* will try to notify the applicant of its decision on an application for approval of *listing particulars* or *supplementary listing particulars* within the same time limits as are specified in section 87C of the *Act* (consideration of application for approval) for an application for approval of a *prospectus* or *supplementary prospectus*.
- 4.3.4 R An *issuer* must ensure that *listing particulars* or *supplementary listing particulars* are not published until they have been approved by the *FSA*.

##### Filing and publication of listing particulars etc

- 4.3.5 R An *issuer* must ensure that after *listing particulars* or *supplementary listing particulars* are approved by the *FSA*, the *listing particulars* or *supplementary listing particulars* are filed and published as if the relevant requirements in *PR 3.2* and the *PD Regulation* applied to them.

#### 4.4 Miscellaneous

##### Supplementary listing particulars

- 4.4.1 G Section 81 of the *Act* (supplementary listing particulars) requires an *issuer* to submit *supplementary listing particulars* to the *FSA* for approval if at any

time after *listing particulars* have been submitted to the *FSA* and before the commencement of dealings in the *securities* following their *admission* to the *official list*:

- (1) there is a significant change affecting any matter contained in those particulars the inclusion of which was required by:
  - (a) section 80 of the *Act* (general duty of disclosure in listing particulars); or
  - (b) *listing rules*; or
  - (c) the *FSA*; or
- (2) a significant new matter arises, the inclusion of information in respect of which would have been so required if it had arisen when the particulars were prepared.

4.4.2 R An *issuer* must ensure that after *supplementary listing particulars* are approved by the *FSA*, the *supplementary listing particulars* are filed and published as if the requirements in *PR 3.2* and the *PD Regulation* applied to them.

5 Suspending, cancelling and restoring listing

5.1 Suspending listing

FSA may suspend listing

- 5.1.1 R (1) The *FSA* may suspend, with effect from such time as it may determine, the *listing* of any *securities* if the smooth operation of the market is, or may be, temporarily jeopardised or it is necessary to protect investors. [Note: article 18(1) *CARD*]
- (2) An *issuer* that has the *listing* of any of its *securities* suspended must continue to comply with all *listing rules* applicable to it.
- (3) If the *FSA* suspends the *listing* of any *securities*, it may impose such conditions for lifting the suspension as it considers appropriate.

Examples of when FSA may suspend

- 5.1.2 G Examples of when the *FSA* may suspend the *listing* of *securities* include (but are not limited to) situations where it appears to the *FSA* that:

- (1) the *issuer* has failed to meet its continuing obligations for *listing*; or
- (2) the *issuer* has failed to publish financial information in accordance with the *listing rules*; or
- (3) the *issuer* is unable to assess accurately its financial position and inform the market accordingly; or
- (4) there is insufficient information in the market about a proposed transaction; or
- (5) the *issuer's securities* have been suspended elsewhere; or
- (6) the *issuer* has appointed administrators or receivers, or is an *investment trust* and is winding up; or
- (7) for a *securitised derivative* that relates to a single *underlying instrument*, the *underlying instrument* is suspended; or
- (8) for a *securitised derivative* that relates to a basket of *underlying instruments*, one or more *underlying instruments* of the basket are suspended.

- 5.1.3 G The *FSA* will not suspend the *listing* of a *security* to fix its price at a particular level.

Suspension at issuer's request

- 5.1.4 G An *issuer* that intends to request the *FSA* to suspend the *listing* of its

*securities* will need to comply with LR 5.3. The FSA will not suspend the *listing* if it is not satisfied that the circumstances justify the suspension.

## 5.2 Cancelling listing

FSA may cancel listing

- 5.2.1 R The FSA may cancel the *listing of securities* if it is satisfied that there are special circumstances that preclude normal regular dealings in them. [Note: article 18(2) CARD]

Examples of when FSA may cancel

- 5.2.2 G Examples of when the FSA may cancel the *listing of securities* include (but are not limited to) situations where it appears to the FSA that:
- (1) the *securities* are no longer admitted to trading as required by these *rules*; or
  - (2) the *issuer* no longer satisfies its continuing obligations for *listing*, for example, if the percentage of *shares* in public hands falls below 25% or such lower percentage as the FSA may permit (the FSA may however allow a reasonable time to restore the percentage, unless this is precluded by the need to maintain the smooth operation of the market or to protect investors); or
  - (3) the *securities listing* has been suspended for more than six months.
- 5.2.3 G The FSA will generally cancel the *listing of a listed company's securities* when it completes a *reverse takeover*.

Cancellation at issuer's request

- 5.2.4 R An *issuer* must satisfy the requirements applicable to it in LR 5.2.5R to LR 5.2.11R and LR 5.3 before the FSA will cancel the *listing of its securities* at its request.

Cancellation of listing of equity securities

- 5.2.5 R Subject to the provisions of LR 5.2.6R and LR 5.2.7R, an *issuer* that wishes the FSA to cancel the *listing of any of its equity securities with a primary listing* must:
- (1) send a *circular* to the holders of the *securities*. The *circular* must:
    - (a) comply with the requirements of LR 13.3.1R and LR 13.3.2R (contents of all circulars);
    - (b) be submitted to the FSA for approval prior to publication; and

- (c) include the anticipated date of cancellation (which must be not less than 20 *business days* following the passing of the resolution referred to in paragraph (2));
  - (2) obtain, at a general meeting, the prior approval of a resolution for the cancellation from a majority of not less than 75% of the holders of the *securities* as (being entitled to do so) vote in person or, where proxies are allowed, by proxy;
  - (3) notify a *RIS*, at the same time as the *circular* is despatched to the relevant *security* holders, of the intended cancellation and of the notice period and meeting; and
  - (4) also notify an *RIS* of the passing of the resolution in accordance with *LR 9.6.18R*.
- 5.2.6 R An *issuer* is not required to seek the prior approval of the holders of the *securities* for which a cancellation is being sought in accordance with *LR 5.2.5R(2)* if the *securities* are admitted to trading on a *regulated market* in an *EEA State* when the cancellation takes effect.
- 5.2.7 R *LR 5.2.5R(2)* will also not apply where an *issuer of equity securities* with a *primary listing* notifies a *RIS*;
- (1) that the financial position of the *issuer* or its *group* is so precarious that, but for the proposal referred to in *LR 5.2.7R(2)*, there is no reasonable prospect that the *issuer* will avoid going into formal insolvency proceedings;
  - (2) that there is a proposal for a transaction, arrangement or other form of reconstruction of the *issuer* or its *group* which is necessary to ensure the survival of the *issuer* or its *group* and the continued *listing* would jeopardise the successful completion of the proposal;
  - (3) explaining;
    - (a) why the cancellation is in the best interests of those to whom the *issuer* or its *directors* have responsibilities (including the bodies of *securities* holders and creditors, taken as a whole); and
    - (b) why the approval of shareholders will not be sought prior to the cancellation of *listing*; and
  - (4) giving at least 20 *business days* notice of the intended cancellation.

#### Requirements for cancellation of other securities

- 5.2.8 R An *issuer* that wishes the *FSA* to cancel the *listing* of *listed securities* (other than *equity securities* with a *primary listing*) must notify a *RIS*, giving at least 20 *business days* notice of the intended cancellation but is not required to obtain the approval of the holders of those *securities*

contemplated in *LR 5.2.5R(2)*.

- 5.2.9 R *Issuers with debt securities* falling under *LR 5.2.8R* must also notify, in accordance with the terms and conditions of the *issue* of those *securities*, holders of those *securities* or a representative of the holders, such as a trustee, of intended cancellation of those *securities*, but the prior approval of the holders of those *securities* in a general meeting need not be obtained.

#### Cancellation in relation to takeover offers

- 5.2.10 R A *circular* need not be sent to holders of *listed securities* where that *listing* is intended to be cancelled, and the prior approval of the holders of those *securities* in a general meeting need not be obtained, when, in the case of a takeover offer:
- (1) the *offeror* has by virtue of its shareholdings and acceptances of the offer, acquired or agreed to acquire issued *share* capital carrying 75% of the voting rights of the *issuer*; and
  - (2) the *offeror* has stated in the offer *document* or any subsequent *circular* sent to the *security* holders that a notice period of not less than 20 *business days* prior to cancellation will commence either on the *offeror* attaining the required 75% as described in *LR 5.2.10R(1)* or on the first date of issue of compulsory acquisition notices under section 429 of the Companies Act 1985 (Right of offeror to buy out minority shareholders).
- 5.2.11 R In the circumstances of *LR 5.2.10R*, the *company* must notify the *security* holders that the required 75% has been attained and that the notice period has commenced and of the anticipated date of cancellation or the explanatory letter or other material accompanying the section 429 notice must state that the notice period has commenced and the anticipated date of cancellation.

### 5.3 Requests to cancel or suspend

#### Information to be included in request to suspend or cancel

- 5.3.1 R A request by an *issuer* for the *listing* of its *securities* to be suspended or cancelled must be in writing and must include:
- (1) the *issuer's* name;
  - (2) details of the *securities* to which it relates and the *RIEs* on which they are traded;
  - (3) a clear explanation of the background and reasons for the request;
  - (4) the date on which the *issuer* requests the suspension or cancellation to take effect;

- (5) for a suspension, the time the *issuer* wants the suspension to take effect;
- (6) if relevant, a copy of any *circular* or announcement or other document upon which the *issuer* is relying;
- (7) if relevant, evidence of any resolution required under *LR 5.2.5R*;
- (8) if being made by an agent on behalf of the *issuer*, confirmation that the agent has the *issuer's* authority to make it;
- (9) the name and contact details of the *person* at the *issuer* (or, if appropriate, an agent) with whom the *FSA* should liaise in relation to the request;
- (10) if the *issuer* is making a conditional request, a clear statement of the applicable conditions;
- (11) a copy of any announcement the *issuer* proposes to notify to a *RIS* that it is relying on in making its request to suspend or cancel; and
- (12) a copy of any announcement the *issuer* proposes to notify to a *RIS* announcing the suspension or cancellation.

5.3.2 R The *issuer* must also include with a request to cancel the *listing* of its *securities* the following:

- (1) if the cancellation is to take effect after the completion of the compulsory acquisition procedures under Part XIII A of the Companies Act 1985, a copy of the notice sent to dissenting shareholders of the offeree together with written confirmation that there have been no objections made to the court within the prescribed period;
- (2) for a cancellation referred to in *LR 5.2.10R* an extract from, or a copy of, the offer document or relevant circular clearly showing the intention to cancel the offeree's *listing* and a copy of the announcement stating the date on which the cancellation was expected to take effect; and
- (3) if a cancellation is to take place after a scheme of arrangement becomes effective under section 425 of the Companies Act 1985 and a new *company* is to be *listed* as a result of that scheme, either:
  - (a) a copy of the certificate from the Registrar of Companies that the scheme has become effective; or
  - (b) documents which demonstrate adequately that the scheme will become effective on a specified date in the future.

5.3.3 G Announcements referred to in *LR 5.3.1R(12)* should be issued after the

dealing notice issued on an *RIS* announcing the suspension or cancellation.

#### Timing of suspension requests

- 5.3.4 G A written request by an *issuer* to have the *listing* of its *securities* suspended should be made as soon as practicable. Suspension requests received for the opening of the market should allow sufficient time for the *FSA* to deal with the request before trading starts.

#### Timing of cancellation requests

- 5.3.5 R A written request by an *issuer* to have the *listing* of its *securities* cancelled must be made not less than 24 hours before the cancellation is expected to take effect.
- 5.3.6 G Cancellations will only be specified to take effect when the market opens on a specified day. An *issuer* should therefore ensure that all accompanying information has been provided to the *FSA* well before the date on which the *issuer* wishes the cancellation to take effect and at the very latest by 3 p.m. on the *business day* before it is to take effect. If the information is received after 3 p.m. on the day before the *issuer* wishes the cancellation to take effect, it will normally be specified to take effect at the start of the *business day* following the next day.

#### Withdrawing request

- 5.3.7 G (1) If an *issuer* requests the *FSA* to suspend or cancel the *listing* of its *securities*, it may withdraw its request at any time before the suspension or cancellation takes effect. The withdrawal request should initially be made by telephone and then confirmed in writing as soon as possible, with an explanation of the reasons for the withdrawal.
- (2) Even if an *issuer* withdraws its request, the *FSA* may still suspend or cancel the *listing* of the *securities* if it considers it is necessary to do so.
- (3) If an *issuer* has published either a statement or a *circular* that states that the *issuer* is, or intends, to seek a suspension or cancellation and the *issuer* no longer intends to do so, it should, as soon as possible, notify a *RIS* with a statement to that effect.

#### 5.4 Restoring listing

##### Revoking a cancellation of listing

- 5.4.1 G If an *issuer* has the *listing* of its *securities* cancelled, it may only have them readmitted to the *official list* by re-applying for their listing.

##### Restoring a listing that is suspended

- 5.4.2 R The *FSA* may restore the *listing* of any *securities* that have been suspended if it considers that the smooth operation of the market is no longer jeopardised or if the suspension is no longer required to protect investors. The *FSA* may restore the *listing* even though the *issuer* does not request it.

#### Requests to restore

- 5.4.3 G (1) An *issuer* that has the *listing* of any of its *securities* suspended may request the *FSA* to have them restored.
- (2) The request should be made sufficiently in advance of the time and date the *issuer* wishes the *securities* to be restored.
- (3) Requests received for when the market opens should allow sufficient time for the *FSA* to deal with the request.
- (4) The request may be an oral request. The *FSA* may require documentary evidence that the events that lead to the suspension are no longer current (for example, financial reports have been published or an appropriate announcement has been made) to process the request.
- (5) Even if restoration is required urgently, it will normally take up to 30 minutes to be effected.
- (6) The *FSA* will issue a dealing notice on a *RIS* announcing the restoration.

#### Refusal of request to restore

- 5.4.4 R The *FSA* will refuse a request to restore the *listing* of *securities* if it is not satisfied of the matters set out in *LR* 5.4.2R.

#### Withdrawal of a request to restore securities

- 5.4.5 G (1) If an *issuer* has requested the *FSA* to restore the *listing* of any *securities*, it may withdraw its request at any time while the *securities* are still suspended. The withdrawal request should initially be made by telephone and then confirmed in writing as soon as possible.
- (2) Even if a request to restore has been withdrawn, the *FSA* may restore the *listing* of *securities* if it believes the circumstances justify it.

#### Restoring listing of securitised derivatives

- 5.4.6 G (1) If an *underlying instrument* is restored, the *securitised derivative's listing* will normally be restored.
- (2) For a *securitised derivative* relating to a basket of *underlying instruments* that has been suspended, the *securitised derivative's listing* may be restored by the *FSA*, irrespective of whether or not the

*underlying instrument* has been restored, if:

- (a) the *issuer* of the *securitised derivative* confirms to the *FSA* that despite the relevant *underlying instrument(s)* suspension a market in the *securitised derivative* will continue to be made; and
- (b) the *FSA* is satisfied that restoring the *securitised derivative* is not inconsistent with either the protection of investors or the smooth operation of the market.

## 5.5 Miscellaneous

Decision-making procedures for suspension, cancellation etc

- 5.5.1 G The decision-making procedures that the *FSA* will follow when it cancels, suspends or to refuses a request to restore *listing* are set out in *DEC* (the Decision Making manual).

Suspension, cancellation or restoration by overseas exchange or authority

- 5.5.2 R An *issuer* must inform the *FSA* if its *listing* has been suspended, cancelled or restored by an *overseas exchange* or *overseas* authority.

- 5.5.3 G
- (1) The *FSA* will not automatically suspend, cancel or restore the *listing* of *securities* at the request of an *overseas exchange* or *overseas* authority (for example, if *listing* of a *secondary listed issuer's securities* are suspended, cancelled or restored on its home exchange).
  - (2) The *FSA* will not normally suspend the *listing* of *securities* where there is a trading halt for the *security* on its home exchange.
  - (3) If a *secondary listed issuer* requests a suspension, cancellation or restoration of the *listing* of its *securities*, after a suspension, cancellation or restoration on its home exchange, the *issuer* should send to the *FSA* written confirmation:
    - (a) that the suspension, cancellation or restoration of *listing* on its home exchange has become effective; or
    - (b) if it has not yet become effective, of the time and date it is proposed to become effective.
  - (4) If an *overseas exchange* or *competent authority* requests the *FSA* to suspend, cancel or restore the *listing* of *securities*, the *FSA* will, wherever practical, contact the *issuer* or its *sponsor* before it suspends, cancels or restores the *listing*. Therefore, *issuers* are encouraged to contact the *FSA* at the same time as they contact their home exchange.

- (5) If the *FSA* is unable to contact the *issuer* or *sponsor*, it will suspend, cancel or restore the *listing* of the *securities* when it is satisfied that the listing of the relevant *securities* has been, or will be, suspended, cancelled or restored on their home exchange.

6 Additional requirements for listing for equity securities

Application

- 6.1.1 R This chapter applies to an *applicant* for the *admission* of *equity securities* to *primary listing*.

Applicant must satisfy requirements in this chapter

- 6.1.2 G An *applicant* for the *admission* of *equity securities* to *primary listing* must satisfy the requirements in this chapter (in addition to those in *LR 2*).

Accounts

- 6.1.3 R (1) A *new applicant* for the *admission* of *shares* or *securities* convertible into its own *shares* must have published or filed audited accounts that:
- (a) cover at least three years; [**Note:** article 44 *CARD*]
  - (b) are the latest accounts for a period ended not more than six months before the date of the *prospectus* or *listing particulars* for the relevant *securities*;
  - (c) are consolidated accounts for the *applicant* and all its *subsidiary undertakings*;
  - (d) have been independently audited, in accordance with the auditing standards applicable in an *EEA State* or an equivalent standard; and
  - (e) have been reported on by the auditors without modification.
- (2) A *new applicant* must:
- (a) take all reasonable steps to ensure that its auditors are independent of it; and
  - (b) obtain written confirmation from its auditors that they comply with guidelines on independence issued by their national accountancy and auditing bodies.

Nature and duration of business activities

- 6.1.4 R A *new applicant* for the *admission* of *shares* or *securities* convertible into its own *shares* must demonstrate that:
- (1) at least 75% of the *applicant's* business is supported by a historic revenue earning record which covers the period for which accounts are required under *LR 6.1.3R(1)*;

- (2) it controls the majority of its assets and has done so for at least the period referred to in paragraph (1); and
  - (3) it will be carrying on an independent business as its main activity.
- 6.1.5 G In determining what amounts to 75% of the *applicant's* business for the purposes of LR 6.1.4R(1), the FSA will take into account factors such as the assets, profitability and market capitalisation of the business.
- 6.1.6 G LR 6.1.4R is intended to enable prospective investors to make a reasonable assessment of what the future prospects of the *applicant's* business might be. Investors are then able to consider the *company's* historic revenue earning record in light of its particular competitive advantages, the outlook for the sector in which it operates and the general macro economic climate.
- 6.1.7 G If an *applicant's* business has been in existence for the period referred to in LR 6.1.4R but part or all of its business has one or more of the following characteristics it may not satisfy that rule:
- (1) a business strategy that places significant emphasis on the development or marketing of products or services which have not formed a significant part of the issuer's historic revenue earning record; or
  - (2) the value of the business on admission will be determined, to a significant degree, by reference to future developments rather than past performance; or
  - (3) 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
  - (4) there is no record of consistent revenue, cash flow or profit growth throughout the historic revenue earning record; or
  - (5) the *applicant's* business has undergone a significant change in its scale of operations during the period of the historic revenue earning record; or
  - (6) it has significant levels of research and development expenditure or significant levels of capital expenditure.

#### Mineral companies

- 6.1.8 R If a *mineral company* applies for the *admission* of its *equity securities*:
- (1) LR 6.1.3R(1)(a) does not apply to the application; and
  - (2) LR 6.1.3R(1)(b) to (e) and (2) apply to the *mineral company* only to the extent that it has published accounts.
- 6.1.9 R LR 6.1.4R does not apply to a *mineral company* that applies for the

*admission of its equity securities.*

- 6.1.10 R (1) This *rule* applies to a *mineral company* that is a *new applicant* for the *admission of its equity securities.*
- (2) If the *mineral company* does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested, it must demonstrate that it has a reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights which give it influence in decisions over the timing and method of extraction of those resources.

#### Scientific research based companies

- 6.1.11 R If a *scientific research based company* applies for the *admission of its equity securities:*
- (1) *LR 6.1.3R(1)(a)* does not apply to the application; and
- (2) *LR 6.1.3R(1)(b) to (e)* and (2) apply to the *scientific research based company* only to the extent that it has published accounts.
- 6.1.12 R An *applicant* for the *admission of equity securities* of a *scientific research based company* does not need to satisfy *LR 6.1.4R* but must:
- (1) demonstrate its ability to attract funds from sophisticated investors;
- (2) intend to raise at least £10 million pursuant to a marketing at the time of *listing*;
- (3) have a capitalisation, before the marketing at the time of *listing*, of at least £20 million (based on the issue price and excluding the value of any *securities* which have been issued in the six months before *listing*);
- (4) have as its primary reason for *listing* the raising of finance to bring identified products to a stage where they can generate significant revenues; and
- (5) demonstrate that it has a three year record of operations in laboratory research and development including:
- (a) details of patents granted or details of progress of patent applications; and
- (b) the successful completion of, or the successful progression of, significant testing of the effectiveness of its products.

#### Other cases where the FSA may modify accounts and track record requirements

- 6.1.13 G The *FSA* may modify or dispense with *LR 6.1.3R(1)(a)* or *LR 6.1.4R* if it is

satisfied that it is desirable in the interests of investors and that investors have the necessary information available to arrive at an informed judgment about the *applicant* and the *securities* for which *listing* is sought. [Note: article 44 *CARD*]

- 6.1.14 G Before modifying or dispensing with *LR 6.1.4R*, the *FSA* must also be satisfied that there is an overriding reason for the *applicant* seeking *listing* (rather than seeking admission to a market more suited to a *company* without a historic revenue earning record).
- 6.1.15 G For the purposes of *LR 6.1.14G* the *FSA* will take into account factors such as whether the *applicant*:
- (1) is attracting significant funds from sophisticated investors;
  - (2) is undertaking a significant marketing of *securities* in connection with the *admission* and has demonstrated that having *listed* status is a significant factor in the ability to raise funds; and
  - (3) has demonstrated that it will have a significant market capitalisation on *admission*.

#### Working capital

- 6.1.16 R An *applicant* for the *admission* of *shares* must satisfy the *FSA* that it and its *subsidiary undertakings* (if any) have sufficient working capital available for the group's requirements for at least the next 12 months from the date of publication of the *prospectus* or *listing particulars* (as the case may be) for the *shares* that are being *admitted*.
- 6.1.17 G The *FSA* may dispense with the requirement under *LR 6.1.16R* if an *applicant* already has *equity securities listed*, and the *FSA* is satisfied that the *prospectus* or *listing particulars* (as the case may be) contain satisfactory proposals for providing the additional working capital thought by the *applicant* to be necessary.
- 6.1.18 G The *FSA* may dispense with the requirement under *LR 6.1.16R* if the *FSA* is satisfied that:
- (1) the *applicant's* business is entirely or substantially that of banking, insurance or providing similar financial services;
  - (2) the *applicant's* solvency and capital adequacy is regulated by the *FSA* or is suitably regulated by another regulatory body; and
  - (3) the *applicant* is meeting its solvency and capital adequacy requirements and is expected to do so for the next 12 months without having to raise further capital.

#### Shares in public hands

- 6.1.19 R (1) If an application is made for the *admission* of a *class* of *shares*, a

sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.

- (2) For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not *EEA States*, if the *shares* are listed in the state or states.
- (3) For the purposes of paragraph (1), a sufficient number of *shares* will be taken to have been distributed to the public when 25% of the *shares* for which application for *admission* has been made are in public hands.
- (4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are held, directly or indirectly, by:
  - (a) a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
  - (b) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
  - (c) the trustees of any *employees' share scheme* or pension fund established for the benefit of any *directors* and *employees* of the *applicant* and its *subsidiary undertakings*; or
  - (d) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
  - (e) any *person* or *persons* in the same *group* who have an interest in 5% or more of the *shares* of the relevant class.
- (5) For the purposes of paragraph (3), *treasury shares* are not to be taken into consideration when calculating the number of *shares* of the *class*. [**Note:** article 48 *CARD*]

- 6.1.20 G The *FSA* may modify *LR* 6.1.19R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public. [**Note:** article 48 *CARD*]

#### Shares of a non-EEA company

- 6.1.21 R The *FSA* will not *admit shares* of a *company* incorporated in a *non-EEA State* that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FSA* is satisfied that the absence of the listing is not due to the need to protect investors. [**Note:** article 51 *CARD*]

#### Warrants or options to subscribe

- 6.1.22 R (1) The total of all issued warrants to subscribe for *equity shares* or options to subscribe for *equity shares* must not exceed 20% of the

issued *equity share capital* (excluding *treasury shares*) of the *applicant* as at the time of issue of the warrants or options.

- (2) Rights under *employees' share schemes* are not included for the purpose of the 20% limit in paragraph (1).

#### Settlement

- 6.1.23 R To be *listed, securities* must be eligible for electronic settlement.
- 6.1.24 G In *LR 6.1.23R*, electronic settlement includes settlement by a “relevant system” (as defined in the Uncertificated Securities Regulations 2001 (SI 2001/3755)).

## 7 Listing Principles

### 7.1 Application and purpose

#### Application

- 7.1.1 R The Listing Principles apply to every *listed company* with a *primary listing of equity securities* in respect of all its obligations arising from the *listing rules* and the *disclosure rules*.

#### Purpose

- 7.1.2 G The purpose of the Listing Principles is to ensure that *listed companies* pay due regard to the fundamental role they play in maintaining market confidence and ensuring fair and orderly markets.
- 7.1.3 G The Listing Principles are designed to assist *listed companies* in identifying their obligations and responsibilities under the *listing rules* and the *disclosure rules*. The Listing Principles should be interpreted together with relevant *rules* and *guidance* which underpin the Listing Principles.
- 7.1.4 G *ENF 21* (Official listing – investigation powers and discipline) sets out *guidance* on the consequences of breaching the Listing Principles.

### 7.2 The Listing Principles

- 7.2.1 R The Listing Principles are as follows:

- Principle 1 *A listed company* must take reasonable steps to enable its *directors* to understand their responsibilities and obligations as *directors*.
- Principle 2 *A listed company* must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.
- Principle 3 *A listed company* must act with integrity towards holders and potential holders of its *listed equity securities*.
- Principle 4 *A listed company* must communicate information to holders and potential holders of its *listed equity securities* in such a way as to avoid the creation or continuation of a false market in such *listed equity securities*.
- Principle 5 *A listed company* must ensure that it treats all holders of the same *class* of its *listed equity securities* that are in the same position equally in respect of the rights attaching to such *listed equity securities*.
- Principle 6 *A listed company* must deal with the *FSA* in an open and co-

operative manner.

#### Guidance on Principle 2

- 7.2.2 G Principle 2 is intended to ensure that *listed companies* have adequate procedures, systems and controls to enable them to comply with their obligations under the *listing rules* and *disclosure rules*. In particular, the *FSA* considers that *listed companies* should place particular emphasis on ensuring that they have adequate procedures, systems and controls in relation to:
- (1) identifying whether any obligations arise under *LR 10* (Significant transactions) and *LR 11* (Related party transactions); and
  - (2) the timely and accurate disclosure of information to the market.
- 7.2.3 G Timely and accurate disclosure of information to the market is a key obligation of *listed companies*. For the purposes of Principle 2, a *listed company* with a *primary listing* of *equity securities* should have adequate systems and controls to be able to:
- (1) ensure that it can properly identify information which requires disclosure under the *listing rules* or *disclosure rules* in a timely manner; and
  - (2) ensure that any information identified under paragraph (1) is properly considered by the *directors* and that such a consideration encompasses whether the information should be disclosed.

8 Sponsors

8.1 Application

Sponsors and applicants

8.1.1 R A *sponsor* and a *person* which is applying for approval as a *sponsor* must comply with:

- (1) LR 8.3 to LR 8.4; and
- (2) LR 8.6 to LR 8.7.

Listed companies and applicants

8.1.2 R A *company* with, or applying for, a *primary listing* of its *equity securities* must comply with LR 8.2 (When a sponsor must be appointed or its assistance obtained) and LR 8.5 (Responsibilities of listed companies).

8.2 When a sponsor must be appointed or its assistance obtained

When a sponsor must be appointed

8.2.1 R A *company* with, or applying for, a *primary listing* of its *equity securities* must appoint a *sponsor* on each occasion that it:

- (1) makes an application for *admission of equity securities* which:
  - (a) requires the production of a *prospectus*; or
  - (b) is accompanied by a certificate of approval from another competent authority; or
  - (c) is accompanied by a summary document as required by PR 1.2.3R(8); or
- (2) is required to produce a *class 1 circular*; or
- (3) is producing a *circular* that proposes a reconstruction or a refinancing which does not constitute a *class 1 transaction*; or
- (4) is producing a *circular* for the proposed purchase of own *shares*:
  - (a) which does not constitute a *class 1 circular*; and
  - (b) is required by LR 13.7.1R(2) to include a working capital statement; or
- (5) is required to do so by the *FSA* because it appears to the *FSA* that there is, or there may be, a breach of the *listing rules* or the

*disclosure rules by the listed company.*

When a listed company must obtain a sponsor's assistance

- 8.2.2 R If a *listed company* is proposing to enter into a transaction which due to its size or nature could amount to a *class 1 transaction* or a *reverse takeover* it must obtain the guidance of a *sponsor* to assess the application of *LR 10*.
- 8.2.3 R If a *listed company* is proposing to enter into a transaction which is, or may be, a *related party transaction* it must obtain the guidance of a *sponsor* in order to assess the application of *LR 11*.

8.3 Role of a sponsor: general

Responsibilities of a sponsor

- 8.3.1 R Where a *sponsor* has been appointed under *LR 8.2* by a *listed company* or an *applicant*, a *sponsor* must:
- (1) provide assurance to the *FSA* when required that the responsibilities of the *listed company* or *applicant* under the *listing rules* have been met; and
  - (2) guide the *listed company* or *applicant* in understanding and meeting its responsibilities under the *listing rules* and *disclosure rules*.
- 8.3.2 G A *sponsor* will be the main point of contact with the *FSA* for any matter where the *sponsor* has been appointed by a *listed company* or *applicant*. The *FSA* expects to discuss all issues relating to a transaction and any draft or final document directly with the *sponsor*. However, in appropriate circumstances, the *FSA* will communicate directly with the *listed company* or *applicant*.

Principles for sponsors: due care and skill

- 8.3.3 R A *sponsor* must provide:
- (1) any service as set out in *LR 8.4*; or
  - (2) any assurance, guidance or advice to a *listed company* or *applicant* in relation to the application or interpretation of the *listing rules* and *disclosure rules*;
- with due care and skill.

Principles for sponsors: duty regarding directors of listed companies

- 8.3.4 R Where a *sponsor* gives any guidance or advice to a *listed company* or *applicant* in relation to the application or interpretation of the *listing rules* or *disclosure rules*, the *sponsor* must take reasonable steps to satisfy itself that

the *director* or *directors* of the *listed company* understand the nature and extent of their responsibilities under the *listing rules* and *disclosure rules*.

#### Principles for sponsors: relations with the FSA

- 8.3.5 R A *sponsor* must:
- (1) deal with the *FSA* in an open and co-operative way;
  - (2) deal with all enquiries raised by the *FSA* promptly; and
  - (3) disclose to the *FSA* in a timely manner any material information relating to the *sponsor* or to a *listed company* or *applicant* of which it has knowledge which addresses non-compliance with the *listing rules* or *disclosure rules*.

#### Principles for sponsors: independence

- 8.3.6 R (1) A *sponsor* must be independent of the *listed company* or *applicant* where a *sponsor* provides any service, assurance, guidance or advice and in any event must not act if the *sponsor* or another *company* in the *sponsor's group* has:
- (a) an interest in, or a holding that is referenced to, 30% or more of the *equity shares* of the *listed company* or *applicant* or any other *company* in that *company's group*; or
  - (b) a significant interest in the *debt securities* of a *listed company* or *applicant* or any other *company* in that *company's group*; or
  - (c) a business relationship with, or financial interest in the *listed company* or *applicant* or any other *company* in the *listed company's group* that would give the *sponsor* or the *sponsor's group* a material interest in the outcome of the transaction.
- (2) Any interest that arises as a result of the *sponsor's* discretionary client holdings is not to be included in the determination of the threshold set out in LR 8.3.6R(1)(a).
- (3) A *sponsor* will not be independent of a *listed company* or *applicant* if a *director*, partner or *employee* of the *sponsor* or of another *company* in the *sponsor's group*:
- (a) is involved in the provision of *sponsor* services; and
  - (b) has a material interest in the *listed company* or *applicant* or any other *company* in that *company's group*.

- 8.3.7 G (1) A *sponsor* and the *sponsor's group* should have a sufficient degree of independence from the *listed company* or *applicant* and from the transaction so that the role of the *sponsor* can be discharged in a way that will not:
- (a) affect the outcome of the transaction; or
  - (b) affect the nature of the advice given to the *listed company* or *applicant*; or
  - (c) be perceived to have affected either the outcome of the transaction or the nature of the advice given to the *listed company* or *applicant*.
- (2) In cases where a *company* in, or an *employee* of, the *sponsor's group* has an interest or a relationship that may be perceived to cause a conflict it may be possible to demonstrate to the *FSA* that adequate separation exists in respect of the transaction.

#### 8.4 Role of a sponsor: transactions

##### Application for admission: new applicants

- 8.4.1 R *LR 8.4.2R* to *LR 8.4.6R* apply in relation to an application for *admission of equity securities* if an *applicant* does not have *equity securities* already listed and:
- (1) the production of a *prospectus* is required; or
  - (2) the application is accompanied by a certificate of approval from another competent authority; or
  - (3) the application is accompanied by a summary document as required by *PR 1.2.3R(8)*.
- 8.4.2 R A *sponsor* must not submit to the *FSA* an application on behalf of an *applicant*, in accordance with *LR 3*, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:
- (1) the *applicant* has satisfied all requirements of the *listing rules* relevant to an application for *admission to listing*;
  - (2) the *applicant* has satisfied all applicable requirements set out in the *prospectus rules* unless the *home Member State* of the *applicant* is not, or will not be, the *United Kingdom*;
  - (3) the *directors* of the *applicant* have established procedures which enable the *applicant* to comply with the *listing rules* and the

*disclosure rules* on an ongoing basis;

- (4) the *directors* of the *applicant* have established procedures which provide a reasonable basis for them to make proper judgments on an ongoing basis as to the financial position and prospects of the *applicant* and its *group*; and
- (5) the *directors* of the *applicant* have a reasonable basis on which to make the working capital statement required by LR 6.1.16R.

New applicants: procedure

8.4.3 R A *sponsor* must:

- (1) submit a completed Sponsor's Declaration on an Application for Listing to the *FSA* either:
  - (a) on the day the *FSA* is to consider the application for approval of the *prospectus* and prior to the time the *prospectus* is approved; or
  - (b) at a time agreed with the *FSA*, if the *FSA* is not approving the *prospectus*;
- (2) submit a completed Shareholder Statement or a Pricing Statement, as applicable, to the *FSA* by 9 a.m. on the day the *FSA* is to consider the application;
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering:
  - (a) the application for *listing*; and
  - (b) whether the *admission* of the *equity shares* would be detrimental to investors' interests;

have been disclosed with sufficient prominence in the *prospectus* or otherwise in writing to the *FSA*; and

- (4) submit a letter to the *FSA* setting out how the *applicant* satisfies the criteria in LR 2 (Requirements for listing – all securities) and LR 6 (Additional requirements for listing for equity securities) no later than when the first draft of the *prospectus* is submitted (or, if the *FSA* is not approving a *prospectus*, at a time to be agreed with the *FSA*).

**Note:** The Sponsor's Declaration on an Application for Listing, the Shareholder Statement and the Pricing Statement forms can be found on the UKLA section of the *FSA*'s website.

8.4.4 G Depending on the circumstances of the case, a *sponsor* providing services to an *applicant* on an application for *admission to listing* may have to confirm

in writing to the *FSA* that the board of the *applicant* has allotted the *equity securities*. [**Note:** see *LR 3.3.4R*]

New applicants: marketing

- 8.4.5 R A *sponsor* must:
- (1) ensure that no *equity shares* are placed with *connected clients* of the *sponsor* or of any securities house or other intermediary assisting with the offer, unless placed with a market maker or fund manager for the purpose of its business as such;
  - (2) ensure that the results of any marketing, including the basis of allotment where applicable, are notified to a *RIS* before *admission* is expected to become effective; and
  - (3) ensure that if, after an *offer for sale*, *offer for subscription*, *placing* or *intermediaries offer*, any of the *listed company's* advisers or any intermediary becomes interested in 3% or more of any *class* of *equity shares* being marketed (calculated exclusive of *treasury shares*) the interest is notified to a *RIS* before *admission* is expected to become effective.
- 8.4.6 R (1) For the purposes of *LR 8.4.5R(3)* an adviser or intermediary:
- (a) will usually be regarded as having an interest if any market maker in the *group* of *companies* to which the adviser or intermediary belongs holds any *equity shares* of the *applicant*; and
  - (b) will not have an interest if the holding of the market maker arises solely from holdings of *equity shares* held on behalf of clients.
- (2) In assessing the percentage size of the interest, the *equity shares* being marketed are to be treated as having already been issued.

Application for admission: further issues

- 8.4.7 R *LR 8.4.8R* to *LR 8.4.10R* apply in relation to an application for *admission* of *equity securities* of an *applicant* that has *equity securities* already *listed*.
- 8.4.8 R A *sponsor* must not submit to the *FSA* an application on behalf of an *applicant*, in accordance with *LR 3* (Listing applications), unless it has come to a reasonable opinion, after having made due and careful enquiry, that:
- (1) the *applicant* has satisfied all requirements of the *listing rules* relevant to an application for *admission to listing*;
  - (2) the *applicant* has satisfied all applicable requirements set out in the

*prospectus rules* unless the *home Member State* of the *applicant* is not, or will not be, the *United Kingdom*; and

- (3) the *directors* of the *applicant* have a reasonable basis on which to make the working capital statement required by LR 6.1.16R.

Further issues: procedure

8.4.9 R A *sponsor* must:

- (1) submit a completed Sponsor's Declaration on an Application for Listing to the *FSA* either:
  - (a) on the day the *FSA* is to consider the application for approval of the *prospectus* and prior to the time the *prospectus* is approved; or
  - (b) at a time agreed with the *FSA* if the *FSA* is not approving the *prospectus*;
- (2) submit a completed Shareholder Statement or a Pricing Statement, as applicable, to the *FSA* by 9 a.m. on the day the *FSA* is to consider the application; and
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering the application for *listing* have been disclosed with sufficient prominence in the *prospectus* or otherwise in writing to the *FSA*.

**Note:** The Sponsor's Declaration on an Application for Listing, the Shareholder Statement and the Pricing Statement forms can be found on the on the UKLA section of the *FSA's* website.

8.4.10 G Depending on the circumstances of the case, a *sponsor* providing services to an *applicant* on an application for *admission to listing* may have to confirm in writing to the *FSA* that the board of the *applicant* has allotted the *securities*. [**Note:** see LR 3.3.4R]

Class 1 circulars, refinancing and purchase of own equity shares

8.4.11 R LR 8.4.12R to LR 8.4.13R apply in relation to transactions involving a *listed company* of *equity shares* with a *primary listing* that:

- (1) is required to produce a *class 1 circular*;
- (2) is producing a *circular* that proposes a reconstruction or a refinancing which does not constitute a *class 1 transaction*; or
- (3) is producing a *circular* for the proposed purchase of own *shares*;

- (a) which does not constitute a *class 1 circular*; and
- (b) is required by *LR 13.7.1R(2)* to include a working capital statement.

8.4.12 R A *sponsor* must not submit to the *FSA*, on behalf of a *listed company*, an application for approval of a *circular* regarding a transaction set out in *LR 8.4.11R*, unless the *sponsor* has come to a reasonable opinion, after having made due and careful enquiry, that:

- (1) the *listed company* has satisfied all requirements of the *listing rules* relevant to the production of a *class 1 circular* or other *circular*;
- (2) the transaction will not have an adverse impact on the *listed company's* ability to comply with the *listing rules* or the *disclosure rules*; and
- (3) the *directors* of the *listed company* have a reasonable basis on which to make the working capital statement required by *LR 9.5.12R*, *LR 13.4.1R* or *LR 13.7.1R*.

Circulars: procedure

8.4.13 R A *sponsor* acting on a transaction falling within *LR 8.4.11R* must:

- (1) submit a completed Sponsor's Declaration for the Production of a Circular to the *FSA* on the day the *circular* is to be approved by the *FSA* and prior to the time the *circular* is approved;
- (2) submit a completed Pricing Statement, if applicable, to the *FSA* by 9 a.m. on the day the *FSA* is to consider the application; and
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering the transaction have been disclosed with sufficient prominence in the documentation or otherwise in writing to the *FSA*.

**Note:** The Sponsor's Declaration for the Production of a Circular and the Pricing Statement forms can be found on the UKLA section of the *FSA's* website.

8.5 Responsibilities of listed companies

Notifications to *FSA*

8.5.1 R A *listed company* or *applicant* must inform the *FSA* promptly of the name and contact details of a *sponsor* appointed in accordance with the *listing rules*.

8.5.2 R (1) A *listed company* or *applicant* must notify the *FSA* in writing immediately of the resignation or dismissal of any *sponsor* that it had

appointed.

- (2) In the case of a dismissal, the reasons for the dismissal must be included in the notification.
- (3) The notification must be copied to the *sponsor*.

Listed company appoints more than one sponsor

- 8.5.3 R Where a *listed company* or *applicant* appoints more than one *sponsor*, the *company* must:
- (1) ensure that one of the *sponsors* that is appointed:
    - (a) takes primary responsibility for contact with the *FSA* in respect of the entire application or transaction; and
    - (b) appoints a suitably experienced *employee*, whose name appears on the list described in *LR 8.6.15R* to liaise with the *FSA*; and
  - (2) inform the *FSA*, in writing, of the name and contact details of the *sponsor* taking responsibility under paragraph *LR 8.5.3R(1)(a)*.
- 8.5.4 R The appointment of more than one *sponsor* does not relieve any of the *sponsors* so appointed of their obligations under the *listing rules*.
- 8.5.5 G Where a *listed company* or *applicant* appoints more than one *sponsor* in relation to a transaction, the *FSA* will consider all *sponsors* so appointed as jointly responsible for compliance with the *listing rules*.

8.6 Criteria for approval as a sponsor

List of sponsors

- 8.6.1 G The *FSA* will maintain a *list of sponsors* on its website.

Application for approval as a sponsor

- 8.6.2 R A *person* wanting to provide services as a *sponsor*, and to be included on the *list of sponsors*, must apply to the *FSA* for approval as a *sponsor* by submitting the following to the Sponsor Supervision Team at the *FSA's* address:
- (1) a completed Sponsor Firm Application Form;
  - (2) completed Sponsor Employee Application Forms; and
  - (3) the application fee set out in *LR App 2*.

**Note:** The Sponsor's Firm Application Form and the Sponsor Employee Application Form can be found on the UKLA section of the *FSA's* website.

- 8.6.3 R A *person* wanting to provide services as a *sponsor* and be included on the *list of sponsors* must also submit:
- (1) all additional documents, explanations and information as required by the *FSA*; and
  - (2) verification of any information in such a manner as the *FSA* may specify.

- 8.6.4 G When considering an application for approval as a *sponsor* the *FSA* may:
- (1) carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators;
  - (2) request that the applicant or its specified representative answer questions and explain any matter the *FSA* considers relevant to the application;
  - (3) take into account any information which it considers appropriate in relation to the application; and
  - (4) request that any information provided by the applicant is verified in such a manner as the *FSA* may specify.

**Note:** The decision-making procedures that the *FSA* will follow when it considers whether to refuse an application for approval as a *sponsor* are set out in *DEC*.

#### Criteria for approval as a sponsor

- 8.6.5 R The *FSA* will approve a *person* as a *sponsor* only if it is satisfied that the *person* is:
- (1) an *authorised person* or a *member of a designated professional body*;
  - (2) competent to perform the services set out in *LR 8.2*, *LR 8.3* and *LR 8.4*; and
  - (3) has adequate systems and controls in place to ensure that it can carry out its role as a *sponsor*.

- 8.6.6 R A *sponsor* must comply, at all times, with the criteria set out in *LR 8.6.5R*.

#### Competence of a sponsor

- 8.6.7 R A *sponsor* will be competent to perform the services set out in *LR 8.2*, *LR 8.3* and *LR 8.4* if it has a broad range of relevant experience and expertise in

providing advice to *listed companies* and on the *listing rules*.

- 8.6.8 G In assessing the competence of a *sponsor*, the *FSA* will have regard to:
- (1) the number of suitably experienced *employees* retained by the *sponsor*, taking into account the size, number and nature of transactions undertaken and anticipated by the *sponsor*;
  - (2) the experience of those *employees* who are held out to the *FSA* as being suitably experienced *employees*; and
  - (3) the seniority of those suitably experienced *employees*.
- 8.6.9 G (1) An *employee* will generally be accepted as suitably experienced if he or she has recent experience providing, in a competent manner, advice and services and fulfilling all the responsibilities of a *sponsor* in relation to a transaction when a *sponsor* must be appointed.
- (2) The *FSA* may consider, in addition to the experience described in paragraph (1), an *employee's* recent experience, acting in a senior capacity, providing advice and services in a competent manner on:
- (a) transactions where a *prospectus* is required under the *Prospectus Directive*; and
  - (b) transactions which are similar in terms of size and complexity to those transactions set out in *LR 8.2.1R*.
- (3) Recent experience would normally be demonstrated if an *employee* has provided advice or services:
- (a) at least three times in the preceding 36 months; and
  - (b) at least once in the preceding 12 months.
- 8.6.10 R A *sponsor* must have a sufficient number of suitably experienced *employees* to provide the services described in *LR 8.2*, *LR 8.3* and *LR 8.4* to a competent standard at all times.
- 8.6.11 G The fewer the number of suitably experienced *employees* that a *sponsor* has, the greater the need that those *employees* do not rely on the same transactions to demonstrate their experience in advising on the *listing rules*, unless each of those *employees* has extensive experience in providing advice on the *listing rules*.

Systems and controls: general

- 8.6.12 G A *sponsor* will generally be regarded as having adequate systems and controls if there are:

- (1) clear and effective reporting lines in place;
  - (2) effective systems and controls for the adequate supervision of *employees* performing any of the services set out in *LR 8.2, LR 8.3* and *LR 8.4*;
  - (3) effective systems and controls to ensure its compliance with all applicable *listing rules* when performing any of the services set out in *LR 8.2, LR 8.3* or *LR 8.4*;
  - (4) effective systems and controls for identifying and managing conflicts of interest; and
  - (5) effective arrangements for making and retaining, for 6 years, adequate records of all matters relating to the provision of any services to a *listed company* or *applicant*.
- 8.6.13 G The nature and extent of the systems and controls which a *sponsor* will need to maintain will depend upon a variety of factors including:
- (1) the nature, scale and complexity of its business;
  - (2) the diversity of its operations;
  - (3) the volume and size of the transactions it undertakes; and
  - (4) the volume and size of the transactions it anticipates undertaking in the following year.
- 8.6.14 G To enable it to comply with its obligation to maintain appropriate systems and controls, a *sponsor* should carry out an annual review of them.
- Systems and controls: employees
- 8.6.15 R A *sponsor* must keep an up to date list of all suitably experienced *employees* on whom it relies to demonstrate that it satisfies the criteria set out in *LR 8.6.5R*.
- 8.6.16 G A *sponsor* will generally be regarded as having effective systems and controls for the adequate supervision of *employees* if:
- (1) all *employees* involved in the provision of any of the services described in *LR 8.2, LR 8.3* and *LR 8.4* are adequately supervised by a suitably experienced *employee*;
  - (2) all *employees* providing any of the services described in *LR 8.2, LR 8.3* and *LR 8.4* do not act beyond their proper authority;
  - (3) for each transaction which requires a *sponsor* as set out in *LR 8.2, LR 8.3* and *LR 8.4*, an *employee*, whose name is on the list required by

LR 8.6.15R:

- (a) is appointed by the *sponsor* to liaise with the *FSA*;
  - (b) reviews all the assurances provided to the *FSA*; and
  - (c) signs the Confirmation of Independence, the Sponsor's Declaration and any Listing Application forms that may be required; and
- (4) for each transaction which requires a *sponsor* as set out in LR 8.2, *employees* who are sufficiently knowledgeable about the transaction are available to answer queries from the *FSA* on any *business day* between the hours of 8 a.m. and 6 p.m.

8.7 Supervision of sponsors

- 8.7.1 G The *FSA* expects to have an open, co-operative and constructive relationship with a *sponsor* to enable it to have a broad picture of the *sponsor's* activities and its ability to satisfy the criteria for approval as a *sponsor* as set out in LR 8.6.5R.

Supervisory tools

- 8.7.2 G The *FSA* uses a variety of tools to monitor whether a *sponsor*:
- (1) continues to satisfy the criteria for approval as a *sponsor* as set out in LR 8.6.5R; and
  - (2) remains in compliance with all applicable *listing rules*.
- 8.7.3 G *FSA* staff, after notifying the *sponsor*, may make supervisory visits to a *sponsor* on a periodic and an ad hoc basis.
- 8.7.4 G The *FSA* will give reasonable notice to a *sponsor* of requests for meetings or requests for access to a *sponsor's* documents and records.

Requests from other regulators

- 8.7.5 G The *FSA*, on behalf of other regulators, may request information from a *sponsor* or pass information on to other regulators to enable such regulators to discharge their functions.

Fees

- 8.7.6 R A *sponsor* must pay the annual fee set out in LR App 2 in order to remain on the *list of sponsors*.

#### Annual notifications

- 8.7.7 R A *sponsor* must provide to the *FSA* on an annual basis:
- (1) written confirmation that it continues to satisfy the criteria for approval as a *sponsor* as set out in *LR 8.6.5R*;
  - (2) an up to date list of *employees* that are suitably experienced on whom the *sponsor* can rely to demonstrate that it satisfies the criteria set out in *LR 8.6.5R*;
  - (3) for each *employee* whose name is on the list maintained by the sponsor under *LR 8.6.15R*, details of the transactions on which the *employee* has acted in the previous twelve months; and
  - (4) a list of transactions on which the *sponsor* was appointed as agent under *LR 8.7.16R*, if applicable.

#### General notifications

- 8.7.8 R A *sponsor* must notify the *FSA* in writing as soon as possible if:
- (1) the *sponsor* ceases to satisfy the criteria for approval as a *sponsor* set out in *LR 8.6.5R*; or
  - (2) the *sponsor*, or any of its *employees* whose names are on the list maintained by the *sponsor* under *LR 8.6.15R*, are:
    - (a) convicted of any offence involving fraud, theft or other dishonesty; or
    - (b) the subject of a bankruptcy proceeding, a receiving order or an administration order; or
  - (3) any of its *employees* whose names are on the list maintained by the *sponsor* under *LR 8.6.15R* are disqualified by a court from acting as a *director* of a *company* or from acting in a management capacity or conducting the affairs of any *company*; or
  - (4) the *sponsor*, or any of its *employees* whose names are on the list maintained by the sponsor under *LR 8.6.15R*, are subject to any public criticism, regulatory intervention or disciplinary action:
    - (a) by the *FSA*; or
    - (b) by any *designated professional body*; or
    - (c) by any body that is comparable to the *FSA* or a *designated professional body*; or
    - (d) under any comparable legislation in any jurisdiction outside

the *United Kingdom*; or

- (5) the *sponsor* resigns or is dismissed by a *listed company* or *applicant*, giving details of any relevant facts or circumstances; or
- (6) the *sponsor* changes its name; or
- (7) the list of *employees* that are suitably experienced to enable the *sponsor* to demonstrate that it satisfies the criteria set out in *LR 8.6.5R* is amended, either because an *employee* is added to or is removed from the list; or
- (8) a *listed company* or *applicant* denies the *sponsor* access to documents or information that have been the subject of a reasonable request by the *sponsor*; or
- (9) a review carried out under *LR 8.6.14G* reveals any material deficiencies in the *sponsor's* systems and controls.

8.7.9 G General notifications may be made in the first instance by telephone, but must be confirmed promptly in writing.

8.7.10 G Written notifications should be sent to the Sponsor Supervision Team at the *FSA's* address.

Transaction notification rules: appointment of FSA liaison

8.7.11 R Each time a *sponsor* is appointed to act for a *listed company* or *applicant* as required by the *listing rules* it must inform the *FSA* as soon as possible of the name of the suitably experienced senior *employee*, whose name appears on the list described in *LR 8.6.15R*, who has been appointed by the *sponsor* to liaise with the *FSA*.

Transaction notification rules: sponsor independence

- 8.7.12 R
- (1) Each time a *sponsor* is appointed to act as a *sponsor* as required by the *listing rules* it must complete a Confirmation of Independence.
  - (2) The completed Confirmation of Independence must be submitted to the *FSA* at the same time as any documents in connection with a transaction are first submitted to the *FSA*.

**Note:** The Confirmation of Independence form can be found on the UKLA section of the *FSA's* website.

8.7.13 R If, after submitting a Confirmation of Independence but prior to the *day* of approval of the *prospectus* or *circular*, a *sponsor* becomes aware that it is not independent of the *listed company* or *applicant* or the transaction, it must notify the *FSA* immediately. The details of the lack of independence must be confirmed to the *FSA* in writing.

- 8.7.14 R On the day of approval of the *prospectus* or *circular*:
- (1) a written confirmation that there has been no material change to the Confirmation of Independence; or
  - (2) an updated Confirmation of Independence reflecting any and all changes;

must be submitted to the *FSA*.

- 8.7.15 G The *FSA* will notify the *sponsor* of any concerns it has in relation to the *sponsor's* independence as soon as possible following receipt of the Confirmation of Independence as set out in *LR 8.7.12R* or *LR 8.7.14R* or other notification regarding the *sponsor's* independence.

#### Appointment of an agent

- 8.7.16 R A *sponsor* may not delegate any of its functions as such, except to another *person* on the *list of sponsors*.
- 8.7.17 R (1) A *sponsor* that delegates any of its functions under *LR 8.7.16R* is not relieved of its obligations under the *listing rules*.
- (2) A *sponsor* that has been appointed as an agent by another *sponsor* under *LR 8.7.16R* must comply with the requirements set out in *LR 8.3*.
- 8.7.18 R A *sponsor* must notify the *FSA* in writing of:
- (1) the identity of any delegate appointed under *LR 8.7.16R*; and
  - (2) a detailed description of the scope of any delegation made under *LR 8.7.16R*.

#### Discipline of sponsors

- 8.7.19 R If the *FSA* considers that a *sponsor* has breached any provision of the *listing rules* and considers it appropriate to impose a sanction it will publish a statement censuring the *sponsor*.
- 8.7.20 G *ENF 21* (Official listing – investigation powers and discipline) sets out the *FSA's* policy on when and how it will use its disciplinary powers in relation to a *sponsor*.

#### Cancellation of a sponsor's approval at the sponsor's request

- 8.7.21 G A *sponsor* that intends to request the *FSA* to cancel its approval as a *sponsor* will need to comply with *LR 8.7.22R*.

- 8.7.22 R A request by a *sponsor* for its approval as a *sponsor* to be cancelled must be in writing and must include:
- (1) the *sponsor's* name;
  - (2) a clear explanation of the background and reasons for the request;
  - (3) the date on which the *sponsor* requests the cancellation to take effect, after having taken into account *LR 8.7.24G(2)*;
  - (4) a signed confirmation that the *sponsor* will not participate in any services described in *LR 8.2* as of the date the request is submitted to the *FSA*; and
  - (5) the name and contact details of the *person* at the *sponsor* with whom the *FSA* should liaise with in relation to the request.
- 8.7.23 G A *sponsor* may withdraw its request at any time before the cancellation takes effect. The withdrawal request should initially be made by telephone and then confirmed in writing as soon as possible, with an explanation of the reasons for the withdrawal.
- 8.7.24 G
- (1) The decision-making procedures that the *FSA* will follow when it cancels a *sponsor's* approval at the *sponsor's* request are set out in *DEC*.
  - (2) Under the statutory notice procedure set out in *DEC* a request for cancellation of approval will take a minimum of 8 weeks to take effect.

9 Continuing obligations

9.1 Preliminary

Application: equity shares

- 9.1.1 R A *company* that has a *primary listing* of *equity shares* must comply with all of the requirements of this chapter.

Application: preference shares

- 9.1.2 R A *company* that has a *primary listing* of *preference shares* must comply with:

- (1) LR 9.2.1R to LR 9.2.6R;
- (2) LR 9.2.11R to LR 9.2.12G;
- (3) LR 9.2.14R to LR 9.2.17G;
- (4) LR 9.3.1R to LR 9.3.10G;
- (5) LR 9.5.1R to LR 9.5.9R;
- (6) LR 9.6.1R to LR 9.6.4R;
- (7) LR 9.6.6R;
- (8) LR 9.6.11R;
- (9) LR 9.6.19R to LR 9.6.22G;
- (10) LR 9.7;
- (11) LR 9.8, but not:
  - (a) LR 9.8.4R(3);
  - (b) LR 9.8.4R(5) and (6);
  - (c) LR 9.8.4R(12) and (13);
  - (d) LR 9.8.6R(6) and (7); and
  - (e) LR 9.8.8R; and
- (12) LR 9.9.

Application: securities convertible into equity shares

9.1.3 R A company that has a *primary listing* of securities convertible into equity shares must comply with:

- (1) LR 9.2.1R to LR 9.2.6R;
- (2) LR 9.2.11R;
- (3) LR 9.2.13G;
- (4) LR 9.3.1R to LR 9.3.5R;
- (5) LR 9.5.11R to LR 9.5.12R;
- (6) LR 9.5.15R to LR 9.5.16R;
- (7) LR 9.6.1R;
- (8) LR 9.6.3R;
- (9) LR 9.6.4R to LR 9.6.6R;
- (10) LR 9.6.19R to LR 9.6.22G;
- (11) LR 9.8 but not:
  - (a) LR 9.8.4R(3);
  - (b) LR 9.8.4R(5) and (6);
  - (c) LR 9.8.4R(12) and (13);
  - (d) LR 9.8.6R(6) and (7); and
  - (e) LR 9.8.8R.

9.1.4 R A company that has a *primary listing* of securities convertible into equity shares must comply with LR 9.2.7R to LR 9.2.10R if the equity shares that the securities convert into are *listed*.

## 9.2 Requirements with continuing application

### Admission to trading

9.2.1 R A *listed company* must comply with LR 2.2.3R at all times.

9.2.2 R A *listed company* must inform the FSA in writing as soon as possible if it has:

- (1) requested a *RIE* to admit or re-admit any of its *listed equity securities* or *listed preference shares* to trading; or
- (2) requested a *RIE* to cancel or suspend trading of any of its *listed equity securities* or *listed preference shares*; or
- (3) been informed by a *RIE* that trading of any of its *listed equity securities* or *listed preference shares* will be cancelled or suspended.

#### Settlement arrangements

- 9.2.3 R A *listed company* must comply with *LR 6.1.23R* at all times.

#### Registrar

- 9.2.4 R A *listed company* must appoint a registrar in the *United Kingdom* unless it provides financial services and itself performs the functions of a registrar in the *United Kingdom*. [Note: Article 65(2) *CARD*]

#### Compliance with the disclosure rules

- 9.2.5 G A *listed company*, whose *securities* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider its obligations under *DR 2* (Disclosure and control of inside information by issuers).
- 9.2.6 R A *listed company* that is not already required to comply with *DR 2* (Disclosure and control of inside information by issuers) must comply with *DR 2* as if it were an *issuer* for the purposes of the *disclosure rules*.

#### Compliance with the Model Code

- 9.2.7 R No dealings in any *securities* may be effected by or on behalf of a *listed company* or any other member in its *group* at a time when, under the provisions of the *Model Code*, a *director* of the *company* would be prohibited from dealing in its *securities*, unless such dealings are entered into:
- (1) in the ordinary course of business by a securities dealing business; or
  - (2) on behalf of third parties by the *company* or any other member of its *group*.
- 9.2.8 R A *listed company* must require:
- (1) every person discharging managerial responsibilities, including *directors*; and
  - (2) every employee of the *company* or any *group company* with access to *inside information*;

to comply with the *Model Code* and to take all proper and reasonable steps to secure their compliance.

- 9.2.9 G A *listed company* may impose more rigorous dealing obligations than those required by the *Model Code*.
- 9.2.10 R Where clearance is given to a *person* to deal in exceptional circumstances (pursuant to paragraph 9 of the *Model Code*) in a *close period*, the notification to a *RIS* required by *DR 3.1.4R* must also include a statement of the exceptional circumstances.

#### Contact details

- 9.2.11 R A *listed company* must ensure that the *FSA* is provided with up to date contact details of at least one appropriate person nominated by it to act as the first point of contact with the *FSA* in relation to the *company's* compliance with the *listing rules* and the *disclosure rules*.
- 9.2.12 G The contact person referred to in *LR 9.2.11R* will be expected to be:
- (1) knowledgeable about the *listed company* and the *listing rules* applicable to it;
  - (2) capable of ensuring that appropriate action is taken on a timely basis; and
  - (3) contactable on *business days* between the hours of 7 a.m. and 7 p.m.

#### Sponsors

- 9.2.13 G A *listed company* should consider its notification obligations under *LR 8.5*.

#### Amendments to constitution

- 9.2.14 R A *listed company* must lodge two copies of any proposed amendment to its *constitution* with the *FSA* no later than when it sends the notice convening the meeting to decide on the amendment. [**Note:** Article 66 *CARD*]

#### Shares in public hands

- 9.2.15 R A *listed company* must comply with *LR 6.1.19R* at all times.
- 9.2.16 R A *listed company* that no longer complies with *LR 6.1.19R* must notify the *FSA* as soon as possible of its non-compliance.
- 9.2.17 G A *listed company* should consider *LR 5.2.2G(2)* in relation to its compliance with *LR 6.1.19R*.

#### Publication of unaudited financial information

- 9.2.18 R (1) This *rule* applies to a *listed company* that has published:
- (a) any unaudited financial information in a *class 1 circular* or a

*prospectus*; or

(b) any *profit forecast* or *profit estimate*.

(2) The first time a *listed company* publishes financial information as required by *LR 9.7* to *LR 9.9* after the publication of the unaudited financial information, *profit forecast* or *profit estimate*, it must:

(a) reproduce that financial information, *profit forecast* or *profit estimate* in its next annual report and accounts;

(b) produce and disclose in the annual report and accounts the actual figures for the same period covered by the information reproduced under paragraph (2)(a); and

(c) provide an explanation of the difference, if there is a difference of 10% or more between the figures required by paragraph (2)(b) and those reproduced under paragraph (2)(a).

9.2.19 G *LR 9.2.18R* does not apply to:

(1) pro forma financial information prepared in accordance with Annex 1 and Annex 2 of the *PD Regulation*; or

(2) any preliminary statements of annual results or half-yearly or quarterly reports that are reproduced with the unaudited financial information.

9.3 Continuing obligations - holders

Equality of treatment

9.3.1 R A *listed company* must ensure equality of treatment for all holders of *listed equity securities* or *listed preference shares* who are in the same position. [Note: Article 65(1) *CARD*]

9.3.2 G *LR 9.3.1R* includes the obligation to post all *circulars* to overseas holders.

Prescribed information to holders

9.3.3 R A *listed company* must ensure that at least in each *EEA State* in which its *equity securities* or *preference shares* are listed all the necessary facilities and information are available to enable holders to exercise their rights. In particular it must:

(1) inform holders of meetings which they are entitled to attend;

- (2) enable them to exercise their vote, where applicable; and
- (3) publish notices or distribute circulars giving information on:
  - (a) the allocation and payment of dividends and/or interest;
  - (b) the issue of new *securities*, including arrangements for the allotment, subscription, conversion or exchange of such *securities*; and
  - (c) redemption or repayment of the *securities*. [**Note:** Article 65(2) *CARD*]

Use of airmail and first class mail

- 9.3.4 R Where available, airmail or an equivalent service that is no slower must be used when sending documents to holders of *listed equity securities* or *listed preference shares* in *non-EEA States*.
- 9.3.5 R Where available, first class mail or an equivalent service that is no slower must be used when sending documents to holders of *listed equity securities* or *listed preference shares* in the *United Kingdom* and other *EEA States*.

Proxy forms

- 9.3.6 R A *listed company* must ensure that a proxy form:
  - (1) is sent with the notice convening a meeting of holders of *listed shares* to each *person* entitled to vote at the meeting;
  - (2) provides for at least two-way voting on all resolutions intended to be proposed (except that it is not necessary to provide proxy forms with two-way voting on procedural resolutions);
  - (3) states that a shareholder is entitled to appoint a proxy of his own choice and that it provides a space for insertion of the name of the proxy; and
  - (4) states that if it is returned without an indication as to how the proxy shall vote on any particular matter, the proxy will exercise his discretion as to whether, and if so how, he votes.

Proxy forms for re-election of retiring directors

- 9.3.7 R A *listed company* must ensure that, if the resolutions to be proposed include the re-election of retiring *directors* and the number of retiring *directors* standing for re-election exceeds five, the proxy form gives shareholders the opportunity to vote for or against the re-election of the retiring *directors* as a whole but may also allow votes to be cast for or against the re-election of the retiring *directors* individually.

## Communications with holders of bearer shares

- 9.3.8 R (1) A *listed company* required to communicate with holders of its *listed* bearer shares must publish an advertisement in at least one national newspaper referring to the communication and giving the address or addresses from which copies of the communication can be obtained.
- (2) A *listed company* is not required to comply with paragraph (1) if:
- (a) the *listed* bearer shares are in global form; and
  - (b) the *listed company* can confirm that notices will be transmitted as soon as possible to all holders.

## Sanctions

- 9.3.9 R Where a *listed company* has taken a power in its *constitution* to impose sanctions on a shareholder who is in default in complying with a notice served under section 212 of the Companies Act 1985 (Company investigations):
- (1) sanctions may not take effect earlier than 14 days after service of the notice;
  - (2) for a shareholding of less than 0.25% of the *shares* of a particular *class* (calculated exclusive of *treasury shares*), the only sanction the *constitution* may provide for is a prohibition against attending meetings and voting;
  - (3) for a shareholding of 0.25% or more of the *shares* of a particular *class* (calculated exclusive of *treasury shares*), the *constitution* may provide:
    - (a) for a prohibition against attending meetings and voting;
    - (b) for the withholding of the payment of dividends (including *shares* issued in lieu of dividend) on the *shares* concerned; and
    - (c) for the placing of restrictions on the transfer of *shares*, provided that restrictions on transfer do not apply to a sale to a genuine unconnected third party (such as through a *RIE* or an *overseas* exchange or by the acceptance of a takeover offer); and
  - (4) any sanctions imposed in accordance with paragraph (2) or (3) above must cease to apply after a specified period of not more than seven days after the earlier of:
    - (a) receipt by the *issuer* of notice that the shareholding has been sold to an unconnected third party through a *RIE* or an *overseas* exchange or by the acceptance of a takeover offer;

and

- (b) due compliance, to the satisfaction of the *issuer*, with the notice under section 212.

9.3.10 G An *overseas company* with a *primary listing* is not required to comply with LR 9.3.9R.

Pre-emption rights

9.3.11 R A *listed company* proposing to issue *equity shares* for cash or to sell *treasury shares* that are *equity securities* for cash must first offer those securities in proportion to their existing holdings to:

- (1) existing holders of that class of *equity shares* (other than the *listed company* itself by virtue of it holding *treasury shares*); and
- (2) holders of other *equity shares* of the *listed company* who are entitled to be offered them.

9.3.12 R LR 9.3.11R does not apply if:

- (1) a general disapplication of statutory pre-emption rights has been authorised by shareholders in accordance with section 95 of the Companies Act 1985 (Disapplication of pre-emption rights) and the issue of *equity securities* or sale of *treasury shares* that are *equity shares* by the *listed company* is within the terms of the authority; or
- (2) the *listed company* is undertaking a *rights issue* or an *open offer* and the disapplication of pre-emption rights is with respect to:
  - (a) *equity shares* representing fractional entitlements; or
  - (b) *equity shares* which the *company* considers necessary or expedient to exclude from the offer on account of the laws or regulatory requirements of another territory; or
- (3) the *listed company* is selling *treasury shares* for cash to an *employee share scheme*; or
- (4) the *company* is an *overseas company* with a *primary listing*.

- 9.4 Documents requiring prior approval
- Employees' share schemes and long-term incentive plans
- 9.4.1 R (1) This *rule* applies to the following schemes of a *listed company* incorporated in the *United Kingdom* and of any of its *major subsidiary undertakings* (even if that *major subsidiary undertaking* is incorporated or operates overseas):
- (a) an *employees' share scheme* if the scheme involves or may involve the issue of new *shares* or the transfer of *treasury shares*; and
  - (b) a *long-term incentive scheme* in which one or more *directors* of the *listed company* is eligible to participate.
- (2) The *listed company* must ensure that the *employees' share scheme* or *long term incentive scheme* is approved by an ordinary resolution of the shareholders of the *listed company* in general meeting before it is adopted.
- 9.4.2 R *LR 9.4.1R* does not apply to the following *long-term incentive schemes*:
- (1) an arrangement where participation is offered on similar terms to all or substantially all *employees* of the *listed company* or any of its *subsidiary undertakings* whose *employees* are eligible to participate in the arrangement (provided that all or substantially all *employees* are not *directors* of the *listed company*); and
  - (2) an arrangement where the only participant is a *director* of the *listed company* (or an individual whose appointment as a *director* of the *listed company* is being contemplated) and the arrangement is established specifically to facilitate, in unusual circumstances, the recruitment or retention of the relevant individual.
- 9.4.3 R For a scheme referred to in *LR 9.4.2R(2)*, the following information must be disclosed in the first annual report published by the *listed company* after the date on which the relevant individual becomes eligible to participate in the arrangement:
- (1) all of the information prescribed in *LR 13.8.11R*;
  - (2) the name of the sole participant;
  - (3) the date on which the participant first became eligible to participate in the arrangement;
  - (4) an explanation of why the circumstances in which the arrangement was established were unusual;

- (5) the conditions to be satisfied under the terms of the arrangement; and
- (6) the maximum award(s) under the terms of the arrangement or, if there is no maximum, the basis on which awards will be determined.

#### Discounted option arrangements

- 9.4.4 R (1) This *rule* applies to the grant to a *director* or *employee* of a *listed company* or of any *subsidiary undertaking* of a *listed company* of an option to subscribe, warrant to subscribe or other similar right to subscribe for *shares* in the capital of the *listed company* or any of its *subsidiary undertakings*.
- (2) A *listed company* must not, without the prior approval by an ordinary resolution of the shareholders of the *listed company* in a general meeting, grant the option, warrant or other right if the price per *share* payable on the exercise of the option, warrant or other similar right to subscribe is less than whichever of the following is used to calculate the exercise price:
- (a) the market value of the *share* on the date when the exercise price is determined; or
  - (b) the market value of the *share* on the *business day* before that date; or
  - (c) the average of the market values for a number of dealing days within a period not exceeding 30 *days* immediately before that date.
- 9.4.5 R *LR 9.4.4R* does not apply to the grant of an option to subscribe, warrant to subscribe or other similar right to subscribe for *shares* in the capital of a *listed company* or any of its *subsidiary undertakings*:
- (1) under an *employees' share scheme* if participation is offered on similar terms to all or substantially all *employees* of the *listed company* or any of its *subsidiary undertakings* whose *employees* are entitled to participate in the scheme; or
  - (2) following a take-over or reconstruction, in replacement for and on comparable terms with options to subscribe, warrants to subscribe or other similar rights to subscribe held immediately before the take-over or reconstruction for *shares* in either a *company* of which the *listed company* thereby obtains control or in any of that *company's subsidiary undertakings*.

9.5 Transactions

Rights issue

- 9.5.1 R For a placing of rights arising from a *rights issue* before the official start of dealings, a *listed company* must ensure that:
- (1) the placing relates to at least 25% of the maximum number of *securities* offered;
  - (2) the placees are committed to take up whatever is placed with them;
  - (3) the price paid by the placees does not exceed the price at which the *securities* the subject of the *rights issue* are offered by more than one half of the calculated premium over that offer price (that premium being the difference between the offer price and the theoretical ex-rights price); and
  - (4) the *securities* the subject of the *rights issue* are of the same *class* as *securities* already *listed*.
- 9.5.2 G The *FSA* may modify *LR 9.5.1R(1)* to allow the placing to relate to less than 25% if it is satisfied that requiring at least 25% would be detrimental to the success of the issue.
- 9.5.3 G In a *rights issue*, the *FSA* may *list* the *securities* at the same time as the *securities* are admitted to trading in “nil paid” form. On the *securities* being paid up and the allotment becoming unconditional, the *listing* will continue without any need for a further application to *list* fully paid *securities*.
- 9.5.4 R If existing *security* holders do not take up their rights to subscribe in a *rights issue*:
- (1) the *listed company* must ensure that the *securities* to which the offer relates are offered for subscription or purchase on terms that any premium obtained over the subscription or purchase price (net of expenses) is to be for the account of the holders, except that if the proceeds for an existing holder do not exceed £5.00, the proceeds may be retained for the *company’s* benefit; and
  - (2) the *securities* may be allotted or sold to underwriters, if on the expiry of the subscription period no premium (net of expenses) has been obtained.
- 9.5.5 R A *listed company* must ensure that for a *rights issue* the following are notified to a *RIS* as soon as possible:
- (1) the issue price and principal terms of the issue; and
  - (2) the results of the issue and, if any rights not taken up are sold, details

of the sale, including the date and price per *share*.

- 9.5.6 R A *listed company* must ensure that the offer relating to a *rights issue* remains open for acceptance for at least 21 days.

#### Open offers

- 9.5.7 R A *listed company* must ensure that the timetable for an *open offer* is approved by the *RIE* on which its *securities* are traded.

- 9.5.8 R A *listed company* must ensure that in relation to communicating information on an *open offer*:

- (1) if the offer is subject to shareholder approval in general meeting the announcement must state that this is the case; and
- (2) the *circular* dealing with the offer must not contain any statement that might be taken to imply that the offer gives the same entitlements as a *rights issue*.

#### Vendor consideration placing

- 9.5.9 R A *listed company* must ensure that in a *vendor consideration placing* all vendors have an equal opportunity to participate in the placing.

#### Discounts not to exceed 10%

- 9.5.10 R
- (1) If a *listed company* makes an *open offer, placing, vendor consideration placing, offer for subscription of equity shares* or an issue out of treasury of a *class already listed*, the price must not be at a discount of more than 10% to the middle market price of those *shares* at the time of announcing the terms of the offer or at the time of agreeing the placing (as the case may be).
  - (2) In paragraph (1), the middle market price of *equity shares* means the middle market quotation for those *equity shares* as derived from the daily official list of the *London Stock Exchange* or any other publication of an *RIE* showing quotations for *listed securities* for the relevant date.
  - (3) Paragraph (1) does not apply to an offer or placing at a discount of more than 10% if:
    - (a) the terms of the offer or placing at that discount have been specifically approved by the *issuer's* shareholders; or
    - (b) it is an issue of *shares* for cash or the sale of *treasury shares* for cash under a pre-existing general authority to disapply section 89 of the Companies Act 1985 (Offers to shareholders to be on pre-emptive basis).
  - (4) The *listed company* must notify a *RIS* as soon as possible after it has

agreed the terms of the offer or placing.

#### Offer for sale or subscription

- 9.5.11 R A *listed company* must ensure that for an *offer for sale* or an *offer for subscription of equity securities*:
- (1) letters of allotment or acceptance are all issued simultaneously and numbered serially (and, where appropriate, split and certified by the *listed company's* registrars);
  - (2) if the *securities* may be held in uncertificated form, there is equal treatment of those who elect to hold the *securities* in certificated form and those who elect to hold them in uncertificated form;
  - (3) letters of regret are posted at the same time or not later than three *business days* after the letters of allotment or acceptance; and
  - (4) if a letter of regret is not posted at the same time as letters of allotment or acceptance, a notice to that effect is inserted in a national newspaper, to appear on the morning after the letters of allotment or acceptance are posted.

#### Reconstruction or refinancing

- 9.5.12 R (1) If a *listed company* produces a *circular* containing proposals relating to a reconstruction or a re-financing, the *circular* must be produced in accordance with *LR* 13.3 and must include a working capital statement.
- (2) The requirement for a working capital statement set out in paragraph (1) does not apply to a *venture capital trust* or an investment entity *listed* in accordance with *LR* 15.
- (3) The working capital statement required by paragraph (1) must be prepared in accordance with item 3.1 of Annex 3 of the *PD Regulation* and on the basis that the reconstruction or the re-financing has taken place.

#### Fractional entitlements

- 9.5.13 R If, for an issue of *shares* (other than an issue in lieu of dividend), a shareholder's entitlement includes a fraction of a *security*, a *listed company* must ensure that the fraction is sold for the benefit of the holder except that if its value (net of expenses) does not exceed £5.00 it may be sold for the *company's* benefit. Sales of fractions may be made before *listing* is granted.

#### Further issues

- 9.5.14 R When *shares* of the same *class* as *shares* that are *listed* are allotted, an application for *admission to listing* of such *shares* must be made as soon as possible and in any event within one month of the allotment. [**Note:** Article 64 *CARD*]

Temporary documents of title (including renounceable documents)

- 9.5.15 R A *listed company* must ensure that any temporary document of title (other than one issued in global form) for an *equity security*:
- (1) is serially numbered;
  - (2) states where applicable:
    - (a) the name and address of the first holder and names of joint holders (if any);
    - (b) for a fixed income *security*, the amount of the next payment of interest or dividend;
    - (c) the pro rata entitlement;
    - (d) the last date on which transfers were or will be accepted for registration for participation in the issue;
    - (e) how the *securities* rank for dividend or interest;
    - (f) the nature of the document of title and proposed date of issue;
    - (g) how fractions (if any) are to be treated; and
    - (h) for a *rights issue*, the time, being not less than 21 days, in which the offer may be accepted, and how *securities* not taken up will be dealt with; and
  - (3) if renounceable:
    - (a) states in a heading that the document is of value and negotiable;
    - (b) advises holders of *securities* who are in any doubt as to what action to take to consult appropriate independent advisers immediately;
    - (c) states that where all of the *securities* have been sold by the addressee (other than “ex rights” or “ex capitalisation”), the document should be passed to the person through whom the sale was effected for transmission to the purchaser;
    - (d) has the form of renunciation and the registration instructions printed on the back of, or attached to, the document;

- (e) includes provision for splitting (without fee) and for split documents to be certified by an official of the *company* or authorised agent;
- (f) provides for the last day for renunciation to be the second *business day* after the last day for splitting; and
- (g) if at the same time as an allotment is made of *shares* issued for cash, *shares* of the same *class* are also allotted credited as fully paid to vendors or others, provides for the period for renunciation to be the same as, but no longer than, that provided for in the case of *shares* issued for cash.

Definitive documents of title

- 9.5.16 R A *listed company* must ensure that any definitive document of title for an *equity security* (other than a bearer *security*) includes the following matters on its face (or on the reverse in the case of paragraphs (5) and (7)):
- (1) the authority under which the *listed company* is constituted and the country of incorporation and registered number (if any);
  - (2) the number or amount of *securities* the certificate represents and, if applicable, the number and denomination of units (in the top right-hand corner);
  - (3) a footnote stating that no transfer of the *security* or any portion of it represented by the certificate can be registered without production of the certificate;
  - (4) if applicable, the minimum amount and multiples thereof in which the *security* is transferable;
  - (5) the date of the certificate;
  - (6) for a fixed income *security*, the interest payable and the interest payment dates and on the reverse (with reference shown on the face) an easily legible summary of the rights as to redemption or repayment and (where applicable) conversion; and
  - (7) for *shares* with preferential rights, on the face (or, if not practicable, on the reverse), a statement of the conditions thereof as to capital, dividends and (where applicable) conversion.

## 9.6 Notifications

### Copies of documents

- 9.6.1 R A *listed company* must forward to the *FSA*, for publication through the *document viewing facility*, two copies of all *circulars*, notices, reports or other documents to which the *listing rules* apply at the same time as they are issued.
- 9.6.2 R A *listed company* must forward to the *FSA*, for publication through the *document viewing facility*, two copies of all resolutions passed by the *listed company* other than resolutions concerning ordinary business at an annual general meeting as soon as possible after the relevant general meeting.
- 9.6.3 R (1) A *listed company* must notify a *RIS* as soon as possible when a document has been forwarded to the *FSA* under *LR 9.6.1R* or *LR 9.6.2R* unless the full text of the document is provided to the *RIS*.
- (2) A notification made under paragraph (1) must set out where copies of the relevant document can be obtained.

### Notifications relating to capital

- 9.6.4 R A *listed company* must notify a *RIS* as soon as possible (unless otherwise indicated in this *rule*) of the following information relating to its capital:
- (1) any proposed change in its capital structure including the structure of its *listed debt securities*, save that an announcement of a new issue may be delayed while marketing or underwriting is in progress;
  - (2) any change in the rights attaching to any class of its *listed shares* or to any of its *listed equity securities* which are convertible into *equity shares*;
  - (3) any redemption of *listed shares* including details of the number of *shares* redeemed and the number of *shares* of that class outstanding following the redemption;
  - (4) any extension of time granted for the currency of temporary documents of title;
  - (5) the effect, if any, of any issue of further *securities* on the terms of exercise of rights under options, warrants and other *securities* convertible into *equity shares*; and
  - (6) the results of any new issue of *equity securities* or *preference shares* or of a public offering of existing *shares* or other *equity securities*.

9.6.5 R A *listed company* must notify a *RIS* as soon as possible of the basis of *equity securities* offered:

- (1) generally to the public for cash; or
- (2) by way of an *open offer* to shareholders.

9.6.6 R Where the *securities* are subject to an underwriting agreement a *listed company* may, at its discretion and subject to *DR 2* (Disclosure and control of inside information by issuers), delay notifying a *RIS* as required by *LR 9.6.4R(6)* for up to two *business days* until the obligation by the underwriter to take or procure others to take *securities* is finally determined or lapses. In the case of an issue or offer of *securities* which is not underwritten, notification of the result must be made as soon as it is known.

#### Notification of major interests in shares

9.6.7 R A *listed company* must notify a *RIS* as soon as possible and in any event by the end of the *business day* following receipt of the information, of any information disclosed to it in accordance with sections 198 to 208 of the Companies Act 1985 (relating to the obligation to disclose certain major interests in the share capital of a company). The notification must also include the following details:

- (1) the date on which the information was disclosed to the *company*; and
- (2) the date on which the transaction was effected, if known.

9.6.8 R A *listed company* must notify a *RIS* as soon as possible and in any event by the end of the *business day* following receipt of the information, of any information obtained by it pursuant to section 212 of the Companies Act 1985 (relating to persons interested in shares) or otherwise, where it is apparent that an interest exists or has been increased or reduced or ceased to exist and should have been disclosed under sections 198 to 208 of the Companies Act 1985 but has not previously been disclosed.

**Note:** A *listed company* may use the form entitled Notification of Major Interests in Shares to make the notifications required by *LR 9.6.7R* and *LR 9.6.8R*. The Notification of Major Interests in Shares form can be found on the UKLA section of the *FSA's* website.

9.6.9 G The requirement to make a notification under *LR 9.6.7R* and *LR 9.6.8R* will be deemed to be discharged if the relevant interest has been notified to a *RIS* pursuant to the disclosure provisions of the *Takeover Code* or the *SARs*.

9.6.10 G An *overseas company* with a *primary listing* should notify a *RIS* as soon as possible of information equivalent to that required by *LR 9.6.7R* and *LR 9.6.8R* whenever it becomes aware of such information. [**Note:** Article 68 *CARD*]

#### Notification of board changes and directors' details

- 9.6.11 R A *listed company* must notify a *RIS* of any change to the board including:
- (1) the appointment of a new *director* stating the appointee's name and whether the position is executive, non-executive or chairman and the nature of any specific function or responsibility of the position;
  - (2) the resignation, removal or retirement of a *director* (unless the *director* retires by rotation and is re-appointed at a general meeting of the *listed company's* shareholders);
  - (3) important changes to the role, functions or responsibilities of a *director*; and
  - (4) the effective date of the change if it is not with immediate effect;
- as soon as possible and in any event by the end of the *business day* following the decision or receipt of notice about the change by the *company*.
- 9.6.12 R If the effective date of the board change is not yet known, the notification required by *LR 9.6.11R* should state this fact and the *listed company* should notify a *RIS* as soon as the effective date has been decided.
- 9.6.13 R A *listed company* must notify a *RIS* of the following information in respect of any new *director* appointed to the board as soon as possible following the decision to appoint the *director* and in any event within five *business days* of the decision:
- (1) details of all directorships held by the *director* in any other publicly quoted *company* at any time in the previous five years, indicating whether or not he is still a *director*;
  - (2) any unspent convictions in relation to indictable offences;
  - (3) details of any receiverships, compulsory liquidations, creditors voluntary liquidations, administrations, company voluntary arrangements or any composition or arrangement with its creditors generally or any class of its creditors of any company where the *director* was an executive *director* at the time of, or within the 12 months preceding, such events;
  - (4) details of any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships where the *director* was a partner at the time of, or within the 12 months preceding, such events;
  - (5) details of receiverships of any asset of such *person* or of a partnership of which the *director* was a partner at the time of, or within the 12 months preceding, such event; and

- (6) details of any public criticisms of the *director* by statutory or regulatory authorities (including *designated professional bodies*) and whether the *director* has ever been disqualified by a court from acting as a *director* of a *company* or from acting in the management or conduct of the affairs of any *company*.

- 9.6.14 R A *listed company* must notify a *RIS* as soon as possible of any changes in the information set out in *LR 9.6.13R*(1) to (6) in respect of any current *director*.
- 9.6.15 G If no information is required to be disclosed pursuant to *LR 9.6.13R*, the notification required by *LR 9.6.13R* should state this fact.

#### Notification of lock-up arrangements

- 9.6.16 R A *listed company* must notify a *RIS* as soon as possible of information relating to the disposal of *equity shares* under an exemption allowed in the lock-up arrangements disclosed in accordance with the *PD Regulations*.
- 9.6.17 R A *listed company* must notify a *RIS* as soon as possible of the details of any variation in the lock-up arrangements disclosed in accordance with the *PD Regulations* or any subsequent announcement.

#### Notification of shareholder resolutions

- 9.6.18 R A *listed company* must notify a *RIS* as soon as possible after a general meeting of all resolutions passed by the *company* other than resolutions concerning ordinary business passed at an annual general meeting.

#### Change of name

- 9.6.19 R A *listed company* which changes its name must, as soon as possible:
- (1) notify a *RIS* of the change, stating the date on which it has taken effect;
  - (2) inform the *FSA* in writing of the change; and
  - (3) where the *listed company* is incorporated in the *United Kingdom*, send the *FSA* a copy of the revised certificate of incorporation issued by the Registrar of Companies.

#### Change of accounting date

- 9.6.20 R A *listed company* must notify a *RIS* as soon as possible of:
- (1) any change in its accounting reference date; and
  - (2) the new accounting reference date.

- 9.6.21 R *A listed company* must prepare and publish a second interim report in accordance with *LR 9.9* if the effect of the change in the accounting reference date is to extend the accounting period to more than 14 months.
- 9.6.22 G The second interim report must be prepared and published in respect of either:
- (1) the period up to the old accounting reference date; or
  - (2) the period up to a date not more than six months prior to the new accounting reference date.

- 9.7 Preliminary statement of annual results and dividends
- 9.7.1 R (1) A *listed company* must publish its preliminary statement of annual results as soon as possible after it has been approved.
- (2) A *listed company* must approve and publish its preliminary statement of annual results within 120 days of the end of the period to which it relates.
- 9.7.2 R A *listed company* must notify a *RIS* as soon as possible after the board has approved the following matters:
- (1) a preliminary statement of the annual results, which must:
- (a) have been agreed with the *company's* auditors;
- (b) show the figures in the form of a table, including the items required for a half-yearly report, consistent with the presentation to be adopted in the annual accounts for that financial year;
- (c) if the auditors report is likely to be modified, give details of the nature of the modification; and
- (d) include any significant additional information necessary for the purpose of assessing the results being announced; and
- (2) any decision to pay or make any dividend or other distribution on *listed equity* or to withhold any dividend or interest payment on *listed securities* giving details of:
- (a) the exact net amount payable per *share*;
- (b) the payment date;
- (c) the record date (where applicable); and
- (d) any foreign income dividend election, together with any income tax treated as paid at the lower rate and not repayable.
- 9.7.3 G The *FSA* may authorise the omission of information required by *LR 9.7.2R* if it considers that disclosure of such information would be contrary to the public interest or seriously detrimental to the *listed company*, provided that such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the *shares*.

## 9.8 Annual report and accounts

### Publication of annual report and accounts

- 9.8.1 R (1) A *listed company* must publish its annual report and accounts as soon as possible after they have been approved.
- (2) A *listed company* must approve and publish its annual report and accounts within six months of the end of the financial period to which they relate.

9.8.2 R The annual report and accounts must:

- (1) have been prepared in accordance with the *listed company's* national law and, in all material respects, with national accounting standards or *IAS*;
- (2) have been independently audited and reported on, in accordance with:
- (a) the auditing standards applicable in an *EEA State*; or
- (b) an equivalent auditing standard;
- (3) be in consolidated form if the *company* has *subsidiary undertakings*; and
- (4) if they do not give a true and fair view of the state of affairs, profit or loss and cash flows of the *group*, provide more detailed and additional information. [**Note:** Article 67 *CARD*]

- 9.8.3 R A *listed company* must publish both own accounts and consolidated accounts if the own accounts contain additional significant information. [**Note:** Article 67(2) *CARD*]

### Information to be included in annual report and accounts

- 9.8.4 R The annual report and accounts must include, where applicable, the following:
- (1) a statement of the amount of interest capitalised by the *group* during the period under review with an indication of the amount and treatment of any related tax relief;
- (2) any information required by *LR 9.2.18R* (Publication of unaudited financial information);
- (3) details of any small related party transaction as required by *LR 11.1.10R(2)(c)*;

- (4) details of any long-term incentive schemes as required by *LR 9.4.3R*;
- (5) details of any arrangements under which a *director* of the *company* has waived or agreed to waive any emoluments from the *company* or any *subsidiary undertaking*;
- (6) where a *director* has agreed to waive future emoluments, details of such waiver together with those relating to emoluments which were waived during the period under review;
- (7) in the case of any allotment for cash of *equity securities* made during the period under review otherwise than to the holders of the *company's equity shares* in proportion to their holdings of such *equity shares* and which has not been specifically authorised by the *company's* shareholders:
  - (a) the details required by paragraph 39 of Schedule 4 to the Companies Act 1985 (Form and content of company accounts);
  - (b) the names of the allottees, if less than six in number, and in the case of six or more allottees a brief generic description of each new class of equity holder (e.g. holder of loan stock);
  - (c) the market price of the allotted *securities* on the date on which the terms of the issue were fixed; and
  - (d) the date on which the terms of the issue were fixed;
- (8) the information required by paragraph (7) must be given for any unlisted *major subsidiary undertaking* of the *company*;
- (9) where a *listed company* has *listed shares* in issue and is a *subsidiary undertaking* of another *company*, details of the participation by the *parent undertaking* in any *placing* made during the period under review;
- (10) details of any *contract of significance* subsisting during the period under review:
  - (a) to which the *listed company*, or one of its *subsidiary undertakings*, is a party and in which a *director* of the *listed company* is or was materially interested; and
  - (b) between the *listed company*, or one of its *subsidiary undertakings*, and a controlling shareholder;
- (11) details of any contract for the provision of services to the *listed company* or any of its *subsidiary undertakings* by a controlling shareholder, subsisting during the period under review, unless:
  - (a) it is a contract for the provision of services which it is the

principal business of the shareholder to provide; and

- (b) it is not a *contract of significance*;
- (12) details of any arrangement under which a shareholder has waived or agreed to waive any dividends; and
- (13) where a shareholder has agreed to waive future dividends, details of such waiver together with those relating to dividends which are payable during the period under review.

9.8.5 G A *listed company* need not include with the annual report and accounts details of waivers of dividends of less than 1% of the total value of any dividend provided that some payment has been made on each *share* of the relevant *class* during the relevant calendar year.

#### Additional information

- 9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual report and accounts:
- (1) a statement setting out all the beneficial and non-beneficial interests of each *director* of the *listed company* that have been disclosed to the *company* under the Companies Act 1985 as at the end of the period under review including:
    - (a) all changes in the beneficial and non-beneficial interests of each *director* that have occurred between the end of the period under review and one month prior to the date of the notice of the annual general meeting; or
    - (b) if there have been no changes in the period described in paragraph (a), a statement that there have been no changes in the beneficial or non-beneficial interests of each *director*;
  - (2) a statement showing, as at a date not more than one month prior to the date of the notice of the annual general meeting:
    - (a) all information disclosed to the *listed company* in accordance with sections 198 to 208 of the Companies Act 1985 (Disclosure of certain major interests in the share capital of a company); or
    - (b) that there have been no disclosures, if no disclosures have been made;

- (3) a statement made by the *directors* that the business is a going concern, together with supporting assumptions or qualifications as necessary, that has been prepared in accordance with “Going Concern and Financial Reporting: Guidance for Directors of listed companies registered in the United Kingdom”, published in November 1994;
- (4) a statement setting out:
  - (a) details of any shareholders’ authority for the purchase, by the *listed company*, of its own *shares* that is still valid at the end of the period under review;
  - (b) in the case of purchases made otherwise than through the market or by tender to all shareholders, the names of sellers of such *shares* purchased, or proposed to be purchased, by the *listed company* during the period under review;
  - (c) in the case of any purchases made otherwise than through the market or by tender to all shareholders, or options or contracts to make such purchases, entered into since the end of the period covered by the report, information equivalent to that required under Part II of Schedule 7 to the Companies Act 1985 (Disclosure required by company acquiring its own shares, etc.); and
  - (d) in the case of sales of *treasury shares* for cash made otherwise than through the market, or in connection with an *employees’ share scheme*, or otherwise than pursuant to an opportunity which (so far as was practicable) was made available to all holders of the *listed company’s securities* (or to all holders of a relevant class of its *securities*) on the same terms, particulars of the names of purchasers of such *shares* sold, or proposed to be sold, by the *company* during the period under review;
- (5) a statement of how the *listed company* has applied the principles set out in Section 1 of the *Combined Code*, in a manner that would enable shareholders to evaluate how the principles have been applied;
- (6) a statement as to whether the *listed company* has:
  - (a) complied throughout the accounting period with all relevant provisions set out in Section 1 of the *Combined Code*; or
  - (b) not complied throughout the accounting period with all relevant provisions set out in Section 1 of the *Combined Code* and if so, setting out:
    - (i) those provisions, if any it has not complied with;

(ii) in the case of provisions whose requirements are of a continuing nature, the period within which, if any, it did not comply with some or all of those provisions; and

(iii) the *company's* reasons for non-compliance; and

(7) a report to the shareholders by the Board which contains all the matters set out in *LR 9.8.8R*.

9.8.7 R An *overseas company* with a *primary listing* must disclose in its annual report and accounts:

- (1) whether or not it complies with the corporate governance regime of its country of incorporation;
- (2) the significant ways in which its actual corporate governance practices differ from those set out in the *Combined Code*; and
- (3) the unexpired term of the service contract of any *director* proposed for election or re-election at the forthcoming annual general meeting and, if any *director* for election or re-election does not have a service contract, a statement to that effect.

#### Report to shareholders

9.8.8 R The report to the shareholders by the Board required by *LR 9.8.6R(7)* must contain the following:

- (1) a statement of the *listed company's* policy on executive *directors'* remuneration;
- (2) information presented in tabular form, unless inappropriate, together with explanatory notes as necessary on:
  - (a) the amount of each element in the remuneration package for the period under review of each *director*, by name, including but not restricted to, basic salary and fees, the estimated money value of benefits in kind, annual bonuses, deferred bonuses, compensation for loss of office and payments for breach of contract or other termination payments;
  - (b) the total remuneration for each *director* for the period under review and for the corresponding prior period;
  - (c) any significant payments made to former *directors* during the period under review; and
  - (d) any share options, including "Save-as-you-earn" options, for each *director*, by name, in accordance with the requirements of the Directors' Remuneration Report Regulations;

- (3) details of any *long-term incentive schemes*, other than share options as required by paragraph (2)(d), including the interests of each *director*, by name, in the *long-term incentive schemes* at the start of the period under review;
- (4) details of any entitlements or awards granted and commitments made to each *director* under any *long-term incentive schemes* during the period, showing which crystallize either in the same year or in subsequent years;
- (5) details of the monetary value and number of *shares*, cash payments or other benefits received by each *director* under any *long-term incentive schemes* during the period;
- (6) details of the interests of each *director* in the *long-term incentive schemes* at the end of the period;
- (7) an explanation and justification of any element of a *director's* remuneration, other than basic salary, which is pensionable;
- (8) details of any *directors' service contract* with a notice period in excess of one year or with provisions for pre-determined compensation on termination which exceeds one year's salary and benefits in kind, giving the reasons for such notice period;
- (9) details of the unexpired term of any *directors' service contract* of a *director* proposed for election or re-election at the forthcoming annual general meeting, and, if any *director* proposed for election or re-election does not have a *directors' service contract*, a statement to that effect;
- (10) a statement of the *listed company's* policy on the granting of options or awards under its *employees' share schemes* and other *long-term incentive schemes*, explaining and justifying any departure from that policy in the period under review and any change in the policy from the preceding year;
- (11) for money purchase schemes (as in Part I of Schedule 6 to the Companies Act 1985 (Disclosure of information: emoluments and other benefits of directors and others)) details of the contribution or allowance payable or made by the *listed company* in respect of each *director* during the period under review; and
- (12) for defined benefit schemes (as in Part I of Schedule 6 to the Companies Act 1985 (Disclosure of information: emoluments and other benefits of directors and others)):
  - (a) details of the amount of the increase during the period under review (excluding inflation) and of the accumulated total amount at the end of the period in respect of the accrued benefit to which each *director* would be entitled on leaving

service or is entitled having left service during the period under review;

(b) either:

- (i) the transfer value (less *director's* contributions) of the relevant increase in accrued benefit (to be calculated in accordance with Actuarial Guidance Note GN11 but making no deduction for any under-funding) as at the end of the period; or
- (ii) so much of the following information as is necessary to make a reasonable assessment of the transfer value in respect of each *director*:
  - (A) age;
  - (B) normal retirement age;
  - (C) the amount of any contributions paid or payable by the director under the terms of the scheme during the period under review;
  - (D) details of spouse's and dependants' benefits;
  - (E) early retirement rights and options;
  - (F) expectations of pension increases after retirement (whether guaranteed or discretionary); and
  - (G) discretionary benefits for which allowance is made in transfer values on leaving and any other relevant information which will significantly affect the value of the benefits; and

(c) no disclosure of voluntary contributions and benefits.

#### Information required by law

- 9.8.9 G The requirements of *LR 9.8.6R(6)* and *LR 9.8.8R* relating to corporate governance are additional to the information required by law to be included in the *listed company's* annual report and accounts.

#### Auditors report

- 9.8.10 R A *listed company* must ensure that the auditors review each of the following before the annual report is published:
- (1) *LR 9.8.6R(3)* (statement by the directors that the business is a going concern); and

- (2) the parts of the statement required by *LR 9.8.6R(6)* (corporate governance) that relate to the following provisions of the *Combined Code*:
  - (a) C1.1;
  - (b) C.2.1; and
  - (c) C3.1 to C3.7.

9.8.11 R A *listed company* must ensure that the auditors review the following disclosures:

- (1) *LR 9.8.8R(2)* (amount of each element in the remuneration package & information on share options);
- (2) *LR 9.8.8R(3)*, (4) and (5) (details of long term incentive schemes for directors);
- (3) *LR 9.8.8R(11)* (money purchase schemes); and
- (4) *LR 9.8.8R(12)* (defined benefit schemes).

9.8.12 R If, in the opinion of the auditors the *listed company* has not complied with any of the requirements set out in *LR 9.8.11R* the *listed company* must ensure that the auditors report includes, to the extent possible, a statement giving details of the non-compliance.

#### Summary financial statements

9.8.13 R Any summary financial statement issued by a *listed company* as permitted under the Companies Act 1985, must disclose:

- (1) earnings per share; and
- (2) the information required for summary financial statements set out in the Companies Act 1985.

- 9.9 Half-yearly reports
- 9.9.1 R *A listed company* must prepare a report, on a *group* basis where relevant, on its activities and profit or loss for the first six months of each financial year. [Note: Article 70 CARD]
- 9.9.2 R The accounting policies and presentation applied to half-yearly figures must be consistent with those applied in the latest published annual accounts except where:
- (1) the accounting policies and presentation are to be changed in the subsequent annual financial statements, in which case the new accounting policies and presentation should be followed, and the changes and the reasons for the changes should be disclosed in the half-yearly report; or
  - (2) the *FSA* otherwise agrees.
- 9.9.3 R (1) *A listed company* must publish its half-yearly report as soon as possible after it has been approved.
- (2) *A listed company* must approve and publish its half-yearly report within 90 days of the end of the period to which it relates.
- 9.9.4 R *A listed company* must notify a *RIS* of the publication of its half-yearly report as soon as possible after its approval by the board.
- 9.9.5 R *A listed company* must either:
- (1) send the half-yearly report to holders of its *listed securities*; or
  - (2) insert the half-yearly report, as a paid advertisement, in at least one national newspaper. [Note: Article 102(2) CARD]
- 9.9.6 R Where a *listed company's shares* are listed in another *EEA State*, the *company* must simultaneously send the competent authority of each of those other member states a copy of the half-yearly report. [Note: Article 102(2) CARD]
- 9.9.7 G An *overseas company* with a *primary listing* that is incorporated in a *non-EEA State* that is required to publish a half-yearly report in its country of incorporation, may seek authorisation from the *FSA* to publish that report instead of the report required by LR 9.9.

#### Contents of half-yearly report

- 9.9.8 R The half-yearly report must contain the following information, presented in table form, in respect of the *group's* activities during the relevant period: [Note: Article 73(2) CARD]

- (1) a balance sheet;
- (2) a cash flow statement;
- (3) an income statement comprising the following:
  - (a) net turnover; [**Note:** Article 73(2) *CARD*]
  - (b) finance income;
  - (c) operating profit or loss;
  - (d) finance costs;
  - (e) profit or loss before taxation;
  - (f) profit or loss;
  - (g) minority interests;
  - (h) profit or loss attributable to equity holders;
  - (i) rates of dividend(s) paid and proposed and amount absorbed thereby; [**Note:** Article 73(4) *CARD*]
  - (j) taxation on profits showing separately *United Kingdom* taxation and, if material, *overseas* and share of associated *undertakings'* taxation; and
  - (k) earnings per share, expressed as pence per share;
- (4) comparative figures in respect of the information required by paragraphs (1) to (3) for the corresponding period in the preceding financial year; [**Note:** Article 73(5) *CARD*]
- (5) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners; and
- (6) an explanatory statement including:
  - (a) any significant information enabling investors to make an informed assessment of the trend of the *group's* activities and profit or loss; [**Note:** Article 73(6) *CARD*]
  - (b) information of any special factor which has influenced the *group's* activities and the profit or loss during the period in question; [**Note:** Article 73(6) *CARD*]
  - (c) enough information to enable a comparison to be made with the corresponding period of the preceding financial year; and [**Note:** Article 73(6) *CARD*]

- (d) to the extent possible, a reference to the *group's* prospects in the current financial year. [**Note:** Article 73(6) *CARD*]
- 9.9.9 R Where the figures in the half-yearly report have been audited or reviewed by auditors pursuant to the Auditing Practices Board guidance on Review of Interim Financial Information, the report of the auditors must be reproduced in full in the half-yearly report. [**Note:** Article 75 *CARD*]
- 9.9.10 G Where any of the requirements or figures set out in *LR 9.9.1R* to *LR 9.9.8R* are unsuited to the *listed company's* activities or circumstances, the *FSA* may require suitable adaptations to be made to the figures. [**Note:** Articles 73(7) and 76 *CARD*]
- 9.9.11 G The *FSA* may waive *LR 9.9.8R(3)(a)*, (e), (i) and, to the extent it is relevant, *LR 9.9.8R(4)* if it considers that disclosure of such information would be contrary to the public interest or seriously detrimental to the *listed company*, provided that such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the *securities*. [**Note:** Article 76(2) *CARD*]

THE MODEL CODE (R)

This annex is referred to in LR 9.2 (Requirements with continuing application) and LR 15 (Investment entities).

Table: The Model Code

Introduction

This code imposes restrictions on dealing in the *securities* of a *listed company* beyond those imposed by law. Its purpose is to ensure that *persons discharging managerial responsibilities* and employee insiders do not abuse, and do not place themselves under suspicion of abusing, *inside information* that they may be thought to have, especially in periods leading up to an announcement of the *company's* results.

Nothing in this code sanctions a breach of section 118 of the *Act* (Market abuse), the insider dealing provisions of the Criminal Justice Act or any other relevant legal or regulatory requirements.

**Definitions**

1. In this code the following definitions, in addition to those contained in the *listing rules*, apply unless the context requires otherwise:
  - (a) "close period" means:
    - (i) the period of 60 days immediately preceding the preliminary announcement of the *listed company's* annual results or, if shorter, the period from the end of the relevant financial year up to and including the time of announcement; and
    - (ii) if the *listed company* reports on a half-yearly basis, the period of 60 days immediately preceding the publication of the half-yearly report in accordance with LR 9.9.3R or, if shorter, the period from the end of the relevant financial period up to and including the time of such publication; or
    - (iii) if the *listed company* reports on a quarterly basis, the period of 30 days immediately preceding the announcement of the quarterly results or, if shorter, the period from the end of the relevant financial period up to and including the time of the announcement;
  - (b) "connected person" has the meaning given in section 96B(2) of the *Act* (Persons discharging managerial responsibilities and connected persons);
  - (c) "dealing" includes:

- (i) any acquisition or disposal of, or agreement to acquire or dispose of any of the *securities* of the *company*;
  - (ii) entering into a contract (including a contract for difference) the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the price of any of the *securities* of the *company*;
  - (iii) the grant, acceptance, acquisition, disposal, exercise or discharge of any option (whether for the call, or put or both) to acquire or dispose of any of the *securities* of the *company*;
  - (iv) entering into, or terminating, assigning or novating any stock lending agreement in respect of the *securities* of the *company*;
  - (v) using as security, or otherwise granting a charge, lien or other encumbrance over the *securities* of the *company*;
  - (vi) any transaction, including a transfer for nil consideration, or the exercise of any power or discretion effecting a change of ownership of a beneficial interest in the *securities* of the *company*;  
or
  - (vii) any other right or obligation, present or future, conditional or unconditional, to acquire or dispose of any *securities* of the *company*;
- (d) "employee insider" means an employee of the *company*, its parent undertaking or any member of its *group* whose name is required to be placed on an *insider list* in accordance with *DR 2.8.1R*;
- (e) "prohibited period" means:
- (i) any *close period*; or
  - (ii) any period when there exists any matter which constitutes *inside information* in relation to the *company*;
- (f) "restricted person" means a *person discharging managerial responsibilities* or employee insider; and
- (g) "*securities of the company*" means any publicly traded or quoted *securities* of the *company* or any member of its *group* or any securities that are convertible into such *securities*.

**Dealings not subject to the provisions of this code**

2. The following dealings are not subject to the provisions of this code:

- (a) undertakings or elections to take up entitlements under a rights issue or other offer (including an offer of *securities* of the *company* in lieu of a cash dividend);
- (b) the take up of entitlements under a rights issue or other offer (including an offer of *securities* of the *company* in lieu of a cash dividend);
- (c) allowing entitlements to lapse under a rights issue or other offer (including an offer of *securities* of the *company* in lieu of a cash dividend);
- (d) the sale of sufficient entitlements nil-paid to take up the balance of the entitlements under a rights issue;
- (e) undertakings to accept, or the acceptance of, a takeover offer;
- (f) dealing where the beneficial interest in the relevant *security* of the *company* does not change;
- (g) transactions conducted between a *person discharging managerial responsibilities* and their spouse, child or step-child (as defined in section 346 of the Companies Act 1985);
- (h) transfers of *shares* arising out of the operation of an *employees' share scheme* into a savings scheme investing in *securities* of the *company* following:
  - (i) exercise of an option under a savings related share option scheme;  
or
  - (ii) release of *shares* from a profit sharing scheme;
- (i) with the exception of a disposal of *securities* of the *company* received by a restricted person as a participant, dealings in connection with an HM Revenue and Customs approved *employees' share scheme*, or any other *employees' share scheme* under which participation is extended on similar terms to those contained in an HM Revenue and Customs approved *employees' share scheme*, to all or most employees of the participating *companies* in that scheme;
- (j) the cancellation or surrender of an option under an *employees' share scheme*;
- (k) transfers of the *securities* of the *company* by an independent trustee of an *employees' share scheme* to a beneficiary who is not a restricted person;
- (l) transfers of *securities* of the *company* already held by means of a matched sale and purchase into a saving scheme or into a pension scheme in which the restricted person is a participant or beneficiary;

- (m) an investment by a restricted person in a scheme or arrangement where the assets of the scheme (other than a scheme investing only in the *securities* of the *company*) or arrangement are invested at the discretion of a third party;
- (n) a dealing by a restricted person in the units of an authorised unit trust or in *shares* in an *open-ended investment company*; and
- (o) bona fide gifts to a restricted person by a third party.

### **Dealing by restricted persons**

3. A restricted person must not deal in any *securities* of the *company* without obtaining clearance to deal in advance in accordance with paragraph 4 of this code.

### **Clearance to deal**

4.
  - (a) A *director* (other than the chairman or chief executive) or company secretary must not deal in any *securities* of the *company* without first notifying the chairman (or a *director* designated by the board for this purpose) and receiving clearance to deal from him.
  - (b) The chairman must not deal in any *securities* of the *company* without first notifying the chief executive and receiving clearance to deal from him.
  - (c) The chief executive must not deal in any *securities* of the *company* without first notifying the chairman and receiving clearance to deal from him.
  - (d) If the role of chairman and chief executive are combined, that *person* must not deal in any *securities* of the *company* without first notifying the board and receiving clearance to deal from the board.
  - (e) *Persons discharging managerial responsibilities* (who are not *directors*) and employee insiders must not deal in any *securities* of the *company* without first notifying the company secretary or a designated *director* and receiving clearance to deal from him.
5. A response to a request for clearance to deal must be given to the relevant restricted person within five *business days* of the request being made.
6. The *company* must maintain a record of the response to any dealing request made by a restricted person and of any clearance given. A copy of the response and clearance (if any) must be given to the restricted person concerned.
7. A restricted person who is given clearance to deal in accordance with paragraph 4 must deal as soon as possible and in any event within two *business days* of clearance being received.

### **Circumstances for refusal**

8. A restricted person must not be given clearance to deal in any *securities* of the *company*:
  - (a) during a prohibited period; or
  - (b) on considerations of a short term nature. An investment with a maturity of one year or less will always be considered to be of a short term nature.

### **Dealings permitted during a prohibited period**

#### **Dealing in exceptional circumstances**

9. A restricted person, who is not in possession of *inside information* in relation to the *company*, may be given clearance to deal if he is in severe financial difficulty or there are other exceptional circumstances. Clearance may be given for such a *person* to sell (but not purchase) *securities* of the *company* when he would otherwise be prohibited by this code from doing so. The determination of whether the *person* in question is in severe financial difficulty or whether there are other exceptional circumstances can only be made by the *director* designated for this purpose.
10. A *person* may be in severe financial difficulty if he has a pressing financial commitment that cannot be satisfied otherwise than by selling the relevant *securities* of the *company*. A liability of such a *person* to pay tax would not normally constitute severe financial difficulty unless the *person* has no other means of satisfying the liability. A circumstance will be considered exceptional if the *person* in question is required by a court order to transfer or sell the *securities* of the *company* or there is some other overriding legal requirement for him to do so.
11. The *FSA* should be consulted at an early stage regarding any application by a restricted person to deal in exceptional circumstances.

#### **Awards of securities and options**

12. The grant of options by the board of *directors* under an *employees' share scheme* to individuals who are not restricted persons may be permitted during a prohibited period if such grant could not reasonably be made at another time and failure to make the grant would be likely to indicate that the *company* was in a prohibited period.
13. The award by the *company* of *securities*, the grant of options and the grant of rights (or other interests) to acquire *securities* of the *company* to restricted persons is permitted in a prohibited period if:
  - (a) the award or grant is made under the terms of an *employees' share scheme* and the scheme was not introduced or amended during the relevant prohibited period; and

- (b) either:
  - (i) the terms of such *employees' share scheme* set out the timing of the award or grant and such terms have either previously been approved by shareholders or summarised or described in a document sent to shareholders, or
  - (ii) the timing of the award or grant is in accordance with the timing of previous awards or grants under the scheme; and
- (c) the terms of the *employees' share scheme* set out the amount or value of the award or grant or the basis on which the amount or value of the of the award or grant is calculated and do not allow the exercise of discretion; and
- (d) the failure to make the award or grant would be likely to indicate that the *company* is in a prohibited period.

### **Exercise of options**

- 14. Where a *company* has been in an exceptionally long prohibited period or the *company* has had a number of consecutive prohibited periods, clearance may be given to allow the exercise of an option or right under an *employees' share scheme*, or the conversion of a convertible security, where the final date for the exercise of such option or right, or conversion of such security, falls during a prohibited period and the restricted person could not reasonably have been expected to exercise it at a time when he was free to deal.
- 15. Where the exercise or conversion is permitted pursuant to paragraph 14, clearance may not be given for the sale of the *securities* of the *company* acquired pursuant to such exercise or conversion including the sale of sufficient securities of the company to fund the costs of the exercise or conversion and/or any tax liability arising from the exercise or conversion unless a binding undertaking to do so was entered into when the *company* was not in a prohibited period.

### **Qualification shares**

- 16. Clearance may be given to allow a *director* to acquire qualification *shares* where, under the *company's constitution*, the final date for acquiring such *shares* falls during a prohibited period and the *director* could not reasonably have been expected to acquire those shares at another time.

### **Saving schemes**

- 17. A restricted person may enter into a scheme under which only the *securities* of the *company* are purchased pursuant to a regular standing order or direct debit or by regular deduction from the person's salary, or where such *securities* are acquired by way of a standing election to re-invest dividends or other distributions received, or are acquired as part payment of the *person's* remuneration without

regard to the provisions of this code, if the following provisions are complied with:

- (a) the restricted person does not enter into the scheme during a prohibited period, unless the scheme involves the part payment of remuneration in the form of *securities* of the *company* and is entered into upon the commencement of the *person's* employment or in the case of a non-executive *director* his appointment to the board;
- (b) the restricted person does not carry out the purchase of the *securities* of the *company* under the scheme during a prohibited period, unless the restricted person entered into the scheme at a time when the *company* was not in a prohibited period and that person is irrevocably bound under the terms of the scheme to carry out a purchase of *securities* of the *company* (which may include the first purchase under the scheme) at a fixed point in time which falls in a prohibited period;
- (c) the restricted person does not cancel or vary the terms of his participation, or carry out sales of *securities* of the *company* within the scheme during a prohibited period; and
- (d) before entering into the scheme, cancelling the scheme or varying the terms of his participation or carrying out sales of the *securities* of the *company* within the scheme, the restricted person obtains clearance in accordance with paragraph 4.

#### **Acting as a trustee**

- 18. Where a restricted person is acting as a trustee, dealing in the *securities* of the *company* by that trust is permitted during a prohibited period where:
  - (a) the restricted person is not a beneficiary of the trust; and
  - (b) the decision to deal is taken by the other trustees or by investment managers on behalf of the trustees independently of the restricted person.
- 19. The other trustees or investment managers acting on behalf of the trustees can be assumed to have acted independently where the decision to deal:
  - (a) was taken without consultation with, or other involvement of, the restricted person; or
  - (b) was delegated to a committee of which the restricted person is not a member.

#### **Dealing by connected persons and investment managers**

- 20. A *person discharging managerial responsibilities* must take reasonable steps to prevent any dealings by or on behalf of any *connected person* of his in any *securities* of the *company* on considerations of a short term nature.

21. A *person discharging managerial responsibilities* must seek to prohibit any dealings in the *securities* of the *company* during a close period:
  - (a) by or on behalf of any *connected person* of his; or
  - (b) by an investment manager on his behalf or on behalf of any *person* connected with him where either he or any *person* connected has funds under management with that investment fund manager, whether or not discretionary (save as provided by paragraphs 17 and 18).
  
22. A *person discharging managerial responsibilities* must advise all of his *connected persons* and investment managers acting on his behalf:
  - (a) of the name of the *listed company* within which he is a *person discharging managerial responsibilities*;
  - (b) of the *close periods* during which they cannot deal in the securities of the company; and
  - (c) that they must advise the *listed company* immediately after they have dealt in *securities* of the *company*.

- 10 Significant transactions
- 10.1 Preliminary
- Application
- 10.1.1 R This chapter applies to a *company* that has a *primary listing of equity securities*.
- Purpose
- 10.1.2 G The purpose of this chapter is to ensure that shareholders of *companies with equity securities listed*:
- (1) are notified of certain transactions entered into by the *listed company*; and
  - (2) have the opportunity to vote on larger proposed transactions.
- Meaning of "transaction"
- 10.1.3 R In this chapter (except where specifically provided to the contrary) a reference to a transaction by a *listed company*:
- (1) (subject to paragraphs (3),(4) and (5)) includes all agreements (including amendments to agreements) entered into by the *listed company* or its *subsidiary undertakings*;
  - (2) includes the grant or acquisition of an option as if the option had been exercised except that, if exercise is solely at the *listed company's* or *subsidiary undertaking's* discretion, the transaction will be classified on exercise and only the consideration (if any) for the option will be classified on the grant or acquisition;
  - (3) excludes a transaction of a revenue nature in the ordinary course of business;
  - (4) excludes an issue of *securities*, or a transaction to raise finance, which does not involve the acquisition or disposal of any fixed asset of the *listed company* or of its *subsidiary undertakings*; and
  - (5) excludes any transaction between the *listed company* and its wholly-owned *subsidiary undertaking* or between its wholly-owned *subsidiary undertakings*.
- 10.1.4 G This chapter is intended to cover transactions that are outside the ordinary course of the *listed company's* business and may change a *security holder's* economic interest in the *company's* assets or liabilities (whether or not the change in the assets or liabilities is recognised on the *company's* balance sheet).

10.1.5 G In assessing whether a transaction is in the ordinary course of a *company's* business under this chapter, the *FSA* will have regard to the size and incidence of similar transactions which the *company* has entered into. The *FSA* may determine that a transaction is not in the ordinary course of business because of its size or incidence.

## 10.2 Classifying transactions

### Classifying transactions

10.2.1 G A transaction is classified by assessing its size relative to that of the *listed company* proposing to make it. The comparison of size is made by using the *percentage ratios* resulting from applying the *class test* calculations to a transaction. The *class tests* are set out in *LR 10 Ann 1* (and modified or added to for specialist companies under *LR 10.7*).

10.2.2 R Except as otherwise provided in this chapter, transactions are classified as follows:

- (1) *Class 3 transaction*: a transaction where all *percentage ratios* are less than 5%;
- (2) *Class 2 transaction*: a transaction where any *percentage ratio* is 5% or more but each is less than 25%;
- (3) *Class 1 transaction*: a transaction where any *percentage ratio* is 25% or more; and
- (4) *Reverse takeover*: a transaction consisting of an acquisition by a *listed company* of a business, an unlisted *company* or assets where any *percentage ratio* is 100% or more or which would result in a fundamental change in the business or in a change in board or voting control of the *listed company*.

### Certain reverse takeovers to be treated as class 1 transactions

10.2.3 R A *reverse takeover* is to be treated as a *class 1 transaction* if all of the following conditions are satisfied in relation to the transaction:

- (1) none of the *percentage ratios* resulting from the calculations under each of the *class tests* in *LR 10 Ann 1* (as modified or added to by *LR 10.7* where applicable) exceed 125%;
- (2) the subject of the acquisition is in a similar line of business to that of the acquiring *company*;
- (3) the undertaking the subject of the acquisition complies with all relevant requirements of *LR 6*;
- (4) there will be no change of board control of the *listed company*; and

- (5) there will be no change of voting control of the *listed company*.

#### Indemnities and similar arrangements

- 10.2.4 R (1) Any agreement or arrangement with a party (other than a wholly owned *subsidiary undertaking* of the *listed company*):
- (a) under which a *listed company* agrees to discharge any liabilities for costs, expenses, commissions or losses incurred by or on behalf of that party, whether or not on a contingent basis;
  - (b) which is exceptional; and
  - (c) under which the maximum liability is either unlimited, or is equal to or exceeds an amount equal to 25% of the average of the *listed company's* profits (as calculated for classification purposes) for the last three financial years (losses should be taken as “nil” profit and included in this average);
- is to be treated as a *class 1 transaction*.
- (2) Paragraph (1) does not apply to a *break fee* (see *LR 10.2.7R* which deals with *break fees*).

- 10.2.5 G For the purposes of *LR 10.2.4R(1)*, the *FSA* considers the following indemnities not to be exceptional:
- (1) those customarily given in connection with sale and purchase agreements;
  - (2) those customarily given to underwriters or placing agents in an underwriting or placing agreement;
  - (3) those given to advisers against liabilities to third parties arising out of providing advisory services; and
  - (4) any other indemnity that is specifically permitted to be given to a *director* or auditor under the Companies Act 1985.

- 10.2.6 G If the calculation under *LR 10.2.4R(1)* produces an anomalous result, the *FSA* may disregard the calculation and modify that *rule* to substitute other relevant indicators of the size of the indemnity or other arrangement given, for example 1% of market capitalisation.

#### Break fees

- 10.2.7 R (1) A *break fee* or *break fees* payable in respect of a transaction are to be treated as a *class 1 transaction* if the total value of the fee or the fees in aggregate exceeds:

- (a) if the *listed company* is being acquired, 1% of the value of the *listed company* calculated by reference to the offer price; and
  - (b) in any other case, 1% of the market capitalisation of the *listed company*.
- (2) For the purposes of paragraph (1)(a):
- (a) the 1% limit is to be calculated on the basis of the fully diluted *equity share capital* of the *listed company*;
  - (b) any VAT payable is to be taken into account in determining whether the 1% limit would be exceeded (except to the extent that the VAT is recoverable by the *listed company*); and
  - (c) for a securities exchange offer, the value of the *listed company* is to be fixed by reference to the value of the offer at the time the transaction is announced (and is not to be taken as fluctuating as a result of subsequent movements in the price of the consideration securities after the announcement).

#### Issues by major subsidiary undertakings

- 10.2.8 R If:
- (1) a *major subsidiary undertaking* of a *listed company* issues *equity shares* for cash or in exchange for other *securities* or to reduce indebtedness;
  - (2) the issue would dilute the *listed company's* percentage interest in the *major subsidiary undertaking*; and
  - (3) the economic effect of the dilution is equivalent to a disposal of 25% or more of the aggregate of the gross assets or profits (after the deduction of all charges except taxation) of the *group*;

the issue is to be treated as a *class 1 transaction*.

- 10.2.9 R *LR 10.2.8R* does not apply if the *major subsidiary undertaking* is itself a *listed company*.

#### Aggregating transactions

- 10.2.10 R (1) Transactions completed during the 12 months before the date of the latest transaction must be aggregated with that transaction for the purposes of classification if:
- (a) they are entered into by the *company* with the same *person* or with *persons* connected with one another;
  - (b) they involve the acquisition or disposal of *securities* or an

interest in one particular *company*; or

(c) together they lead to substantial involvement in a business activity which did not previously form a significant part of the *company's* principal activities.

(2) Paragraph (1) does not apply in relation to *break fees*.

(3) If under this *rule* aggregation of transactions results in a requirement for shareholder approval, then that approval is required only for the latest transaction.

10.2.11 G The *FSA* may modify these *rules* to require the aggregation of transactions in circumstances other than those specified in *LR 10.2.10R*.

**Note:** If an *issuer* is proposing to enter into a transaction that could be a *Class 1 transaction* or *reverse takeover* it is required under *LR 8* to obtain the guidance of a *sponsor* to assess the potential application of *LR 10*.

10.3 Class 3 requirements

Notification of acquisitions involving the issue of securities

10.3.1 R (1) If:

(a) a *listed company* agrees the terms of a *class 3 transaction* that involves an acquisition; and

(b) the consideration for the acquisition includes the issue of *securities* for which *listing* will be sought;

the *company* must notify a *RIS* as soon as possible after the terms of the acquisition are agreed.

(2) The notification must include:

(a) the amount of the *securities* being issued;

(b) details of the transaction, including the name of the other party to the transaction; and

(c) either the value of the consideration, and how this is being satisfied, or the value of the gross assets acquired, whichever is the greater.

Notification of other class 3 transactions

10.3.2 R (1) If:

(a) a *listed company* agrees the terms of a *class 3 transaction* of

a type other than that referred to in *LR 10.3.1R*; and

(b) it releases any details to the public;

it must also notify those details to a *RIS* by no later than the release of details to the public referred to in paragraph (b).

(2) The notification must include:

(a) details of the transaction, including the name of the other party to the transaction; and

(b) either the value of the consideration, and how this is being satisfied, or the value of the gross assets acquired or disposed of.

#### 10.4 Class 2 requirements

##### Notification of class 2 transactions

10.4.1 R (1) A *listed company* must notify a *RIS* as soon as possible after the terms of a *class 2 transaction* are agreed.

(2) The notification must include:

(a) details of the transaction, including the name of the other party to the transaction;

(b) a description of the business carried on by, or using, the assets the subject of the transaction;

(c) the consideration, and how it is being satisfied (including the terms of any arrangements for deferred consideration);

(d) the value of the gross assets the subject of the transaction;

(e) the profits attributable to the assets the subject of the transaction;

(f) the effect of the transaction on the *listed company* including any benefits which are expected to accrue to the *company* as a result of the transaction;

(g) details of any service contracts of proposed *directors* of the *listed company*;

(h) for a disposal, the application of the sale proceeds;

(i) for a disposal, if *securities* are to form part of the consideration received, a statement whether the *securities* are to be sold or retained; and

- (j) details of key individuals important to the business or *company* the subject of the transaction.

#### Supplementary notification

- 10.4.2 R (1) A *listed company* must notify a *RIS* as soon as possible if, after the notification under *LR 10.4.1R*, it becomes aware that:
- (a) there has been a significant change affecting any matter contained in that earlier notification; or
  - (b) a significant new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.
- (2) The supplementary notification must give details of the change or new matter and also contain a statement that, except as disclosed, there has been no significant change affecting any matter contained in the earlier notification and no other significant new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.
- (3) In paragraphs (1) and (2), “significant” means significant for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the *listed company* and the rights attaching to any *securities* forming part of the consideration. It includes a change in the terms of the transaction that affects the *percentage ratios* and requires the transaction to be reclassified into a higher category.

#### 10.5 Class 1 requirements

##### Notification and shareholder approval

- 10.5.1 R A *listed company* must, in relation to a *class 1 transaction*:
- (1) comply with the requirements of *LR 10.4* (Class 2 requirements) for the transaction;
  - (2) send an explanatory *circular* to its shareholders and obtain their prior approval in a general meeting for the transaction; and
  - (3) ensure that any agreement effecting the transaction is conditional on that approval being obtained.

**Note:** *LR 13* sets out requirements for the content and approval of *class 1 circulars*.

10.6 Reverse takeover requirements

- 10.6.1 R A *listed company* must in relation to a *reverse takeover* comply with the requirements of LR 10.5 (Class 1 requirements) for that transaction.

Cancellation of listing

- 10.6.2 G When a *listed company* completes a *reverse takeover*, the FSA will generally cancel the *listing* of its *securities* (see LR 5.2.3G) and the *company* will be required to re-apply for the *listing* of the *securities* and satisfy the relevant requirements for *listing* (except that LR 6.1.3R(1)(b) will not apply in relation to the *listed company's* accounts).

10.7 Transactions by specialist companies

Classification of transactions by listed property companies

- 10.7.1 R LR 10 Ann 1 is modified as follows in relation to acquisitions or disposals of *property* by a *listed property company*:
- (1) for the purposes of paragraph 2R(1) (the gross assets test), the assets test is calculated by dividing the transaction consideration by the gross assets of the *listed property company* and paragraphs 2R(5) and 2R(6) do not apply;
  - (2) for the purposes of paragraph 2R(1) (the gross assets test), if the transaction is an acquisition of land to be developed, the assets test is calculated by dividing the transaction consideration and any financial commitments relating to the development by the gross assets of the *listed property company* and paragraphs 2R(5) and 2R(6) do not apply;
  - (3) for the purposes of paragraph 2R(2), the gross assets of a *listed property company* are, at the option of the *company*:
    - (a) the aggregate of the *company's* share capital and reserves (excluding minority interests);
    - (b) the book value of the *company's properties* (excluding those properties classified as current assets in the latest published annual report and accounts); or
    - (c) the published valuation of the *company's properties* (excluding those properties classified as current assets in the latest published annual report and accounts);
  - (4) for the purposes of paragraph 4R(1) (the profits test), profits means the *net annual rent*;
  - (5) paragraph 5R (the consideration test) does not apply but instead the

test in *LR 10.7.2R* applies; and

- (6) paragraph 7R (the gross capital test) applies to disposals as well as acquisitions of *property*.
- 10.7.2 R (1) In addition to the tests in *LR 10 Ann 1*, if the transaction is an acquisition of *property* by a *listed property company* and any of the consideration is in the ordinary *shares* of that *company*, the *listed company* must determine the *percentage ratios* that result from the calculations under the test in paragraph (2).
- (2) The share capital test is calculated by dividing the number of consideration *shares* to be issued by the number of ordinary *shares* in issue (excluding *treasury shares*).
- 10.7.3 R *LR 10* does not apply to the acquisition or disposal by a *listed property company* of a *property* in the ordinary course of business which:
- (1) for an acquisition, will be classified as a current asset in the *company's* published accounts; or
- (2) for a disposal, was so classified in the *company's* published accounts.
- 10.7.4 G *LR 10* may apply to subsequent transfers of *property* assets from current to fixed assets or from fixed to current assets in the accounts of a *property company*.

#### Classification of transactions by listed mineral companies

- 10.7.5 R (1) In addition to the tests in *LR 10 Ann 1*, a *listed mineral company* undertaking a transaction involving significant *mineral resources* must determine the *percentage ratios* that result from the calculations under the test in paragraph (2).
- (2) The reserves test is calculated by dividing the volume or amount of the *proven reserves* and *probable reserves* to be acquired or disposed of by the volume or amount of the aggregate *proven reserves* and *probable reserves* of the *mineral company* making the acquisition or disposal.
- 10.7.6 G If the *mineral resources* are not directly comparable, the *FSA* may modify *LR 10.7.5R(2)* to permit valuations to be used instead of amounts or volumes.
- 10.7.7 R When calculating the size of a transaction under *LR 10 Ann 1* and *LR 10.7.5R*, account must be taken of any associated transactions or loans effected or intended to be effected, and any contingent liabilities or commitments.

#### Classification of transactions by listed scientific research based companies

- 10.7.8 G A *listed scientific research based company* undertaking a transaction should

consult the *FSA* at an early stage to determine whether industry specific tests are required instead of or in addition to the *class tests* in *LR 10 Ann 1*.

## 10.8 Miscellaneous

### Class 1 disposals by companies in severe financial difficulty

- 10.8.1 G (1) A *listed company* in severe financial difficulty may find itself with no alternative but to dispose of a substantial part of its business within a short time frame to meet its ongoing working capital requirements or to reduce its liabilities. Due to time constraints it may not be able to prepare a *circular* and convene an extraordinary general meeting to obtain prior shareholder approval.
- (2) The *FSA* may modify the requirements in *LR 10.5* to prepare a *circular* and to obtain shareholder approval for such a disposal, if the *company*:
- (a) can demonstrate that it is in severe financial difficulty; and
  - (b) satisfies the conditions in *LR 10.8.2G* to *LR 10.8.6G*
- (3) An application to modify *LR 10.5* should be brought to the *FSA's* attention at the earliest available opportunity and at least five clear *business days* before the terms of the disposal are agreed.
- 10.8.2 G The *listed company* should demonstrate to the *FSA* that it could not reasonably have entered into negotiations earlier to enable shareholder approval to be sought.
- 10.8.3 G The following documents should be provided in writing to the *FSA*:
- (1) confirmation from the *listed company* that:
    - (a) negotiation does not allow time for shareholder approval;
    - (b) all alternative methods of financing have been exhausted and the only option remaining is to dispose of a substantial part of their business;
    - (c) by taking the decision to dispose of part of the business to raise cash, the directors are acting in the best interests of the *company* and shareholders as a whole and that unless the disposal is completed receivers, administrators or liquidators are likely to be appointed; and
    - (d) if the disposal is to a *related party*, that the disposal by the *company* to the *related party* is the only available option in the current circumstances.
  - (2) confirmation from the *company's sponsor* that, in its opinion and on

the basis of information available to it, the *company* is in severe financial difficulty and that it will not be in a position to meet its obligations as they fall due unless the disposal takes place according to the proposed timetable;

- (3) confirmation from the *persons* providing finance stating that further finance or facilities will not be made available and that unless the disposal is effected immediately, current facilities will be withdrawn; and
- (4) an announcement that complies with *LR 10.8.4G* and *LR 10.8.5G*.

10.8.4 G An announcement should be notified to a *RIS* no later than the date the terms of the disposal are agreed and should contain:

- (1) all relevant information required to be notified under *LR 10.4.1R*;
- (2) the name of the acquirer and the expected date of completion of the disposal;
- (3) full disclosure about the continuing group's prospects for at least the current financial year;
- (4) a statement that the *directors* believe that the disposal is in the best interests of the *company* and shareholders as a whole. The *directors* should also state that if the disposal is not completed the *company* will be unable to meet its financial commitments as they fall due and consequently will be unable to continue to trade resulting in the appointment of receivers, liquidators or administrators;
- (5) a statement incorporating the details of all the confirmations provided to the *FSA* in *LR 10.8.3R*;
- (6) details of any financing arrangements (either current or future) if they are contingent upon the disposal being effected;
- (7) if the disposal is to a *related party*, then a statement as set out in *LR 13.6.1R(5)* must be given;
- (8) a statement by the *listed company* that in its opinion the working capital available to the continuing group is sufficient for the group's present requirements, that is, for at least 12 months from the date of the announcement, or, if not, how it is proposed to provide the additional working capital thought by the *company* to be necessary.

10.8.5 G The announcement should contain any further information that the *company* and its *sponsors* consider necessary. This should incorporate historical price sensitive information, which has already been published in relation to the disposal along with any further information required to be disclosed under *DR 2* (disclosure of inside information).

10.8.6 G (1) The *FSA* will wish to examine the documents referred to in *LR*

10.8.3G (including the *RIS* announcement) before it grants the modification and before the announcement is released.

- (2) The documents should ordinarily be lodged with the *FSA*:
  - (a) in draft form at least five clear *business days* before the terms of the transaction are agreed; and
  - (b) in final form on the day on which approval is sought.

10.8.7 G In relation to the *listed company's* financial position, *DR 2* (disclosure of inside information) continues to apply while the *company* is seeking a modification.

10.8.8 G The *directors* should also consider whether the *listed company's* financial situation is such that they should request the suspension of its *listing* pending publication of an announcement and clarification of its financial position.

#### Joint ventures

- 10.8.9 G
- (1) When a *listed company* enters into a joint venture it should consider how this chapter applies.
  - (2) It is common, when entering into a joint venture, for the partners to include exit provisions in the terms of the agreement. These typically give each partner a combination of rights and obligations to either sell their own holding or to acquire their partner's holding should certain triggering events occur.
  - (3) If the *listed company* does not retain sole discretion over the event which requires them to either purchase the joint venture partner's stake or to sell their own, *LR 10.1.3R(2)* requires this obligation to be classified at the time it is agreed as though it had been exercised at that time. Further, if the consideration to be paid is to be determined by reference to the future profitability of the joint venture or an independent valuation at the time of exercise, this consideration will be treated as being uncapped. If this is the case, the initial agreement will be classified as a *class 1 transaction* at the time it is entered into.
  - (4) If the *listed company* does retain sole discretion over the triggering event, or if the *listed company* is making a choice to purchase or sell following an event which has been triggered by the joint venture partner, the purchase or sale must be classified when this discretion is exercised or when the choice to purchase or sell is made. In the case of a *50/50 joint venture* regard should also be had to *LR 11* (related party transactions).

## LR 10 Annex 1 - The Class Tests

### Class tests

1G This Annex sets out the following *class tests*:

- (1) the gross assets test;
- (2) the profits test;
- (3) the consideration test; and
- (4) the gross capital test.

### The Gross Assets test

- 2R (1) The assets test is calculated by dividing the gross assets the subject of the transaction by the gross assets of the *listed company*.
- (2) The gross assets of the *listed company* means the total non-current assets, plus the total current assets, of the *listed company*.
- (3) For:
- (a) an acquisition of an interest in an undertaking which will result in consolidation of the assets of that undertaking in the accounts of the listed company; or
  - (b) a disposal of an interest in an undertaking which will result in the assets of that undertaking no longer being consolidated in the accounts of the *listed company*;
- the gross assets the subject of the transaction means the value of 100% of that undertaking's assets irrespective of what interest is acquired or disposed of.
- (4) For an acquisition or disposal of an interest in an undertaking which does not fall within paragraph (3), the gross assets the subject of the transaction means:
- (a) for an acquisition, the consideration together with liabilities assumed (if any); and
  - (b) for a disposal, the assets attributed to that interest in the listed company's accounts.
- (5) If there is an acquisition of assets other than an interest in an undertaking, the assets the subject of the transaction means the consideration or, if greater, the book value of those assets as they will be included in the *listed company's* balance sheet.

- (6) If there is a disposal of assets other than an interest in an undertaking, the assets the subject of the transaction means the book value of the assets in the *listed company's* balance sheet.

3G The *FSA* may modify paragraph 2R to require, when calculating the assets the subject of the transaction, the inclusion of further amounts if contingent assets or arrangements referred to in *LR 10.2.4R* (indemnities and similar arrangements) are involved.

#### The Profits test

- 4R (1) The profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the *listed company*.
- (2) For the purposes of paragraph (1), profits means:
- (a) profits after deducting all charges except taxation; and
  - (b) for an acquisition or disposal of an interest in an undertaking referred to in paragraph 2R (3)(a) or (b) of this Annex, 100% of the profits of the undertaking (irrespective of what interest is acquired or disposed of).

#### The Consideration test

- 5R (1) The consideration test is calculated by taking the consideration for the transaction as a percentage of the aggregate market value of all the ordinary shares (excluding *treasury shares*) of the *listed company*.
- (2) For the purposes of paragraph (1):
- (a) the consideration is the amount paid to the contracting party;
  - (b) if all or part of the consideration is in the form of *securities* to be traded on a market, the consideration attributable to those *securities* is the aggregate market value of those *securities*; and
  - (c) if deferred consideration is or may be payable or receivable by the *listed company* in the future, the consideration is the maximum total consideration payable or receivable under the agreement.
- (3) If the total consideration is not subject to any maximum the transaction is to be treated as a *class 1 transaction* (irrespective of the class into which it otherwise falls).
- (4) For the purposes of sub-paragraph (2)(b), the figures used to determine consideration consisting of:

- (a) *securities* of a *class* already *listed*, must be the aggregate market value of all those *securities* on the last *business day* before the announcement; and
  - (b) a new *class* of *securities* for which an application for *listing* will be made, must be the expected aggregate market value of all those *securities*.
- (5) For the purposes of paragraph (1), the figure used to determine market capitalisation is the aggregate market value of all the ordinary *shares* (excluding *treasury shares*) of the *listed company* at the close of business on the last *business day* before the announcement.
- 6G The *FSA* may modify paragraph 5R to require the inclusion of further amounts in the calculation of the consideration. For example, if the purchaser agrees to discharge any liabilities, including the repayment of inter-company or third party debt, whether actual or contingent, as part of the terms of the transaction.

#### The Gross Capital test

- 7R (1) The gross capital test is calculated by dividing the gross capital of the company or business being acquired by the gross capital of the *listed company*.
- (2) The test in paragraph (1) is only to be applied for an acquisition of a *company* or business.
- (3) For the purposes of paragraph (1), the gross capital of the *company* or business being acquired means the aggregate of:
- (a) the consideration (as calculated under paragraph 5R of this Annex);
  - (b) if a *company*, any of its *shares* and *debt securities* which are not being acquired;
  - (c) all other liabilities (other than current liabilities) including for this purpose minority interests and deferred taxation; and
  - (d) any excess of current liabilities over current assets.
- (4) For the purposes of paragraph (1), the gross capital of the *listed company* means the aggregate of:
- (a) the market value of its *shares* (excluding *treasury shares*) and the issue amount of the *debt security*;
  - (b) all other liabilities (other than current liabilities) including for this purpose minority interests and deferred taxation; and

- (c) any excess of current liabilities over current assets.
- (5) For the purposes of paragraph (1):
- (a) figures used must be, for *shares* and *debt security* aggregated for the purposes of the gross capital percentage ratio, the aggregate market value of all those *shares* (or if not available before the announcement, their nominal value) and the issue amount of the *debt security*; and
  - (b) for *shares* and *debt security* aggregated for the purposes of paragraph (3)(b), any *treasury shares* held by the *company* are not to be taken into account.

#### Figures used to classify assets and profits

- 8R. (1) For the purposes of calculating the tests in this Annex, except as otherwise stated in paragraphs (2) to (6), figures used to classify assets and profits, must be the figures shown in the latest published audited consolidated accounts or, if a *listed company* has, or will have, published a preliminary statement of later annual results at the time the terms of a transaction are agreed, the figures shown in that preliminary statement.
- (2) If a balance sheet has been published in a subsequently published interim statement then gross assets should be taken from the balance sheet published in the interim statement.
- (3) (a) The figures of the *listed company* must be adjusted to take account of subsequent transactions which have been notified to a *RIS* under *LR 10.4* or *LR 10.5*.
- (b) The figures of the target company or business must be adjusted to take account of subsequent transactions which would have been a *class 2 transaction* or greater when classified against the target as a whole.
- (4) Figures on which the auditors are unable to report without modification must be disregarded.
- (5) When applying the *percentage ratios* to an acquisition by a *company* whose assets consist wholly or predominantly of cash or short-dated *securities*, the cash and short-dated *securities* must be excluded in calculating its assets and market capitalisation.
- (6) The principles in this paragraph also apply (to the extent relevant) to calculating the assets and profits of the target company or business.
- 9G The *FSA* may modify paragraph 8R(4) in appropriate cases to permit figures to be taken into account.

### Anomalous results

- 10G If a calculation under any of the *class tests* produces an anomalous result or if a calculation is inappropriate to the activities of the *listed company*, the *FSA* may modify the relevant *rule* to substitute other relevant indicators of size, including industry specific tests.

11 Related party transactions

Application

11.1.1 R This chapter applies to a *company* that has a *primary listing* of *equity securities*.

Purpose

11.1.2 G (1) This chapter sets out safeguards that apply to:

- (a) transactions and arrangements between a *listed company* and a *related party*; and
- (b) transactions and arrangements between a *listed company* and any other *person* that may benefit a *related party*.

(2) The safeguards are intended to prevent a *related party* from taking advantage of its position and also to prevent any perception that it may have done so.

Transaction

11.1.3 R A reference in this chapter:

- (1) to a transaction or arrangement by a *listed company* includes a transaction or arrangement by its *subsidiary undertaking*; and
- (2) to a transaction or arrangement is, unless the contrary intention appears, a reference to the entering into of the agreement for the transaction or the entering into of the arrangement.

Definition of “related party”

11.1.4 R In *LR*, a "*related party*" means:

- (1) a *person* who is (or was within the 12 months before the date of the transaction or arrangement) a *substantial shareholder*; or
- (2) a *person* who is (or was within the 12 months before the date of the transaction or arrangement) a *director* or *shadow director* of the *listed company* or of any other *company* which is (and, if he has ceased to be such, was while he was a *director* or *shadow director* of such other *company*) its *subsidiary undertaking* or *parent undertaking* or a fellow *subsidiary undertaking* of its *parent undertaking*; or
- (3) a *50/50 joint venture partner*; or
- (4) a *person exercising significant influence*; or

- (5) an *associate* of a *related party* referred to in paragraph (1), (2), (3) or (4).

Definition of “related party transaction”

- 11.1.5 R In *LR*, a "*related party transaction*" means:
- (1) a transaction (other than a transaction of a revenue nature in the ordinary course of business) between a *listed company* and a *related party*; or
  - (2) an arrangement pursuant to which a *listed company* and a *related party* each invests in, or provides finance to, another undertaking or asset; or
  - (3) any other similar transaction or arrangement (other than a transaction of a revenue nature in the ordinary course of business) between a *listed company* and any other *person* the purpose and effect of which is to benefit a *related party*.

Transactions to which this chapter does not apply

- 11.1.6 R *LR* 11.1.7R to *LR* 11.1.10R do not apply to a *related party transaction* if it is a transaction or arrangement:
- (1) of a kind referred to in paragraph 1 of *LR* 11 Ann 1R (a small transaction)); or
  - (2) of a kind referred to in paragraph 2 to 10 of *LR* 11 Ann 1R and does not have any unusual features.

**Note:** If an *issuer* is proposing to enter into a transaction that could be a *related party transaction* it is required under *LR* 8 to obtain the guidance of a *sponsor* to assess the potential application of *LR* 11.

Requirements for related party transactions

- 11.1.7 R If a *listed company* enters into a *related party transaction*, the *listed company* must:
- (1) make a notification in accordance with *LR* 10.4.1R (Notification of class 2 transactions) that contains the details required by that *rule* and also:
    - (a) the name of the *related party*; and
    - (b) details of the nature and extent of the *related party's* interest in the transaction or arrangement;

- (2) send a *circular* to its shareholders containing the information required by *LR 13.3* and *LR 13.6*;
- (3) obtain the approval of its shareholders for the transaction or arrangement either:
  - (a) before it is entered into; or
  - (b) if the transaction or arrangement is expressed to be conditional on that approval, before it is completed; and
- (4) ensure that the *related party*:
  - (a) does not vote on the relevant resolution; and
  - (b) takes all reasonable steps to ensure that the *related party's associates* do not vote on the relevant resolution.

11.1.8 G If a meeting of the *listed company* has been called to approve a transaction or arrangement and, after the date of the notice of meeting but before the meeting itself, a party to that transaction or arrangement has become a *related party*, then to comply with *LR 11.1.7R* the *listed company* should:

- (1) ensure that the *related party* concerned does not vote on the relevant resolution and that the *related party* takes all reasonable steps to ensure that its *associates* do not vote on the relevant resolution; and
- (2) send a further *circular*, for receipt by shareholders at least one clear *business day* before the last time for lodging proxies for the meeting, containing any information required by *LR 13.3* (Contents of all circulars) and *LR 13.6* (Related party circulars) that was not contained in the original *circular* with the notice of meeting.

11.1.9 G *LR 11.1.7R* and *LR 11.1.8G* will apply to the variation or novation of an existing agreement between the *listed company* and a *related party* whether or not, at the time the original agreement was entered into, that party was a *related party*.

#### Modified requirements for smaller related party transactions

- 11.1.10 R
- (1) This *rule* applies to a *related party transaction* if each of the *percentage ratios* is less than 5%, but one or more of the *percentage ratios* exceeds 0.25%.
  - (2) Where this rule applies, *LR 11.1.7R* does not apply but instead the *listed company* must before entering into the transaction or arrangement (as the case may be):
    - (a) inform the *FSA* in writing of the details of the proposed transaction or arrangement;
    - (b) provide the *FSA* with written confirmation from an

independent adviser acceptable to the *FSA* that the terms of the proposed transaction or arrangement with the *related party* are fair and reasonable as far as the shareholders of the *listed company* are concerned; and

- (c) undertake in writing to the *FSA* to include details of the transaction or arrangement in the *listed company's* next published annual accounts, including, if relevant, the identity of the *related party*, the value of the consideration for the transaction or arrangement and all other relevant circumstances.

#### Aggregation of transactions in any 12 month period

- 11.1.11 R (1) If a *listed company* enters into transactions or arrangements with the same *related party* (and any of its *associates*) in any 12 month period and the transactions or arrangements have not been approved by shareholders the transactions or arrangements must be aggregated.
- (2) If any *percentage ratio* is 5% or more for the aggregated transactions or arrangements, the *listed company* must comply with *LR 11.1.7R* in respect of the latest transaction or arrangement.
- Note:** *LR 13.6.1R(8)* requires details of each of the transactions or arrangements being aggregated to be included in the circular.
- (3) If transactions or arrangements that are small transactions under *LR 11 Annex 1R* paragraph 1 are aggregated under paragraph (1) of this *rule* and for the aggregated small transactions each of the *percentage ratios* is less than 5%, but one or more of the *percentage ratios* exceeds 0.25%, the *listed company* must comply with:
- (a) *LR 11.1.10R(2)(b)* in respect of the latest small transaction; and
  - (b) *LR 11.1.10R(2)(a)* and (c) in respect of the aggregated small transactions.

#### Application of rules to 50/50 joint ventures

- 11.1.12 G (1) If a *listed company* has entered into a *50/50 joint venture* then any subsequent transaction or arrangement with the *50/50 joint venture partner* or its *associate* will be a *related party transaction* due to paragraph (3) of the *related party* definition (see *LR 11.1.4R*) and the requirements of this chapter will need to be complied with (unless the transaction or arrangement falls within an exception referred to in *LR 11.1.6R*).
- (2) The *FSA* would ordinarily consider the following subsequent transactions or arrangements (amongst others) between a *listed company* and a *50/50 joint venture partner* or its *associate* to be a

*related party transaction:*

- (a) a subsequent amendment to the joint venture agreement;
- (b) the exercise by the *listed company* of a right or option to buy the joint venture interest of its *50/50 joint venture partner* or its *associate* or to sell the joint venture interest to its *50/50 joint venture partner* or its *associate*;
- (c) the *listed company* performs an act within its sole discretion the result of which is to give the *50/50 joint venture partner* the right to buy the *listed company's* interest in the joint venture or to sell its own interest in the joint venture to the *listed company*; and
- (d) any further investment in the joint venture by the *listed company*.

## LR 11 Annex 1R

Transactions to which related party transaction rules do not apply

Small transaction

- 1 A transaction or arrangement where each of the applicable *percentage ratios* is equal to or less than 0.25%.

Issue of new securities and sale of treasury shares

- 2 A transaction that consists of:
  - (1) the take up by a *related party* of new *securities* or *treasury shares* under its entitlement in a pre-emptive offering;
  - (2) an issue of new *securities* either:
    - (a) made under the exercise of conversion or subscription rights attaching to a *listed class* of *securities*; or
    - (b) previously approved by the *listed company's* shareholders in general meeting.

Employees' share schemes and long term incentive schemes

- 3 The:
  - (1) receipt of any asset (including cash or *securities* of the *listed company* or any of its *subsidiary undertakings*) by a *director* of the

*listed company*, its *parent undertaking* or any of its *subsidiary undertakings*; or

- (2) grant of an option or other right to a *director* of the *listed company*, its *parent undertaking*, or any of its *subsidiary undertakings* to acquire (whether or not for consideration) any asset (including cash or new or existing *securities* of the *listed company* or any of its *subsidiary undertakings*); or
- (3) provision of a gift or loan to the trustees of an employee benefit trust to finance the provision of assets as referred to in (1) or (2);

in accordance with the terms of an *employees' share scheme* or a *long-term incentive scheme*.

#### Credit

- 4 A grant of credit (including the lending of money or the guaranteeing of a loan):
  - (1) to the *related party* on normal commercial terms;
  - (2) to a *director* for an amount and on terms no more favourable than those offered to employees of the group generally; or
  - (3) by the *related party* on normal commercial terms and on an unsecured basis.

#### Directors' indemnities

- 5 (1) A transaction that consists of:
  - (a) granting an indemnity to a *director* of the *listed company* (or any of its *subsidiary undertakings*) if the terms of the indemnity are in accordance with those specifically permitted to be given to a *director* under the Companies Act 1985; or
  - (b) maintaining a contract of insurance if the insurance is in accordance with that specifically permitted to be maintained for a *director* under that the Companies Act 1985 (whether for a *director* of the *listed company* or for a *director* of any of its *subsidiary undertakings*).
- (2) Paragraph (1) applies to a *listed company* that is not subject to the Companies Act 1985 if the terms of the indemnity or contract of insurance are in accordance with those that would be specifically permitted under that Act (if it applied).

#### Underwriting

- 6 (1) The underwriting by a *related party* of all or part of an issue of *securities* by the *listed company* (or any of its *subsidiary*

*undertakings*) if the consideration to be paid by the *listed company* (or any of its *subsidiary undertakings*) for the underwriting:

- (a) is no more than the usual commercial underwriting consideration; and
  - (b) is the same as that to be paid to the other underwriters (if any).
- (2) Paragraph (1) does not apply to the extent that a *related party* is underwriting *securities* which it is entitled to take up under an issue of *securities*.

#### Transactions not related to joint venture

7 A transaction or arrangement that:

- (1) is with a *person* who is only a *related party* because it is a *50/50 joint venture partner* or its *associate*; and
- (2) does not relate to the terms of the joint venture or to the assets or business of the joint venture.

#### Joint investment arrangements

- 8
- (1) An arrangement where a *listed company*, or any of its *subsidiary undertakings*, and a *related party* each invests in, or provides finance to, another undertaking or asset if the following conditions are satisfied:
    - (a) the amount invested, or provided, by the *related party* is not more than 25% of the amount invested, or provided, by the *listed company* or its *subsidiary undertaking* (as the case may be) and the *listed company* has advised the *FSA* in writing that this condition has been met; and
    - (b) an independent adviser acceptable to the *FSA* has provided a written opinion to the *FSA* stating that the terms and circumstances of the investment or provision of finance by the *listed company* or its *subsidiary undertakings* (as the case may be) are no less favourable than those applying to the investment or provision of finance by the *related party*.
  - (2) The advice in paragraph (1)(a) and the opinion in paragraph (1)(b) must be provided before the investment is made or the finance is provided.

#### Insignificant subsidiary undertaking

- 9
- (1) A transaction or arrangement where each of the conditions in paragraphs (2) to (6) (as far as applicable) is satisfied.
  - (2) The party to the transaction or arrangement is only a *related party* because:

- (a) it is (or was within the 12 months before the date of the transaction or arrangement) a *substantial shareholder* or its *associate*; or
- (b) it is a *person* who is (or was within the 12 months before the date of the transaction or arrangement) a *director* or *shadow director* or his *associate*;

of a *subsidiary undertaking* or *subsidiary undertakings* of the *listed company* that has, or if there is more than one *subsidiary undertaking* that have in aggregate, contributed less than 10% of the profits of, and represented less than 10% of the assets of, the *listed company* for the relevant period.

- (3) The *subsidiary undertaking* or each of the *subsidiary undertakings* (as the case may be) have been in the *listed company's* group for 1 year or more.
- (4) In paragraph (2), "relevant period" means:
  - (a) if the *subsidiary undertaking* or each of the *subsidiary undertakings* (as the case may be) have been part of the *listed company's* group for more than 1 year but less than 3 years, each of the financial years before the date of the transaction or arrangement for which accounts have been published; and
  - (b) if the *subsidiary undertaking* or any of the *subsidiary undertakings* (as the case may be) have been part of the *listed company's* group for 3 years or more, each of the 3 financial years before the date of the transaction or arrangement for which accounts have been published.
- (5) If the *subsidiary undertaking* or any of the *subsidiary undertakings* (as the case may be) are themselves party to the transaction or arrangement or if *securities* in the *subsidiary undertaking* or any of the *subsidiary undertakings* or their assets are the subject of the transaction or arrangement, then the ratio of consideration to market capitalisation of the *listed company* is less than 10%.
- (6) In this *rule*, the figures to be used to calculate profits, assets and consideration to market capitalisation are the same as those used to classify profits, assets and consideration to market capitalisation in *LR 10 Ann 1* (as modified or added to by *LR 10.7* where applicable).

#### Insignificant joint ventures

- 10 (1) A transaction or arrangement where each of the conditions in paragraphs (2) to (6) (as far as applicable) are satisfied.
- (2) The transaction or arrangement is with a *person* who is only a *related party* because it is a *50/50 joint venture partner* or its *associate*.
- (3) 100% of the assets and profits of the relevant joint venture, or if

there is more than one joint venture the relevant joint ventures, are equal to less than 10% of the profits of, and less than 10% of the assets of, the *listed company* for the relevant period.

- (4) The joint venture or each of the joint ventures (as the case may be) have been in existence for one year or more.
- (5) In paragraph (3), "relevant period" means:
  - (a) if the joint venture or each of the joint ventures (as the case may be) have been in existence for more than one year but less than three years, each of the financial years before the date of the transaction or arrangement for which accounts have been published; and
  - (b) if the joint venture or any of the joint ventures (as the case may be) have been in existence for three years or more, each of the three financial years before the date of the transaction or arrangement for which accounts have been published.
- (6) The ratio of consideration to market capitalisation of the *listed company* is less than 10%.
- (7) In this *rule*:
  - (a) a reference to the period of existence of a joint venture is a reference to the period since the agreement for the joint venture was first executed; and
  - (b) the figures to be used to calculate profits, assets and consideration to market capitalisation are the same as those used to classify profits, assets and consideration to market capitalisation for the purposes of *LR 10 Ann 1* (as modified or added to by *LR 10.7* where applicable).

12 Dealing in own securities and treasury shares

12.1 Application

Application

12.1.1 R This chapter applies to a *company* that has a *primary listing* of *equity securities* or *preference shares*.

12.1.2 R This chapter contains *rules* applicable to a *listed company* that:

- (1) purchases its own *equity shares*; or
- (2) purchases its own *securities* other than *equity shares*; or
- (3) sells or transfers *treasury shares*; or
- (4) purchases or redeems its own *securities* during a *prohibited period*; or
- (5) purchases its own *securities* from a *related party*.

Exceptions

12.1.3 R *LR 12.2* to *LR 12.5* do not apply to a transaction entered into:

- (1) in the ordinary course of business by a securities dealing business; or
- (2) on behalf of third parties either by the *company* or any member of its *group*;

if the *listed company* has established and maintains effective *Chinese walls* between those responsible for any decision relating to the transaction and those in possession of *inside information* relating to the *listed company*.

12.2 Prohibition on purchase of own securities

12.2.1 R A *listed company* must not purchase or redeem (or make any early redemptions of) its own *securities* and must ensure that no purchases in its *securities* are effected on its behalf or by any member of its *group* during a *prohibited period* unless:

- (1) the *company* has in place a buy-back programme where the dates and quantities of *securities* to be traded during the relevant period are fixed and have been disclosed in a notification made in accordance with *LR 12.4.4R*; or

- (2) the *company* has in place a buy-back programme managed by an independent third party which makes its trading decisions in relation to the *company's securities* independently of, and uninfluenced by, the *company*; or
- (3) the *company* is purchasing or redeeming *securities* other than *shares* or *securities* whose price or value would be likely to be significantly affected by the publication of the information giving rise to the *prohibited period*; or
- (4) the *company* is redeeming *securities* (other than *equity shares*) which, at the time of issue, set out:
  - (a) the date of redemption;
  - (b) the number of *securities* to be redeemed or the formula used to determine that number; and
  - (c) the redemption price or the formula used to determine the price.

### 12.3 Purchase from a related party

12.3.1 R Where a purchase by a *listed company* of its own *equity securities* or *preference shares* is to be made from a *related party*, whether directly or through intermediaries, LR 11 (Related party transactions) must be complied with unless:

- (1) a *tender offer* is made to all holders of the *class* of *securities*; or
- (2) in the case of a market purchase pursuant to a general authority granted by shareholders, it is made without prior understanding, arrangement or agreement between the *listed company* and any *related party*.

### 12.4 Purchase of own equity shares

#### Purchases of less than 15%

12.4.1 R Unless a *tender offer* is made to all holders of the *class*, purchases by a *listed company* of less than 15% of any *class* of its *equity shares* (excluding *treasury shares*) pursuant to a general authority granted by shareholders, may only be made if the price to be paid is not more than the higher of:

- (1) 5% above the average market value of the *company's equity shares* for the 5 *business days* prior to the day the purchase is made; and
- (2) that stipulated by Article 5(1) of the *Buy-back and Stabilisation Regulation*. [Note: This Article is reproduced at MAR 1 Ann 1]

Purchases of 15% or more

- 12.4.2 R Purchases by a *listed company* of 15% or more of any *class* of its *equity shares* (excluding *treasury shares*) must be by way of a *tender offer* to all shareholders of that *class*.
- 12.4.3 G Where a series of purchases are made pursuant to a general authority granted by shareholders, which in aggregate amount to 15% or more of the number of *equity shares* of the relevant *class* in issue immediately following the shareholders meeting at which the general authority to purchase was granted, a *tender offer* need only be made in respect of any purchase that takes the aggregate to or above that level. Purchases that have been specifically approved by shareholders are not to be taken into account in determining whether the 15% level has been reached.

Notification prior to purchase

- 12.4.4 R
- (1) Any decision by the board to submit to shareholders a proposal for the *listed company* to be authorised to purchase its own *equity shares* must be notified to a *RIS* as soon as possible.
  - (2) A notification required by paragraph (1) must set out whether the proposal relates to:
    - (a) specific purchases and if so, the names of the *persons* from whom the purchases are to be made; or
    - (b) a general authorisation to make purchases.
  - (3) The requirement set out in paragraph (1) does not apply to a decision by the board to submit to shareholders a proposal to renew an existing authority to purchase own *equity shares*.
- 12.4.5 R A *listed company* must notify a *RIS* as soon as possible of the outcome of the shareholders' meeting to decide the proposal described in LR 12.4.4R

Notification of purchases

- 12.4.6 R Any purchase of a *listed company's* own *equity shares* by or on behalf of the *company* or any other member of its *group* must be notified to a *RIS* as soon as possible, and in any event by no later than 7.30 a.m. on the *business day* following the calendar *day* on which the purchase occurred. The notification must include:
- (1) the date of purchase;

- (2) the number of *equity shares* purchased;
- (3) the purchase price for each of the highest and lowest price paid, where relevant;
- (4) the number of *equity shares* purchased for cancellation and the number of *equity shares* purchased to be held as *treasury shares*; and
- (5) where *equity shares* were purchased to be held as *treasury shares*, a statement of:
  - (a) the total number of *treasury shares* of each *class* held by the *company* following the purchase and non-cancellation of such *equity shares*; and
  - (b) the number of *equity shares* of each *class* that the *company* has in issue less the total number of *treasury shares* of each *class* held by the *company* following the purchase and non-cancellation of such *equity shares*.

Consent of other classes

- 12.4.7 R Unless *LR 12.4.8R* applies, a *company* with *listed securities* convertible into, or exchangeable for, or carrying a right to subscribe for *equity shares* of the *class* proposed to be purchased must (prior to entering into any agreement to purchase such *shares*):
- (1) convene a separate meeting of the holders of those *securities*; and
  - (2) obtain their approval for the proposed purchase of *equity shares* by an extraordinary resolution.
- 12.4.8 R *LR 12.4.7R* does not apply if the trust deed or terms of issue of the relevant *securities* authorise the *listed company* to purchase its own *equity shares*.
- 12.4.9 R A *circular* convening a meeting required by *LR 12.4.7R* must include (in addition to the information in *LR 13* (Contents of circulars)):
- (1) a statement of the effect of the conversion on the expectations of holders in terms of attributable assets and earnings, on the basis that the *company* exercises the authority to purchase its *equity shares* in full at the maximum price allowed (where the price is to be determined by reference to a future market price the calculation must be made on the basis of market prices prevailing immediately prior to the publication of the *circular* and that basis must be disclosed); and
  - (2) any adjustments to the rights of the holders which the *company* may propose (in such a case, the information required under paragraph (1) must be restated on the revised basis).

#### Other similar transactions

- 12.4.10 G A *listed company* intending to enter into a transaction that would have an effect on the *company* similar to that of a purchase of own *equity shares* should consult with the *FSA* to discuss the application of *LR 12.4*.

#### 12.5 Purchase of own securities other than equity shares

- 12.5.1 R Where a *listed company* intends to purchase any of its *equity securities* (other than *equity shares*) or *preference shares* it must:
- (1) ensure that no dealings in the relevant *securities* are carried out by or on behalf of the *company* or any member of its *group* until the proposal has either been notified to a *RIS* or abandoned; and
  - (2) notify a *RIS* of its decision to purchase unless the purchases will consist of individual transactions made in accordance with the terms of issue of the relevant *securities*.

#### Notification of purchases, early redemptions and cancellations

- 12.5.2 R Any purchases, early redemptions or cancellations of a *company's* own *listed equity securities* (other than *equity shares*) or *preference shares*, by or on behalf of the *company* or any other member of its *group* must be notified to a *RIS* when an aggregate of 10% of the initial amount of the relevant *class* of *securities* has been purchased, redeemed or cancelled, and for each 5% in aggregate of the initial amount of that *class* acquired thereafter.
- 12.5.3 R The notification required by *LR 12.5.2R* must be made as soon as possible and in any event no later than 7.30 a.m. on the *business day* following the calendar day on which the relevant threshold is reached or exceeded. The notification must state:
- (1) the amount of *securities* acquired, redeemed or cancelled since the last notification; and
  - (2) whether or not the *securities* are to be cancelled and the number of that *class* of *securities* that remain outstanding.
- 12.5.4 R Where a *listed company* purchases or makes an early redemption of *shares* other than *equity shares*, the notification required by *LR 12.5.2R* must include the matters set out in *LR 12.5.3R* and, in addition, the number of the *shares* purchased or redeemed early for cancellation and the number purchased to be held as *treasury shares*.

#### Period between purchase and notification

- 12.5.5 R In circumstances where the purchase is not being made pursuant to a *tender offer* and the purchase causes a relevant threshold in LR 12.5.2R to be reached or exceeded, no further purchases may be undertaken until after a notification has been made in accordance with LR 12.5.2R to LR 12.5.4R.

#### Convertible securities

- 12.5.6 R In the case of *securities* which are convertible into, exchangeable for, or carry a right to subscribe for *equity shares*, unless a *tender offer* is made to all holders of the *class*, purchases must not be made at a price higher than 5% above the average of the market values for the *securities* for the five *business days* immediately prior to the date of purchase.

#### Warrants and options

- 12.5.7 R Where, within a period of 12 months, a *listed company* purchases warrants or options over its own *equity shares* which, on exercise, convey the entitlement to *equity shares* representing 15% or more of the *company's* existing issued *shares* (excluding *treasury shares*), the *company* must send to its shareholders a *circular* containing the following information:
- (1) a statement of the *directors'* intentions regarding future purchases of the *company's* warrants and options;
  - (2) the number and terms of the warrants or options acquired and to be acquired and the method of acquisition;
  - (3) where warrants or options have been, or are to be, acquired from specific parties, a statement of the names of those parties and all material terms of the acquisition; and
  - (4) details of the prices to be paid.

12.6 Treasury shares

Prohibition on sales or transfers of treasury shares

- 12.6.1 R Subject to LR 12.6.2R, sales for cash, or transfers for the purposes of, or pursuant to, an *employees' share scheme*, of *treasury shares* must not be made during a *prohibited period*.

Exemptions

- 12.6.2 R LR 12.6.1R does not apply to sales or transfers by a *listed company* of *treasury shares* in the following circumstances:
- (1) transfers of *shares* arising out of the operation of an *employees' share scheme* into a saving scheme investing only in *securities* of the *company* following:
    - (a) exercise of an option under a savings related share option scheme; or
    - (b) release of *shares* from a share incentive plan;
  - (2) with the exception of a disposal of *securities* received by a *person discharging managerial responsibilities* as a participant, dealings in connection with an HM Revenue and Customs approved *employee share scheme*, or any other *employees' share scheme* under which participation is extended, on similar terms, to those contained in an HM Revenue and Customs approved "Save-as-you-earn" share option scheme, to all or most *employees* of the participating *companies* in that scheme;
  - (3) transfers of *securities* by the *company* to an independent trustee of an *employees' share scheme* to a beneficiary who is not a *person discharging managerial responsibilities*; and
  - (4) sales or transfers by the *company* of *treasury shares* (other than *equity shares*) of a *class* whose price or value would not be likely to be significantly affected by the publication of the information giving rise to the *prohibited period*.

Notification of capitalisation issues and of sales, transfers and cancellations of treasury shares

- 12.6.3 R If, by virtue of its holding *treasury shares*, a *listed company* is allotted *shares* as part of a capitalisation issue, the *company* must notify a *RIS* as soon as possible and in any event by no later than 7.30 a.m. on the *business day* following the calendar *day* on which allotment occurred of the following information:
- (1) the date of the allotment;

- (2) the number of *shares* allotted;
- (3) a statement as to what number of *shares* allotted have been cancelled and what number is being held as *treasury shares*; and
- (4) where *shares* allotted are being held as *treasury shares*, a statement of:
  - (a) the total number of *treasury shares* of each *class* held by the *company* following the allotment; and
  - (b) the number of *shares* of each *class* that the *company* has in issue less the total number of *treasury shares* of each *class* held by the *company* following the allotment.

12.6.4 R Any sale for cash, transfer for the purposes of or pursuant to an *employees' share scheme* or cancellation of *treasury shares* by a *listed company* must be notified to a *RIS* as soon as possible and in any event by no later than 7.30 a.m. on the *business day* following the calendar day on which the sale, transfer or cancellation occurred. The notification must include:

- (1) the date of the sale, transfer or cancellation;
- (2) the number of *shares* sold, transferred or cancelled;
- (3) the sale or transfer price for each of the highest and lowest prices paid, where relevant; and
- (4) a statement of:
  - (a) the total number of *treasury shares* of each *class* held by the *company* following the sale, transfer or cancellation; and
  - (b) the number of *shares* of each *class* that the *company* has in issue less the total number of *treasury shares* of each *class* held by the *company* following the sale, transfer or cancellation.

- 13 Contents of Circulars
- 13.1 Preliminary
- Application
- 13.1.1 R This chapter applies to a *company* that has a *primary listing of equity securities*.
- Listed company to ensure circulars comply with chapter
- 13.1.2 R A *listed company* must ensure that *circulars* it issues to holders of its *listed equity securities* comply with the requirements of this chapter.
- Incorporation by reference
- 13.1.3 R Information may be incorporated in a *circular* by reference to relevant information contained in:
- (1) a *prospectus* or *listing particulars*; or
- (2) any other published *document* that has been filed with the *FSA*.
- 13.1.4 R Information incorporated by reference must be the latest available to the *listed company*.
- 13.1.5 R Information required by *LR* 13.3.1R(1) and (2) must not be incorporated in the *circular* by reference to information contained in another document.
- 13.1.6 R When information is incorporated by reference, a cross reference list must be provided in the *circular* to enable *security* holders to identify easily specific items of information. The cross reference list must specify where the information can be accessed by *security holders*.
- 13.2 Approval of circulars
- Circulars to be approved
- 13.2.1 R A *listed company* must not circulate or publish a *circular* unless it has been approved by the *FSA*.
- Circulars not requiring approval
- 13.2.2 R A *circular* does not need to be approved under *LR* 13.2.1R if:
- (1) it is of a type referred to in *LR* 13.8 or only relates to a proposed change of name or, in any other case, the *FSA* has agreed that it does not need to be approved;

- (2) it complies with *LR* 13.3 and also, if it is a *circular* referred to in *LR* 13.8, any relevant requirements in that section; and
- (3) neither it, nor the transaction or matter to which it relates, has unusual features.

When circulars about purchase of own equity securities need approval

- 13.2.3 R (1) A *circular* relating to a resolution to give a *listed company* authority to purchase its own *equity securities* must be approved by the *FSA* under *LR* 13.2.1R if:
- (a) the purchase by the *company* of its own *securities* is to be made from a *related party* (whether directly or through intermediaries); or
  - (b) the exercise in full of the authority sought would result in the purchase of 25% or more of the *company's* issued *equity shares* (excluding *treasury shares*).
- (2) A *circular* referred to in paragraph (1)(a) does not need to be approved if:
- (a) a tender is made to all holders of the *class of securities* on the same terms; or
  - (b) for a market purchase under a general authority granted by shareholders, it is made without prior understanding, arrangement or agreement between the *company* and any *related party*.

Approval procedures

- 13.2.4 R The following documents (to the extent applicable) must be lodged with the *FSA* in final form before it will approve a *circular*:
- (1) a Sponsors Declaration for the Production of a Circular completed by the *sponsor*;
  - (2) for a *class 1 circular* or *related party circular*, a letter setting out any items of information required by this chapter that are not applicable in that particular case;
  - (3) the *sponsor's* Confirmation of Independence; and
  - (4) any other document that the *FSA* has sought in advance from the *listed company* or its *sponsor*.
- 13.2.5 R Two copies of the following documents in draft form must be submitted at least 10 clear *business days* before the date on which it is intended to publish the *circular*:

- (1) the *circular*; and
- (2) the letters and documents referred to in LR 13.2.4R(1) and (2).

- 13.2.6 R The *sponsor's* Confirmation of Independence in final form must be submitted at least 10 clear *business days* before the date on which it is intended to publish the *circular*.
- 13.2.7 R If a *circular* submitted for approval is amended, two copies of amended drafts must be resubmitted, marked to show changes made to conform with *FSA* comments and to indicate other changes.

#### Approval of circulars

- 13.2.8 G The *FSA* will approve a *circular* if it is satisfied that the requirements of this chapter are satisfied.
- 13.2.9 G The *FSA* will only approve a *circular* between 9 a.m. and 5.30 p.m. on a *business day* (unless alternative arrangements are made in advance).

**Note:** LR 9.6.1R requires a *company* to forward to the *FSA* two copies of all *circulars* issued (whether or not they require approval) for publication on the *document viewing facility*.

### 13.3 Contents of all circulars

#### Contents of all circulars

- 13.3.1 R Every *circular* sent by a *listed company* to holders of its *listed securities* must:
- (1) provide a clear and adequate explanation of its subject matter giving due prominence to its essential characteristics, benefits and risks;
  - (2) state why the *security* holder is being asked to vote or, if no vote is required, why the *circular* is being sent;
  - (3) if voting or other action is required, contain all information necessary to allow the *security* holders to make a properly informed decision;
  - (4) if voting or other action is required, contain a heading drawing attention to the document's importance and advising *security* holders who are in any doubt as to what action to take to consult appropriate independent advisers;
  - (5) if voting is required, contain a recommendation from the Board as to the voting action *security* holders should take for all resolutions proposed, indicating whether or not the proposal described in the *circular* is, in the Board's opinion, in the best interests of *security*

holders as a whole;

- (6) state that if all the *securities* have been sold or transferred by the addressee the *circular* and any other relevant documents should be passed to the *person* through whom the sale or transfer was effected for transmission to the purchaser or transferee;
- (7) if new *securities* are being issued in substitution for existing *securities*, explain what will happen to existing documents of title;
- (8) not include any reference to a specific date on which listed *securities* will be marked "ex" any benefit or entitlement which has not been agreed in advance with the *RIE* on which the *company's securities* are or are to be traded;
- (9) if it relates to a transaction in connection with which *securities* are proposed to be *listed*, include a statement that application has been or will be made for the *securities* to be *admitted* and, if known, a statement of the following matters:
  - (a) the dates on which the *securities* are expected to be *admitted* and on which dealings are expected to commence;
  - (b) how the new *securities* rank for dividend or interest;
  - (c) whether the new *securities* rank equally with any existing *listed securities*;
  - (d) the nature of the document of title;
  - (e) the proposed date of issue;
  - (f) the treatment of any fractions;
  - (g) whether or not the *security* may be held in uncertificated form; and
  - (h) the names of the *RIEs* on which *securities* are to be traded;
- (10) if a *person* is named in the *circular* as having advised the *listed company* or its *directors*, a statement that the adviser has given and has not withdrawn its written consent to the inclusion of the reference to the adviser's name in the form and context in which it is included; and
- (11) if the *circular* relates to cancelling *listing*, state whether it is the *company's* intention to apply to cancel the *securities' listing*.

13.3.2 R If another *rule* provides that a *circular* of a particular type must include specified information, then that information is (unless the contrary intention appears) in addition to the information required under this section.

13.4 Class 1 circulars

Class 1 circulars

13.4.1 R A *class 1 circular* must also include the following information:

- (1) the information given in the notification (see *LR 10.4.1R*);
- (2) the information required by *LR 13 Ann 1R*;
- (3) the information required by *LR 13.5* (if applicable); and
- (4) a declaration by its *directors* in the following form (with appropriate modifications):

"The directors of [the company], 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.";

- (5) a statement of the effect of the acquisition or disposal on the *group's* earnings and assets and liabilities; and
- (6) if a statement or report attributed to a *person* as an expert is included in a *circular* (other than a statement or report incorporated by reference from a *prospectus* or *listing particulars*), a statement to the effect that the statement or report is included, in the form and context in which it is included, with the *person's* consent.

13.4.2 R If a *class 1 circular* contains a modified accountant's report, as described in *LR 13.5.25R*, the *class 1 circular* must set out:

- (1) whether the modification is significant to shareholders;
- (2) if the modification is significant to shareholders, the reason for its significance; and
- (3) a statement from the *directors* explaining why they are able to recommend the proposal set out in the *class 1 circular* notwithstanding the modified accountant's report.

Takeover offers

- 13.4.3 R (1) If a *class 1 circular* relates to a takeover offer which is recommended by the offeree's board and the *listed company* has had access to due diligence information on the offeree at the time the *class 1 circular* is published, the *listed company* must prepare and publish the working capital statement on the basis that the acquisition has taken place.
- (2) If a *class 1 circular* relates to a takeover offer which has not been recommended by the offeree's board or the *listed company* has not had access to due diligence information on the offeree at the time the *class 1 circular* is published, then the *listed company* must comply with paragraphs (3) to (6).
- (3) The *listed company* must prepare and publish the working capital statement on the *listed company* on the basis that the acquisition has not taken place. The working capital statement prepared on the basis that the acquisition has taken place must be updated and published and sent to shareholders within 28 days of the offer becoming or being declared wholly unconditional. The *circular* must state that the statements on a combined basis will be made available as soon as possible.
- (4) Other information on the offeree required by LR 13 Ann 1R should be disclosed in the *class 1 circular* on the basis of information published or made available by the offeree and of which the *listed company* is aware and is free to disclose.
- (5) If the takeover offer becomes unconditional, any change or addition to the information disclosed which is material in relation to the *listed company*, should be disclosed in a *circular* published (in the absence of exceptional circumstances) within 28 days after the offer becoming or being declared wholly unconditional.
- (6) If the takeover offer has been recommended but the *listed company* does not have access to due diligence information on the offeree, the *listed company* must disclose in the *class 1 circular* why access has not been given to that information.

#### Acquisition or disposal of property

- 13.4.4 R If a *class 1 transaction* relates to:
- (1) the acquisition or disposal of *property*; or
- (2) the acquisition of a *property company* that is not *listed*;
- the *class 1 circular* must include a *property valuation report*.
- 13.4.5 R If a *listed company* makes significant reference to the value of a *property* in a *class 1 circular*, the *class 1 circular* must include a *property valuation report*.

#### Acquisition or disposal of mineral resources

- 13.4.6 R If a *class 1 transaction* relates to an acquisition or disposal of *mineral resources* the *class 1 circular* must include:
- (1) a *mineral expert's report*; and
  - (2) a glossary of the technical terms used in the *mineral expert's report*.
- 13.4.7 G For a disposal, the *FSA* may modify the information requirements in *LR 13.4.6R* if the information would not provide significant additional information.

#### Acquisition of a scientific research based company or related assets

- 13.4.8 R If a *class 1 transaction* relates to the acquisition of a *scientific research based company* or related assets, the *class 1 circular* must contain an explanation of the transaction's impact on the acquirer's business plan and the information set out in paragraph 134 of the *CESR recommendations*.

#### 13.5 Financial information in Class 1 Circulars

##### When financial information must be included in a class 1 circular

- 13.5.1 R Financial information, as set out in this section, must be included by a *listed company* in a *class 1 circular* if:
- (1) the *listed company* is seeking to acquire an interest in a *target* which will result in a consolidation of the *target's* assets and liabilities with those of the *listed company*; or
  - (2) the *listed company* is seeking to dispose of an interest in a *target* which will result in the assets and liabilities no longer being consolidated; or
  - (3) the *target* ("A") has itself acquired a *target* ("B") and:
    - (a) A acquired B within the three year reporting period set out in *LR 13.5.13R(1)* or after the date of the last published accounts; and
    - (b) the acquisition of B, at the date of its acquisition by A, would have been classified as a *class 1 acquisition* in relation to the *listed company* at the date of acquisition of A by the *listed company*.
- 13.5.2 G A *listed company* that is entering into a *class 1 transaction* which does not fall within *LR 13.5.1R* must include in a *class 1 circular* such financial information as the *FSA* may specify.
- 13.5.3 G *LR 13.5.1R* will not normally apply to a *property company* making an

acquisition or disposal of *property*.

#### Form of accounting information

- 13.5.4 R (1) A *listed company* must present all financial information that is disclosed in a *class 1 circular* in a form that is consistent with the accounting policies adopted in its own latest annual consolidated accounts.
- (2) The requirement set out in paragraph (1) does not apply to financial information presented in accordance with LR 13.5.36R.

- 13.5.5 G Accounting policies include accounting standards and accounting disclosures.

#### Source of information

- 13.5.6 R A *listed company* must cite the source of all financial information that it discloses in a *class 1 circular*.

- 13.5.7 G In complying with LR 13.5.6R a *listed company* should:
- (1) state whether the financial information was extracted from accounts, internal financial accounting records, internal management accounting records, an external or other source;
  - (2) state whether financial information that was extracted from audited accounts was extracted without material adjustment; and
  - (3) indicate which aspects of the financial information relate to:
    - (a) historical financial information;
    - (b) forecast or estimated financial information; or
    - (c) pro forma financial information prepared in accordance with Annex 1 and Annex 2 of the *PD Regulation*;

with reference made to where the basis of presentation can be found.

- 13.5.8 R If financial information has not been extracted directly from audited accounts, the *class 1 circular* must:
- (1) set out the basis and assumptions on which the financial information has been prepared; and
  - (2) include a statement that the financial information is unaudited or not reported on by an accountant.

- 13.5.9 R A *listed company* must provide investors with all necessary information to understand the context and relevance of non-statutory figures, including a reconciliation to statutory equivalents.

#### Prominence of information

- 13.5.10 R A *listed company* must give audited historical financial information greater prominence in a *class 1 circular* than any forecast, estimated, pro forma or non-statutory financial information.

#### Summary of financial information

- 13.5.11 R A *listed company* that provides a summary of financial information in a *class 1 circular* must include in the *circular* a statement that investors should read the whole document and not rely solely on the summarised financial information.

#### Financial information table

- 13.5.12 R A *listed company* that is required by LR 13.5.1R to produce financial information in a *class 1 circular* must include in the *circular* a *financial information table*.

#### Financial information table: reporting period

- 13.5.13 R A *financial information table* must cover one of the following reporting periods:
- (1) a period of three years up to the end of the latest financial period for which the *target* or its parent has prepared audited accounts;
  - (2) a lesser period than the period set out in paragraph (1) if the *target's* business has been in existence for less than three years; or
  - (3) for a *class 1 disposal*, the period set out in LR 13.5.19R.

#### Financial information table: class 1 acquisitions

- 13.5.14 R A *listed company* must include, in a *financial information table*, financial information that covers:
- (1) the *target*; and
  - (2) the *target's subsidiary undertakings*, if any.
- 13.5.15 R A *listed company* must include in a separate *financial information table*, financial information that covers those undertakings which are to become the *target's subsidiary undertakings*, if applicable.
- 13.5.16 R (1) This rule applies if a *listed company* is seeking to acquire an interest in a *target* ("A") that has itself acquired a *target* ("B") and:
- (a) A acquired B within the three year reporting period set out in LR 13.5.13R(1) or after the date of the last published accounts; and

(b) the acquisition of B, at the date of its acquisition by A, would have been classified as a *class 1 acquisition* in relation to the *listed company* at the date of acquisition of A by the *listed company*.

(2) A *listed company* must include in a *financial information table* pre-acquisition financial information on B that covers the period from the commencement of the three year reporting period set out in LR 13.5.13R(1) up to the date of acquisition by A.

13.5.17 G If the *target* made a series of acquisitions that:

(1) are not caught individually by LR 13.5.16R; and

(2) were made during or subsequent to the reporting period set out in LR 13.5.13R(1) or (2);

the *FSA* may require additional financial information about those acquisitions to be included in the *financial information table*.

13.5.18 R A *listed company* must ensure that a *financial information table* includes, for each of the periods covered by the table:

(1) a balance sheet and its explanatory notes;

(2) an income statement and its explanatory notes;

(3) a cash flow statement and its explanatory notes;

(4) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners;

(5) the accounting policies; and

(6) any additional explanatory notes.

Financial information table: class 1 disposal

13.5.19 R (1) In the case of a *class 1 disposal* a *financial information table* must include, for the *target*:

(a) the last audited consolidated balance sheet; and

(b) the audited consolidated income statements for the last three years;

if audited accounts have been prepared for the *target*.

- (2) If audited accounts have not been prepared for the *target*, the information required by paragraph (1) must be extracted from the consolidation schedules that underlie the *listed company's* audited consolidated accounts. The income statements must be drawn up to at least the level of profit or loss for the period.
- (3) If the *target* has not been owned by the *listed company* for the entire reporting period set out in paragraph (1)(b), the information required by paragraph (1) may be extracted from the *target's* accounting records.

13.5.20 G If a dispensation of LR 13.5.19R has been granted because it is not possible to provide a meaningful allocation of costs, such as interest and tax, the *class 1 circular* should contain a statement to this effect.

Financial information table: accountant's opinion

13.5.21 R A *financial information table* must be accompanied by an accountant's opinion unless LR 13.5.27R, LR 13.5.28R or LR 13.5.29G applies.

13.5.22 R An accountant's opinion must set out:

- (1) whether, for the purposes of the *class 1 circular*, the *financial information table* gives a true and fair view of the financial matters set out in it; and
- (2) whether the *financial information table* has been prepared in a form that is consistent with the accounting policies adopted in the *listed company's* latest annual accounts.

13.5.23 R An accountant's opinion must be given by an independent accountant who is qualified to act as an auditor.

13.5.24 G An accountant will be independent if he or she complies with the standards and guidelines on independence issued by its national accountancy and auditing bodies.

13.5.25 R If an accountant's report, which contains the accountant's opinion required by LR 13.5.21R, is modified details of all material matters must be set out in the *class 1 circular*, including:

- (1) all the reasons for the modification; and
- (2) a quantification of the effects, if both relevant and practicable.

13.5.26 R If the accounts of a *target* that falls within LR 13.5.14R to LR 13.5.16R contain a *modified auditor's report*, details of the material matters giving rise to the modification must be set out in the *class 1 circular*.

Accountant's opinion: acquisitions of publicly traded companies

- 13.5.27 R (1) This *rule* applies if the *target* is:
- (a) *admitted to trading*; or
  - (b) a *company* whose *securities* are listed on an *overseas investment exchange* or admitted to trading on an *overseas regulated market*;
- and a material adjustment needs to be made to the *target's* financial statements to achieve consistency with the *listed company's* accounting policies.
- (2) A *listed company* must include the following in the *class 1 circular*:
- (a) a reconciliation of financial information on the *target*, for all periods covered by the *financial information table*, on the basis of the *listed company's* accounting policies;
  - (b) an accountant's opinion that sets out:
    - (i) whether the reconciliation of financial information in the *financial information table* has been properly compiled on the basis stated; and
    - (ii) whether the adjustments are appropriate for the purpose of presenting the financial information (as adjusted) on a basis consistent in all material respects with the *listed company's* accounting policies.

When an accountant's opinion is not required

- 13.5.28 R An accountant's opinion is not required if the *target* is:
- (1) *admitted to trading*; or
  - (2) a *company* whose *securities* are listed on an *overseas investment exchange* or admitted to trading on an *overseas regulated market*;
- and no material adjustment needs to be made to the *target's* financial statements to achieve consistency with the *listed company's* accounting policies.

- 13.5.29 G In the case of a *class 1 disposal* a *listed company* is not required to include an accountant's opinion with the *financial information table*.

Half-yearly and quarterly financial information

- 13.5.30 R If the *target* of an acquisition has published half-yearly or quarterly financial information subsequent to the period set out in *LR 13.5.13R(1)* or (2), such financial information must be:

- (1) reproduced in the *class 1 circular*; and
- (2) reconciled in accordance with LR 13.5.27R(2), if applicable.

Pro forma financial information

- 13.5.31 R If a *listed company* includes pro forma financial information in a *class 1 circular* it must comply with the requirements for pro forma financial information set out in the *PD Regulation*.

Profit forecasts and profit estimates

- 13.5.32 R If a *listed company* includes a *profit forecast* or a *profit estimate* in a *class 1 circular* it must:

- (1) comply with the requirements for a *profit forecast* or *profit estimate* set out in Annex 1 of the *PD Regulation* except that a *listed company* does not need to include a report on the forecast or estimate from an accountant in the *class 1 circular*; and
- (2) include a statement confirming that the *profit forecast* or *profit estimate* has been properly compiled on the basis of assumptions stated and that the basis of accounting is consistent with the accounting policies of the *listed company*.

- 13.5.33 R If, prior to the *class 1 transaction*, a *profit forecast* or *profit estimate* was published that:

- (1) relates to the *listed company*, a significant part of the *listed company's group*, or the *target*; and
- (2) is still outstanding;

the *listed company* must include that *profit forecast* or *profit estimate* in the *class 1 circular* or include an explanation of why the *profit forecast* or *profit estimate* is no longer valid.

- 13.5.34 G A *listed company* should consider LR 9.2.18R regarding information that must be published after a *class 1 transaction*.

- 13.5.35 G LR 13.5.32R and LR 13.5.33R do not apply to *class 1 disposals*.

Subsequent publication of unaudited financial information

- 13.5.36 R (1) A *listed company* that publishes unaudited financial information in a *class 1 circular* must:
- (a) reproduce that financial information in its next annual report and accounts;
  - (b) produce and disclose in the annual report and accounts the actual figures for the same period covered by the information

reproduced under paragraph (a); and

- (c) provide an explanation of the difference, if there is a difference of 10% or more between the figures required by paragraph (b) and those reproduced under paragraph (a).
- (2) Paragraph (1) does not apply to:
- (a) pro forma financial information prepared in accordance with Annex 1 and Annex 2 of the *PD Regulation*; or
  - (b) any preliminary statements of annual results or half-yearly or quarterly reports that are reproduced in the *class 1 circular*; or
  - (c) any additional analysis of financial information that is set out in a *financial information table*.

## 13.6 Related party circulars

### Related party circulars

#### 13.6.1 R A *related party circular* must also include:

- (1) in all cases the following information referred to in the *PD Regulations* relating to the *company*:

Paragraph of Annex 1 of the *PD Regulations*:

- (a) Annex 1 item 5.1.1 – Issuer name;
  - (b) Annex 1 item 5.1.4 – Issuer address;
  - (c) Annex 1 item 18.1 – Major shareholders;
  - (d) Annex 1 item 20.9 – Significant changes;
  - (e) Annex 1 item 22 – Material contracts (if it is information which shareholders of the *company* would reasonably require to make a properly informed assessment of how to vote);
  - (f) Annex 1 item 24 – Documents on display;
- (2) for a transaction or arrangement where the *related party* is (or was within the 12 months before the transaction or arrangement), a *director* or *shadow director*, or an *associate* of a *director* or *shadow director*, of the *company* (or of any other *company* which is its *subsidiary undertaking* or *parent undertaking* or a fellow *subsidiary undertaking*) the following information referred to in the *PD Regulations* relating to that *director*:

Paragraph of Annex 1 of the *PD Regulations*:

- (a) Annex 1 item 16.2 – Service contracts;
  - (b) Annex 1 item 17.2 – Directors' interests in shares;
  - (c) Annex 1 item 19 – Related party transactions;
- (3) full particulars of the transaction or arrangement, including the name of the *related party* concerned and of the nature and extent of the interest of the party in the transaction or arrangement and also a statement that the reason the *security* holder is being asked to vote on the transaction or arrangement is because it is with a *related party*;
  - (4) for an acquisition or disposal of an asset where any *percentage ratio* is 25% or more and for which appropriate financial information is not available, an independent valuation;
  - (5) a statement by the board that the transaction or arrangement is fair and reasonable as far as the *security* holders of the *company* are concerned and that the *directors* have been so advised by an independent adviser acceptable to the *FSA*;
  - (6) if applicable, a statement that the *related party* will not vote on the relevant resolution, and that the *related party* has undertaken to take all reasonable steps to ensure that its *associates* will not vote on the relevant resolution, at the meeting;
  - (7) for a transaction where any *percentage ratio* is 25% or more, the information required to be included in a *class 1 circular*;
  - (8) if *LR 11.1.11R* (Aggregation of transactions) applies, details of each of the transactions or arrangements being aggregated; and
  - (9) if a statement or report attributed to a *person* as an expert is included in a *circular* (other than a statement or report incorporated by reference from a *prospectus* or *listing particulars*), a statement that it is included, in the form and context in which it is included, with the consent of that *person*.

13.6.2 R For the purposes of the statement by the board referred to in *LR 13.6.1R(5)*:

- (1) any *director* who is, or an *associate* of whom is, the *related party*, or who is a *director* of the *related party* should not have taken part in the board's consideration of the matter; and
- (2) the statement should specify that such persons have not taken part in the board's consideration of the matter.

13.6.3 G For the purpose of advising the *directors* under *LR 13.6.1R(5)*, an independent adviser may take into account but not rely on commercial

assessments of the *directors*.

## 13.7 Circulars about purchase of own equity securities

### Purchase of own equity securities

- 13.7.1 R (1) A *circular* relating to a resolution proposing to give the *company* authority to purchase its own *equity securities* must also include:
- (a) if the authority sought is a general one, a statement of the *directors'* intentions about using the authority;
  - (b) if known, the method by which the *company* intends to acquire its *equity shares* and the number to be acquired in that way;
  - (c) a statement of whether the *company* intends to cancel the *equity shares* or hold them in treasury;
  - (d) if the authority sought related to a proposal to purchase from specific parties, a statement of the names of the persons from whom *equity shares* are to be acquired together with all material terms of the proposal;
  - (e) details about the price, or the maximum and minimum price, to be paid; and
  - (f) the total number of warrants and options to subscribe for *equity shares* that are outstanding at the latest practicable date before the *circular* is published and both the proportion of issued share capital (excluding *treasury shares*) that they represent at that time and will represent if the full authority to buyback *shares* (existing and being sought) is used.
- (2) If the exercise in full of the authority sought would result in the purchase of 25% or more of the *company's* issued *equity shares* (excluding *treasury shares*) the *circular* must also include the following information referred to the *PD Regulations*:
- (a) Annex 1 item 4 – Risk factors;
  - (b) Annex 1 item 12 – Trend information;
  - (c) Annex 1 item 17.2 – Director's interests in shares;
  - (d) Annex 1 item 18.1 – Major interests in shares;
  - (e) Annex 1 item 20.9 – Significant changes;
  - (f) Annex 3 item 3.1 – Working capital (this must be based on the assumption that the authority sought will be used in full

at the maximum price allowed and this assumption must be stated).

## 13.8 Other circulars

### Authority to allot shares

13.8.1 R A *circular* relating to a resolution proposing to grant the *directors'* authority to allot *relevant securities* must include:

- (1) a statement of the maximum amount of *relevant securities* which the *directors* will have authority to allot and the percentage which that amount represents of the total ordinary share capital in issue (excluding *treasury shares*) as at the latest practicable date before publication of the *circular*;
- (2) a statement of the number of *treasury shares* held by the *company* as at the date of the *circular* and the percentage which that amount represents of the total ordinary share capital in issue (excluding *treasury shares*) as at the latest practicable date before publication of the *circular*;
- (3) a statement by the *directors* as to whether they have any present intention of exercising the authority, and if so for what purpose; and
- (4) a statement as to when the authority will lapse.

### Disapplying pre-emption rights

13.8.2 R A *circular* relating to a resolution proposing to disapply the statutory pre-emption rights under section 89 of the Companies Act 1985 (Offers to shareholders to be on pre-emptive basis) must include:

- (1) a statement of the maximum amount of *equity securities* which the disapplication will cover; and
- (2) if there is a general disapplication for *equity securities* for cash made otherwise than to existing shareholders in proportion to their existing holdings, the percentage which the amount generally disappplied represents of the total ordinary share capital in issue as at the latest practicable date before publication of the *circular*.

### Increase in authorised share capital

13.8.3 R A *circular* relating to a resolution proposing to increase the *company's* authorised share capital must include:

- (1) a statement of the proposed percentage increase in the authorised share capital of the relevant class; and

- (2) a statement of the reason for the increase.

Reduction of capital

- 13.8.4 R A *circular* relating to a resolution proposing to reduce the *company's* capital must include a statement of the reasons for, and the effects of, the proposal.

Capitalisation or bonus issue

- 13.8.5 R (1) A *circular* relating to a resolution proposing a capitalisation or bonus issue must include:
- (a) the reason for the issue;
  - (b) a statement of the last date on which transfers were or will be accepted for registration to participate in the issue;
  - (c) details of the proportional entitlement; and
  - (d) a description of the nature and amount of reserves which are to be capitalised.
- (2) Any timetable set out in the *circular* must have been approved by the *RIE* on which the *company's equity securities* are traded.

Scrip dividend alternative

- 13.8.6 R (1) A *circular* containing an offer to shareholders of the right to elect to receive *shares* instead of all or part of a cash dividend must include:
- (a) a statement of the total number of *shares* that would be issued if all eligible shareholders were to elect to receive *shares* for their entire shareholdings, and the percentage which that number represents of the *equity shares* (excluding *treasury shares*) in issue at the date of the *circular*;
  - (b) in a prominent position, details of the equivalent cash dividend foregone to obtain each *share* or the basis of the calculation of the number of *shares* to be offered instead of cash;
  - (c) a statement of the total cash dividend payable and applicable tax credit on the basis that no elections for the scrip dividend alternative are received;
  - (d) a statement of the date for ascertaining the *share* price used as a basis for calculating the allocation of *shares*;
  - (e) details of the proportional entitlement;
  - (f) details of what is to happen to fractional entitlements;

- (g) the record date; and
  - (h) a form of election relating to the scrip dividend alternative which:
    - (i) is worded so as to ensure that shareholders must elect positively in order to receive shares instead of cash; and
    - (ii) includes a statement that the right is non-transferable.
- (2) Any timetable set out in the *circular* must have been approved by the *RIE* on which the *company's equity securities* are traded.

Scrip dividend mandate schemes/dividend reinvestment plans

- 13.8.7 R (1) A *circular* relating to any proposal where shareholders are entitled to complete a mandate in order to receive *shares* instead of future cash dividends must include:
- (a) the information in *LR 13.7.6R(2)(d)* and (f);
  - (b) the basis of the calculation of the number of *shares* to be offered instead of cash;
  - (c) a statement of last date for lodging notice of participation or cancellation in order for that instruction to be valid for the next dividend;
  - (d) details of when adjustment to the number of *shares* subject to the mandate will take place;
  - (e) details of when cancellation of a mandate instruction will take place;
  - (f) a statement of whether or not the mandate instruction must be in respect of a shareholder's entire holding;
  - (g) the procedure for notifying shareholders of the details of each scrip dividend; and
  - (h) a statement of the circumstances, if known, under which the *directors* may decide not to offer a scrip alternative in respect of any dividend.
- (2) The timetable in the *circular* for each scrip alternative covered by a scrip dividend mandate plan must have been approved by the *RIE* on which the *company's equity securities* are traded.

Notices of meetings

- 13.8.8 R (1) When holders of *listed equity securities* are sent a notice of meeting

which includes any business, other than ordinary business at an annual general meeting, an explanatory *circular* must accompany the notice. If the other business is to be considered at or on the same day as an annual general meeting, the explanation may be incorporated in the *directors'* report.

- (2) A *circular* or other document convening an annual general meeting at which only ordinary business is to be conducted and, if applicable, any other matter covered by this section is to be considered or proposed, need not be submitted to the *FSA* for prior approval if, for the other matter to be considered or proposed, the *circular* or other document complies with the relevant provisions of this section.
- (3) A *circular* or other document convening an annual general meeting where only ordinary business is proposed does not need to comply with *LR* 13.3.1R(3), (4) and (5).

- 13.8.9 G A *circular* or other document convening an annual general meeting where special business is proposed will need to comply with all of *LR* 13.3.1R (including paragraphs (3), (4) and (5) in respect of special business).

#### Amendments to constitution

- 13.8.10 R A *circular* to shareholders about proposed amendments to the *constitution* must include:
- (1) an explanation of the effect of the proposed amendments; and
  - (2) either the full terms of the proposed amendments, or a statement that the full terms will be available for inspection:
    - (a) from the date of sending the *circular* until the close of the relevant general meeting at a place in or near the City of London or such other place as the *FSA* may determine; and
    - (b) at the place of the general meeting for at least 15 minutes before and during the meeting.

#### Employees' share scheme etc

- 13.8.11 R A *circular* to shareholders about the approval of an *employees' share scheme* or *long-term incentive scheme* must:
- (1) include either the full text of the scheme or a description of its principal terms;
  - (2) include, if *directors* of the *listed company* are trustees of the scheme, or have a direct or indirect interest in the trustees, details of the trusteeship or interest;
  - (3) state that the provisions (if any) relating to:

- (a) the persons to whom, or for whom, *securities*, cash or other benefits are provided under the scheme (the "participants");
- (b) limitations on the number or amount of the *securities*, cash or other benefits subject to the scheme;
- (c) the maximum entitlement for any one participant; and
- (d) the basis for determining a participant's entitlement to, and the terms of, *securities*, cash or other benefit to be provided and for the adjustment thereof (if any) if there is a capitalisation issue, *rights issue* or *open offer*, sub-division or consolidation of *shares* or reduction of capital or any other variation of capital;

cannot be altered to the advantage of participants without the prior approval of shareholders in general meeting (except for minor amendments to benefit the administration of the scheme, to take account of a change in legislation or to obtain or maintain favourable tax, exchange control or regulatory treatment for participants in the scheme or for the *company* operating the scheme or for members of its group);

- (4) state whether benefits under the scheme will be pensionable and, if so, the reasons for this; and
- (5) if the scheme is not circulated to shareholders, include a statement that it will be available for inspection:
  - (a) from the date of sending the *circular* until the close of the relevant general meeting at a place in or near the City of London or such other place the *FSA* may determine; and
  - (b) at the place of the general meeting for at least 15 minutes before and during the meeting.

13.8.12 R The resolution contained in the notice of meeting accompanying the *circular* must refer either to:

- (1) the scheme itself (if circulated to shareholders); or
- (2) the summary of its principal terms included in the *circular*.

13.8.13 R The resolution approving the adoption of an *employees' share scheme* or *long-term incentive scheme* may authorise the *directors* to establish further schemes based on any scheme which has previously been approved by shareholders but modified to take account of local tax, exchange control or securities laws in overseas territories, provided that any *shares* made available under such further schemes are treated as counting against any limits on individual or overall participation in the main scheme.

Amendments to employees' share scheme etc

- 13.8.14 R A *circular* to shareholders about proposed amendments to an *employees' share scheme* or a *long-term incentive scheme* must include:
- (1) an explanation of the effect of the proposed amendments; and
  - (2) the full terms of the proposed amendments, or a statement that the full text of the scheme as amended will be available for inspection.

Discounted option arrangements

- 13.8.15 R If shareholders' approval is required by LR 9.4.4R, the *circular* to shareholders must include the following information:
- (1) details of the persons to whom the *options*, *warrants* or rights are to be granted; and
  - (2) a summary of the principal terms of the *options*, *warrants* or rights.

Reminders of conversion rights

- 13.8.16 R (1) A *circular* to holders of *listed securities* convertible into *shares* reminding them of the times when conversion rights are exercisable must include:
- (a) the date of the last day for lodging conversion forms and the date of the expected sending of the certificates;
  - (b) a statement of the market values for the *securities* on the first dealing day in each of the six months before the date of the *circular* and on the latest practicable date before sending the *circular*;
  - (c) the basis of conversion in the form of a table setting out capital and income comparisons;
  - (d) a brief explanation of the tax implications of conversion for holders resident for tax purposes in the *United Kingdom*;
  - (e) if there is a trustee, or other representative, of the *securities* holders to be redeemed, a statement that the trustee, or other representative, has given its consent to the issue of the *circular* or stated that it has no objection to the resolution being put to a meeting of the *securities* holders;
  - (f) reference to future opportunities to convert and whether the terms of conversion will be the same as or will differ from those available at present, or, if there are no such opportunities, disclosure of that fact;
  - (g) reference to letters of indemnity, for example, if certificates

- have been lost;
- (h) if power exists to allot *shares* issued on conversion to another person, reference to forms of nomination; and
  - (i) a statement as to whether holders exercising their rights of conversion will retain the next interest payment due on the *securities*.
- (2) The *circular* must not contain specific advice as to whether or not to convert the *securities*.

## LR 13 Ann 1R

### Class 1 circulars

The following table identifies (by reference to certain paragraphs of Annex 1 and Annex 3 of the *PD Regulations*) the additional information required to be included in a *class 1 circular* relating to the *listed company* and the undertaking the subject of the transaction.

Information	Listed Company	Undertaking subject of transaction
Annex 1 item 4 – Risk factors	*	*
Annex 1 item 5.1.1 – Company name	*	
Annex 1 item 5.1.4 – Company address	*	
Annex 1 item 12 – Trend information	*	*
Annex 1 item 16.2 – Service contracts	*	
Annex 1 item 17.2 – Director's interests in shares	*	
Annex 1 item 18.1 – Major interests in shares	*	
Annex 1 item 19 – Related party transactions	*	
Annex 1 item 20.8 – Litigation	*	*
Annex 1 item 20.9 – Significant changes	*	*
Annex 1 item 22 – Material contracts	*	*
Annex 1 item 24 – Documents on display	*	
Annex 3 item 3.1 – Working capital	*	*

1 The information required by this Annex must be presented as follows:

- (1) the information required by Annex 1 item 22 (material contracts), Annex 1 item 20.8 (litigation) and Annex 1 item 20.9 (significant change)
  - (a) for an acquisition, in separate statements for the *listed company* and its *subsidiary undertakings* and for the undertaking, business or assets to be acquired; or
  - (b) for a disposal, in separate statements for the *listed company* and its *subsidiary undertakings* (on the basis that the disposal has taken place), and for the undertaking, business or assets to be disposed of;
- (2) the information required by Annex 3 item 3.1 (working capital) and, if relevant Annex 1 item 12 (trend information):
  - (a) in the case of an acquisition, in a single statement for the *listed company* and its *subsidiary undertakings* (on the basis that the acquisition has taken place); or
  - (b) in the case of a disposal, in a single statement for the *listed company* and its *subsidiary undertakings* (on the basis that the disposal has taken place).

2 In determining what information is required to be included by virtue of Annex 1 item 22 (material contracts) if a *prospectus* or *listing particulars* are not required, regard should be had to whether information about that provision is information which *securities* holders of the *issuer* would reasonably require for the purpose of making a properly informed assessment about the way in which to exercise the voting rights attached to their *securities* or the way in which to take any other action required of them related to the subject matter of the *circular*.

3 The information required by this Annex is modified as follows:

- (1) if the *listed company* is issuing *shares* for which *listing* is sought, the information regarding major interests in *shares* (Annex 1 item 18.1) and *directors'* interests in *shares* (Annex 1 item 17.2) must be given for the share capital both as existing and as enlarged by the *shares* for which *listing* is sought;
- (2) information required by Annex 1 item 19 (related party transactions) and Annex 1 item 16.2 (directors' service contracts) does not need not be given if it has already been published before the *circular* is sent; and
- (3) information referred to in Annex 3 item 3.1 (Working capital) is not required to be included in a *class 1 circular* if the *listed company* is an investment entity referred to in LR 15.1.1R or a *venture capital trust*.

14 Secondary listing of overseas companies

14.1 Application

14.1.1 R This chapter applies to an *overseas company* with, or applying for, a *secondary listing of equity securities*.

14.2 Requirements for listing

14.2.1 R An *applicant* which is applying for a *secondary listing of equity securities* must comply with all of *LR 2* (Requirements for listing – all securities).

Shares in public hands

- 14.2.2 R
- (1) If an application is made for the *admission* of a *class* of *shares*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.
  - (2) For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not *EEA States*, if the *shares* are listed in the state or states.
  - (3) For the purposes of paragraph (1), a sufficient number of *shares* will be taken to have been distributed to the public when 25% of the *shares* for which application for *admission* has been made are in public hands.
  - (4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are held, directly or indirectly by:
    - (a) a *director* of the *applicant* or of any of its *subsidiary undertakings*;
    - (b) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*;
    - (c) the trustees of any *employees' share scheme* or pension fund established for the benefit of any *directors* and *employees* of the *applicant* and its *subsidiary undertakings*;
    - (d) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
    - (e) any *person* or *persons* in the same *group* who have an interest in 5% or more of the *shares* of the relevant class.
  - (5) For the purposes of paragraph (3), *treasury shares* are not to be taken into consideration when calculating the number of *shares* of the *class*.

[**Note:** Article 48 *CARD*]

- 14.2.3 G The *FSA* may modify *LR* 14.2.2R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public. [**Note:** Article 48 *CARD*]

Shares of a non-EEA company

- 14.2.4 R The *FSA* will not *admit shares* of a *company* incorporated in a *non-EEA State* that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FSA* is satisfied that the absence of the listing is not due to the need to protect investors. [**Note:** Article 51 *CARD*]

Listing applications

- 14.2.5 G An *overseas issuer* applying for a *secondary listing* of *equity securities* will need to comply with *LR* 3 (Listing applications).
- 14.2.6 R An *overseas issuer* with a *secondary listing* of *equity securities* applying for a *primary listing* of its *securities* must:
- (1) comply with *LR* 3 as if it were a *new applicant*; and
  - (2) comply with *LR* 6 to *LR* 13.

### 14.3 Continuing obligations

Admission to trading

- 14.3.1 R The *listed equity securities* of an *overseas company* must be admitted to trading on an *RIE's* market for *listed securities* at all times.

Shares in public hands

- 14.3.2 R (1) An *overseas company* must comply with *LR* 14.2.2R at all times.
- (2) An *overseas company* that no longer complies with *LR* 14.2.2R must notify the *FSA* as soon as possible of its non-compliance.
- 14.3.3 G An *overseas company* should consider *LR* 5.2.2G(2) in relation to its compliance with *LR* 14.2.2R.

Further issues

- 14.3.4 R Where *equity securities* of the same *class* as *equity securities* that are *listed* are allotted, an application for *admission to listing* of such *equity securities* must be made as soon as possible and in any event within one year of the

allotment. [**Note:** Article 64 *CARD*]

#### Amendments to constitution

- 14.3.5 R An *overseas company* must lodge two copies of any proposed amendment to its *constitution* with the *FSA* by no later than when it sends the notice convening the meeting to decide on the amendment. [**Note:** Article 66 *CARD*]

#### Copies of documents

- 14.3.6 R An *overseas company* must forward to the *FSA*, for publication through the *document viewing facility*, two copies of:
- (1) all *circulars*, notices, reports or other documents to which the *listing rules* apply, at the same time as any such documents are issued; and
  - (2) all resolutions passed by the *company* other than resolutions concerning ordinary business at an annual general meeting, as soon as possible after the relevant general meeting.
- 14.3.7 R (1) An *overseas company* must notify a *RIS* as soon as possible when a document has been forwarded to the *FSA* under *LR* 14.3.6R unless the full text of the document is provided to the *RIS*.
- (2) A notification made under paragraph (1) must set out where copies of the relevant document can be obtained.

#### Contact details

- 14.3.8 R An *overseas company* must ensure that the *FSA* is provided with up to date contact details of appropriate *persons* nominated by it to act as the first point of contact with the *FSA* in relation to the *overseas company's* compliance with the *listing rules* and the *disclosure rules*, as applicable.

#### Temporary documents of title (including renounceable documents)

- 14.3.9 R An *overseas company* must ensure that any temporary document of title (other than one issued in global form) for an *equity security*:
- (1) is serially numbered;
  - (2) states where applicable:
    - (a) the name and address of the first holder and names of joint holders (if any);
    - (b) the pro rata entitlement;
    - (c) the last date on which transfers were or will be accepted for registration for participation in the issue;

- (d) how the *equity securities* rank for dividend or interest;
  - (e) the nature of the document of title and proposed date of issue;
  - (f) how fractions (if any) are to be treated; and
  - (g) for a *rights issue*, the time, being not less than 21 days, in which the offer may be accepted, and how *equity securities* not taken up will be dealt with; and
- (3) if renounceable:
- (a) states in a heading that the document is of value and negotiable;
  - (b) advises holders of *equity securities* who are in any doubt as to what action to take to consult appropriate independent advisers immediately;
  - (c) states that where all of the *equity securities* have been sold by the addressee (other than “ex rights” or “ex capitalisation”), the document should be passed to the person through whom the sale was effected for transmission to the purchaser;
  - (d) has the form of renunciation and the registration instructions printed on the back of, or attached to, the document;
  - (e) includes provision for splitting (without fee) and for split documents to be certified by an official of the *overseas company* or authorised agent;
  - (f) provides for the last day for renunciation to be the second *business day* after the last day for splitting; and
  - (g) if at the same time as an allotment is made of *shares* issued for cash, *shares* of the same *class* are also allotted credited as fully paid to vendors or others, provides for the period for renunciation to be the same as, but no longer than, that provided for in the case of *shares* issued for cash.

#### Definitive documents of title

- 14.3.10 R An *overseas company* must ensure that any definitive document of title for an *equity security* (other than a bearer *security*) includes the following matters on its face (or on the reverse in the case of (5) and (7)):
- (1) the authority under which the *overseas company* is constituted and the country of incorporation and registered number (if any);
  - (2) the number or amount of *equity securities* the certificate represents and, if applicable, the number and denomination of units (in the top

right-hand corner);

- (3) a footnote stating that no transfer of the *equity security* or any portion of it represented by the certificate can be registered without production of the certificate;
- (4) if applicable, the minimum amount and multiples thereof in which the *equity security* is transferable;
- (5) the date of the certificate;
- (6) for a fixed income *security*, the interest payable and the interest payment dates and on the reverse (with reference shown on the face) an easily legible summary of the rights as to redemption or repayment and (where applicable) conversion; and
- (7) for *shares* with preferential rights, on the face (or, if not practicable, on the reverse), a statement of the conditions thereof as to capital, dividends and (where applicable) conversion.

#### Disclosure rules

- 14.3.11 G An *overseas company*, whose *securities* are admitted to trading on a regulated market in the United Kingdom, should consider its obligations under the *disclosure rules*.

#### Equality of treatment

- 14.3.12 R An *overseas company* must ensure equality of treatment for all holders of its *equity securities* who are in the same position. [**Note:** Article 65(1) *CARD*]
- 14.3.13 G LR 14.3.12R includes the obligation to post all *circulars* to overseas holders.

#### Prescribed information to holders

- 14.3.14 R An *overseas company* must ensure that at least in each *EEA state* in which its *equity securities* are listed all the necessary facilities and information are available to enable holders to exercise their rights. In particular it must:
- (1) inform holders of meetings which they are entitled to attend;
  - (2) enable them to exercise their vote, where applicable; and
  - (3) publish notices or distribute circulars giving information on:
    - (a) the allocation and payment of dividends and/or interest
    - (b) the issue of new *equity securities*, including arrangements for the allotment, subscription, conversion or exchange of such *securities*; and
    - (c) redemption or repayment of the *equity securities*. [**Note:**

Article 65(2) CARD]

Registrar

- 14.3.15 R An *overseas company* must appoint a registrar in the *United Kingdom* if:
- (1) there are 200 or more holders resident in the *United Kingdom*; or
  - (2) 10% of more of the *equity securities* are held by *persons* resident in the *United Kingdom*.
- 14.3.16 G An *overseas company* is not required to comply with LR 14.3.15R if the *company* provides financial services and itself performs the functions of a registrar in the *United Kingdom*. [Note: Article 65(2) CARD]

Notifications relating to capital

- 14.3.17 R An *overseas company* must notify a *RIS* as soon as possible (unless otherwise indicated in this *rule*) of the following information relating to its capital:
- (1) any proposed change in its capital structure including the structure of its *listed debt securities*, save that an announcement of a new issue may be delayed while marketing or underwriting is in progress;
  - (2) any change in the rights attaching to any *class* of its *listed equity securities* or to any of its *securities* which are convertible into *equity shares*;
  - (3) any redemption of *listed equity securities* including details of the number of *equity securities* redeemed and the number of *equity securities* of that *class* outstanding following the redemption;
  - (4) the basis of *equity securities* offered:
    - (a) generally to the public for cash; or
    - (b) by way of an *open offer* to shareholders;
  - (5) any extension of time granted for the currency of temporary documents of title;
  - (6) the effect, if any, of any issue of further *securities* on the terms of exercise of rights under options, warrants and other securities convertible into *equity shares*; and
  - (7) the results of any new issue of *listed equity securities* or of a public offering of existing *shares* or other *equity securities*.

- 14.3.18 R Where the *equity securities* are subject to an underwriting agreement an *overseas company* may, at its discretion and subject to *DR 2* (Disclosure and control of inside information by issuers), delay notifying a *RIS* as required by *LR 14.3.17R(7)* for up to 2 *business days* until the obligation by the underwriter to take or procure others to take *equity securities* is finally determined or lapses. In the case of an issue or offer of *equity securities* which is not underwritten, notification of the result must be made as soon as it is known.

#### Notification of major interests in shares

- 14.3.19 R (1) An *overseas company* that is incorporated in a *non-EEA state* must notify a *RIS* of the information set out in paragraph (2) when it becomes aware that a *person* or entity has acquired or disposed of a number of *shares* in the *overseas company* such that the *person's* or entity's holding of the voting rights of the *company* (determined in accordance with Article 92 *CARD*) reaches, exceeds or falls below 10%, 20%, one third or 50% and two thirds of the total voting rights.
- (2) The information to be notified to a *RIS* is:
- (a) the proportion of voting rights held; and
  - (b) the date on which the *company* became aware of the acquisition or disposal. [**Note:** Article 68(3) *CARD*]
- 14.3.20 R The notification required by *LR 14.3.19R* must be made as soon as possible and in any event by 7.30 a.m. on the *business day* following the date on which the *company* becomes aware of the acquisition or disposal.
- 14.3.21 R An *overseas company* that is incorporated in an *EEA state* must notify a *RIS* as soon as possible and in any event by 7.30 a.m. on the *business day* following receipt of the information of details of the interests of which the *company* is aware in the *shares* of the *company* as communicated to the *company* pursuant to the law of its country of incorporation and (if different) the requirements of the competent authority of the *EEA state* where the *company* has a listing. [**Note:** Article 68(3) *CARD*]

#### 14.4 Continuing obligations – financial information

##### Annual report and accounts

- 14.4.1 R (1) An *overseas company* must publish its annual report and accounts as soon as possible after they have been approved.
- (2) An *overseas company* must approve and publish its annual report and accounts within six months of the end of the financial period to which they relate.
- 14.4.2 R The annual report and accounts must:

- (1) have been prepared in accordance with the *overseas company's* national law and, in all material respects, with national accounting standards or *IAS*;
  - (2) have been independently audited and reported on, in accordance with
    - (a) the auditing standards applicable in an *EEA State*; or
    - (b) an equivalent auditing standard;
  - (3) be in consolidated form if the *overseas company* has *subsidiary undertakings*; and
  - (4) if they do not give a true and fair view of the state of affairs, profit or loss and cash flows of the *group*, provide more detailed and additional information. [**Note:** Article 67 *CARD*]
- 14.4.3 R An *overseas company* must publish both own accounts and consolidated accounts if the own accounts contain additional significant information. [**Note:** Article 67(2) *CARD*]
- 14.4.4 R The annual report and accounts must:
- (1) include particulars of the interest of each *director* and major shareholder in the *overseas company's equity share capital*;
  - (2) include the information necessary to enable holders of the *overseas company's equity securities* resident in the *United Kingdom* to obtain any relief from *United Kingdom* taxation to which they are entitled in respect of their holdings;
  - (3) have attached the auditor's report required by *LR 14.4.2R(2)*; and
  - (4) be circulated, together with a copy of the auditor's report, to all holders of the *company's listed equity securities* in the *United Kingdom*.
- 14.4.5 R If any of its *listed equity securities* are in bearer form, an *overseas company* must insert an advertisement in two newspapers published in the *United Kingdom* stating a time and place in the City of London at which copies of the annual report and accounts and auditor's report may be obtained without charge.
- 14.4.6 R The auditor's report required by *LR 14.4.2R(2)* must indicate whether the accounts give a true and fair view of:
- (1) in the case of the *overseas company's* accounts, the state of affairs at the end of the financial year and the profit or loss and changes in the financial position for the financial year;

- (2) where consolidated accounts are required, the state of affairs at the end of the financial year and profit or loss and changes in the financial position of the *overseas company* and its *subsidiary undertakings* for the financial year.

- 14.4.7 G An auditor's report of an *overseas company* that is a banking or insurance *company* should make clear whether or not profits have been stated before transfers to or from undisclosed reserves.

#### Half-yearly reports

- 14.4.8 R An *overseas company* must prepare a half-yearly report, on a *group* basis where relevant, on its activities and profit or loss for the first six months of each financial year. [Note: Article 70 CARD]
- 14.4.9 R An *overseas company* must either:
- (1) send the half-yearly report to holders of its *listed equity securities*; or
- (2) insert the half-yearly report, as a paid advertisement, in at least one national newspaper. [Note: Article 102(2) CARD]
- 14.4.10 R The half-yearly report must be published within four months of the end of the period to which it relates. [Note: Article 72 CARD]
- 14.4.11 R Where an *overseas company's shares* are listed in another *EEA state*, a *company* must simultaneously send the competent authority of each of those other member states a copy of the half-yearly report. [Note: Article 102(2) CARD]
- 14.4.12 R Where the half-yearly report is not prepared on a basis consistent with that of the annual accounts, the half-yearly report must include a statement that, in the opinion of the *overseas company's directors*, the report enables investors to make an informed assessment of the results and activities of the *group* for the period.
- 14.4.13 G An *overseas company* that is incorporated in a *non-EEA state* that is required to publish a half-yearly report in its country of incorporation, may seek authorisation from the *FSA* to publish that report instead of the report required by LR 14.4.8R.

- 15 Investment entities
- 15.1 Application
- 15.1.1 R This chapter applies to the following *issuers* with, or applying for, a *listing* of their *securities*:
- (1) an *investment company*;
  - (2) an *investment trust*;
  - (3) an *overseas investment company* seeking a *primary listing*;
  - (4) a *property investment company*;
  - (5) an *authorised property unit trust*;
  - (6) an *open-ended investment company* which is a *recognised scheme*;
  - (7) an *open-ended investment company* which is an *unrecognised scheme*; and
  - (8) an *issuer* of *securities* falling within paragraph 1 of Schedule 11A to the *Act* (Transferable securities)
- 15.1.2 G (1) *LR 15.2.2R* and *LR 15.3* apply to all investment entities.
- (2) *LR 15.2* and *LR 15.4* apply to:
- (a) an *investment company*;
  - (b) an *investment trust*; and
  - (c) an *overseas investment company*.
- (3) *LR 15.5* applies to a *property investment company*.
- (4) *LR 15.6* applies to an *authorised property unit trust*.
- (5) *LR 15.2.15G* to *LR 15.2.16R* and *LR 15.7* apply to an *open-ended investment company*.
- 15.2 Requirements for listing
- Application
- 15.2.1 G (1) *LR 15.2.2R* to *LR 15.2.14R* and *LR 15.2.18G* apply to an *investment*

*company.*

- (2) *LR 15.2.2R and LR 15.2.17R to LR 15.2.18G apply to an investment trust.*

#### Requirements for all investment entities

- 15.2.2 R To be *listed*, an *applicant* must comply with the following:
- (1) those responsible for managing the investments must have adequate experience;
  - (2) there must be an adequate spread of investment risk;
  - (3) the *applicant* must be a passive investor and must not control or seek to control, or be actively involved in the management of, any *companies* or businesses in which it invests; and
  - (4) the *applicant* must not, to a significant extent, be a dealer in investments.

#### Requirements for investment companies

- 15.2.3 R To be *listed*, an *investment company* must comply with *LR 2* (Requirements for listing – all securities) and *LR 6* (Additional requirements for listing for equity securities), with the modifications and additional conditions set out in *LR 15.2.4R to LR 15.2.14R* and, if applicable, *LR 15.2.18G*.

#### Accounts and nature and duration of business activities

- 15.2.4 R An *investment company* must either:
- (1) satisfy the conditions set out in *LR 6.1.3R* (Audited accounts for three years) and *LR 6.1.4R* (Nature and duration of business activities); or
  - (2) satisfy the *FSA* that its *directors* and *investment managers* have sufficient and satisfactory experience in the management of investments of the type in which the company proposes to invest.

- 15.2.5 R *LR 6.1.16R* (Working capital) does not apply to an *investment company*.

#### Corporate governance

- 15.2.6 R The board of *directors* or equivalent body of an *investment company* must be able to demonstrate that it will act independently of any *investment managers* of the *investment company*.
- 15.2.7 R In complying with *LR 15.2.6R*:
- (1) a majority of the board or equivalent body must not be:

- (a) *directors, employees* or professional advisers to other *investment companies* that are:
    - (i) managed by any such *investment managers*; or
    - (ii) managed by any other *company* in the same *group* as any such *investment managers*; or
  - (b) *directors, employees, partners, officers, or professional advisers* to any such *investment manager* or any other *company* in the same *group* as any such *investment manager*;
- (2) no more than one *director, partner, employee, or professional adviser* to each such *investment manager* or any other *company* in the same *group* as any such *investment manager* may be a *director* of the *investment company*; and
  - (3) a *director* as described in paragraph (2) must be subject to annual re-election by shareholders.
- 15.2.8 R The chairman of the board of the *investment company* must be free of conflicts of interest and must be independent of any *investment managers* of the *investment company* and any other *company* in the same *group* as any of the *investment managers*.
- 15.2.9 R In complying with LR 15.2.8R the chairman of the board must not be:
- (1) a *director, employee, officer, partner or professional adviser* to any *investment manager* of the *investment company*; or
  - (2) a *director, employee, officer, partner, or professional adviser* to any other *company* in the same *group* as any *investment manager* of the *investment company*; or
  - (3) a *director* of any other *investment company* managed by any of the same *investment managers*; or
  - (4) a *director* of any other *company* in the same *group* as any of the same *investment managers*.

#### Investment policies

- 15.2.10 R (1) An *investment company* that has an investment policy of principally investing its funds in another *company* or fund which invests in a portfolio of investments must satisfy the FSA that at all times its *directors* will comprise a majority of the *directors* of that other *company* or fund and will control the policy of that other *company* or fund to ensure that the other *company* or fund conforms with the investment policies and related requirements that apply to *investment*

*companies* set out in LR 15.

- (2) Except as set out in paragraph (1) and except for *property investment companies*, the *issuer* must not take legal or management control of investments in its portfolio.
  - (3) Except as set out in paragraph (1) no more than 20% of the total assets of the *issuer* (consolidated where applicable) may be lent to or invested in the *securities* of any one *company* or *group* (including loans to or *shares* in the *issuer's* own *subsidiaries*) at the time the investment or loan is made.
  - (4) For the purposes of paragraph (3) any existing holding in the *company* concerned must be aggregated with the proposed new investment.
  - (5) The restriction set out in paragraph (3) does not apply to cash deposits awaiting investment.
- 15.2.11 R (1) No more than 10%, in aggregate, of the value of the total assets of the *issuer* at the time of admission may be invested in other *listed investment companies* or *listed investment trusts*.
- (2) The restriction set out in paragraph (1) does not apply to investments in *investment companies* or *investment trusts* which themselves have stated investment policies to invest no more than 15% of their total assets in other *listed investment companies* or *listed investment trusts*.
- 15.2.12 R An *investment company* and any of its *subsidiaries* must not conduct a trading activity which is significant in the context of the *group* as a whole.

#### Income, surpluses and dividends

- 15.2.13 R (1) Dividends must not be paid unless they are covered by income received from underlying investments.
- (2) For the purposes set out in paragraph (1) a share of the profits of an associated *company* is unavailable unless and until distributed to the *investment company*.
- 15.2.14 R The distribution of surpluses, as dividend, arising from the realisation of investments must be prohibited and a provision to this effect must be contained in the *issuer's constitution*.

#### When a company will be treated as an investment company

- 15.2.15 G An *open-ended investment company* which does not regularly intervene in the market to keep the price of *shares* in line with net asset value and which:

- (1) redeems or purchases its own *shares* but does not do so at the request of shareholders; or
- (2) redeems or purchases its own *shares* but does so in accordance with the requirements of the Second Company Law Directive (Council Directive 77/91/EEC);

will be treated as an *investment company* that is *closed-ended* for the purposes of this chapter.

15.2.16 R An *open-ended investment company* that:

- (1) is an *unrecognised scheme*; and
- (2) is treated as a *closed-ended investment company*;

must comply with the requirements for *listing*, the continuing obligations that are applicable to *investment companies* and the requirements set out in LR 15.3.2R, LR 15.7.4R and LR 15.7.10R.

#### Requirements for investment trusts

15.2.17 R To be *listed*, an *investment trust* must comply with LR 2 and LR 6 with the following modifications and additional conditions:

- (1) the requirements set out in LR 15.2.2R to LR 15.2.9R;
- (2) LR 15.2.10R(1); and
- (3) LR 15.2.11R.

#### Investment in property

15.2.18 G An *investment company* or an *investment trust* that invests or intends to invest 20% or more of its total assets in *property* must:

- (1) comply with the requirements for *property companies* set out in the *listing rules*; or
- (2) comply with the requirements for *property investment companies* set out in LR 15.5.

### 15.3 Listing applications and procedures

- 15.3.1 R An *issuer* to which this chapter applies that is seeking *admission* of its *securities* to the *official list* must:
- (1) comply with *LR 3* (Listing applications), as applicable; and
  - (2) produce either a *prospectus* in accordance with the requirements set out in the *Prospectus Rules* or *listing particulars* in accordance with the requirements set out in *LR 4* (Listing particulars for professional securities market and certain other securities), as applicable.

#### Sponsors

- 15.3.2 R An *issuer* to which this chapter applies that is seeking *admission* of its *equity securities* to the *official list* must retain a *sponsor* as required by *LR 8* (Sponsors) except that *LR 8.2.1R(1)* applies additionally to an application for *admission to listing* which requires the production of *listing particulars*.
- 15.3.3 G In the case of an *authorised property unit trust*, references in *LR 8* to the *directors* of the *issuer* should be treated as referring to the *directors* of the managers of the trust.
- 15.3.4 R An application for *listing* for a *new applicant*, must set out which of the categories in *LR 15.1.1R* applies to the *issuer*.
- 15.3.5 G *LR 8.4.5R(3)* is modified to require the notification of interests of 10% or more for *open-ended investment companies*.

#### Multi-class fund or umbrella fund

- 15.3.6 R An application for the *listing* of *securities* of a multi-class fund or umbrella fund must provide details of the various *classes* or designations of *securities* intended to be issued by the *issuer*.
- 15.3.7 G The *FSA* will admit to *listing* such number of *securities* as the *issuer* may request for the purpose of future issues. At the time of issue the *securities* will be designated to the relevant *class*.
- 15.3.8 R A multi-class or umbrella fund which is open-ended and which seeks to create a new *class* of *security* without increasing its share capital for which *listing* has previously been granted must provide the *FSA* with the details of the new *class* and no further application for *listing* is required.
- 15.3.9 R An existing *listed class* may not be converted into a new *class* or an unlisted *class* unless approval has been given by the shareholders of that existing *class*.

#### Open-ended investment companies and authorised property unit trusts

- 15.3.10 R (1) This *rule* applies to:
- (a) *open-ended investment companies*; and
  - (b) *authorised property unit trusts*.
- (2) A *new applicant* may apply to *list* such *equity securities* as it requires for future issues.

#### 15.4 Continuing obligations

##### Application

- 15.4.1 G (1) *LR 15.4.2R to LR 15.4.17R* apply to an *investment company*.
- (2) *LR 15.4.18R* applies to an *overseas investment company*.
- (3) *LR 15.4.19R to LR 15.4.25R* applies to an *investment trust*.

##### Investment companies

- 15.4.2 R An *investment company* must comply with *LR 9 (Continuing obligations)* subject to the modifications and additional conditions set out in *LR 15.4.3R to LR 15.4.17R*.

##### Admission requirements with continuing application

- 15.4.3 R (1) An *investment company* must comply, at all times, with the requirements set out in:
- (a) *LR 9.2.1R to LR 9.2.3R*;
  - (b) *LR 9.2.5R to LR 9.2.9G*; and
  - (c) *LR 15.2.15R to LR 15.2.17G*.
- (2) An *investment company* must not invest more than 10%, in aggregate, of the value of the gross assets at the time the investment is made, in other *listed investment companies* or *listed investment trusts*.
- (3) The restriction in paragraph (2) does not apply to investments in *investment companies* or *investment trusts* which themselves have stated investment policies to invest no more than 15% of their gross assets in other *listed investment companies* or *listed investment trusts*.

##### Compliance with the Model Code

- 15.4.4 R The *FSA* may dispense with the provisions of the *Model Code* to allow,

during a *close period*:

- (1) dealings by *persons discharging managerial responsibilities* in an *investment company*;
- (2) purchases by the *investment company* of its own *securities*; and
- (3) sales of *treasury shares* for cash or transfers (except for sales and transfers by an *investment company* of *treasury shares* in the circumstances set out in *LR 12.6.2R*);

if the *FSA* is satisfied that all *inside information* which the *directors* and the *company* may have in periods leading up to an announcement of results has previously been notified to a *RIS*.

- 15.4.5 G To obtain a dispensation under *LR 15.4.4R* an *investment company* should:
- (1) calculate, on a weekly or more frequent basis, the net asset value in respect of each *class* of *security* in which it is proposed to deal; and
  - (2) notify such calculations to a *RIS*; or
  - (3) publish, after the relevant period end, all price sensitive information which is to be included in the forthcoming results statement.
- 15.4.6 G For the purposes of *LR 15.4.5G(1)*, the calculation of net asset value should:
- (1) be in respect of not less than 90% of the *company's* gross assets; and
  - (2) comply with industry accepted standards.
- 15.4.7 G An *investment company* which:
- (1) has significant interests in unquoted securities or unregulated investments; or
  - (2) derives significant revenues from commercial businesses;
- is unlikely to be granted a dispensation under *LR 15.4.4R*.
- 15.4.8 G A dispensation under *LR 15.4.4R* does not affect the application of paragraph 8 of the *Model Code* to an *investment company* and its *persons discharging managerial responsibilities* at times when there exists *inside information* in relation to the *company's securities*.
- Rights as between holders and communication with holders
- 15.4.9 R An *investment company* may only make a material change to its investment policies with the approval of its shareholders.
- Notification requirements
- 15.4.10 R An *investment company* must notify any change in its taxation status to a

*RIS* as soon as possible.

- 15.4.11 R An *investment company* must notify a *RIS* of the following:
- (1) within two *business days* of the end of each calendar *month*, a list of all investments in other *listed investment companies* and *listed investment trusts*, as at the last *business day* of that *month*, which themselves do not have stated investment policies to invest no more than 15% of their total assets in other *listed investment companies* or *listed investment trusts*; and
  - (2) within two *business days* of the end of each quarter, a list of all investments with a value greater than 5% of the *company's* total assets and at least the 10 largest investments as at the last *business day* of that quarter.

#### Financial information

- 15.4.12 R In addition to the requirements of *LR 9.8* (Annual report and accounts) an *investment company* must include in its annual report and accounts:
- (1) a statement, set out in a prominent position, as to whether in the opinion of the *directors* the continuing appointment of the *investment manager* on the terms agreed is in the interests of shareholders as a whole, together with a statement of the reasons for this view;
  - (2) a summary of the principal contents of any agreements between the *investment company* and each of the *investment managers*, including but not limited to any provisions relating to compensation payable in the event of termination of the agreement;
  - (3) the name of the *investment managers* together with an indication of the terms and duration of their appointment, the basis for their remuneration and any arrangements relating to the termination of their appointment; and
  - (4) a list of all investments with a value greater than 5% of the *investment company's* investment portfolio, and at least the 10 largest investments.
- 15.4.13 R The list described in *LR 15.4.12R(4)* should include, with comparative figures where relevant:
- (1) the value of each investment; and
  - (2) for each investment which is not quoted on a stock exchange the following information:
    - (a) a brief description of the business;

- (b) the proportion of capital owned or intended to be owned;
- (c) the cost of the investment and aggregate market value, if any, at the latest practicable date;
- (d) a *director's* valuation at the latest practicable date, if different from the value in paragraph (c) or if there is no market value;
- (e) the earnings per share for the latest audited financial year;
- (f) the dividend per share received in the most recent financial year, including any abnormal dividends or other payments;
- (g) dividend cover or underlying earnings for the latest audited financial year;
- (h) the net assets attributable to the investment as at the date of the latest audited balance sheet; and
- (i) an analysis of any provision for diminution in value of investments, naming the investments against which provision has been made and stating in respect of each investment:
  - (i) the cost
  - (ii) any provision made;
  - (iii) the book value; and
  - (iv) the reason for the provision.

15.4.14 R In addition to the requirements in *LR 9* (Continuing obligations) for half-yearly reports and preliminary statements of annual results an *investment company* must include information showing the split between:

- (1) dividend and interest received; and
- (2) other forms of income (including income of associated *companies*).

15.4.15 R For an *investment company*,

- (1) *LR 9.8.8R* does not apply in respect of the *Combined Code*; and
- (2) *LR 9.8.6R(6)* does not apply in respect of principles B.1 to B.2 and provisions B.1.1 to B.1.6 and B.2.1 to B.2.4 of the *Combined Code* except to the extent that they relate specifically to non-executive *directors*.

#### Transactions with related parties

15.4.16 R *LR 11* (Related party transactions) applies to an *investment company*.

15.4.17 R In addition to the definition in *LR 11.1.4R* a *related party* includes any

*investment manager of the investment company or investment trust.*

Overseas investment companies

- 15.4.18 R (1) An *overseas investment company* with a *primary listing* is not required to have a registrar situated in the *United Kingdom* if it has a transfer agent in the *United Kingdom* that has authority to remit transfers to the overseas registrar.
- (2) Any change in transfer agent must be notified to a *RIS* as soon as possible.

Investment trusts

- 15.4.19 R An *investment trust* must comply with *LR 9* (Continuing obligations) subject to the modifications and additional conditions set out in *LR 15.4.20R* to *LR 15.4.25R*.
- 15.4.20 R An *investment trust* must comply with:
- (1) *LR 15.2.5R* to *LR 15.2.9R*;
- (2) *LR 15.4.4R* to *LR 15.4.8R*; and
- (3) *LR 15.4.11R* to *LR 15.4.15G*.
- 15.4.21 R In addition to the requirement set out in *LR 15.4.12R*, an *investment trust* must include in its annual report and accounts:
- (1) an analysis of the investment portfolio by broad industrial or commercial sector;
- (2) an analysis of the investment portfolio between *equity shares*, *convertible securities*, fixed income securities and other investments;
- (3) an analysis of income between dividends, interest and other forms of income;
- (4) an analysis, where material to an appreciation of the *investment trust's* financial position, of realised and unrealised profits and losses as between investments quoted on a stock exchange and those that are not quoted on a stock exchange; and
- (5) either:
- (a) a statement confirming that:
- (i) HM Revenue and Customs has approved it as an *investment trust* for the purpose of section 842 of the Income and Corporation Taxes Act 1988, specifying the last accounting period in respect of which such approval

has been given; and

(ii) the *investment trust* has subsequently directed its affairs so as to continue to be so approved; or

(b) a statement, in the case of a newly *listed investment trust* confirming that:

(i) the *investment trust* has announced that it will direct its affairs so as to enable it to seek approval from the HM Revenue and Customs; and

(ii) it has subsequently directed its affairs so as to enable it to be so approved.

15.4.22 G An *investment trust* that is newly *admitted to listing* may publish its first half-yearly report for a period that is either shorter or longer than six *months* in order to align the end of the first six-monthly reporting period with the normal reporting cycle for that *investment trust*.

Investment companies that are closed ended

15.4.23 R (1) Unless authorised by the shareholders, an *investment company* that is *closed-ended* may not issue further *shares* of the same *class* as existing *shares* for cash at a price below the net asset value per share of those *shares* unless they are first offered pro rata to existing holders of shares of that *class*.

(2) When calculating the net asset value per share *treasury shares* held by the *company* should not to be taken into account.

Significant transactions

15.4.24 R LR 10 (Significant transactions) applies to:

(1) *investment trusts*; and

(2) *closed-ended investment companies*;

excluding any transaction that falls within the stated investment policies of the *investment trust* or *closed-ended investment company*.

Transactions with related parties

15.4.25 R LR 15.4.16R to LR 15.4.17R apply to an *investment trust*.

15.5 Property investment companies

Application

15.5.1 R This section applies to a *property investment company*.

Requirements for listing: general

15.5.2 R To be *listed*, a *property investment company* must comply with *LR 2* (Requirements for listing – all securities) and *LR 6* (Additional requirements for listing for equity securities), with the modifications and additional conditions set out in *LR 15.5.3R* to *LR 15.5.10R* and, if applicable, *LR 15.5.11R* to *LR 15.5.13R*, and either:

(1) the requirements for *listing* for an *investment company* set out in *LR 15.2.2R* to *LR 15.2.14R* and *LR 15.2.18G*; or

(2) the requirements for *listing* for an *investment trust* set out in *LR 15.2.2R* and *LR 15.2.17R* to *LR 15.2.18G*.

Requirements for listing: corporate governance

15.5.3 R In addition to complying with *LR 15.2.4R*, the *directors* of a *property investment company* and any property manager must be able to demonstrate sufficient and satisfactory experience in *property* investment over at least a three year period involving the management of a portfolio of similar type and size as is proposed for the *company*.

15.5.4 R In addition to complying with *LR 15.2.6R* the board of *directors* of a *property investment company* must be similarly independent of any *property* manager or *property* adviser of the *company*.

Requirements for listing: investment policies and restrictions

15.5.5 R No single *property* (including all adjacent or contiguous *properties*) can, at the time of initial *listing*, constitute more than 15% of the total assets of a *property investment company*, consolidated where applicable.

15.5.6 R Income receivable from any single tenant, or tenants within the same group in any one financial year, must not exceed 20% of the total rental income of a *property investment company* in that financial year.

15.5.7 R At least 90% by value of *properties* held by a *property investment company* must be in the form of freehold or long leasehold *properties* or the equivalent.

15.5.8 R The term "long leasehold" in *LR 15.5.7R* means a leasehold with over 60 years remaining either:

(1) at the time of initial *listing*; or

(2) at the time of acquisition of the leasehold, if acquired subsequent to initial *listing*.

15.5.9 R The proportion of a *property investment company's* property portfolio which is unoccupied or not producing income or which is in course of substantial

development, redevelopment or refurbishment must not exceed 25% of the value of the portfolio.

- 15.5.10 R A *property investment company* that is not an *investment trust* must not retain more than 15% of its net profits, before gains and losses on the disposal of *properties* and other investments.

Requirements for listing: new applicants

- 15.5.11 R A *new applicant* must have net assets of at least £30 million, including any funds raised at the time of *listing*.
- 15.5.12 R The articles of association of a *new applicant* must prohibit the borrowings of a *property investment company* from exceeding 65% of the gross assets of the *company*, consolidated where applicable.
- 15.5.13 R A *new applicant* must ensure that all *directors*, associates of *directors* and promoters agree not to dispose of their *shares*, other than among themselves, for a period of two years from the date on which dealings first commence.

Continuing obligations

- 15.5.14 R A *property investment company* must comply with *LR 9* (Continuing obligations) and *LR 15.4* subject to the modifications and additional conditions set out in *LR 15.5.15R* to *LR 15.5.23R*.
- 15.5.15 R (1) A *property investment company* must comply, at all times, with:
- (a) *LR 15.5.3R* to *LR 15.5.4R*;
  - (b) *LR 15.5.6R* to *LR 15.5.8G*;
  - (c) *LR 15.5.9R* except that *properties* acquired by a *property investment company* need not be counted as part of the *property* portfolio until six months after acquisition;
  - (d) *LR 15.5.10R*; and
  - (e) *LR 15.5.13R*.
- (2) No single *property* (including all adjacent or contiguous *properties*) can, at the time of acquisition, constitute more than 15% of the gross assets of a *property investment company*, consolidated where applicable.
- 15.5.16 R A *property investment company* must inform the *FSA* as soon as possible if it ceases to comply with *LR 15.5.15R*.
- 15.5.17 R A *property investment company's* annual accounts must:
- (1) state whether *LR 15.5.15R* has been met throughout the accounting

- period;
- (2) provide an explanation for any failures to meet *LR 15.5.15R* throughout the accounting period; and
  - (3) include a summary of the valuation, carried out in accordance with *LR 15.5.18R*, of the *property investment company's* portfolio.
- 15.5.18 R A valuation required by *LR 15.5.17R(3)* must:
- (1) either:
    - (a) be made in accordance with the Appraisal and Valuation Standards (5<sup>th</sup> edition) issued by the Royal Institution of Chartered Surveyors; or
    - (b) where the valuation does not comply in all applicable respects with the Appraisal and Valuation Standards (5<sup>th</sup> edition) issued by the Royal Institution of Chartered Surveyors, include a statement which sets out a full explanation of such non-compliance; and
  - (2) be carried out by an external valuer as defined in the Appraisal and Valuation Standards (5<sup>th</sup> edition) issued by the Royal Institution of Chartered Surveyors.
- 15.5.19 R The summary described in *LR 15.5.17R(3)* must include:
- (1) the total value of *properties* held at the year end;
  - (2) totals of the cost of *properties* acquired;
  - (3) the net book value of *properties* disposed of during the year; and
  - (4) an indication of the geographical location and type of *properties* held at the year end.
- 15.5.20 R In addition to the notifications required by *LR 9.6.11R* to *LR 9.6.15G*, a *property investment company* must, so far as practicable, consult the *FSA* in advance about any proposed changes to the board in order that the *FSA* may consider whether the board still has the experience required by *LR 15.5.3R*.

#### Transactions

- 15.5.21 R An acquisition or disposal of a property by a *property investment company* will be treated in the same way as acquisitions and disposals of *properties* by a *property company* as set out in *LR 10.7.1R* to *LR 10.7.4R*.

#### Change of status

- 15.5.22 G A *listed company* which applies to be *listed* as a *property investment company* will be treated as a *new applicant* and its current *listing* will be

*suspended.*

- 15.5.23 R A *listed property investment company* which applies to be *listed* as a *property company* will be treated as a *new applicant* and its existing *listing* will be *suspended*.

## 15.6 Authorised property unit trusts

### Application

- 15.6.1 R This section applies to an *authorised property unit trust*.

### Requirements for listing

- 15.6.2 R To be *listed*, an *authorised property unit trust* must comply, with appropriate modifications to reflect the legal form of the trust, with *LR 2* (Requirements for listing – all securities) and *LR 6* (Additional requirements for listing for equity securities), with the following modifications and additional conditions:

- (1) the requirements set out in *LR 15.2.2R*, *LR 15.2.4R*, *LR 15.5.3R* and *LR 15.5.11R*; and
- (2) the trustee of the *authorised property unit trust* must be independent of the manager.

### Continuing obligations

- 15.6.3 R An *authorised property unit trust* must comply with the following, modified as necessary to reflect the legal form of the trust:

- (1) *LR 9* (Continuing obligations), as modified by the requirements set out in this section;
- (2) *LR 15.4.10R*;
- (3) *LR 15.4.12R(4)*;
- (4) *LR 15.4.14R*; and
- (5) *LR 15.7.7R* to *LR 15.7.9R*.

- 15.6.4 R The following do not apply to an *authorised property unit trust*:

- (1) *LR 9.2.3R*;
- (2) *LR 9.3.11R* to *LR 9.3.12R*;
- (3) *LR 9.3.3R(3)(b)* and (c);

- (4) *LR 9.5.14R*;
  - (5) *LR 9.6.7R to LR 9.6.15G*;
  - (6) *LR 10 (Significant transactions)*;
  - (7) *LR 11 (Related party transactions)*; and
  - (8) *LR 12.2.1R*.
- 15.6.5 R (1) The *Model Code* applies in relation to *persons discharging managerial responsibilities* within the managers of an *authorised property unit trust* as if it were a *company* and such *persons discharging managerial responsibilities* were employed by it.
- (2) Paragraph 16 of the *Model Code* does not apply to dealings in an *authorised property unit trust*.
- 15.6.6 R The amount of the charges and expenses (to the extent borne by the trust) of the managers, the trustee and any agent of the managers or trustee, or any sub-custodian, must be clearly set out in each annual report of an *authorised property unit trust*.
- 15.6.7 R The number of units of an *authorised property unit trust* that are outstanding in bearer or registered form must be notified to a *RIS* at least monthly.
- 15.6.8 R The bid and offer prices must be notified to a *RIS* on the occasion of each valuation of units.
- 15.6.9 R An *authorised property unit trust* must notify the following information to a *RIS* as soon as possible and in any event within three *months* of the end of each distribution or allocation period:
- (1) the total gross and net income per unit before charging fees to the *authorised property unit trust*;
  - (2) the net amount per unit (after allowing for charges and adjustments) to be distributed or allocated, together with the gross equivalent attributable to the distribution or allocation period (specifying, where grouping is permitted by the trust deed or equivalent constitutional document, the amount per unit represented by income equalisation);
  - (3) the date of the striking of the unit holders' register balances; and
  - (4) any date on and from which trading ex distribution (where applicable) will take place.
- 15.6.10 R An *authorised property unit trust* must notify the following information to a *RIS* as soon as possible:
- (1) any changes in the identity or control of the manager or trustee;

- (2) any change in the investment policy of the trust; and
  - (3) any proposal to renew, vary, amalgamate or terminate the *authorised property unit trust*.
- 15.6.11 R (1) A complete file must be maintained by the manager of all advertisements, brochures, leaflets and other documents issued by or on behalf of the manager with a view to effecting or stimulating sales or purchases of units.
- (2) The file must be produced to the *FSA* at any time on demand.
- 15.7 Open ended investment companies
- Application
- 15.7.1 R This section applies to an *open ended investment company*.
- Requirements for listing
- 15.7.2 R An *open ended investment company* must comply with *LR 15.2.1R – LR 15.2.14R*.
- 15.7.3 R *LR 6.1.19R* (shares in public hands) does not apply to an *open-ended investment company*.
- Publication
- 15.7.4 R An *open-ended investment company* which is an *unrecognised scheme* is only required to make information available to the *FSA* and to other recipients as permitted under the *Act*.
- 15.7.5 R An *open-ended investment company* must ensure that any information made available in accordance with *PR 3.2* or *LR 4.3* (publication of *prospectus* or *listing particulars*) complies with sections 21 (Restrictions on financial promotion) and 238 (Restrictions on promotion) of the *Act*, to the extent applicable.
- Continuing obligations
- 15.7.6 R An *open-ended investment company* must comply with *LR 9* and *LR 15.4.3R* to *LR 15.4.13R* subject to the modifications and additional conditions set out in *LR 15.7.7R* to *LR 15.7.11R*.
- 15.7.7 R Changes in issued capital are not required to be disclosed under *LR 9.6.4R*(1) and (6) and *LR 9.6.5R* as a result of issues and redemptions or repurchases in the normal course as described in the *prospectus* or *listing particulars*, unless and until the number of *securities* of the relevant *class* currently in issue increases or decreases by more than 10 per cent since the publication of the *prospectus* or *listing particulars* or the last notification to

a *RIS* as the case may be.

- 15.7.8 R *LR 9.6.7R to LR 9.6.10G do not apply to an open-ended investment company.*
- 15.7.9 R The interests of a single *person* or entity which exceed 10% of the issued *shares* (calculated exclusive of *treasury shares*) of any *class* in the capital of the *open-ended investment company* must, so far as they are known to the *company*, be notified to a *RIS* as soon as possible following the *company* becoming aware of those interests.
- 15.7.10 G (1) Any continuing obligation set out in *LR 9 (Continuing obligations)* or in this chapter, requiring an *open-ended investment company* which is an *unrecognised scheme* to publish information or send a document to the public, is modified to require the sending of such information or document only to the *FSA* and to other recipients permitted under the *Act*.
- (2) When sending any document as described in paragraph (1), an *open-ended investment company* should clearly mark the document "not for onward publication".
- 15.7.11 R *LR 10 (Significant transactions)* and *LR 12 (Dealing in own securities and treasury shares)* do not apply to an *open-ended investment company*.

- 16 Venture capital trusts
- 16.1 Application
- 16.1.1 R This chapter applies to a *venture capital trust* with, or applying for, a *primary listing*.
- 16.2 Requirements for listing
- 16.2.1 R To be *admitted to listing*, a *venture capital trust* must comply with *LR 2* (Requirements for listing – all securities) and *LR 6* (Additional requirements for listing equity securities), subject to the modifications and additional conditions set out in *LR 16.2.2R* to *LR 16.2.10R*.
- HM Revenue and Customs status
- 16.2.2 R A *venture capital trust* must have obtained either:
- (1) confirmation from HM Revenue and Customs that it qualifies as a *venture capital trust*, if it has been in existence for more than three years; or
  - (2) provisional approval from HM Revenue and Customs, if it has been in existence for less than three years.
- Directors and investment managers
- 16.2.3 R A *venture capital trust* must satisfy the *FSA* that its *directors* and any *investment managers* have sufficient and satisfactory experience (usually over at least the preceding three years) in the management of a portfolio of investments of the size and type in which the *venture capital trust* proposes to invest.
- 16.2.4 R The board of *directors* of a *venture capital trust* must be able to demonstrate that it will act independently of any *investment managers* of the *venture capital trust*.
- 16.2.5 R A majority of the board must not be *directors* or *employees*, or former *directors* or *employees* of, or professional advisers to, the *investment managers* or any other *company* in the same *group* as the *investment managers*.
- Accounts, business activities and working capital
- 16.2.6 R *LR 6.1.3R(1)(a)* (audited accounts for three years) *LR 6.1.4R* (nature and duration of business activities) and *LR6.1.16R* (working capital) do not

apply to a *venture capital trust*.

- 16.2.7 R *LR 6.1.3R(1)(b) to (f)* apply to a *venture capital trust* to the extent that it has published accounts.

#### Investment restrictions

- 16.2.8 R A *venture capital trust* must not control the *companies* in which it invests in such a way as to render them *subsidiary undertakings* until it has obtained approval as a *venture capital trust* from HM Revenue and Customs.
- 16.2.9 R None of a *venture capital trust's* investments, other than in a *venture capital trust* or a *company* which would qualify as a *venture capital trust* if it were *listed*, must represent more than 15% by value of its investments.
- 16.2.10 R No more than 20% of a *venture capital trust's* total assets may be invested in the securities of *companies* which are *property companies*.

#### 16.3 Continuing obligations

- 16.3.1 R A *venture capital trust* must comply with *LR 9* (Continuing obligations) subject to the modifications and additional conditions set out in *LR 16.3.2R* to *LR 16.3.7G* and *LR*

#### Investment restrictions

- 16.3.2 R A *venture capital trust* must comply with *LR 16.2.8R – LR 16.2.10R* at all times.

#### Total value of funds raised

- 16.3.3 R The total value of funds to be raised in any twelve month period by a *listed venture capital trust* must not exceed the total amount of venture capital funds managed by that trust's *investment manager* or *directors* where relevant, for at least the preceding three years.

#### Annual report and accounts

- 16.3.4 R In addition to the requirements of *LR 9.8*, a *venture capital trust* must include in its annual report and accounts:
- (1) a list of all investments with a value of greater than 5% of the total assets of the *venture capital trust* and at least the 10 largest investments stating, with respect to each investment so listed:
    - (a) a brief description of the business;
    - (b) the proportion of capital owned or intended to be owned;

- (c) the voting rights attributable to the *shares* owned;
  - (d) the cost of the investment;
  - (e) the value of the investment at the latest practicable date;
  - (f) the method of valuation; and
  - (g) brief details of the results and assets and liabilities taken from the most recent audited accounts, including at least profit before tax, profit or loss for the period, total assets and total equity and liabilities;
- (2) details of:
- (a) the total of provisions made against unlisted investments;
  - (b) the amounts written off such investments in each of the latest three financial years; and
  - (c) any individual provision or write off which exceeded 5% of the total assets of the *venture capital trust*;
- (3) a full description of the methods of valuation used including a justification of any method of valuation which does not conform with the Guidelines for the Valuation and Disclosure of Venture Capital Portfolios issued by the British Venture Capital Association; and
- (4) details of any investments made in any *company* in which other funds managed by the same *investment manager* have also invested.

#### Compliance with the Combined Code

- 16.3.5 R In the case of a *venture capital trust* with no executive *directors*, in respect of the *Combined Code*:
- (1) *LR 9.8.8R* does not apply in respect of the *Combined Code*; and
  - (2) *LR 9.8.6R(6)* does not apply in respect of principles B.1 to B.2 and provisions B.1.1 to B.1.6 and B.2.1 to B.2.4 of the *Combined Code* except to the extent that they relate specifically to non-executive *directors*.

#### Loss of tax status

- 16.3.6 R A *venture capital trust* must notify the *FSA* as soon as possible if it loses its tax status under section 842AA of the Income and Corporations Taxes Act 1988.

- 16.3.7 G In the situation set out in LR 16.3.6R the *listing* of a *venture capital trust's shares* will normally be suspended until it publishes proposals either to continue trading as an *investment company* or to be wound up.

## 16.4 Transactions

### Significant transactions

- 16.4.1 R LR 10 (Significant transactions) applies to *venture capital trusts* except for transactions which fall within the stated investment policies of the *venture capital trust*.

### Related party transactions

- 16.4.2 R LR 11 (Related party transactions) applies to *venture capital trusts* with the following modifications.
- 16.4.3 R In addition to the definition in LR 11.1.4R a *related party* includes any *investment manager* of the *venture capital trust*.
- 16.4.4 R In addition to the definition in LR 11.1.5R a *related party transaction* includes:
- (1) any arrangement by which a *venture capital trust* takes an interest in a *company* in which its *investment manager* has invested or intends to invest on its own account, unless the investment is made either at the same time and on the same terms or in accordance with a pre-existing agreement between the *venture capital trust* and the *investment manager*; and
  - (2) a *venture capital trust* that enters into a transaction with another fund managed by the same *investment manager*.
- 16.4.5 R Where a *venture capital trust* intends to invest in a *company* in which another fund managed by the same *investment manager* has invested or intends to invest, the investment must be approved by the *directors* of the *venture capital trust* who are independent of the *investment manager* unless the investment is made either at the same time and on the same terms or in accordance with a pre-existing agreement between the *venture capital trust* and the *investment manager*.

### Venture capital trusts which are also investment trusts

- 16.4.6 R A *venture capital trust* which is also an *investment trust* and which either has or is seeking a *listing*, must comply with the requirements set out in this chapter and with the following provisions:
- (1) the following requirements for *listing*:

- (a) *LR 15.2.2R(2), (3) and (4);*
  - (b) *LR 15.2.11R(1); and*
  - (c) the requirements laid down for *investment trusts* in section 842 of the Income and Corporation Taxes Act 1988; and
- (2) the continuing obligations set out in:
- (a) *LR 15.4.14R;*
  - (b) *LR 15.4.12R(3); and*
  - (c) *LR 15.4.21R(1), (2), (4) and (5).*

- 17 Debt and specialist securities
- 17.1 Application
- 17.1.1 R This chapter applies to:
- (1) an *issuer* of any of the following types of *securities*:
    - (a) *debt securities*;
    - (b) *asset-backed securities*;
    - (c) *certificates representing debt securities*; and
    - (d) *specialist securities* of the following types:
      - (i) *convertible securities* which convert to *debt securities*;
      - (ii) *convertible securities* which convert to *equity securities*; and
      - (iii) *convertible securities* which are exchangeable for *securities* of another *company*.
- 17.1.2 G An *issuer*, as described in LR 17.1.1R includes:
- (1) a *state monopoly*;
  - (2) a *state finance organisation*;
  - (3) a statutory body; and
  - (4) an *OECD state guaranteed issuer*.
- 17.1.3 G A state, a regional or local authority or a *public international body* with *listed debt securities* should see LR 17.5 for its continuing obligations
- 17.2 Requirements for listing and listing applications
- Requirements for listing
- 17.2.1 G An *issuer* to whom this chapter applies will need to comply with LR 2 (Requirements for listing – all securities).
- Listing Applications
- 17.2.2 G An *issuer* to whom this chapter applies will need to comply with LR 3

(Listing applications).

### 17.3 Requirements with continuing application

#### Copies of documents

- 17.3.1 R (1) An *issuer* must forward to the *FSA*, for publication through the *document viewing facility*, two copies of any document required by *LR 17.3* or *LR 17.4* at the same time the document is issued.
- (2) An *issuer* must notify a *RIS* as soon as possible when a document has been forwarded to the *FSA* under paragraph (1) unless the full text of the document is provided to the *RIS*.
- (3) A notification made under paragraph (2) must set out where copies of the relevant document can be obtained.

#### Admission to trading

- 17.3.2 R (1) An *issuer's securities* must be admitted to trading on a *RIE's* market for *listed securities* at all times.
- (2) An *issuer* must inform the *FSA* in writing without delay if it has:
- (a) requested a *RIE* to admit or re-admit any of its *listed securities* to trading; or
- (b) requested a *RIE* to cancel or suspend trading of any of its *listed securities*; or
- (c) been informed by a *RIE* that the trading of any of its *listed securities* will be cancelled or suspended.

#### Equality of treatment

- 17.3.3 R An *issuer* must ensure equal treatment for all holders of its *listed securities* of the same *class* in respect of all rights attaching to such *securities*. [**Note:** Article 78(1) *CARD*]

#### Annual accounts

- 17.3.4 R (1) An *issuer* must publish its annual report and annual accounts as soon as possible after they have been approved. [**Note:** Article 80(1) *CARD*]
- (2) An *issuer* must approve and publish its annual report and accounts within six months of the end of the financial period to which they

relate.

- 17.3.5 G (1) If an *issuer* prepares both own and consolidated annual accounts it may publish either form provided that the unpublished accounts do not contain any significant additional information. [**Note:** Article 80(2) *CARD*]
- (2) If the annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits or losses of the *issuer* or *group*, additional information must be provided to the satisfaction of the *FSA*. [**Note:** Article 80(3) *CARD*]
- (3) An *issuer* incorporated or established in a *non-EEA State* which is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, may draw up its accounts to this equivalent standard.

17.3.6 G An *issuer* that meets the following criteria is not required to comply with *LR 17.3.4R*:

- (1) the *issuer* is an *issuer of asset-backed securities* and is not required to comply with any other requirement for the publication of annual report and accounts; or
- (2) (a) the *issuer*:
- (i) is a wholly owned subsidiary of a *listed company*;
  - (ii) issues *listed securities* that are unconditionally and irrevocably guaranteed by the *issuer's listed holding company* or equivalent arrangements are in place;
  - (iii) is included in the consolidated accounts of its *listed holding company*; and
  - (iv) is not required to comply with any other requirement for the preparation of annual report and accounts; and
- (b) non-publication of the *issuer's* accounts would not be likely to mislead the public with regard to facts and circumstances that are essential for assessing the *securities*.

Paying agent

17.3.7 R An *issuer* must appoint and retain a paying agent in the *United Kingdom* until the date on which the *listed securities* are finally redeemed unless the *issuer*:

- (1) provides financial services; and
- (2) itself performs the functions of a paying agent in the *United Kingdom*. [**Note:** Article 78(2) *CARD*]

#### Disclosure Rules

- 17.3.8 G An *issuer*, whose *securities* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider its obligations under *DR 2* (Disclosure and control of inside information by issuers).
- 17.3.9 R An *issuer* that is not already required to comply with *DR 2* must comply with *DR 2* as if it were an *issuer* for the purposes of the *disclosure rules*.

#### Amendments to trust deeds

- 17.3.10 R An *issuer* must ensure that any *circular* it issues to holders of its *listed securities* about proposed amendments to a *trust deed* includes:
- (1) an explanation of the effect of the proposed amendments; and
  - (2) either the full terms of the proposed amendments, or a statement that they will be available for inspection:
    - (a) from the date the *circular* is sent until the close of the relevant general meeting at a place in or near the City of London or such other place as the *FSA* may determine; and
    - (b) at the place of the general meeting for at least 15 minutes before and during the meeting.

#### Amendments to constitution

- 17.3.11 R An *issuer* must submit two copies of any proposed amendment to its *constitution* that affects the rights of *securities* holders to the *FSA* by no later than when it sends the notice convening the meeting to decide on the amendment. [**Note:** Article 79 *CARD*]

#### Early redemptions

- 17.3.12 R (1) An *issuer* must ensure that any *circular* it issues to holders of its *listed securities* relating to a resolution proposing to redeem *listed securities* before their due date for redemption includes:
- (a) an explanation of the reasons for the early redemption;

- (b) a statement of the market values for the *securities* on the first dealing day in each of the six months before the date of the *circular* and on the latest practicable date before sending the *circular*;
  - (c) a statement of any interests of any *director* in the *securities*;
  - (d) if there is a trustee, or other representative, of the holders of the *securities* to be redeemed, a statement that the trustee, or other representative, has given its consent to the issue of the *circular* or stated that it has no objection to the resolution being put to a meeting of the *securities* holders;
  - (e) the timetable for redemption; and
  - (f) an explanation of the procedure to be followed by the *securities* holders.
- (2) The *circular* must not contain specific advice about whether or not to accept the proposal for redemption.
  - (3) The timetable for redemption in the *circular* must have been approved by the *RIE* on which the *listed securities* are traded.

#### Documents of title

- 17.3.13 R An *issuer* must ensure that any definitive document of title for a *security* (other than a bearer *security*) includes the following matters on its face (or on the reverse in the case of paragraph (5)):
- (1) the authority under which the *issuer* is constituted and the country of incorporation and registered number (if any);
  - (2) the number or amount of *securities* the certificate represents and, if applicable, the number and denomination of units (in the top right-hand corner);
  - (3) a footnote stating that no transfer of the *security* or any portion of it represented by the certificate can be registered without production of the certificate;
  - (4) if applicable, the minimum amount and multiples thereof in which the *security* is transferable;
  - (5) the date of the certificate; and

- (6) the interest payable and the interest payment dates and on the reverse (with reference shown on the face) an easily legible summary of the rights as to redemption or repayment and (where applicable) conversion.

## 17.4 Disclosures

Disclosures to be made without delay to a RIS

- 17.4.1 R An *issuer* must notify a *RIS* as soon as possible of:
- (1) any new issues and guarantee or security related to such new issues; [**Note:** Article 81 *CARD*]
  - (2) any change of guarantor or security of its *listed securities* where this information is important for the purposes of assessing the *securities* in question;
  - (3) any change in the rights attaching to *listed securities* (including any change in loan terms or in the rate of interest carried by the *listed securities*); [**Note:** Article 81 *CARD*]
  - (4) when any document has been submitted to the *FSA* for publication through the *document viewing facility* under *LR* 17.3.1R, unless the full text of the document is provided to a *RIS*;
  - (5) any change of paying agent in the *United Kingdom*; and
  - (6) the publication of:
    - (a) its annual report and accounts;
    - (b) in the case of *debt securities* guaranteed by another *company*, the annual report and accounts of the *company* that is providing the guarantee unless that *company* is *listed* or adequate information is otherwise available; and
    - (c) in the case of *convertible securities* which are exchangeable for *securities* of another *company*, the annual report and accounts of that other *company* unless that *company* is *listed* or adequate information is otherwise available.

Disclosure to holders: exercise of rights

- 17.4.2 R An *issuer* must ensure that at least in each *EEA state* in which its *securities* are listed, all the necessary facilities and information are

available to enable holders of such *securities* to exercise their rights. In particular, it must:

- (1) inform holders of meetings which they are entitled to attend;
- (2) enable them to exercise their vote, where applicable; and
- (3) publish notices or distribute circulars giving information on:
  - (a) the payment of interest in respect of such *securities*; and
  - (b) the exercise of any conversion, exchange, subscription or renunciation rights and repayment of its *securities*. [**Note:** Article 78(2) *CARD*]

17.4.3 R An *issuer* of bearer *securities* must comply with LR 17.4.2R by publishing an advertisement in at least one national newspaper in the *United Kingdom*.

17.4.4 G An *issuer* of bearer *securities* is not required to comply with LR 17.4.3R if:

- (1) the *securities* are in global form; and
- (2) the *issuer* can confirm that notices will be transmitted without delay to all holders.

#### Communications with holders

- 17.4.5 R (1) An *issuer* must notify a *RIS* of all notices to holders of its *listed securities* no later than the date the notices are sent to holders.
- (2) An *issuer* must submit to the *FSA* draft copies of any proposed amendment to its *constitution* which would affect the rights of holders. [**Note:** Article 79 *CARD*]

#### Disclosure: convertible and guaranteed securities

- 17.4.6 R Any changes to conversion rights attaching to *convertible securities* must be notified to a *RIS* as soon as possible. [**Note:** Article 81 *CARD*]
- 17.4.7 R In the case of *debt securities* guaranteed by another *company*, an *issuer* must submit to the *FSA* the annual report and accounts of the *company* that is providing the guarantee unless that *company* is *listed* or adequate information is otherwise available.
- 17.4.8 R In the case of *convertible securities* which are exchangeable for *securities* of another *company*, an *issuer* must submit to the *FSA* the annual report and accounts of that other *company* unless that *company* is *listed* or adequate information is otherwise available.

Disclosure: asset-backed securities

17.4.9 R Where an *issuer* proposes to issue further *debt securities* that are:

- (1) backed by the same assets; and
- (2) not fungible with existing classes of *debt securities*; or
- (3) not subordinated to existing classes of *debt securities*;

the *issuer* must inform the holders of the existing classes of *debt securities*.

17.5 Requirements for states, regional and local authorities and public international bodies

17.5.1 R This chapter does not apply to a state, a regional or local authority and a *public international body* with *listed debt securities* except that such an *issuer* must comply with:

- (1) LR 17.3.2R (Admission to trading);
- (2) LR 17.3.3R (Equality of treatment);
- (3) LR 17.4.1R(3) (Disclosures to be made without delay to an RIS); and
- (4) LR 17.4.2R to LR 17.4.4G (Disclosure to holders – exercise of rights).

- 18 Certificates representing certain securities
- 18.1 Application
- 18.1.1 R This chapter applies to:
- (1) a *depository*; and
  - (2) an *issuer* of the *securities* which are represented by certificates.
- 18.2 Requirements for listing
- Issuer of securities is taken to be the issuer
- 18.2.1 R If an application is made for the *admission of certificates representing certain securities*, the *issuer* of the *securities* which the certificates represent is the *issuer* for the purpose of the *listing rules* and the application will be dealt with as if it were an application for the *admission* of the *securities*.
- Certificates representing certain securities
- 18.2.2 R For *certificates representing certain securities* to be *admitted to listing* an *issuer* of the *securities* which the certificates represent must comply with *LR 18.2.3R* to *LR 18.2.7R*.
- 18.2.3 R An *issuer* must be:
- (1) duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment; and
  - (2) operating in conformity with its *constitution*. [**Note:** Articles 42 and 52 *CARD*]
- 18.2.4 R For the certificates to be *listed*, the *securities* which the certificates represent must:
- (1) conform with the law of the *issuer's* place of incorporation;
  - (2) be duly authorised according to the requirements of the *issuer's constitution*; and
  - (3) have any necessary statutory or other consents. [**Note:** Articles 45 and 53 *CARD*]
- 18.2.5 R
- (1) For the certificates to be *listed*, the *securities* which the certificates represent must be freely transferable. [**Note:** Articles 46, 54 and 60 *CARD*]
  - (2) For the certificates to be *listed*, the *securities* which the certificates

represent must be fully paid and free from all liens and from any restriction on the right of transfer (except any restriction imposed for failure to comply with a notice under section 212 of the Companies Act 1985 (Company investigations))

- 18.2.6 G The *FSA* may modify *LR* 18.2.5R to allow partly paid *securities* if it is satisfied that their transferability is not restricted and investors have been provided with appropriate information to enable dealings in the *securities* to take place on an open and proper basis. [Note: Articles 46 and 54 *CARD*]
- 18.2.7 G The *FSA* may, in exceptional circumstances, modify or dispense with *LR* 18.2.5R where the *issuer* has the power to disapprove the transfer of *securities* if the *FSA* is satisfied that this power would not disturb the market in those *securities*.

#### Certificates representing equity securities of an overseas company

- 18.2.8 R (1) If an application is made for the *admission* of a *class* of *certificates representing shares* of an *overseas company*, a sufficient number of certificates must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.
- (2) For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not *EEA States*, if the certificates are listed in the state or states.
- (3) For the purposes of paragraph (1), a sufficient number of certificates will be taken to have been distributed to the public when 25% of the certificates for which application for *admission* has been made are in public hands.
- (4) For the purposes of paragraphs (1), (2) and (3), certificates are not held in public hands if they are held, directly or indirectly by:
- (a) a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
  - (b) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
  - (c) the trustees of any *employees' share scheme* or pension fund established for the benefit of any *directors* and *employees* of the *applicant* and its *subsidiary undertakings*; or
  - (d) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
  - (e) any *person* or *persons* in the same *group* who have an interest in 5% or more of the certificates of the relevant *class*.
- 18.2.9 G The *FSA* may modify *LR* 18.2.8R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in

view of the large number of certificates of the same *class* and the extent of their distribution to the public. [**Note:** Article 48 *CARD*]

Certificates representing equity securities of a UK company

- 18.2.10 R Certificates representing *equity shares* of a *company* incorporated in the *United Kingdom* will be *admitted to listing* only if the *shares* they represent are already *listed* or are the subject of an application for *listing* at the same time.

Additional requirements for the certificates

- 18.2.11 R To be *listed*, the *certificates representing certain securities* must satisfy the requirements set out in *LR 2.2.2R* to *LR 2.2.11R*. For this purpose, in those *rules* references to *securities* are to be read as references to the *certificates representing certain securities* for which application for *listing* is made.
- 18.2.12 R To be *listed*, the *certificates representing certain securities* must not impose obligations on the *depository* that issues the certificates except to the extent necessary to protect the certificate-holders' rights to, and the transmission of entitlements of, the *securities*.

Additional requirements for a depository

- 18.2.13 R A *depository* that issues *certificates representing certain securities* must be a suitably authorised and regulated financial institution acceptable to the *FSA*.
- 18.2.14 R A *depository* that issues *certificates representing certain securities* must hold on trust (or under equivalent arrangements) for the sole benefit of the certificate holders the *securities* to which the certificates relate, all rights relating to the *securities* and all money and benefits that it may receive in respect of them, subject only to payment of the remuneration and proper expenses of the *issuer* of the certificates.

18.3 Listing applications

- 18.3.1 R An *applicant for admission of certificates representing certain securities* must comply with *LR 3.2* and *LR 3.4.4R* to *LR 3.4.7R* subject to the following modifications.

- 18.3.2 R In addition to the documents set out in *LR 3.4.4R* that must be submitted to the *FSA* before midday two *business days* prior to the consideration of the application for *admission*, either of the following documents must be submitted at the same time:

- (1) a copy of the executed deposit agreement; or

- (2) a final draft of the deposit agreement together with confirmation from the *issuer* that a copy of the executed deposit agreement will be submitted to the *FSA* as soon as possible after execution.
- 18.3.3 G Following submission of the relevant documents, *listing* may be granted, subject to the issue of the *certificates representing certain securities*.
- 18.4 Continuing obligations
- 18.4.1 R An *issuer of debt securities* which the certificates represent must comply with the continuing obligations set out in *LR 17.3* (Requirements with continuing application) and *LR 17.4* (Disclosures) in addition to the requirements of this section.
- 18.4.2 R A *UK issuer of equity shares* which the certificates represent must comply with the continuing obligations set out in *LR 9* (Continuing obligations) in addition to the requirements of this section.
- 18.4.3 R An *overseas company* that is the *issuer* of the *equity shares* which the certificates represent must comply with:
- (1) the requirements of this section;
  - (2) the continuing obligations set out in *LR 14.3* (Continuing obligations) and *LR 14.4* (Continuing obligations – financial information); and
  - (3) *DR 2* (Disclosure and control of inside information by issuers), as if it were an *issuer* for the purposes of the *disclosure rules*.

#### Change of depositary

- 18.4.4 R Prior to any change of the *depositary of certificates representing certain securities*, the new *depositary* must satisfy the *FSA* that it meets the requirements of *LR 18.2.11R* to *LR 18.2.14R*.

#### Notification of change of depositary

- 18.4.5 R
- (1) An *issuer of securities* represented by *listed certificates representing certain securities* must notify a *RIS* of any change of *depositary*.
  - (2) The notification required by paragraph (1) must be made as soon as possible, and in any event by 7.30 a.m. on the *business day* following the change of *depositary*, and contain the following information:
    - (a) the name, registered office and principal administrative establishment if different from the registered office of the *depositary*;

- (b) the date of incorporation and length of life of the *depository*, except where indefinite;
- (c) the legislation under which the *depository* operates and the legal form which it has adopted under the legislation; and
- (d) any changes to the information regarding the *certificates representing certain securities*.

Documents of title

- 18.4.6 R An *issuer* must comply with the requirements in *LR 9.5.15R* (Temporary documents of title) and *LR 9.5.16R* (Definitive documents of title) so far as relevant to *certificates representing equity securities*.

- 19           Securitised derivatives
- 19.1        Application
- 19.1.1     R     This chapter applies to an *issuer* of:
- (1)     *retail securitised derivatives*;
  - (2)     *specialist securitised derivatives*; and
  - (3)     other derivative products if the *FSA* has specifically approved their *listing* under this chapter.
- Other derivative products
- 19.1.2     R     For the purposes of this chapter, an *issuer* of other derivative products that have received the specific approval of the *FSA* to be *listed* under this chapter must comply with the *rules* applicable to an *issuer* of *specialist securitised derivatives* unless otherwise stated.
- 19.1.3     R     The *FSA* will not admit to *listing*, under this chapter, other derivative products that are likely to be bought and traded by investors who are not *specialist investors*, unless the derivative product falls within the scope of *specified investments* in Part III of the *Regulated Activities Order*.
- 19.2        Requirements for listing
- 19.2.1     R     An *applicant* for the *admission* of *securitised derivatives* must comply with *LR 2* (Requirements for listing – all securities) and the following requirements.
- Requirements for listing: the issuer
- 19.2.2     R     An *applicant* for the *admission* of *securitised derivatives* must either:
- (1)     have *permission* under the *Act* to carry on its activities relating to *securitised derivatives* and be either a *bank* or a *securities and futures firm*;
  - (2)     if the *applicant* is an *overseas company*:
    - (a)     be regulated by an *overseas* regulator responsible for the regulation of banks, securities firms or futures firms and which has a lead regulation agreement for financial supervision with the *FSA*; and

- (b) be carrying on its activities relating to *securitised derivatives* within the approved scope of its business; or
- (3) arrange for its obligations in relation to the *securitised derivatives*, 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 (1) or (2).

#### Requirements for listing

- 19.2.3 R For a *securitised derivative* to be *listed*, its *underlying instrument* must be traded on a regulated, regularly operating, recognised open market, unless it is:
- (1) a currency; or
  - (2) an index; or
  - (3) an interest rate; or
  - (4) a basket of any of the above.
- 19.2.4 R The *FSA* may modify or dispense with the requirement in *LR 19.2.3R* for other derivative products.

#### Requirements for listing: retail products

- 19.2.5 R To be *listed*, a *retail securitised derivative* must:
- (1) satisfy the requirements set out in *LR 19.2.3R*; and
  - (2) not be a *contingent liability investment*.
- 19.2.6 R To be *listed*, if a *retail securitised derivative* gives its holder a right of exercise, its terms and conditions must provide that:
- (1) 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; or
  - (2) for physically settled *securitised derivatives* that are *in the money* at the *exercise time* on the *expiration date*, if the holder fails to deliver an *exercise notice* by the time stipulated in the terms and conditions, the *issuer* will, irrespective of the failure to exercise, pay to the holder an amount in cash in lieu of the holder's failure to deliver the *exercise notice*, the amount and method of calculation of this amount to be determined by the *issuer*.

### 19.3 Listing applications

#### Listing application procedures

19.3.1 R An *applicant for admission of securitised derivatives* must comply with:

- (1) LR 3.2 (Application for admission to listing); and
- (2) LR 3.4.4R to LR 3.4.10R;

subject to the following modification.

19.3.2 R An *issuer* must 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.

### 19.4 Continuing obligations

#### Application

19.4.1 R An *issuer* that has only *securitised derivatives listed* is subject to the continuing obligations set out in this chapter.

19.4.2 R An *issuer* that has both *securitised derivatives* and other *securities listed* is subject to the continuing obligations set out in this chapter and the continuing obligations that are applicable to the other *securities so listed*.

#### Admission to trading

19.4.3 R (1) An *issuer's listed securitised derivatives* must be admitted to trading on a *RIE's* market for *listed securities* at all times.

(2) An *issuer* must inform the *FSA* in writing as soon as possible if it has:

- (a) requested a *RIE* to admit or re-admit any of its *listed securitised derivatives* to trading; or
- (b) requested a *RIE* to cancel or suspend trading of any of its *listed securitised derivatives*; or
- (c) been informed by a *RIE* that the trading of any of its *listed securitised derivatives* will be cancelled or suspended.

#### Equality of treatment

19.4.4 An *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*.

#### Annual accounts

- 19.4.5 R (1) An *issuer* must publish its annual accounts as soon as possible after they have been approved.
- (2) An *issuer* must approve and publish its annual accounts within six months of the end of the financial period to which they relate.
- 19.4.6 R (1) Annual accounts must be drawn up and be independently audited.
- (2) If an *issuer* prepares both own and consolidated annual accounts, it may publish either form provided that the unpublished accounts do not contain any significant additional information.
- 19.4.7 R If an issue is *guaranteed* by an unlisted *company*, an *issuer* must submit the guarantor's accounts to the *FSA*.
- 19.4.8 R The *FSA* may dispense with *LR 19.4.5R* and *LR 19.4.6R* if:
- (1) the issue is *guaranteed*;
- (2) the guarantor is a listed *company*;
- (3) the *issuer* is included in the consolidated accounts of the guarantor;
- (4) no other requirement for the preparation of annual reports and accounts exists; and
- (5) 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.

#### Paying agent

- 19.4.9 R An *issuer* must maintain a paying agent in the *United Kingdom* until the maturity date of the *securitised derivatives* unless the *issuer*:
- (1) provides financial services; and
- (2) itself performs the function of a paying agent in the *United Kingdom*.

#### Settlement arrangements

- 19.4.10 R (1) An *issuer* must ensure that appropriate settlement arrangements for its *listed securitised derivatives* are in place.
- (2) *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).

#### Disclosure rules

- 19.4.11 R An *issuer* must comply with *DR 2.1* to *DR 2.7* as if it were an *issuer* for the purposes of the *disclosure rules*.

#### Documents of title

- 19.4.12 R An *issuer* must comply with the requirements in *LR 9.5.15R* (temporary documents of title) and *LR 9.5.16R* (definitive documents of title) so far as relevant to *securitised derivatives*.

#### 19.5 Disclosures

- 19.5.1 R An *issuer* must submit to the *FSA* two copies of any document required by *LR 19.5.2R* to *LR 19.5.10R* at the same time as the document is issued.

#### Changes to rights

- 19.5.2 R Any change in the rights attaching to *listed securitised derivatives* must be notified to a *RIS* as soon as possible.
- 19.5.3 R An *issuer* must notify a *RIS* as soon as possible of:
- (1) any new issues and guarantee or security related to such new issues; and
  - (2) any change of guarantor or security for the *securitised derivatives* where this information is important for the purposes of assessing the *securities* in question.

#### Annual accounts

- 19.5.4 R Immediately following the publication of its annual accounts an *issuer* must notify a *RIS* of where *securitised derivative* holders can obtain a copy of the annual accounts free of charge.
- 19.5.5 R Where an *issuer* has been granted a dispensation under *LR 19.4.8R* from publishing annual accounts, it must notify a *RIS* once the accounts have been published of where *securitised derivative* holders can obtain a copy of the guarantor's accounts free of charge.

#### Communications with holders

- 19.5.6 R All notices to holders must be made either by:
- (1) publishing an advertisement in at least one national newspaper circulating in the *United Kingdom*;
  - (2) despatch of the notice to the holders registered address; or

(3) sending the notice electronically to the holder's e-mail address.

- 19.5.7 R An *issuer* must notify a *RIS* of all notices to holders of *listed securitised derivatives* no later than the date of despatch or publication.

#### Paying agent

- 19.5.8 R Any change of paying agent within the *United Kingdom* must be notified to a *RIS* as soon as possible.

#### Underlying instruments

- 19.5.9 R An *issuer* must notify a *RIS* 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

- 19.5.10 R An *issuer* must inform the *FSA* immediately if it becomes aware that an *underlying instrument* that is listed or traded outside the *United Kingdom* has been suspended.

**Note:** *LR 5.1.2G(7)* and (8) and *LR 5.4.6G* are of relevance to an *issuer* of *securitised derivatives*.

## LR Appendix 1 Note – Relevant definitions

### LR App 1.1 - Relevant definitions

**Note:** The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

<i>Act</i>	the Financial Services and Markets Act 2000.
<i>admission or admission to listing</i>	<i>admission of securities</i> to the <i>official list</i> .
<i>admission to trading</i>	admission of <i>securities</i> to trading on an <i>RIE's</i> market for <i>listed securities</i> .
<i>advertisement</i>	(as defined in the <i>PD Regulation</i> ) announcements: <ol style="list-style-type: none"><li>(a) relating to a specific offer to the public of securities or to an admission to trading on a regulated market; and</li><li>(b) aiming to specifically promote the potential subscription or acquisition of securities.</li></ol>
<i>applicant</i>	an <i>issuer</i> which is applying for <i>admission of securities</i> .
<i>asset backed security</i>	(as defined in the <i>PD Regulation</i> ) securities which: <ol style="list-style-type: none"><li>(1) represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable there under; or</li><li>(2) are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets.</li></ol>
<i>associate</i>	in relation to a <i>director, substantial shareholder, 50/50 joint venture partner</i> or <i>person exercising significant influence</i> , who is an individual: <ol style="list-style-type: none"><li>(1) that individual's spouse or child (together "the individual's family");</li><li>(2) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an <i>occupational pension scheme</i> or an <i>employees' share scheme</i> which does not, in either case, have the effect of conferring benefits on persons all or most of whom are related parties;</li><li>(3) any <i>company</i> in whose <i>equity securities</i> the individual or any member or members (taken together) of the individual's family or</li></ol>

the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:

- (a) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
- (b) to appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters.

For the purpose of paragraph (3), if more than one *director* of the *listed company*, its *parent undertaking* or any of its *subsidiary undertakings* is interested in the *equity securities* of another *company*, then the interests of those *directors* and their *associates* will be aggregated when determining whether that *company* is an associate of the *director*.

in relation to a *substantial shareholder*, *50/50 joint venture partner* or *person exercising significant influence*, which is a *company*:

- (1) any other *company* which is its *subsidiary undertaking* or *parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;
- (2) any *company* whose *directors* are accustomed to act in accordance with the *substantial shareholder's*, *50/50 joint venture partner's* or *person exercising significant influence's* directions or instructions.

*authorised person*

(in accordance with section 31 of the *Act* (Authorised persons)) one of the following:

- (a) a *person* who has a *Part IV permission* to carry on one or more *regulated activities*;
- (b) an *incoming EEA firm*;
- (c) an *incoming Treaty firm*;
- (d) a *UCITS qualifier*;
- (e) an *ICVC*;
- (f) the *Society of Lloyd's*.

*authorised property unit trust*

a *unit trust scheme* authorised by the *FSA* and which is a *property scheme* or an *umbrella scheme* each separate part of which would qualify as a *property scheme* if it were a separate *authorised unit trust scheme*.

<i>bank</i>	<p>(a) a <i>firm</i> with a <i>Part IV permission</i> which includes <i>accepting deposits</i>, and:</p> <p style="margin-left: 2em;">(i) which is a <i>credit institution</i>; or</p> <p style="margin-left: 2em;">(ii) whose <i>Part IV permission</i> includes a requirement that it comply with <i>IPRU (BANK)</i>;</p> <p style="margin-left: 2em;">but which is not a <i>building society</i>, a <i>friendly society</i> or a <i>credit union</i>;</p> <p>(b) an <i>EEA bank</i> which is a <i>full credit institution</i>.</p>
<i>base prospectus</i>	a base prospectus referred to in <i>PR 2.2.7R</i> .
<i>book value of property</i>	(in relation to a <i>property company</i> ) the value of a <i>property</i> (which is not classified as a net current asset) before the deduction of mortgages or borrowings as shown in the <i>company's</i> latest annual report and accounts.
<i>break fee</i>	a fee payable by a <i>listed company</i> if certain specified events occur which have the effect of materially impeding a transaction or causing the transaction to fail.
<i>building block</i>	(as defined in the <i>PD Regulation</i> ) a list of additional information requirements, not included in one of the schedules, to be added to one or more schedules, as the case may be, depending on the type of instrument and/or transaction for which a prospectus or base prospectus is drawn up.
<i>business day</i>	<p>(1) (in relation to anything done or to be done in (including to be submitted to a place in) any part of the <i>United Kingdom</i>), any <i>day</i> which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in that part of the <i>United Kingdom</i>;</p> <p>(2) (in relation to anything done or to be done by reference to a market outside the <i>United Kingdom</i>) any <i>day</i> on which that market is normally open for business.</p>
<i>Buy-back and Stabilisation Regulation</i>	Commission Regulation (EC) of 22 December 2003 implementing the <i>Market Abuse Directive</i> as regards exemptions for buy-back programmes and stabilisation of financial instruments (No 2273/2003).
<i>CARD</i>	<i>Consolidated Admissions and Reporting Directive</i> .
<i>certificate representing certain securities</i>	<p>the <i>investment</i> specified in article 80 of the <i>Regulated Activities Order</i> (Certificates representing certain securities), which is in summary: a certificate or other instrument which confers contractual or property rights (other than rights consisting of <i>options</i>):</p> <p style="margin-left: 2em;">(a) in respect of any <i>share</i>, <i>debenture</i>, <i>government and public security</i> or <i>warrant</i>) held by a <i>person</i> other than the <i>person</i> on whom the rights are conferred by the certificate or</p>

instrument; and

- (b) the transfer of which may be effected without requiring the consent of that *person*;

but excluding any certificate or other instrument which confers rights in respect of two or more *investments* issued by different *persons* or in respect of two or more different *government and public securities* issued by the same *person*.

*certificate representing debt securities* a *certificate representing certain securities* where the certificate or other instrument confers rights in respect of *debentures* or *government and public securities*.

*certificate representing equity securities* a *certificate representing certain securities* where the certificate or other instrument confers rights in respect of *equity securities*.

*certificate representing shares* a *certificate representing certain securities* where the certificate or other instrument confers rights in respect of *equity shares*.

*CESR recommendations* the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses no 809/2004 published by the Committee of European Securities Regulators.

*charge* (in relation to *securitised derivatives*) means any payment identified under the terms and conditions of the *securitised derivatives*.

*Chinese wall* an arrangement that requires information held by a *person* in the course of carrying on one part of its business to be withheld from, or not to be used for, *persons* with or for whom it acts in the course of carrying on another part of its business.

*circular* any document issued to holders of *listed securities* including notices of meetings but excluding *prospectuses*, *listing particulars*, annual reports and accounts, interim reports, proxy cards and dividend or interest vouchers.

*class* *securities* the rights attaching to which are or will be identical and which form a single issue or issues.

*class 1 acquisition* a *class 1 transaction* that involves an acquisition by the relevant *listed company* or its *subsidiary undertaking*.

*class 1 circular* a *circular* relating to a *class 1 transaction*.

*class 1 disposal* a *class 1 transaction* that consists of a disposal by the relevant *listed*

	<i>company</i> or its <i>subsidiary undertaking</i>
<i>class 1 transaction</i>	a transaction classified as a class 1 transaction under <i>LR 10</i> .
<i>class 2 transaction</i>	a transaction classified as a class 2 transaction under <i>LR 10</i> .
<i>class 3 transaction</i>	a transaction classified as a class 3 transaction under <i>LR 10</i> .
<i>class tests</i>	the tests set out in <i>LR 10 Ann 1</i> (and for certain specialist companies, those tests as modified or added to by <i>LR 10.7</i> ), which are used to determine how a transaction is to be classified for the purposes of the <i>listing rules</i> .
<i>closed-ended</i>	(in relation to investment entities) an <i>investment company</i> which is not an <i>open-ended investment company</i> .
<i>close period</i>	as defined in paragraph 1(a) of the <i>Model Code</i> .
<i>COB</i>	the Conduct of Business Sourcebook.
<i>Combined Code</i>	the corporate governance code issued by the Financial Reporting Council
<i>company</i>	any <i>body corporate</i> .
<i>competent authority</i>	(in relation to the functions referred to in Part VI of the <i>Act</i> ): <ul style="list-style-type: none"> <li>(a) the authority designated under Schedule 8 to the <i>Act</i> (transfer of functions under Part VI (Official listing)) as responsible for performing those functions under the <i>Act</i>; for the time being the <i>FSA</i> in its capacity as such; or</li> <li>(b) an authority exercising functions corresponding to those functions under the laws of another <i>EEA State</i>.</li> </ul>
<i>connected client</i>	in relation to a <i>sponsor</i> or securities house, any client of the <i>sponsor</i> or securities house who is: <ul style="list-style-type: none"> <li>(a) a partner, <i>director</i>, employee or controller (as defined in section 422 of the <i>Act</i>) of the <i>sponsor</i> or securities house or of an undertaking described in paragraph (d);</li> <li>(b) the spouse or child of any individual described in paragraph (a);</li> <li>(c) a <i>person</i> in his capacity as trustee of a private trust (other than a pension scheme or an <i>employee's share scheme</i>) the beneficiaries of which include any <i>person</i> described in paragraph (a) or (b); or</li> </ul>

	(d) an undertaking which in relation to the <i>sponsor</i> or securities house is a group undertaking.
<i>connected person</i>	as defined in section 96B(2) of the <i>Act</i> .
<i>Consolidated Admissions and Reporting Directive</i>	Directive of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities (No 2001/34/EC).
<i>constitution</i>	memorandum and articles of association or equivalent constitutional document.
<i>contingent liability investment</i>	a <i>derivative</i> under the terms of which the <i>client</i> will or may be liable to make further payments (other than <i>charges</i> , and whether or not secured by <i>margin</i> ) when the transaction falls to be completed or upon the earlier <i>closing out</i> of his position.
<i>contract of significance</i>	a contract which represents in amount or value (or annual amount or value) a sum equal to 1% or more, calculated on a <i>group</i> basis where relevant, of: <ul style="list-style-type: none"> <li>(1) in the case of a capital transaction or a transaction of which the principal purpose or effect is the granting of credit, the aggregate of the <i>group's</i> share capital and reserves; or</li> <li>(2) in other cases, the total annual purchases, sales, payments or receipts, as the case may be, of the <i>group</i>.</li> </ul>
<i>convertible securities</i>	a <i>security</i> which is: <ul style="list-style-type: none"> <li>(1) convertible into, or exchangeable for, other <i>securities</i>; or</li> <li>(2) accompanied by a warrant or option to subscribe for or purchase other <i>securities</i>.</li> </ul>
<i>deal</i>	a <i>dealing</i> transaction;
<i>dealing</i>	(in accordance with paragraph 2 of Schedule 2 to the <i>Act</i> (Regulated activities)) buying, selling, subscribing for or underwriting <i>investments</i> or offering or agreeing to do so, either as <i>principal</i> or as agent, including, in the case of an <i>investment</i> which is a <i>contract of insurance</i> , carrying out the contract.
<i>DEC</i>	the Decision making manual.
<i>debt security</i>	debentures, debenture stock, loan stock, bonds, certificates of deposit or any other instrument creating or acknowledging indebtedness.
<i>depository</i>	a <i>person</i> that issues <i>certificates representing certain securities</i> that have

been *admitted to listing* or are the subject of an application for *admission to listing*.

<i>designated professional body</i>	<p>a professional body designated by the Treasury under section 326 of the <i>Act</i> (Designation of professional bodies) for the purposes of Part XX of the <i>Act</i> (Provision of Financial Services by Members of the Professions); as at 21 June 2001 the following professional bodies have been designated in the Financial Services and Markets Act 2000 (Designated Professional Bodies) Order 2001 (SI 2001/1226):</p> <ul style="list-style-type: none"><li>(a) The Law Society (England and Wales);</li><li>(b) The Law Society of Scotland;</li><li>(c) The Law Society of Northern Ireland;</li><li>(d) The Institute of Chartered Accountants in England and Wales;</li><li>(e) The Institute of Chartered Accountants of Scotland;</li><li>(f) The Institute of Chartered Accountants in Ireland;</li><li>(g) The Association of Chartered Certified Accountants;</li><li>(h) The Institute of Actuaries.</li></ul>
<i>director</i>	<p>(in accordance with section 417(1)(a) of the <i>Act</i>) a <i>person</i> occupying in relation to it the position of a director (by whatever name called) and, in relation to an <i>issuer</i> which is not a <i>body corporate</i>, a <i>person</i> with corresponding powers and duties.</p>
<i>disclosure rules</i>	<p>(in accordance with section 73A(3) of the <i>Act</i>) rules relating to the disclosure of information in respect of <i>financial instruments</i> which have been admitted to trading on a <i>regulated market</i> or for which a request for <i>admission to trading</i> on such a market has been made.</p>
<i>document</i>	<p>any piece of recorded information, including (in accordance with section 417(1) of the <i>Act</i> (Interpretation)) information recorded in any form; in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.</p>
<i>document viewing facility</i>	<p>a location identified on the <i>FSA</i> website where the public can inspect documents referred to in the <i>listing rules</i> as being documents to be made available at the document viewing facility.</p>
<i>DR</i>	<p>the sourcebook containing the <i>disclosure rules</i>.</p>
<i>EEA State</i>	<p>(in accordance with paragraph 8 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, as it</p>

has effect for the time being; as at 1 May 2004, the following are the *EEA States*: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden and the *United Kingdom*.

<i>employee</i>	an individual:  (a) who is employed or appointed by a <i>person</i> in connection with that <i>person's</i> business, whether under a contract of service or for services or otherwise; or  (b) whose services, under an arrangement between that <i>person</i> and a third party, are placed at the disposal and under the control of that <i>person</i> ;  but excluding an <i>appointed representative</i> of that <i>person</i> .
<i>employees' share scheme</i>	has the same meaning as in section 743 of the Companies Act 1985.
<i>equity security</i>	<i>equity shares</i> and <i>securities</i> convertible into <i>equity shares</i> .
<i>ENF</i>	the Enforcement manual.
<i>equity share</i>	<i>shares</i> comprised in a <i>company's equity share capital</i> .
<i>equity share capital</i>	(for a <i>company</i> ), its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.
<i>exercise notice</i>	(in relation to <i>securitised derivatives</i> ), a document that notifies the <i>issuer</i> of a holder's intention to exercise its rights under the <i>securitised derivative</i> .
<i>exercise price</i>	(in relation to <i>securitised derivatives</i> ), the price stipulated by the <i>issuer</i> at which the holder can buy or sell the <i>underlying instrument</i> from or to the <i>issuer</i> .
<i>exercise time</i>	(in relation to <i>securitised derivatives</i> ), the time stipulated by the <i>issuer</i> by which the holder must exercise their rights.
<i>expiration date</i>	(in relation to <i>securitised derivatives</i> ), the date stipulated by the <i>issuer</i> on which the holder's rights in respect of the <i>securitised derivative</i> ends.
<i>extraction</i>	(in relation to <i>mineral companies</i> ), includes mining, quarrying or similar activities and the reworking of mine tailings or waste dumps.
<i>final terms</i>	the document containing the final terms of each issue which is intended to

	be <i>listed</i> .
<i>financial information table</i>	financial information presented in a tabular form that covers the reporting period set out in <i>LR</i> 13.5.13R in relation to the entities set out in <i>LR</i> 13.5.14R, and to the extent relevant <i>LR</i> 13.5.15R and <i>LR</i> 13.5.16R.
<i>FSA</i>	the Financial Services Authority.
<i>50/50 joint venture</i>	a joint venture where the two parties to the joint venture have a deadlocked interest in the joint venture.
<i>50/50 joint venture partner</i>	a party to a <i>50/50 joint venture</i> with a <i>listed company</i> or its <i>subsidiary undertaking</i> .
<i>guarantee</i>	(in relation to <i>securitised derivatives</i> ), either: <ul style="list-style-type: none"> <li>(1) a guarantee given in accordance with <i>LR</i> 19.2.2R(3) (if any); or</li> <li>(2) any other guarantee of the issue of <i>securitised derivatives</i>.</li> </ul>
<i>guidance</i>	guidance given by the <i>FSA</i> under the <i>Act</i> .
<i>group</i>	(1) except in <i>LR</i> 6.1.19R, an <i>issuer</i> and its <i>subsidiary undertakings</i> (if any); and <ul style="list-style-type: none"> <li>(2) in <i>LR</i> 6.1.19R, as defined in section 421 of the <i>Act</i>.</li> </ul>
<i>Handbook</i>	the <i>FSA</i> 's Handbook of rules and guidance.
<i>Home Member State</i> or <i>Home State</i>	(as defined in section 102C of the <i>Act</i> ) in relation to an issuer of <i>transferable securities</i> , the <i>EEA State</i> which is the "home Member State" for the purposes of the <i>prospectus directive</i> (which is to be determined in accordance with Article 2.1(m) of that directive).
<i>Host Member State</i> or <i>Host State</i>	(as defined in Article 2.1(n) of the <i>prospectus directive</i> ) the State where an offer to the public is made or admission to trading is sought, when different from the <i>home Member State</i> .
<i>IAS</i>	<i>International Accounting Standards</i> .
<i>inside information</i>	as defined in section 118C of the <i>Act</i> .
<i>insider list</i>	a list of persons with access to <i>inside information</i> as required by <i>DR</i> 2.8.1R.
<i>International Accounting Standards</i>	international accounting standards within the meaning of EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 as adopted from time to time by the European Commission in accordance with that Regulation.

*intermediaries offer* a marketing of *securities* already or not yet in issue, by means of an offer by, or on behalf of, the *issuer* to intermediaries for them to allocate to their own clients.

*in the money* (in relation to *securitised derivatives*):

- (a) where the holder has the right to buy the *underlying instrument* or *instruments* from the *issuer*, when the *settlement price* is greater than the *exercise price*; or
- (b) where the holder has the right to sell the *underlying instrument* or *instruments* to the *issuer*, when the *exercise price* is greater than the *settlement price*.

*investment company* a *company* whose object is to invest its funds wholly or mainly in:

- (a) any of the following *investments* specified in the *Regulated Activities Order*:
  - i. *share* (article 76);
  - ii. *debenture* (article 77);
  - iii. *government and public security* (article 78);
  - iv. *warrant* (article 79);
  - v. *certificate representing certain securities* (article 80);
  - vi. *unit* (article 81);
  - vii. *option* (article 83);
  - viii. *future* (article 84);
  - ix. *contract for differences* (article 85);
  - x. rights to or interests in investments in (i) to (ix) (article 89);
- (b) interests in partnership arrangements, participations, joint ventures and other forms of non-corporate investment provided that the conditions of listing are met; or
- (c) interests in any other property provided that the relevant requirements of this chapter are met;

with the object of spreading investment risk and managing its portfolio for the benefit of its shareholders.

*investment manager* a *person* who, acting only on behalf of a *client*:

- (a) manages *designated investments* in an account or portfolio on a discretionary basis under the terms of a discretionary management agreement; or
- (b) manages *designated investments* in an account or portfolio on a non-discretionary basis under the terms of a non-discretionary management agreement.

<i>investment trust</i>	<p>a <i>company listed</i> in the <i>United Kingdom</i> or another <i>EEA State</i> which:</p> <p>(a) is approved by the Inland Revenue Commissioners under section 842 of the Income and Corporation Taxes Act 1988 (or, in the case of a newly formed <i>company</i>, has declared its intention to conduct its affairs so as to obtain such approval); or</p> <p>(b) is resident in an <i>EEA State</i> other than the <i>United Kingdom</i> and would qualify for such approval if resident and <i>listed</i> in the <i>United Kingdom</i>.</p>
<i>issuer</i>	any <i>company</i> or other legal person or undertaking (including a <i>public sector issuer</i> ), any <i>class</i> of whose <i>securities</i> has been <i>admitted to listing</i> or is the subject of an application for <i>admission to listing</i> .
<i>LR</i>	the sourcebook containing the <i>listing rules</i> .
<i>list of sponsors</i>	the list of <i>sponsors</i> maintained by the <i>FSA</i> in accordance with section 88(3)(a) of the <i>Act</i> .
<i>listed</i>	admitted to the <i>official list</i> maintained by the <i>FSA</i> in accordance with section 74 of the <i>Act</i> .
<i>listed company</i>	a <i>company</i> that has any <i>class</i> of its <i>securities listed</i> .
<i>listing particulars</i>	(in accordance with section 79(2) of the <i>Act</i> ), a document in such form and containing such information as may be specified in <i>listing rules</i> .
<i>listing rules</i>	(in accordance with section 73A(2) of the <i>Act</i> ) rules relating to admission to the <i>official list</i> .
<i>London Stock Exchange</i>	London Stock Exchange Plc.
<i>long-term incentive scheme</i>	<p>any arrangement (other than a retirement benefit plan, a deferred bonus or any other arrangement that is an element of an executive <i>directors</i> remuneration package) which may involve the receipt of any asset (including cash or any <i>security</i>) by a <i>director</i> or <i>employee</i> of the <i>group</i>:</p> <p>(1) which includes one or more conditions in respect of service and/or performance to be satisfied over more than one financial year; and</p> <p>(2) pursuant to which the <i>group</i> may incur (other than in relation to the establishment and administration of the arrangement) either cost or a liability, whether actual or contingent.</p>
<i>MAD</i>	<i>Market Abuse Directive</i> .
<i>Market Abuse</i>	Directive of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (No

<i>Directive</i>	2003/6/EC).
<i>major subsidiary undertaking</i>	a <i>subsidiary undertaking</i> that represents 25% or more of the aggregate of the gross assets or profits (after deducting all charges except taxation) of the <i>group</i> .
<i>member</i>	(in relation to a profession) a <i>person</i> who is entitled to practise that profession and, in practising it, is subject to the rules of the relevant <i>designated professional body</i> , whether or not he is a member of that body.
<i>mineral company</i>	a <i>company</i> or <i>group</i> , whose principal activity is, or is planned to be, the <i>extraction of mineral resources</i> (which may or may not include exploration for <i>mineral resources</i> ).
<i>mineral resources</i>	include metallic and non-metallic ores, mineral concentrates, industrial minerals, construction aggregates, mineral oils, natural gases, hydrocarbons and solid fuels including coal.
<i>mineral expert's report</i>	a report prepared in accordance with the <i>CESR recommendations</i>
<i>Model Code</i>	the Model Code on <i>directors'</i> dealings in <i>securities</i> set out in LR 9 Ann 1.
<i>modified auditors report</i>	an auditor's report: <ul style="list-style-type: none"> <li>(a) in which the auditor's opinion is qualified; or</li> <li>(b) which sets out: <ul style="list-style-type: none"> <li>(i) a problem relating to the business as a going concern; or</li> <li>(ii) a significant uncertainty, the resolution of which is dependent upon future events.</li> </ul> </li> </ul>
<i>net annual rent</i>	(in relation to a <i>property</i> ) the current income or income estimated by the valuer: <ul style="list-style-type: none"> <li>(1) ignoring any special receipts or deductions arising from the <i>property</i>;</li> <li>(2) excluding Value Added Tax and before taxation (including tax on profits and any allowances for interest on capital or loans); and</li> <li>(3) after making deductions for superior rents (but not for amortisation) and any disbursements including, if appropriate, expenses of managing the <i>property</i> and allowances to maintain it in a condition to command its rent.</li> </ul>
<i>new applicant</i>	an <i>applicant</i> that does not have any <i>class</i> of its <i>securities</i> already <i>listed</i> .

<i>non-EEA State</i>	a country or state that is not an <i>EEA State</i> .
<i>OECD state guaranteed issuer</i>	an <i>issuer</i> of <i>debt securities</i> whose obligations in relation to those <i>securities</i> have been guaranteed by a member state of the <i>OECD</i> .
<i>offer</i>	an <i>offer of transferable securities to the public</i> .
<i>offer of transferable securities to the public</i>	<p>(as defined in section 102B of the <i>Act</i>), in summary:</p> <p>(a) a communication to any person which presents sufficient information on:</p> <p style="margin-left: 40px;">(i) the transferable securities to be offered, and</p> <p style="margin-left: 40px;">(ii) the terms on which they are offered,</p> <p style="margin-left: 40px;">to enable an investor to decide to buy or subscribe for the securities in question;</p> <p>(b) which is made in any form or by any means;</p> <p>(c) including the placing of securities through a financial intermediary;</p> <p>(d) but not including a communication in connection with trading on:</p> <p style="margin-left: 40px;">(i) a regulated market;</p> <p style="margin-left: 40px;">(ii) a multilateral trading facility; or</p> <p style="margin-left: 40px;">(iii) any market prescribed by an order under section 130A of the <i>Act</i>.</p> <p><b>Note:</b> This is only a summary, to see the full text of the definition, readers should consult section 102B of the <i>Act</i>.</p>
<i>offer for sale</i>	an invitation to the public by, or on behalf of, a third party to purchase <i>securities</i> of the <i>issuer</i> already in issue or allotted (and may be in the form of an invitation to tender at or above a stated minimum price).
<i>offer for subscription</i>	an invitation to the public by, or on behalf of, an <i>issuer</i> to subscribe for <i>securities</i> of the <i>issuer</i> not yet in issue or allotted (and may be in the form of an invitation to tender at or above a stated minimum price).
<i>offeror</i>	(a) in <i>LR 5.2.10R</i> , an offeror as defined in the <i>Takeover Code</i> ; and

	(b) elsewhere in <i>LR</i> , a person who makes an <i>offer of transferable securities to the public</i> .
<i>official list</i>	the list maintained by the <i>FSA</i> in accordance with section 74(1) of the <i>Act</i> for the purposes of Part VI of the <i>Act</i> .
<i>open ended investment company</i>	as defined in section 236 of the <i>Act</i> (Open-ended investment companies).
<i>open offer</i>	an invitation to existing <i>securities</i> holders to subscribe or purchase <i>securities</i> in proportion to their holdings, which is not made by means of a renounceable letter (or other negotiable document).
<i>option</i>	the <i>investment</i> , specified in article 83 of the <i>Regulated Activities Order</i> (Options), which is an option to acquire or dispose of: <ul style="list-style-type: none"> <li>(a) a <i>designated investment</i> (other than an option); or</li> <li>(b) currency of the <i>United Kingdom</i> or of any other country or territory; or</li> <li>(c) palladium, platinum, gold or silver; or</li> <li>(d) an option to acquire or dispose of an option specified in (a), (b) or (c).</li> </ul>
<i>overseas</i>	outside the <i>United Kingdom</i> .
<i>overseas investment exchange</i>	an investment exchange which has neither its head office nor its registered office in the <i>United Kingdom</i> .
<i>overseas company</i>	a <i>company</i> incorporated outside the <i>United Kingdom</i> .
<i>PD</i>	<i>prospectus directive</i> .
<i>PD Regulation</i>	Regulation number 809/2004 of the European Commission
<i>PR</i>	the sourcebook containing the <i>Prospectus Rules</i> .
<i>parent undertaking</i>	as defined in section 258 of the Companies Act 1985.
<i>Part 6 rules</i>	(in accordance with section 73A(1) of the <i>Act</i> ) <i>rules</i> made for the purposes of Part 6 of the <i>Act</i> .
<i>percentage ratio</i>	(in relation to a transaction) the figure, expressed as a percentage, that results from applying a calculation under a <i>class test</i> to the transaction.

<i>person</i>	(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a <i>partnership</i> ).
<i>person discharging managerial responsibilities</i>	as defined in section 96B(1) of the <i>Act</i> .
<i>person exercising significant influence</i>	in relation to a <i>listed company</i> , a <i>person</i> or entity which exercises significant influence over that <i>listed company</i> (other than a <i>50/50 joint venture partner</i> ).
<i>placing</i>	a marketing of <i>securities</i> already in issue but not <i>listed</i> or not yet in issue, to specified <i>persons</i> or clients of the <i>sponsor</i> or any securities house assisting in the placing, which does not involve an offer to the public or to existing holders of the <i>issuer's securities</i> generally.
<i>preference share</i>	a <i>share</i> conferring preference as to income or return of capital which is not convertible into an <i>equity share</i> and does not form part of the <i>equity share capital</i> of a <i>company</i> .
<i>primary listed issuer</i>	an <i>issuer</i> with a <i>primary listing</i> of its <i>securities</i> .
<i>primary listing</i>	a <i>listing</i> by the <i>FSA</i> by virtue of which the <i>issuer</i> is subject to the full requirements of the <i>listing rules</i> .
<i>probable reserves</i>	<p>(1) in respect of <i>mineral companies</i> primarily involved in the <i>extraction</i> of oil and gas resources, those reserves which are not yet <i>proven</i> but which, on the available evidence and taking into account technical and economic factors, have a better than 50% chance of being produced; and</p> <p>(2) in respect of <i>mineral companies</i> other than those primarily involved in the <i>extraction</i> of oil and gas resources, those <i>measured</i> and/or <i>indicated mineral resources</i>, which are not yet <i>proven</i> but of which detailed technical and economic studies have demonstrated that <i>extraction</i> can be justified at the time of the determination and under specified economic conditions.</p>
<i>profit estimate</i>	(as defined in the <i>PD Regulation</i> ) a profit forecast for a financial period which has expired and for which results have not yet been published.
<i>profit forecast</i>	(as defined in the <i>PD Regulation</i> ) a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even

	if no particular figure is mentioned and the word "profit" is not used.
<i>prohibited period</i>	as defined in the <i>Model Code</i> .
<i>property</i>	freehold, heritable or leasehold property.
<i>property company</i>	a <i>company</i> primarily engaged in <i>property</i> activities including: <ol style="list-style-type: none"> <li>(1) the holding of <i>properties</i> (directly or indirectly) for letting and retention as investments;</li> <li>(2) the development of <i>properties</i> for letting and retention as investments;</li> <li>(3) the purchase and development of <i>properties</i> for subsequent sale; or</li> <li>(4) the purchase of land for development <i>properties</i> for retention as investments.</li> </ol>
<i>property investment company</i>	an <i>investment company</i> or an <i>investment trust</i> which invests or intends to invests 20% or more of its gross assets directly in <i>property</i> and satisfies the requirements of LR 15.5 in addition to any other relevant requirements of LR 15.
<i>property valuation report</i>	a <i>property</i> valuation report prepared by an independent expert in accordance with the Appraisal and Valuation Standards (5 <sup>th</sup> edition) issued by the Royal Institution of Chartered Surveyors.
<i>prospectus</i>	a prospectus required under the <i>prospectus directive</i> .
<i>prospectus directive</i>	the Directive of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (No 2003/71/EC).
<i>prospectus rules</i>	(as defined in section 73A(4) of the <i>Act</i> ) <i>rules</i> expressed to relate to transferable securities.
<i>proven reserves</i>	<ol style="list-style-type: none"> <li>(1) in respect of <i>mineral companies</i> primarily involved in the <i>extraction</i> of oil and gas resources, those reserves which, on the available evidence and taking into account technical and economic factors, have a better than 90% chance of being produced; and</li> <li>(2) in respect of <i>mineral companies</i> other than those primarily involved in the <i>extraction</i> of oil and gas resources, those <i>measured mineral resources</i> of which detailed technical and economic studies have demonstrated that <i>extraction</i> can be justified at the time of the determination, and under specified economic conditions.</li> </ol>
<i>public international</i>	the African Development bank, the Asian Development Bank, the Caribbean Development Bank, the Council of Europe Resettlement Fund,

<i>body</i>	the European Atomic Energy Community, the European Bank for Reconstruction and Development, the European Coal and Steel Community, the European Company for the Financing of Railroad Stock, the European Economic Community, the European Investment Bank, the Inter-American Development bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Monetary Fund, the Nordic Investment bank.
<i>public sector issuer</i>	states and their regional and local authorities, <i>state monopolies</i> , <i>state finance organisations</i> , <i>public international bodies</i> , statutory bodies and <i>OECD state guaranteed issuers</i> .
<i>registration document</i>	a registration document referred to in <i>PR 2.2.2R</i> .
<i>recognised scheme</i>	a <i>scheme</i> recognised under: <ul style="list-style-type: none"> <li>(a) section 264 of the <i>Act</i> (Schemes constituted in other EEA States); or</li> <li>(b) section 270 of the <i>Act</i> (Schemes authorised in designated countries or territories); or</li> <li>(c) section 272 of the <i>Act</i> (Individually recognised overseas schemes).</li> </ul>
<i>Regulated Activities Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).
<i>regulated market</i>	<ul style="list-style-type: none"> <li>(a) (as defined in article 1 of the <i>ISD</i>) a market for the instruments listed in Section B of the Annex to the <i>ISD</i> which: <ul style="list-style-type: none"> <li>(i) appears on the list of such markets drawn up by the market's <i>Home State</i> as required by article 16 of the <i>ISD</i>;</li> <li>(ii) functions regularly;</li> <li>(iii) is characterised by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market; and</li> <li>(iv) requires compliance with all the reporting and transparency requirements laid down by articles 20 and 21</li> </ul> </li> </ul>

of the *ISD*;

(see Tables 1 and 2 of *SUP 17 Ann 5G* for an indicative list of these markets); and

- (b) a market notified under article 16 of the *ISD*, as included in point 30b of Annex IX to the Agreement of the European Economic Area, to the Standing Committee of the EFTA States as defined in that agreement;

(see Tables 3 and 4 of *SUP 17 Ann 5G* for an indicative list of these markets).

*regulatory information service or RIS* a Regulatory Information Service that is approved by the *FSA* as meeting the Primary Information Provider criteria and that is on the list of Regulatory Information Services maintained by the *FSA*.

*related party* as defined in *LR 11.1.4R*.

*related party circular* a *circular* relating to a *related party transaction*.

*related party transaction* as defined in *LR 11.1.5R*.

*relevant securities* has the same meaning as in section 80 of the Companies Act 1985.

*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 the *listing rules*, is required to be admitted to listing with a clear statement on any disclosure document that the issue is intended for a purchase by only investors who are particularly knowledgeable in investment matters.

*reverse takeover* a transaction classified as a *reverse takeover* under *LR 10*.

*rights issue* an offer to existing *security* holders to subscribe or purchase further *securities* in proportion to their holdings made by means of the issue of a renounceable letter (or other negotiable document) which may be traded (as "nil paid" rights) for a period before payment for the *securities* is due.

*RIE* *recognised investment exchange*.

*rule* (in accordance with section 417(1) of the *Act* (Definitions)) a rule made by the *FSA* under the *Act*, including:

- (a) a *Principle*; and

(b) an *evidential provision*.

<i>schedule</i>	(as defined in the <i>PD Regulation</i> ) a list of minimum information requirements adapted to the particular nature of the different types of <i>issuers</i> and/or the different <i>securities</i> involved.
<i>scientific research based company</i>	a <i>company</i> primarily involved in the laboratory research and development of chemical or biological products or processes or any other similar innovative science based company.
<i>secondary listed issuer</i>	an <i>issuer</i> with a <i>secondary listing</i> of its <i>equity securities</i> .
<i>secondary listing</i>	a <i>listing</i> by the <i>FSA</i> of <i>equity securities</i> of an <i>overseas company</i> which is not a <i>primary listing</i> .
<i>securitised derivative</i>	an <i>option</i> or <i>contract for differences</i> which, in either case, is <i>listed</i> under <i>LR 19</i> (including such an <i>option</i> or <i>contract for differences</i> which is also a <i>debenture</i> ).
<i>securities note</i>	a securities note referred to in <i>PR 2.2.2R</i> .
<i>security</i>	(in accordance with section 102A of the <i>Act</i> ) anything which has been, or may be admitted to the <i>official list</i> .
<i>settlement price</i>	(in relation to <i>securitised derivatives</i> ), the reference price or prices of the <i>underlying instrument</i> or <i>instruments</i> stipulated by the <i>issuer</i> for the purposes of calculating its obligations to the holder.
<i>shadow director</i>	as in sub-paragraph (b) of the definition of director in section 417(1) of the <i>Act</i> .
<i>share</i>	(in accordance with section 744 of the Companies Act 1985) a share in the share capital of a <i>company</i> , and includes:  (a) stock (except where a distinction between shares and stock is express or implied); and  (b) <i>preference shares</i> .
<i>specialist investor</i>	an investor who is particularly knowledgeable in investment matters.
<i>specialist securities</i>	<i>securities</i> which, because of their nature, are normally bought and traded by a limited number of investors who are particularly knowledgeable in investment matters.
<i>specialist securitised derivative</i>	a <i>securitised derivative</i> which because of its nature is normally bought and traded by a limited number of investors who are particularly knowledgeable in investment matters.

*specified investment*

any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments):

- (a) *deposit* (article 74);
- (aa) *electronic money* (article 74A);
- (b) *contract of insurance* (article 75); for the purposes of the permission regime, this is sub-divided into:
  - (i) *general insurance contract*;
  - (ii) *long-term insurance contract*;and then further sub-divided into classes of *contract of insurance*;
- (c) *share* (article 76);
- (d) *debenture* (article 77);
- (e) *government and public security* (article 78);
- (f) *warrant* (article 79);
- (g) *certificate representing certain securities* (article 80);
- (h) *unit* (article 81);
- (i) *stakeholder pension scheme* (article 82);
- (j) *option* (article 83); for the purposes of the *permission* regime, this is sub-divided into:
  - (i) *option* (excluding a *commodity option* and an *option* on a *commodity future*);
  - (ii) *commodity option* and an *option* on a *commodity future*;
- (k) *future* (article 84); for the purposes of the *permission* regime, this is sub-divided into:
  - (i) *future* (excluding a *commodity future* and a *rolling spot forex contract*);
  - (ii) *commodity future*;
  - (iii) *rolling spot forex contract*;
- (l) *contract for differences* (article 85); for the purposes of the *permission* regime, this is sub-divided into:
  - (i) *contract for differences* (excluding a *spread bet* and a *rolling*

	<i>spot forex contract</i> );
	(ii) <i>spread bet</i> ;
	(iii) <i>rolling spot forex contract</i> ;
	(m) <i>underwriting capacity of a Lloyd's syndicate</i> (article 86(1));
	(n) <i>membership of a Lloyd's syndicate</i> (article 86(2));
	(o) <i>funeral plan contract</i> (article 87);
	(oa) <i>regulated mortgage contract</i> (article 61(3));
	(p) <i>rights to or interests in investments</i> (article 89).
<i>sponsor</i>	a <i>person</i> approved, under section 88 of the <i>Act</i> by the <i>FSA</i> , as a sponsor.
<i>state finance organisation</i>	a legal person other than a <i>company</i> : <ul style="list-style-type: none"> <li>(1) which is a national of an <i>EEA State</i>;</li> <li>(2) which is set up by or pursuant to a special law;</li> <li>(3) whose activities are governed by that law and consist solely of raising funds under state control through the issue of <i>debt securities</i>;</li> <li>(4) which is financed by means of the resources they have raised and resources provided by the <i>EEA State</i>; and</li> <li>(5) the <i>debt securities</i> issued by it are considered by the law of the relevant <i>EEA State</i> as securities issued or guaranteed by that state.</li> </ul>
<i>state monopoly</i>	a <i>company</i> or other legal person which is a national of an <i>EEA State</i> and which: <ul style="list-style-type: none"> <li>(1) in carrying on its business benefits from a monopoly right granted by an <i>EEA state</i>; and</li> <li>(2) is set up by or pursuant to a special law or whose borrowings are unconditionally and irrevocably guaranteed by an <i>EEA state</i> or one of the federated states of an <i>EEA state</i>.</li> </ul>
<i>subsidiary undertaking</i>	as defined in section 258 of the Companies Act 1985.
<i>substantial shareholder</i>	any <i>person</i> (excluding a bare trustee) who is entitled to exercise or to control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the <i>company</i> (or any other <i>company</i> which is its <i>subsidiary undertaking</i> or <i>parent undertaking</i> or is a

	fellow <i>subsidiary undertaking</i> of its <i>parent undertaking</i> ).
<i>summary</i>	(in relation to a <i>prospectus</i> ) the <i>summary</i> included in the <i>prospectus</i> .
<i>SUP</i>	the Supervision manual.
<i>supplementary listing particulars</i>	(in accordance with section 81(1) of the <i>Act</i> ), supplementary listing particulars containing details of the change or new matter.
<i>supplementary prospectus</i>	a supplementary prospectus containing details of a new factor, mistake or inaccuracy.
<i>Takeover Code</i>	the City Code on Takeovers and Mergers issued by the <i>Takeover Panel</i> .
<i>target</i>	the subject of a <i>class 1 transaction</i> .
<i>tender offer</i>	an offer by a <i>company</i> to purchase all or some of a <i>class</i> of its <i>listed equity securities</i> or <i>preference shares</i> at a maximum or fixed price (that may be established by means of a formula) that is: <ol style="list-style-type: none"> <li>(1) communicated to all holders of that <i>class</i> by means of a <i>circular</i> or advertisement in two national newspapers;</li> <li>(2) open to all holders of that <i>class</i> on the same terms for at least 7 days; and</li> <li>(3) open for acceptance by all holders of that <i>class</i> pro rata to their existing holdings.</li> </ol>
<i>transferable security</i>	(as defined in section 102A of the <i>Act</i> ) anything which is a transferable security for the purposes of the <i>investment services directive</i> , other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.
<i>treasury shares</i>	qualifying shares to which sections 162A to 162G of the Companies Act 1985 apply.
<i>trust deed</i>	a trust deed or equivalent document securing or constituting <i>debt securities</i> .
<i>UK</i>	<i>United Kingdom</i> .
<i>underlying instrument</i>	(in relation to <i>securitised derivatives</i> ) means either: <ol style="list-style-type: none"> <li>(1) if the <i>securitised derivative</i> is an <i>option</i> or <i>debt security</i> with the characteristics of an <i>option</i>, any of the underlying investments listed in article 83 of the <i>Regulated Activities Order</i>; or</li> <li>(2) if the <i>securitised derivative</i> is a <i>contract for differences</i> or <i>debt security</i> with the characteristics of a <i>contract for differences</i>, any factor by</li> </ol>

reference to which a profit or loss under article 85 of the *Regulated Activities Order* can be calculated.

*unrecognised scheme* a *collective investment scheme* which is neither a *recognised scheme* nor a scheme that is constituted as an *authorised unit trust scheme*.

*vendor consideration placing* a marketing, by or on behalf of vendors, of *securities* that have been allotted as consideration for an acquisition.

*venture capital trust* a *company* which is, or which is seeking to become, approved as a venture capital trust under section 842AA of the Income and Corporation Taxes Act 1988.

*warrant* the *investment*, specified in article 79 of the *Regulated Activities Order* (Instruments giving entitlements to investments), which is in summary: a warrant or other instrument entitling the holder to subscribe for a *share*, *debenture* or *government and public security*.

LR Appendix 2R – Fees and financial penalty income

LR App 2.1 - Fees and financial penalty income

2.1.1R

Fee type	Fee amount
Annual fees for the period 1 April 2005 to 31 March 2006	
<p>Annual Issuer Fees – all <i>listed issuers</i> of <i>shares</i>, depositary receipts and <i>securitised derivatives</i>. This fee represents the total annual fee for a <i>listed issuer</i> – no additional annual fee is due under the <i>disclosure rules</i>.</p>	<p>(1) For all <i>issuers</i> of <i>securitised derivatives</i>, depositary receipts and global depositary receipts the fees payable are set out in Table 1.</p> <p>(2) For all other <i>issuers</i> fees to be determined according to market capitalisation as set out in Table 2. The fee is calculated as follows:</p> <p>(a) the relevant minimum fee; plus</p> <p>(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche.</p> <p>(3) Notwithstanding (2), <i>overseas issuers</i> with a <i>listing</i> of <i>equity securities</i> which is not a <i>primary listing</i> will only pay 80% of the fee otherwise payable under (2).</p>
Annual Sponsor Fees	£10,000
Annual fees are charged in annual cycles beginning on 1 April of a year and ending on 31 March of the following year. An <i>issuer</i> or <i>sponsor</i> which becomes subject to the <i>listing rules</i> during the course of the financial year must pay a proportion of the annual fee which is calculated in accordance with the following Table 3.	

Table 1

Annual fees for issuers of securitised derivatives, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers</i> of <i>securitised derivatives</i>	£3,000
<i>Issuers</i> of depositary receipts and global depositary receipts	£3,600

Table 2

Tiered annual fees for all other issuers

Fee payable

Minimum fee (£) 3,000

£ million of Market Capitalisation	Fee (£/£m or part £m of Market Capitalisation)
0 – 100	0
>100 – 250	11.81
>250 – 1,000	4.72
>1,000 – 5,000	1.57
>5,000 – 25,000	0.0295
>25,000	0.0079

Table 3

Quarter in which the <i>issuer/sponsor</i> becomes subject to the <i>Listing Rules</i>	Proportion payable
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%

Annex 2

Fee type

Fee amount

Transaction vetting fees for the period 1 July 2005 to 31 March 2006		
Transaction vetting fees relate to specific events or transactions that an <i>issuer</i> might be involved in during the year and fall due when documentation is first submitted to the <i>FSA</i> .		
Eligibility	New applicants	£1,300
Category 1	<i>Class 1 transactions</i>	£5,700
Category 2	<i>Listing particulars for specialist security issuers (including depositary receipts)</i>	£2,500
Category 3	All other vetting only transactions	£2,500
Category 4	<i>Supplementary listing particulars</i>	£500

Annex 3

Part 1

Fee type

Fee amount

Application Fees for the period 1 July 2005 to 31 March 2006	
Application for <i>listing</i> An application fee becomes payable when an <i>issuer</i> makes an application for <i>listing</i> .	£225
Tranches from debt issuance programmes and <i>securitised derivative</i> tranches	£100

An upfront fee is required per tranche for draw downs in the following 12 months. Payment in advance for more than 75 draw downs will attract a 10% discount.	
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Part 2

Sponsor Application Fees for the period 1 July 2005 to 31 March 2006	
Fee type	Fee amount
Application for approval as <i>sponsor</i> An application fee becomes payable when a <i>person</i> applies for approval as a <i>sponsor</i> .	£4,000

Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.
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Financial penalty income

- G Section 100 of the *Act* (Penalties) provides that the *FSA* must prepare and operate a scheme for ensuring that the amounts paid to it as penalties are applied for the benefit of *issuers*.
- G The *FSA* will allow a permitted deduction from the annual fees of an amount equal to that *issuer's* share of the amounts paid to the *FSA* by way of penalties.
- G The *FSA* will notify *issuers* annually of the amount of the permitted deduction for each relevant year.

LR Appendix 3R – List of Regulatory Information Services

LR App 3R

The following are approved *Regulatory Information Services*:

Business Wire Regulatory Disclosure provided by Business Wire

FirstSight provided by Romeike

Announce provided by Hugin ASA

News Release Express provided by CCNMatthews UK Limited

PR Newswire Disclose provided by PRNewswire

RNS provided by the London Stock Exchange

## Transitional Provisions for Sponsors

(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	LR 8.6.2R	R	<p>(1) A <i>person</i> that is approved as a <i>sponsor</i> and whose name is included on the <i>list of sponsors</i> immediately prior to LR 8.6 coming into force need not apply to the <i>FSA</i> under LR 8.6.2R if it:</p> <p>(a) has reasonable grounds for concluding that it complies with LR 8.6; and</p> <p>(b) notifies the <i>FSA</i> of this in writing.</p>	From 1 July 2005	1 July 2005
			<p>(2) The notification required by paragraph (1)(b) must:</p> <p>(a) provide the same information that is required by the Sponsor Firm Application Form and the Sponsor Employee Application Form; and</p> <p>(b) be submitted to the <i>FSA</i> by no later than the 31 July, 2005.</p>		
2		G	A <i>person</i> may use the Sponsor Firm Application Form and the Sponsor Employee Application Form to provide the information required by TR 1(2)(a).		

3		G	<p>If a <i>person</i> that is approved as a <i>sponsor</i> and whose name is included on the <i>list of sponsors</i> immediately prior to these <i>rules</i> coming into force:</p> <p>(a) does not notify the <i>FSA</i> of its compliance with <i>LR</i> 8.6 in accordance with TR 1(2);</p> <p>(b) and it wants to provide services as a <i>sponsor</i> and be included on the list of <i>sponsors</i>;</p> <p>it will need to apply to the <i>FSA</i> in accordance with <i>LR</i> 8.6.2R.</p>		

## PROSPECTUS RULES INSTRUMENT 2005

### 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 73A (Part 6 rules);
  - (2) section 84 (Matters which may be dealt with by prospectus rules);
  - (3) section 85(5) and (6) (Prohibition of dealing etc in transferable securities without approved prospectus);
  - (4) section 99 (Fees);
  - (5) section 101 (Listing rules: general provisions);
  - (6) section 157(1) (Guidance); and
  - (7) Schedule 7 (The Authority as Competent Authority for Part VI).

### Commencement

- B. This instrument comes into force on 1 July 2005.

### Amendments to the Handbook

- C. The Annex to this instrument inserts into the Handbook the new Prospectus Rules sourcebook (PR).

### Notes and Non-FSA legislative text

- D. (1) In the Annex to this instrument, the "notes" (indicated by “**Note:**”) and legislative text, marked "EU" or "UK" in the margin, are included for the convenience of readers but do not form part of the legislative text made by the Financial Services Authority.
- (2) Although European Union Legislation is reproduced in this instrument, only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

### Citation

- E. This instrument may be cited as the Prospectus Rules Instrument 2005.

By order of the Board  
16 June 2005

## Annex

### The Prospectus Rules Sourcebook

In this Annex all text is new and is not underlined. Insert the following new sourcebook, Prospectus Rules (PR).

1 Preliminary

1.1 Preliminary

Application

1.1.1 R (1) *PR 2, PR 3, PR 4.2, PR 5.1, PR 5.3.1R to PR5.3.3G and PR 5.5* only apply (subject to paragraph (2)) in relation to:

(a) an *offer*, or a request for *admission to trading of transferable securities*, in respect of which section 85 of the *Act* applies (other than an exempt *offer* under section 86 of the *Act*) and in relation to which the *United Kingdom* is the *Home State*;

(b) an *offer*, or a request for *admission to trading of transferable securities*, where under section 87 of the *Act* a *person* has elected to have a *prospectus* in relation to the *transferable securities*; and

(c) an *offer*, or a request for *admission to trading of transferable securities*, not referred to in paragraphs (a) or (b), in relation to which the *United Kingdom* is the *Home State*.

(2) *PR 2, PR 3, PR 4.2, PR 5.3.1R to PR 5.3.3G* also apply in relation to an *offer*, or a request for *admission to trading of transferable securities*, where another competent authority of an *EEA State* has transferred the function of approving the *prospectus* to the *FSA*.

FSA exercising functions as competent authority

1.1.2 G In relation to the *prospectus rules*, the *FSA* is exercising functions as the competent authority under Part 6 of the *Act* (see section 72(1) of the *Act*).

**Note:** When exercising functions as the competent authority under Part 6 of the *Act*, the *FSA* may use the name the UK Listing Authority.

Persons responsible for complying with rules

1.1.3 R A *person* must comply with all *rules* that are specified as being applicable to them.

1.1.4 R If a *rule* does not specify who is responsible for complying with it, then the following *persons* must comply with it:

- (1) in relation to an *offer*:
  - (a) the *issuer*; and
  - (b) the *offeror* (if this is a *person* other than the *issuer*);
- (2) in relation to a request for the *admission to trading of transferable securities*:
  - (a) the *issuer*; and
  - (b) the *person* requesting *admission to trading* (if this is a *person* other than the *issuer*).

1.1.5 R An *issuer* is not responsible under PR 1.1.4R(1)(a) or (2)(a) if it has not authorised or made the *offer* or the request for the *admission to trading*.

#### Provisions implementing the prospectus directive

1.1.6 G The following documents need to be considered together to determine the effect of the *prospectus directive*:

- (1) Part 6 of the *Act*;
- (2) the *PD Regulation*;
- (3) these *rules*; and
- (4) the *CESR recommendations*.

1.1.7 G To assist readers, extracts from the *Act* and the *PD Regulation* are reproduced in the text of these *rules*. Readers should however consult those documents themselves to see the full text.

#### CESR recommendations

1.1.8 G In determining whether Part 6 of the *Act*, these *rules* and the *PD Regulation* has been complied with, the *FSA* will take into account whether a *person* has complied with the *CESR recommendations*.

#### Application of rules to supplementary prospectuses

1.1.9 R Unless the context otherwise requires, a reference in these *rules* to a *prospectus* includes a *supplementary prospectus*.

## 1.2 Requirement for a prospectus and exemptions

### Requirement for a prospectus

1.2.1 UK Sections 85 and 86 of the *Act* provide for when a *prospectus* approved by the *FSA* will be required:

- 85 (1) It is unlawful for transferable securities to which this subsection applies to be offered to the public in the United Kingdom unless an approved prospectus has been made available to the public before the offer is made.
- (2) It is unlawful to request the admission of transferable securities to which this subsection applies to trading on a regulated market situated or operating in the United Kingdom unless an approved prospectus has been made available to the public before the request is made.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (4) A contravention of subsection (1) or (2) is actionable, at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (5) Subsection (1) applies to all transferable securities other than –
- (a) those listed in Schedule 11A;
  - (b) such other transferable securities as may be specified in prospectus rules [see *PR 1.2.2R*].
- (6) Subsection (2) applies to all transferable securities other than –
- (a) those listed in Part 1 of Schedule 11A;
  - (b) such other transferable securities as may be specified in prospectus rules [see *PR 1.2.3R*].
- (7) "Approved prospectus" means, in relation to transferable securities to which this section applies, a prospectus approved by the competent authority of the home State in relation to the issuer of the securities.

86 Exempt offers to the public

- (1) A person does not contravene section 85(1) if –
- (a) the offer is made to or directed at qualified investors only;
  - (b) the offer is made to or directed at fewer than 100 persons,

other than qualified investors, per EEA State;

- (c) the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least 50,000 euros (or an equivalent amount);
- (d) the transferable securities being offered are denominated in amounts of at least 50,000 euros (or equivalent amounts); or
- (e) the total consideration for the transferable securities being offered cannot exceed 100,000 euros (or an equivalent amount).

(2) Where-

- (a) a person who is not a qualified investor ("the client") has engaged a qualified investor falling within Article 2.1(e)(i) of the prospectus directive to act as his agent; and
- (b) the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client's behalf without reference to the client,

an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.

(3) For the purposes of subsection (1)(b), the making of an offer of transferable securities to –

- (a) trustees of a trust,
- (b) members of a partnership in their capacity as such, or
- (c) two or more persons jointly,

is to be treated as the making of an offer to a single person.

(4) In determining whether subsection (1)(e) is satisfied in relation to an offer ("offer A"), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which –

- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
- (b) had previously satisfied subsection (1)(e).

(5) For the purposes of this section, an amount (in relation to an amount denominated in euros) is an "equivalent amount" if it is an amount of equal value denominated wholly or partly in another currency or unit

of account.

- (6) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.
- (7) "Qualified investor" means –
  - (a) an entity falling within Article 2.1(e)(i), (ii) or (iii) of the prospectus directive;
  - (b) an investor registered on the register maintained by the [FSA] under section 87R;
  - (c) an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the purposes of the prospectus directive.

Exempt securities – offers of securities to the public

- 1.2.2 R In accordance with section 85(5)(b) of the *Act*, section 85(1) of the *Act* does not apply to *offers* of the following types of *transferable securities*:
- (1) shares issued in substitution for shares of the same class already issued, if the issue of the new shares does not involve any increase in the issued capital;
  - (2) *transferable securities* offered in connection with a takeover by means of an exchange offer, if a document is available containing information which is regarded by the *FSA* as being equivalent to that of the *prospectus*, taking into account the requirements of Community legislation;
  - (3) *transferable securities* offered, allotted or to be allotted in connection with a merger, if a document is available containing information which is regarded by the *FSA* as being equivalent to that of the *prospectus*, taking into account the requirements of Community legislation;
  - (4) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which the dividends are paid, if a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
  - (5) *transferable securities* offered, allotted or to be allotted to existing or former directors or employees by their employer which has *transferable securities* already *admitted to trading* or by an affiliated undertaking, if a document is made available containing information on the number and nature of the *transferable securities* and the

reasons for and details of the offer. [**Note:** article 4(1) *PD*]

Exempt securities – admission to trading on a regulated market

- 1.2.3 R In accordance with section 85(6)(b) of the *Act*, section 85(2) of the *Act* does not apply to the *admission to trading* of the following types of *transferable securities*:
- (1) shares representing, over a period of 12 months, less than 10 per cent of the number of shares of the same class already *admitted to trading* on the same *regulated market*;
  - (2) shares issued in substitution for shares of the same class already *admitted to trading* on the same *regulated market*, if the issue of the shares does not involve any increase in the issued capital;
  - (3) *transferable securities* offered in connection with a takeover by means of an exchange offer, if a document is available containing information which is regarded by the *FSA* as being equivalent to that of the *prospectus*, taking into account the requirements of Community legislation;
  - (4) *transferable securities* offered, allotted or to be allotted in connection with a merger, if a document is available containing information which is regarded by the *FSA* as being equivalent to that of the *prospectus*, taking into account the requirements of Community legislation;
  - (5) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which the dividends are paid, if the shares are of the same class as the shares already *admitted to trading* on the same *regulated market* and if a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
  - (6) *transferable securities* offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, if the *transferable securities* are of the same class as the *transferable securities* already *admitted to trading* on the same *regulated market* and if a document is made available containing information on the number and nature of the *transferable securities* and the reasons for and detail of the offer;
  - (7) shares resulting from the conversion or exchange of other *transferable securities* or from the exercise of the rights conferred by other *transferable securities*, if the shares are of the same class as the shares already *admitted to trading* on the same *regulated market*;
  - (8) *transferable securities* already *admitted to trading* on another *regulated market*, on the following conditions:

- (a) that these *transferable securities*, or *transferable securities* of the same class, have been *admitted to trading* on that other *regulated market* for more than 18 months;
- (b) that, for *transferable securities* first *admitted to trading* after the 31 December 2003, the *admission to trading* on that other *regulated market* was associated with an approved *prospectus* made available to the public in accordance with Article 14 of the *prospectus directive*;
- (c) that, except where (b) applies, for *transferable securities* first admitted to listing after 30 June 1983, listing particulars were approved in accordance with the requirements of Directive 80/390/EEC or Directive 2001/34/EC;
- (d) that the ongoing obligations for trading on that other *regulated market* have been fulfilled;
- (e) that the *person* requesting the *admission to trading* under this exemption makes a summary document available to the public in a language accepted by the competent authority of the *EEA State* of the *regulated market* where admission is sought;
- (f) that the summary document referred to in paragraph (e) is made available to the public in the *EEA State* of the *regulated market* where *admission to trading* is sought in the manner set out in Article 14 of the *prospectus directive*; and
- (g) that the contents of the summary document comply with article 5(2) of the *prospectus directive*. Also the document must state where the most recent *prospectus* can be obtained and where the financial information published by the *issuer* pursuant to its ongoing disclosure obligations is available.  
[Note: article 4(2) PD]

- 1.2.4 G (1) The summary document referred to in PR 1.2.3R(8) should at least contain the information that would be required in a *summary* if the *summary* were being produced at the date of the summary document.
- (2) The content of the summary document may be obtained from publicly available information on the *issuer*.
- (3) If the information is obtained from publicly available information on the *issuer*, the information should be accurately reproduced from publicly available information and no facts should be omitted which would make the reproduced information misleading.

## 2.1 General contents of prospectus

### General contents of prospectus

#### 2.1.1 UK Sections 87A(2),(3) and (4) of the *Act* provide for the general contents of a *prospectus*:

- (2) The necessary information is the information necessary to enable investors to make an informed assessment of –
  - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and
  - (b) the rights attaching to the transferable securities.
- (3) The necessary information must be presented in a form which is comprehensible and easy to analyse.
- (4) The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer.

### Summary

#### 2.1.2 UK Sections 87A(5) and (6) of the *Act* set out the requirement for a *summary* to be included in a *prospectus*:

- (5) The prospectus must include a summary (unless the transferable securities in question are ones in relation to which prospectus rules provide that a summary is not required).
- (6) The summary must, briefly and in non-technical language, convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the transferable securities to which the prospectus relates.

### When a summary is not required

#### 2.1.3 R In accordance with section 87A(5) of the *Act*, a *summary* is not required for a *prospectus* relating to *non-equity transferable securities* that have a denomination of at least 50,000 Euros (or an equivalent amount) if the *prospectus* relates to an *admission to trading*. [**Note:** article 5.2 *PD*]

### Contents of summary

#### 2.1.4 EU Article 24 of the *PD Regulation* provides for how the contents of the *summary* are to be determined:

##### Content of the summary of prospectus and base prospectus

The issuer, the offeror or the person asking for admission to trading on a regulated market shall determine on its own the detailed content of the

summary to the prospectus or base prospectus referred to in [section 87A of the *Act*].

2.1.5 G The *summary* should generally not exceed 2 500 words. [**Note:** recital 21 *PD*]

2.1.6 R The *summary* must be in the language in which the *prospectus* was originally drawn up. [**Note:** article 19.2 *PD*]

**Note:** *PR* 4.1 sets out *rules* about the language in which the *prospectus* must be drawn up.

**Note:** Article 19.2 of the *prospectus directive* also allows the competent authority of a *Host State* to require that the *summary* be translated into its official language(s). The *FSA* as competent authority of a *Host State* requires a *summary* to be translated into English under *PR* 4.1.6R.

2.1.7 R The *summary* must also contain a warning to the effect that:

- (1) it should be read as an introduction to the *prospectus*;
- (2) any decision to invest in the *transferable securities* should be based on consideration of the *prospectus* as a whole by the investor;
- (3) where a claim relating to the information contained in a *prospectus* is brought before a court, the plaintiff investor might, under the national legislation of the *EEA States*, have to bear the costs of translating the *prospectus* before the legal proceedings are initiated; and
- (4) civil liability attaches to those *persons* who are responsible for the *summary* including any translation of the *summary*, but only if the *summary* is misleading, inaccurate or inconsistent when read together with the other parts of the *prospectus*. [**Note:** article 5.2 *PD*]

2.2 Format of prospectus

Format of prospectus

2.2.1 R A *prospectus* may be drawn up as a single document or separate documents. [**Note:** *PD* article 5.3]

2.2.2 R (1) A *prospectus* composed of separate documents must divide the required information into a *registration document*, a *securities note* and a *summary*.

(2) The *registration document* must contain the information relating to the *issuer*. The *securities note* must contain the information concerning the *transferable securities* to be *offered* or to be *admitted to trading*. [**Note:** article 5.3 *PD*]

- 2.2.3 R The *registration document* accompanied by the *securities note* (updated if applicable in accordance with PR 2.2.5R) and the *summary* shall be considered to constitute a valid *prospectus*. [**Note:** article 9.4 PD]

#### Prospectuses consisting of separate documents

- 2.2.4 R An *issuer, offeror* or *person* requesting admission who already has a *registration document* approved by the FSA is required to draw up only the *securities note* and the *summary* when *transferable securities* are *offered* or a request is made for *admission to trading*. [**Note:** article 12.1 PD]
- 2.2.5 R If PR 2.2.4R applies, the *securities note* must provide information that would normally be provided in the *registration document* if there has been a material change or recent development which could affect investor's assessments since the latest updated *registration document*, or any *supplementary prospectus*, was approved. The *securities note* and *summary* shall be subject to a separate approval. [**Note:** article 12.2 PD]
- 2.2.6 R An *issuer, offeror* or *person* requesting admission may choose to file a *registration document* without approval. If it does so, the entire documentation, including updated information, is subject to approval. [**Note:** article 12.3 PD]

#### Base prospectus

- 2.2.7 R The *prospectus* can, at the choice of the *issuer, offeror* or *person* requesting admission, consist of a *base prospectus* containing all relevant information concerning the *issuer* and the *transferable securities* to be *offered* or to be *admitted to trading* if it relates to one of the following types of *transferable securities*:
- (1) *non-equity transferable securities*, including warrants in any form, issued under an *offering programme*; or
  - (2) *non-equity transferable securities* issued in a continuous or repeated manner by *credit institutions*:
    - (a) where the sums deriving from the issue of the *transferable securities*, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from *transferable securities* until their maturity date;
    - (b) where, in the event of the insolvency of the related *credit institution*, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the provisions of Directive 2001/24/EC on the reorganisation and winding up of credit institutions. [**Note:** article 5.4 PD]
- 2.2.8 R The information given in the *base prospectus* must be supplemented, if necessary, in accordance with section 87G of the *Act* (supplementary prospectus), with updated information on the *issuer* and on the *transferable*

*securities to be offered or to be admitted to trading.* [Note: article 5.4 PD]

- 2.2.9 R If the final terms of the *offer* are not included in either the *base prospectus* or a *supplementary prospectus*:
- (1) the final terms must be provided to investors and filed with the *FSA*, and made available to the public, in accordance with *PR 3.2.4R* to *PR 3.2.6R* and the *PD Regulation* as soon as practicable after each *offer* is made and, if possible, before the *offer* begins;
  - (2) the *base prospectus* must disclose the criteria and/or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price. [Note: article 5.4 PD]
- 2.2.10 EU Articles 25 and 26 of the *PD Regulation* provide for the format of *prospectuses* and *base prospectuses*:

#### Format of the prospectus

- 25.1 Where an issuer, an offeror or a person asking for the admission to trading on a regulated market chooses, according to [PR 2.2.1R] to draw up a prospectus as a single document, the prospectus shall be composed of the following parts in the following order:
- (1) a clear and detailed table of contents;
  - (2) the summary provided for in [section 87A(5) of the Act];
  - (3) the risk factors linked to the issuer and the type of security covered by the issue;
  - (4) the other information items included in the schedules and building blocks according to which the prospectus is drawn up.
2. Where an issuer, an offeror or a person asking for the admission to trading on a regulated market chooses, according to [PR 2.2.1R], to draw up a prospectus composed of separate documents, the securities note and the registration document shall be each composed of the following parts in the following order:
- (1) a clear and detailed table of contents;
  - (2) as the case may be, the risk factors linked to the issuer and the type of security covered by the issue;
  - (3) the other information items included in the schedules and building blocks according to which the prospectus is drawn up.
3. In the cases mentioned in paragraphs 1 and 2, the issuer, the offeror or the person asking for admission to trading on a regulated market

shall be free in defining the order in the presentation of the required information items included in the schedules and building blocks according to which the prospectus is drawn up.

4. Where the order of the items does not coincide with the order of the information provided for in the schedules and building blocks according to which the prospectus is drawn up, the [FSA] may ask the issuer, the offeror or the person asking for the admission to trading on a regulated market to provide a cross reference list for the purpose of checking the prospectus before its approval. Such list shall identify the pages where each item can be found in the prospectus. [see LR 3.1.1R(3)]
5. Where the summary of a prospectus must be supplemented according to [section 87G of the Act], the issuer, the offeror or the person asking for admission to trading on a regulated market shall decide on a case-by-case basis whether to integrate the new information in the original summary by producing a new summary, or to produce a supplement to the summary.

If the new information is integrated in the original summary, the issuer, the offeror or the person asking for admission to trading on a regulated market shall ensure that investors can easily identify the changes, in particular by way of footnotes.

#### Format of the base prospectus and its related final terms

- 26.1 Where an issuer, an offeror or a person asking for the admission to trading on a regulated market chooses, according to [PR 2.2.7R] to draw up a base prospectus, the base prospectus shall be composed of the following parts in the following order:
  - (1) a clear and detailed table of contents;
  - (2) the summary provided for in [section 87A of the Act];
  - (3) the risk factors linked to the issuer and the type of security or securities covered by the issue(s);
  - (4) the other information items included in the schedules and building blocks according to which the prospectus is drawn up.
2. Notwithstanding paragraph 1, the issuer, the offeror or the person asking for admission to trading on a regulated market shall be free in defining the order in the presentation of the required information items included in the schedules and building blocks according to which the prospectus is drawn up. The information on the different securities contained in the base prospectus shall be clearly segregated.

3. Where the order of the items does not coincide with the order of the information provided for by the schedules and building blocks according to which the prospectus is drawn up, the [FSA] may ask the issuer, the offeror or the person asking for admission to trading on a regulated market to provide a cross reference list for the purpose of checking the prospectus before its approval. Such list should identify the pages where each item can be found in the prospectus. [see LR 3.1.1R(3)]
4. In case the issuer, the offeror or the person asking for admission to trading on a regulated market has previously filed a registration document for a particular type of security and, at a later stage, chooses to draw up base prospectus in conformity with the conditions provided for in [PR 2.2.7R], the base prospectus shall contain:
  - (1) the information contained in the previously or simultaneously filed and approved registration document which shall be incorporated by reference, following the conditions provided for in Article 28 of this Regulation;
  - (2) the information which would otherwise be contained in the relevant securities note less the final terms where the final terms are not included in the base prospectus.
5. The final terms attached to a base prospectus shall be presented in the form of a separate document containing only the final terms or by inclusion of the final terms into the base prospectus.

In the case that the final terms are included in a separate document containing only the final terms, they may replicate some information which has been included in the approved base prospectus according to the relevant securities note schedule that has been used for drawing up the base prospectus. In this case the final terms have to be presented in such a way that they can be easily identified as such.

A clear and prominent statement shall be inserted in the final terms indicating that the full information on the issuer and on the offer is only available on the basis of the combination of base prospectus and final terms and where the base prospectus is available.

6. Where a base prospectus relates to different securities, the issuer, the offeror or the person asking for admission to trading on a regulated market shall include a single summary in the base prospectus for all securities. The information on the different securities contained in the summary, however, shall be clearly segregated.
7. Where the summary of a base prospectus must be supplemented according to [section 87G of the Act], the issuer, the offeror or the person asking for admission to trading on a regulated market shall decide on a case-by-case basis whether to integrate the new

information in the original summary by producing a new summary, or by producing a supplement to the summary.

If the new information is integrated in the original summary of the base prospectus by producing a new summary, the issuer, the offeror or the person asking for admission to trading on a regulated market shall ensure that investors can easily identify the changes, in particular by way of footnotes.

8. Issuers, offerors or persons asking for admission to trading on a regulated market may compile in one single document two or more different base prospectuses.

## 2.3 Minimum information to be included in a prospectus

### Minimum information

- 2.3.1 EU Articles 3 to 23 of the *PD Regulation* provide for the minimum information to be included in a *prospectus*:

**Note:** the Annexes (including *schedules* and *building blocks*) referred to in these articles are set out for information in *PR App 3EU*.

#### Article 3

##### Minimum information to be included in a prospectus

A prospectus shall be drawn up by using one or a combination of the following schedules and building blocks set out in Articles 4 to 20, according to the combinations for various types of securities provided for in Article 21.

A prospectus shall contain the information items required in Annexes I to XVII depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in Articles 4 to 20. A competent authority shall not request that a prospectus contains information items which are not included in Annexes I to XVII.

In order to ensure conformity with the obligation referred to in [section 87A(2) of the *Act*], the [*FSA*], when approving a prospectus in accordance with [section 87A of the *Act*], may require that the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market be completed, for each of the information items, on a case by case basis.

#### Article 4

##### Share registration document schedule

1. For the share registration document information shall be given in accordance with the schedule set out in Annex I.

2. The schedule set out in paragraph 1 shall apply to the following:
  - (1) shares and other transferable securities equivalent to shares;
  - (2) other securities which comply with the following conditions:
    - (a) they can be converted or exchanged into shares or other transferable securities equivalent to shares, at the issuer's or at the investor's discretion, or on the basis of the conditions established at the moment of the issue, or give, in any other way, the possibility to acquire shares or other transferable securities equivalent to shares, and
    - (b) provided that these shares or other transferable securities equivalent to shares are or will be issued by the issuer of the security and are not yet traded on a regulated market or an equivalent market outside the Community at the time of the approval of the prospectus covering the securities, and that the underlying shares or other transferable securities equivalent to shares can be delivered with physical settlement.

#### Recital 9

Pro forma financial information is needed in case of significant gross change, i. e. a variation of more than 25% relative to one or more indicators of the size of the issuer's business, in the situation of an issuer due to a particular transaction, with the exception of those situations where merger accounting is required..

#### Article 5

##### Pro-forma financial information building block

For pro-forma financial information, information shall be given in accordance with the building block set out in Annex II.

Pro forma financial information should be preceded by an introductory explanatory paragraph that states in clear terms the purpose of including this information in the prospectus.

#### Article 6

##### Share securities note schedule

1. For the share securities note information is necessary to be given in accordance with the schedule set out in Annex III.
2. The schedule shall apply to shares and other transferable securities

equivalent to shares

#### Article 7

Debt and derivative securities registration document schedule for securities with a denomination per unit of less than EUR 50 000

For the debt and derivative securities registration document concerning securities which are not covered in Article 4 with a denomination per unit of less than EUR 50 000 or, where there is no individual denomination, securities that can only be acquired on issue for less than EUR 50 000 per security, information shall be given in accordance with the schedule set out in Annex IV.

#### Article 8

Securities note schedule for debt securities with a denomination per unit of less than EUR 50 000

1. For the securities note for debt securities with a denomination per unit of less than EUR 50 000 information shall be given in accordance with the schedule set out in Annex V.
2. The schedule shall apply to debt where the issuer has an obligation arising on issue to pay the investor 100% of the nominal value in addition to which there may be also an interest payment.

#### Article 9

Guarantees building block

For guarantees information shall be given in accordance with the building block set out in Annex VI.

#### Article 10

Asset backed securities registration document schedule

For the asset backed securities registration document information shall be given in accordance with the schedule set out in Annex VII.

#### Article 11

Asset backed securities building block

For the additional information building block to the securities note for asset backed securities information shall be given in accordance with the building

block set out in Annex VIII.

#### Article 12

Debt and derivative securities registration document schedule for securities with a denomination per unit of at least EUR 50 000

For the debt and derivative securities registration document concerning securities which are not covered in Article 4 with a denomination per unit of at least EUR 50 000 or, where there is no individual denomination, securities that can only be acquired on issue for at least EUR 50 000 per security, information shall be given in accordance with the schedule set out in Annex IX.

#### Article 13

Depository receipts schedule

For depository receipts issued over shares information shall be given in accordance with the schedule set out in Annex X.

#### Article 14

Banks registration document schedule

1. For the banks registration document for debt and derivative securities and those securities which are not covered by article 4 information shall be given in accordance with the schedule set out in annex XI.
2. The schedule set out in paragraph 1 shall apply to credit institutions as defined in point (a) of Article 1(1) of Directive 2000/12/EC as well as to third country credit institutions which do not fall under that definition but have their registered office in a state which is a member of the OECD.

These entities may also use alternatively the registration document schedules provided for under in Articles 7 and 12.

#### Article 15

Securities note schedule for derivative securities

1. For the securities note for derivative securities information shall be given in accordance with the schedule set out in annex XII.
2. The schedule shall apply to securities which are not in the scope of application of the other securities note schedules referred to in Articles 6, 8 and 16, including certain securities where the payment and/or delivery

obligations are linked to an underlying.

#### Article 16

Securities note schedule for debt securities with a denomination per unit of at least EUR 50,000

1. For the securities note for debt securities with a denomination per unit of at least EUR 50 000 information shall be given in accordance with the schedule set out in Annex XIII.
2. The schedule shall apply to debt where the issuer has an obligation arising on issue to pay the investor 100% of the nominal value in addition to which there may be also an interest payment.

#### Article 17

Additional information building block on the underlying share

1. For the additional information on the underlying share, the description of the underlying share shall be given in accordance with the building block set out in Annex XIV.

In addition, if the issuer of the underlying share is an entity belonging to the same group, the information required by the schedule referred to in Article 4 shall be given in respect of that issuer.

2. The additional information referred to in the first subparagraph of paragraph 1 shall only apply to those securities which comply with both of the following conditions:
  - (1) they can be converted or exchanged into shares or other transferable securities equivalent to shares, at the issuer's or at the investor's discretion, or on the basis of the conditions established at the moment of the issue or give, in any other way, the possibility to acquire shares or other transferable securities equivalent to shares; and
  - (2) provided that these shares or other transferable securities equivalent to shares are or will be issued by the issuer of the security or by an entity belonging to the group of that issuer and are not yet traded on a regulated market or an equivalent market outside the Community at the time of the approval of the prospectus covering the securities, and that the underlying shares or other transferable securities equivalent to shares can be delivered with physical settlement.

#### Article 18

Registration document schedule for collective investment undertakings of the closed-end type

1. In addition to the information required pursuant to items 1, 2, 3, 4, 5.1, 7, 9.1, 9.2.1, 9.2.3, 10.4, 13, 14, 15, 16, 17.2, 18, 19, 20, 21, 22, 23, 24, 25 of Annex I, for the registration document for securities issued by collective investment undertakings of the closed-end type information shall be given in accordance with the schedule set out in Annex XV.
2. The schedule shall apply to collective investment undertakings of the closed-end type holding a portfolio of assets on behalf of investors that:
  - (1) are recognised by national law in the Member State in which it is incorporated as a collective investment undertaking of the closed end type; or
  - (2) do not take or seek to take legal or management control of any of the issuers of its underlying investments. In such a case, legal control and/or participation in the administrative, management or supervisory bodies of the underlying issuer(s) may be taken where such action is incidental to the primary investment objective, necessary for the protection of shareholders and only in circumstances where the collective investment undertaking will not exercise significant management control over the operations of that underlying issuer(s).

Article 19

Registration document schedule for Member States, third countries and their regional and local authorities

1. For the registration document for securities issued by Member States, third countries and their regional and local authorities information shall be given in accordance with the schedule set out in annex XVI
2. The schedule shall apply to all types of securities issued by Member States, third countries and their regional and local authorities.

Article 20

Registration document schedule for public international bodies and for issuers of debt securities guaranteed by a member state of the OECD

1. For the registration document for securities issued by public international bodies and for securities unconditionally and irrevocably guaranteed, on the basis of national legislation, by a state which is member of the OECD information shall be given in accordance with the schedule set out in Annex XVII.

2. The schedule shall apply to:
  - all types of securities issued by public international bodies;
  - to debt securities unconditionally and irrevocably guaranteed, on the basis of national legislation, by a state which is member of the OECD.

#### Article 21

##### Combination of schedules and building blocks

1. The use of the combinations provided for in the table set out in Annex XVIII shall be mandatory when drawing up prospectuses for the types of securities to which those combinations correspond according to this table. However, for securities not covered by those combinations further combinations may be used.
2. The most comprehensive and stringent registration document schedule, i.e. the most demanding schedule in term of number of information items and the extent of the information included in them, may always be used to issue securities for which a less comprehensive and stringent registration document schedule is provided for, according to the following ranking of schedules:
  - (1) share registration document schedule;
  - (2) debt and derivative securities registration document schedule for securities with a denomination per unit of less than EUR 50 000;
  - (3) debt and derivative securities registration document schedule for securities with a denomination per unit at least EUR 50 000.

#### Article 22

##### Minimum information to be included in a base prospectus and its related final terms

1. A base prospectus shall be drawn up by using one or a combination of schedules and building blocks provided for in Articles 4 to 20 according to the combinations for various types of securities set out in Annex XVIII.

A base prospectus shall contain the information items required in Annexes I to XVII depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in Articles 4 to 20. A competent authority shall not request that a base prospectus contains information items which are not included in Annexes I to XVII.

In order to ensure conformity with the obligation referred to in [section 87A(2) of the *Act*], the [FSA], when approving a base prospectus in accordance with [section 87A of the *Act*], may require that the information provided by the issuer, the offeror or the person asking for admission to

trading on a regulated market be completed, for each of the information items, on a case by case basis.

2. The issuer, the offeror or the person asking for admission to trading on a regulated market may omit information items which are not known when the base prospectus is approved and which can only be determined at the time of the individual issue.
3. The use of the combinations provided for in the table in Annex XVIII shall be mandatory when drawing up base prospectuses for the types of securities to which those combinations correspond according to this table. However, for securities not covered by those combinations further combinations may be used.
4. The final terms attached to a base prospectus shall only contain the information items from the various securities note schedules according to which the base prospectus is drawn up.
5. In addition to the information items set out in the schedules and building blocks referred to in Articles 4 to 20 the following information shall be included in a base prospectus:
  - (1) indication on the information that will be included in the final terms;
  - (2) the method of publication of the final terms; if the issuer is not in a position to determine, at the time of the approval of the prospectus, the method of publication of the final terms, an indication of how the public will be informed about which method will be used for the publication of the final terms;
  - (3) in the case of issues of non equity securities according to [PR 2.2.7R(1)], a general description of the programme.
6. Only the following categories of securities may be contained in a base prospectus and its related final terms covering issues of various types of securities:
  - (1) asset backed securities;
  - (2) warrants falling under Article 17;
  - (3) non-equity securities provided for under [PR 2.2.7R(2)];
  - (4) all other non-equity securities including warrants with the exception of those mentioned in point (2).

In drawing up a base prospectus the issuer, the offeror or the person asking for admission to trading on a regulated market shall clearly segregate the specific information on each of the different securities included in these categories.

7. Where an event envisaged under [section 87G(1) of the *Act* (Supplementary

prospectus)] occurs between the time that the base prospectus has been approved and the final closing of the offer of each issue of securities under the base prospectus or, as the case may be, the time that trading on a regulated market of those securities begins, the issuer, the offeror or the person asking for admission to trading on a regulated market shall publish a supplement prior to the final closing of the offer or the admission of those securities to trading.

### Article 23

#### Adaptations to the minimum information given in prospectuses and base prospectuses

1. Notwithstanding Articles 3 second paragraph and 22(1) second subparagraph, where the issuer's activities fall under one of the categories included in Annex XIX, the [FSA], taking into consideration the specific nature of the activities involved, may ask for adapted information, in addition to the information items included in the schedules and building blocks set out in Articles 4 to 20, including, where appropriate, a valuation or other expert's report on the assets of the issuer, in order to comply with the obligation referred to in [sections 87A(2),(3) and (4) of the Act]. The [FSA] shall forthwith inform the Commission thereof.

In order to obtain the inclusion of a new category in Annex XIX a Member State shall notify its request to the Commission. The Commission shall update this list following the Committee procedure provided for in Article 24 of [the *prospectus directive*].

2. By way of derogation of Articles 3 to 22, where an issuer, an offeror or a person asking for admission to trading on a regulated market applies for approval of a prospectus or a base prospectus for a security which is not the same but comparable to the various types of securities mentioned in the table of combinations set out in Annex XVIII, the issuer, the offeror or the person asking for admission to trading on a regulated market shall add the relevant information items from another securities note schedule provided for in Articles 4 to 20 to the main securities note schedule chosen. This addition shall be done in accordance with the main characteristics of the securities being offered to the public or admitted to trading on a regulated market.
3. By way of derogation of Articles 3 to 22, where an issuer, an offeror or a person asking for admission to trading on a regulated market applies for approval of a prospectus or a base prospectus for a new type of security, the issuer, the offeror or the person asking for admission to trading on a regulated market shall notify a draft prospectus or base prospectus to the [FSA].

The [FSA] shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information shall be included in the prospectus or base prospectus in order

to comply with the obligation referred to in [sections 87A(2),(3) and (4) of the *Act*]. The [*FSA*] shall forthwith inform the Commission thereof.

The derogation referred to in the first subparagraph shall only apply in case of a new type of security which has features completely different from the various types of securities mentioned in Annex XVIII, if the characteristics of this new security are such that a combination of the different information items referred to in the schedules and building blocks provided for in Articles 4 to 20 is not pertinent.

4. By way of derogation of Articles 3 to 22, in the cases where one of the information items required in one of the schedules or building blocks referred to in 4 to 20 or equivalent information is not pertinent to the issuer, to the offer or to the securities to which the prospectus relates, that information may be omitted.

#### Final offer price and amount of securities not included in prospectus

- 2.3.2 R If a *prospectus* for which approval is sought does not include the final offer price or the amount of *transferable securities* to be *offered*:

- (1) the *prospectus* must disclose the criteria and/or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price; and
- (2) the final offer price and amount of *transferable securities* must as soon as practicable be filed with the *FSA*, and made available to the public, in accordance with *PR 3.2.4R* to *PR 3.2.6R* and the *PD Regulation*. [**Note:** article 8.1 *PD*]

**Note:** Sections 87A(7) and 87Q(1),(2) and (3) of the *Act* set out further provisions that apply if the final offer price or the amount of *transferable securities* to be *offered* are not included in a *prospectus*.

#### 2.4 Incorporation by reference

##### Incorporation by reference

- 2.4.1 R (1) Information may be incorporated in the *prospectus* by reference to one or more previously or simultaneously published documents that have been approved by the *FSA* or filed with or notified to it in accordance with the *prospectus directive* or titles IV and V of *CARD*.
- (2) In particular under paragraph (1), information may be incorporated by reference to information filed under *PR 5.2* (Annual information update). [**Note:** article 11.1 *PD*]
- 2.4.2 G Information under titles IV and V of *CARD* that may be incorporated by

reference includes, for example, instruments of incorporation or statutes of a company, annual accounts and annual reports, equivalent information made available to markets in the *United Kingdom*, half yearly reports, listing particulars and supplementary listing particulars.

[**Note:** for full details refer to these titles of *CARD*]

- 2.4.3 R Information incorporated by reference must be the latest available to the *issuer, offeror* or *person* requesting admission. [**Note:** article 11.1 *PD*]
- 2.4.4 R The *summary* must not incorporate information by reference. [**Note:** article 11.1 *PD*]
- 2.4.5 R When information is incorporated by reference, a cross reference list must be provided in the *prospectus* to enable investors to identify easily specific items of information. The cross reference list must specify where the information can be accessed by investors. [**Note:** article 11.2 *PD*]
- 2.4.6 EU Article 28 of the *PD Regulation* provides examples of information that may be incorporated by reference:

#### Arrangements for incorporation by reference

1. Information may be incorporated by reference in a prospectus or base prospectus, notably if it is contained in one the following documents:
  - (1) annual and interim financial information;
  - (2) documents prepared on the occasion of a specific transaction such as a merger or demerger;
  - (3) audit reports and financial statements;
  - (4) memorandum and articles of association;
  - (5) earlier approved and published prospectuses and/or base prospectuses;
  - (6) regulated information;
  - (7) circulars to security holders.
2. The documents containing information that may be incorporated by reference in a prospectus or base prospectus or in the documents composing it shall be drawn up following the provisions of [*PR* 4.1 (Use of languages)].
3. If a document which may be incorporated by reference contains information which has undergone material changes, the prospectus or base prospectus shall clearly state such a circumstance and shall give the updated information.
4. The issuer, the offeror or the person asking for admission to trading on a

regulated market may incorporate information in a prospectus or base prospectus by making reference only to certain parts of a document, provided that it states that the non- incorporated parts are either not relevant for the investor or covered elsewhere in the prospectus.

5. When incorporating information by reference, issuers, offerors or persons asking for admission to trading on a regulated market shall endeavour not to endanger investor protection in terms of comprehensibility and accessibility of the information.

## 2.5 Omission of information

### Equivalent information

- 2.5.1 R Without prejudice to the adequate information of investors, if, in exceptional cases, certain information referred to in the *PD Regulation* that is required to be included in a *prospectus* is inappropriate to the *issuer's* activity or to the legal form of the *issuer* or to the *transferable securities* to which the *prospectus* relates, the *prospectus* must contain information equivalent to the required information (unless there is no such information). [Note: article 8.3 *PD*]

### Omission of information from prospectus

- 2.5.2 UK Section 87B(1) of the *Act* sets out when the *FSA* may authorise the omission of information from a *prospectus*:

- (1) The [*FSA*] may authorise the omission from a prospectus of any information, the inclusion of which would otherwise be required, on the ground –
  - (a) that its disclosure would be contrary to the public interest;
  - (b) that its disclosure would be seriously detrimental to the issuer, provided that the omission would be unlikely to mislead the public with regard to any facts or circumstances which are essential for an informed assessment of the kind mentioned in section 87A(2); or
  - (c) that the information is only of minor importance for a specific offer to the public or admission to trading on a regulated market and unlikely to influence an informed assessment of the kind mentioned in section 87A(2).

### Request to omit information

- 2.5.3 R A request to the *FSA* to authorise the omission of specific information must:
  - (1) be in writing from the *applicant*;

- (2) identify the specific information concerned and the specific reasons for its omission; and
- (3) state why in the *applicant's* opinion one or more of the grounds in section 87B(1) of the *Act* applies.

### 3 Approval and publication of prospectus

#### 3.1 Approval of prospectus

##### Applying for approval

#### 3.1.1 R An *applicant* must submit to the *FSA* the following information:

- (1) a completed form A;
- (2) the *prospectus*;
- (3) if the order of items in the *prospectus* does not coincide with the order in the *schedules* and *building blocks* in the *PD Regulation*, a cross reference list identifying the pages where each item can be found in the *prospectus*;
- (4) a letter identifying any items from the *schedules* and *building blocks* that have not been included because they are not applicable;
- (5) if information is incorporated in the *prospectus* by reference to another document, a copy of the document (annotated to indicate which item of the *schedules* and *building blocks* in the *PD Regulation* it relates to);
- (6) if the *applicant* is requesting the *FSA* to authorise the omission of information from the *prospectus*, the information required by *PR 2.5.3R*;
- (7) the application form to purchase or subscribe for the *transferable securities*;
- (8) a copy of the resolution of the board of the *issuer* allotting the *transferable securities* or if a copy of the resolution is not available, confirmation that the resolution will be submitted to the *FSA* no later than 3 *working days* after the *prospectus* is approved;
- (9) contact details of individuals who are:
  - (a) sufficiently knowledgeable about the documentation to be able to answer queries from the *FSA*; and
  - (b) available to answer queries between the hours of 7 a.m. and 6 p.m.; and

(10) any other information that the *FSA* may require.

3.1.2 R The *applicant* must also pay to the *FSA* the relevant application fee calculated in accordance with the scale of fees in *PR App 2R*.

When information must be submitted

3.1.3 R (1) The *applicant* must submit to the *FSA* by the date specified in paragraph (2):

- (a) the completed form A in final form;
- (b) the relevant fee; and
- (c) the other information referred to in *PR 3.1.1R* in draft form.

(2) The date referred to in paragraph (1) is:

- (a) at least 10 *working days* before the intended approval date of the *prospectus*; or
- (b) at least 20 *working days* before the intended approval date of the *prospectus* if the *applicant* does not have *transferable securities admitted to trading* and has not previously made an *offer*; or
- (c) as soon as practicable in the case of a *supplementary prospectus*.

(3) The *applicant* must submit to the *FSA* the information referred to in paragraph (1)(c) in final form before midday on the day on which approval is required to be granted.

Drafts of documents

3.1.4 R Drafts of documents must be submitted to the *FSA*:

- (1) in a substantially complete form;
- (2) in duplicate in hard copy or an agreed electronic format; and
- (3) annotated in the margin to indicate compliance with all applicable requirements of Part 6 of the *Act* and these *rules*.

3.1.5 R If further drafts of documents are required, they must be submitted to the *FSA*:

- (1) marked to show all changes made since the last draft was reviewed by the *FSA*;
- (2) marked to show all changes made to the documents as a consequence of the *FSA's* comments (in a way that differentiates those changes

from other changes);

- (3) in duplicate in hard copy or an agreed electronic format; and
- (4) annotated in the margin to indicate compliance with all applicable requirements of the *Act* and these *rules*.

#### Request for certificate of approval

- 3.1.6 G If an *applicant* wishes the *FSA* to provide a certificate of approval to another competent authority at the time the *prospectus* is approved, it should include a request for the supply of the certificate with its application for approval of the *prospectus* (*PR 5.3.2R* sets out the requirements for such a request).

#### Approval of prospectus

- 3.1.7 UK Section 87A(1) of the *Act* provides for the approval of a *prospectus* by the *FSA*:
- (1) The [*FSA*] may not approve a prospectus unless it is satisfied that:
    - (a) the United Kingdom is the home State in relation to the issuer of the transferable securities to which it relates,
    - (b) the prospectus contains the necessary information, and
    - (c) all of the other requirements imposed by or in accordance with this Part or the prospectus directive have been complied with (so far as those requirements apply to a prospectus for the transferable securities in question).

- 3.1.8 G The *FSA* will only approve a *prospectus* when it considers that the information provided with the application is complete and is in final form.

**Note:** Section 87C of the *Act* sets out time limits for the *FSA* to notify an *applicant* of its decision on an application for approval.

#### Decision-making procedures

- 3.1.9 R The *FSA* will follow the *executive procedures* for *statutory notice decisions* and *statutory notice associated decisions* if it:
- (1) proposes to refuse to approve a *prospectus*; or
  - (2) decides to refuse to approve a *prospectus* after having given the *applicant* a written notice.

**Note:** *DEC 4.3* sets out the *executive procedures* for *statutory notice decisions* and *statutory notice associated decisions*.

#### Prospectus not to be published until approved

- 3.1.10 R A *prospectus* must not be published until it has been approved by the *FSA*.

[**Note:** article 13.1 *PD*]

#### Prospectus comprising separate documents

- 3.1.11 R If the *prospectus* is not a single document but is comprised of separate documents:
- (1) an application for approval may relate to one or more of those separate documents; and
  - (2) a reference in this section to a *prospectus* is, unless the context otherwise requires, to be taken to be a reference to the document or documents to which the application relates.

#### Transfer to another competent authority

- 3.1.12 R (1) A *person* seeking to have the function of approving a *prospectus* transferred to the competent authority of another *EEA State* must make a written request to the *FSA* at least 10 *working days* before the date the transfer is sought.
- (2) The request must:
- (a) set out the reasons for the proposed transfer;
  - (b) state the name of the competent authority to whom the transfer is sought; and
  - (c) include a copy of the draft *prospectus*.
- 3.1.13 G The *FSA* will consider transferring the function of approving a *prospectus* to the competent authority of another *EEA State*:
- (1) if requested to do so by the *issuer*, *offeror* or *person* requesting admission or by another competent authority; or
  - (2) in other cases if the *FSA* considers it would be more appropriate for another competent authority to perform that function.

#### Vetting of equivalent documents

- 3.1.14 R A *person* who wishes the *FSA* to vet an equivalent document referred to in *PR* 1.2.2R(2) or (3) or *PR* 1.2.3R(3) or (4) must submit to the *FSA*:
- (1) a copy of the document;
  - (2) a cross reference list identifying the pages in the document where each item that is equivalent to the disclosure requirements for a *prospectus* may be found;
  - (3) contact details of individuals who are:
    - (a) sufficiently knowledgeable about the documentation to be

able to answer queries from the *FSA*; and

(b) available to answer queries between the hours of 7 a.m. and 6 p.m.; and

(4) any other information that the *FSA* may require.

3.1.15 R The *person* must submit the documents referred to in *PR* 3.1.14R at least ten *working days* before the date on which it wishes the vetting to be completed.

3.1.16 R A *person* must pay to the *FSA* any relevant fee specified in *PR* App 2R in relation to the vetting of an equivalent document or a summary document.

## 3.2 Filing and publication of prospectus

### Filing and publication of prospectus

3.2.1 R After a *prospectus* is approved by the *FSA*, it must be filed with the *FSA* and made available to the public. [**Note:** articles 14.1 and 16.1 of *PD*]

### Timing of filing and publication

3.2.2 R Except as provided in *PR* 3.2.3R, the *prospectus* must be filed and made available to the public as soon as practicable, and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the *offer* or the *admission to trading* of the *transferable securities* involved. [**Note:** article 14.1 *PD*]

3.2.3 R In the case of an initial public offer of a class of shares not already *admitted to trading* that is to be *admitted to trading* for the first time, the *prospectus* must be made available to the public at least six *working days* before the end of the offer. [**Note:** article 14.1 *PD*]

### Method of publishing

3.2.4 R A *prospectus* is deemed to be made available to the public for the purposes of *PR* 3.2.1R to *PR* 3.2.3R when published either:

- (1) by insertion in one or more newspapers circulated throughout, or widely circulated in, the *EEA States* in which the *offer* is made or the *admission to trading* is sought; or
- (2) in a printed form to be made available, free of charge, to the public at the offices of the *regulated market* on which the *transferable securities* are being *admitted to trading*, or at the registered office of the *issuer* and at the offices of the financial intermediaries placing or selling the *transferable securities*, including paying agents; or
- (3) in an electronic form on the *issuer's* website and, if applicable, on the

website of the financial intermediaries placing or selling the *transferable securities*, including paying agents; or

(4) in an electronic form on the website of the *regulated market* where the *admission to trading* is sought. [**Note:** article 14.2 PD]

3.2.5 R The text and the format of the *prospectus* made available to the public, must at all times be identical to the original version approved by the FSA. [**Note:** article 14.6 PD]

3.2.6 R If the *prospectus* is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the *issuer*, the *offeror*, the *person* requesting admission or the financial intermediaries placing or selling the *transferable securities*. [**Note:** article 14.7 PD]

FSA will publish list of approved prospectuses

3.2.7 G The FSA will publish on its website, a list of *prospectuses* approved over the previous 12 months. The list will specify how a *prospectus* is made available and where it can be obtained, including, if applicable, a hyperlink to the *prospectus* published on the *issuer's* or *regulated market's* website. [**Note:** article 14.4 PD]

Prospectus comprising separate documents etc

3.2.8 R If a *prospectus* consists of several documents or incorporates information by reference, the documents and information making up the *prospectus* may be published and circulated separately if the documents are made available, free of charge, to the public, in accordance with PR 3.2.4R. Each document must indicate where the other constituent documents of the full *prospectus* may be obtained. [**Note:** article 14.5 PD]

3.2.9 EU Articles 29, 30 and 33 of the *PD Regulation* provide for further requirements relating to publication of *prospectuses*:

#### Article 29

##### Publication in electronic form

1. The publication of the prospectus or base prospectus in electronic form, either pursuant to [PR 3.2.4R(3) and (4)], or as an additional means of availability, shall be subject to the following requirements:
  - (1) the prospectus or base prospectus shall be easily accessible when entering the web-site;
  - (2) the file format shall be such that the prospectus or base prospectus cannot be modified;
  - (3) the prospectus or base prospectus shall not contain hyper-links, with exception of links to the electronic addresses where information

incorporated by reference is available;

- (4) the investors shall have the possibility of downloading and printing the prospectus or base prospectus.

The exception referred to in point (3) of the first subparagraph shall only be valid for documents incorporated by reference; those documents shall be available with easy and immediate technical arrangements.

2. If a prospectus or base prospectus for offer of securities to the public is made available on the web-sites of issuers and financial intermediaries or of regulated markets, these shall take measures, to avoid targeting residents in Members States or third countries where the offer of securities to the public does not take place, such as the insertion of a disclaimer as to who are the addressees of the offer.

### Article 30

#### Publication in newspapers

1. In order to comply with [PR 3.2.4R(1)] the publication of a prospectus or a base prospectus shall be made in a general or financial information newspaper having national or supra-regional scope;
2. If the [FSA] is of the opinion that the newspaper chosen for publication does not comply with the requirements set out in paragraph 1, it shall determine a newspaper whose circulation is deemed appropriate for this purpose taking into account, in particular, the geographic area, number of inhabitants and reading habits in each Member State.

### Article 33

#### Publication of the final terms of base prospectuses

The publication method for final terms related to a base prospectus does not have to be the same as the one used for the base prospectus as long as the publication method used is one of the publication methods indicated in [PR 3.2.4R].

## 3.3 Advertisements

### Application

- 3.3.1 R PR 3.3.2R to PR 3.3.4R only apply to an *offer*, or to an *admission to trading of transferable securities*, for which:
  - (1) a *prospectus* is required to be made available to the public under section 85 of the *Act*; or

- (2) a person elects to have a prospectus under section 87 of the *Act*.  
[**Note:** article 15.1 *PD*]

#### Advertisements

- 3.3.2 R An *advertisement* relating to an *offer* or to an *admission to trading* must not be issued unless:
- (1) it states that a *prospectus* has been or will be published and indicates where investors are, or will be, able to obtain it;
  - (2) it is clearly recognisable as an advertisement;
  - (3) information in the *advertisement* is not inaccurate, or misleading; and
  - (4) information in the *advertisement* is consistent with the information contained in the *prospectus*, if already published, or with the information required to be in the *prospectus*, if the *prospectus* is published afterwards. [**Note:** articles 15.1, 15.2 and 15.3 of *PD*]
- 3.3.3 G To comply with *PR* 3.3.2R, a written *advertisement* should also contain a bold and prominent statement to the effect that it is not a *prospectus* but an *advertisement* and investors should not subscribe for any *transferable securities* referred to in the *advertisement* except on the basis of information in the *prospectus*.

#### Other information disclosed must be consistent with prospectus

- 3.3.4 R All information concerning an *offer* or an *admission to trading* disclosed in an oral or written form (even if not for advertising purposes), must be consistent with that contained in the *prospectus*. [**Note:** article 15.4 *PD*]
- 3.3.5 EU Article 34 of the *PD Regulation* sets out a non-exhaustive list of the types of *advertisement* covered by the advertising provisions:

#### Dissemination of advertisements

Advertisements related to an offer to the public of securities or to an admission to trading on a regulated market may be disseminated to the public by interested parties, such as issuer, offeror or person asking for admission, the financial intermediaries that participate in the placing and/or underwriting of securities, notably by one of the following means of communication:

- (1) Addressed or unaddressed printed matter;
- (2) Electronic message or advertisement received via a mobile telephone or pager;
- (3) Standard letter;

- (4) Press advertising with or without order form;
- (5) Catalogue;
- (6) Telephone with or without human intervention;
- (7) Seminars and presentations;
- (8) Radio;
- (9) Videophone;
- (10) Videotext;
- (11) Electronic mail;
- (12) Facsimile machine (fax);
- (13) Television;
- (14) Notice;
- (15) Bill;
- (16) Poster;
- (17) Brochure;
- (18) Web posting including internet banners.

### 3.4 Supplementary Prospectus

#### Supplementary prospectus

#### 3.4.1 UK Section 87G of the *Act* provides that:

- (1) Subsection (2) applies if, during the relevant period, there arises or is noted a significant new factor, material mistake or inaccuracy relating to the information included in a prospectus approved by [the *FSA*].
- (2) The person on whose application the prospectus was approved must, in accordance with prospectus rules, submit a supplementary prospectus containing details of the new factor, mistake or inaccuracy to the [*FSA*] for its approval.
- (3) The relevant period begins when the prospectus is approved by the [*FSA*] and ends –
  - (a) with the closure of the offer of the transferable securities to

which the prospectus relates; or

- (b) when trading in those securities on a regulated market begins.
- (4) "Significant" means significant for the purposes of making an informed assessment of the kind mentioned in section 87A(2).
- (5) Any person responsible for the prospectus who is aware of any new factor, mistake or inaccuracy which may require the submission of a supplementary prospectus in accordance with subsection (2) must give notice of it to –
  - (a) the issuer of the transferable securities to which the prospectus relates, and
  - (b) the person on whose application the prospectus was approved.
- (6) A supplementary prospectus must provide sufficient information to correct any mistake or inaccuracy which gave rise to the need for it.
- (7) Subsection (1) applies also to information contained in any supplementary prospectus published under this section.

#### Amendments to summary

- 3.4.2 R *A supplementary prospectus* must also if necessary include an amendment or supplement to the *summary*, and any translations of the *summary*, to take into account the new information. [**Note:** article 16.1 PD]

**Note:** Section 87Q(4) of the *Act* sets out the rights of investors to withdraw their acceptances after a *supplementary prospectus* is published.

## 4 Use of languages and third country issuers

### 4.1 Use of Languages

#### Language

- 4.1.1 R If an *offer* is made, or *admission to trading* is sought, only in the *United Kingdom* and the *United Kingdom* is the *Home State*, the *prospectus* must be drawn up in English. [**Note:** article 19.1 PD]
- 4.1.2 R If an *offer* is made, or *admission to trading* is sought, in more than one *EEA State* including the *United Kingdom* and the *United Kingdom* is the *Home State*, the *prospectus* must be drawn up in English and must also be made available either in a language accepted by the competent authorities of each *Host State* or in a language customary in the sphere of international finance, at the choice of the *issuer*, *offeror* or *person* requesting admission (as the

case may be). [Note: article 19.3 PD]

- 4.1.3 R (1) If an *offer* is made, or *admission to trading* is sought, in one or more *EEA States* excluding the *United Kingdom* and the *United Kingdom* is the *Home State*, the *prospectus* must be drawn up in a language accepted by the competent authorities of those *EEA States* or in a language customary in the sphere of international finance, at the choice of the *issuer*, *offeror* or *person* requesting admission (as the case may be). [Note: article 19.2 PD]
- (2) For the purpose of the scrutiny by the *FSA* where the *United Kingdom* is the *Home State*, the *prospectus* must be drawn up either in English or in another language customary in the sphere of international finance, at the choice of the *issuer*, *offeror* or *person* requesting admission (as the case may be). [Note: article 19.2 PD]
- 4.1.4 R If *admission to trading of non-equity transferable securities* whose denomination per unit amounts to at least 50,000 euros (or an equivalent amount) is sought in the *United Kingdom* or in one or more other *EEA States*, the *prospectus* must be drawn up in either a language accepted by the competent authorities of the *Home State* and *Host States* or in a language customary in the sphere of international finance, at the choice of the *issuer*, *offeror* or *person* requesting admission (as the case may be). [Note: article 19.4 PD]

English language

- 4.1.5 G English is a language accepted by the *FSA* where the *United Kingdom* is a *Home State* or *Host State*.

Summary to be translated into English

- 4.1.6 R If:
- (1) an *offer* is made in the *United Kingdom*;
  - (2) a *prospectus* relating to the *transferable securities* has been approved by the competent authority of another *EEA State* and the *prospectus* contains a *summary*; and
  - (3) the *prospectus* is not drawn up in English,
- the *offeror* must ensure that the *summary* is translated into English. [Note: article 19.2 PD]

## 4.2 Third Country Issuers

## Approval of prospectus drawn up in accordance with third country laws

- 4.2.1 R If a *prospectus* relating to an *issuer* that has its registered office in a country that is not an *EEA State* is drawn up in accordance with the legislation of that country, the *FSA* may, if the *United Kingdom* is the *Home State* in relation to the *issuer*, approve the *prospectus* if it is satisfied that:
- (1) the *prospectus* has been drawn up in accordance with international standards set by international securities commission organisations, including the IOSCO disclosure standards; and
  - (2) the information requirements, including information of a financial nature, are equivalent to the requirements under Part 6 of the *Act*, the *PD Regulation* and these *rules*. [**Note:** article 20.1 *PD*]
- 4.2.2 G An *applicant* for the approval of a *prospectus* referred to in *PR* 4.2.1 will need to comply with relevant requirements of the *Act*, the *PD regulation* and these *rules* including (to the extent applicable) *PR* 3.1 relating to applying for approval of a *prospectus*.

## 5 Other provisions

### 5.1 Validity of prospectus

#### Validity of prospectus

- 5.1.1 R A *prospectus* is valid for 12 months after its publication for an *offer* or an *admission to trading*, provided that the *prospectus* is updated by a *supplementary prospectus* (if required) under section 87G of the *Act*. [**Note:** article 9.1 *PD*]
- 5.1.2 R For an *offering programme*, the *base prospectus* is valid for a period of up to 12 months after it is filed. [**Note:** article 9.2 *PD*]
- 5.1.3 R For *non-equity transferable securities* referred to in *PR* 2.2.7R(2), the *prospectus* is valid until no more of the *transferable securities* concerned are issued in a continuous or repeated manner. [**Note:** article 9.3 *PD*]
- 5.1.4 R A *registration document* is valid for a period of up to 12 months after it is filed provided that it has been updated in accordance with *PR* 2.2.5R. [**Note:** article 9.4 *PD*]

### 5.2 Annual Information Update

#### Annual information update

- 5.2.1 R An *issuer* whose *transferable securities* are *admitted to trading* and in relation to whom the *United Kingdom* is the *Home State* must at least

annually prepare a document (an annual information update) that refers to or contains all information that has been published or made available to the public over the previous 12 months in one or more *EEA States* and in third countries in compliance with its obligations under Community and national laws and rules dealing with the regulation of securities, issuers of securities and securities markets. [**Note:** article 10.1 *PD*]

- 5.2.2 R *PR* 5.2.1R does not apply in relation to *non-equity transferable securities* whose denomination per unit amounts to at least 50,000 Euros (or an equivalent amount). [**Note:** article 10.3 *PD*]
- 5.2.3 G The *FSA* would expect the *annual information update* to refer to or contain information that is published or made available under:
- (1) Part 6 of the *Act*;
  - (2) *Part 6 rules*;
  - (3) Regulation No 1606/2002 on the application of international accounting standards;
  - (4) the Companies Act 1985 or, for an *overseas company*, the relevant companies legislation of the place where it is incorporated, relating to the regulation of securities, issuers and securities markets; and
  - (5) laws and rules of other *EEA States* and third countries that relate to the regulation of securities, issuers of securities and securities markets. [**Note:** article 10.1 *PD*]

Details to be provided in information update

- 5.2.4 G The *annual information update* may refer to information rather than including that information.
- 5.2.5 R If the *annual information update* refers to information it must state where the information can be obtained. [**Note:** article 10.2 *PD*]
- 5.2.6 G If the *annual information update* refers to information it should also:
- (1) give a short description of the nature of the information; and
  - (2) specify the date and place of filing (if applicable), and the date of publication, of the information.
- 5.2.7 EU Article 27 (3) of the *PD Regulation* provides for the following statement to be included in the *annual information update*:
3. The document shall include a statement indicating that some information may be out-of-date, if such is the case.

Filing and publication of information update

- 5.2.8 R The *issuer* must file the *annual information update* with the *FSA* by notifying it to a *RIS*. [**Note:** article 10.2 *PD*]
- 5.2.9 EU Articles 27 (1) and (2) of the *PD Regulation* provide for when the *annual information update* must be filed and published and for the method of publication.

Publication of the [*annual information update*]

1. The [*annual information update*] shall be made available to the public, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market, through one of the means permitted under [*PR 3.2.4R to PR 3.2.6R*] in the home Member State of the issuer.
2. The document shall be filed with the competent authority of the home Member State and made available to the public at the latest 20 working days after the publication of the annual financial statements in the home Member State.

5.3 Certificate of Approval

- 5.3.1 UK Sections 87H and 87I of the *Act* provide:

Prospectus approved in another EEA State

- 87H (1) A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has provided the competent authority with –
- (a) a certificate of approval;
  - (b) a copy of the prospectus as approved; and
  - (c) if requested by the [*FSA*], a translation of the summary of the prospectus.
- (2) A document is not a certificate of approval unless it states that the prospectus –
- (a) has been drawn up in accordance with the prospectus directive; and
  - (b) has been approved, in accordance with that directive, by the competent authority providing the certificate.
- (3) A document is not a certificate of approval unless it states whether (and, if so, why) the competent authority providing it authorised, in accordance with the prospectus directive, the omission from the

prospectus of information which would otherwise have been required to be included.

- (4) "Prospectus" includes a supplementary prospectus

#### Provision of information to host Member State

- 87I (1) The [FSA] must, if requested to do so, supply the competent authority of a specified EEA State with –
- (a) a certificate of approval;
  - (b) a copy of the specified prospectus (as approved by the [FSA]); and
  - (c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the other competent authority).
- (2) Only the following may make a request under this section –
- (a) the issuer of the transferable securities to which the specified prospectus relates;
  - (b) a person who wishes to offer the transferable securities to which the specified prospectus relates to the public in an EEA State other than (or as well as) the United Kingdom;
  - (c) a person requesting the admission of the transferable securities to which the specified prospectus relates to a regulated market situated or operating in an EEA State other than (or as well as) the United Kingdom.
- (3) A certificate of approval must state that the prospectus –
- (a) has been drawn up in accordance with this Part and the prospectus directive; and
  - (b) has been approved, in accordance with those provisions, by the [FSA].
- (4) A certificate of approval must state whether (and, if so, why) the [FSA] authorised, in accordance with section 87B, the omission from the prospectus of information which would otherwise have been required to be included.
- (5) The [FSA] must comply with a request under this section –
- (a) if the prospectus has been approved before the request is made, within 3 working days beginning with the date of the

request; or

(b) if the request is submitted with an application for the approval of the prospectus, on the first working day after the date on which it approves the prospectus.

(6) "Prospectus" includes a supplementary prospectus.

(7) "Specified" means specified in a request made for the purposes of this section.

#### Requests to FSA to supply certificate of approval

- 5.3.2 R (1) This *rule* applies to a request by a *person* to the *FSA* to supply information referred to in section 87I of the *Act* to the competent authority of a relevant *Host State*.
- (2) The request must be in writing and must include:
- (a) the relevant *prospectus* as approved (if it has already been approved); and
- (b) a translation of the *summary* if required by the competent authority of a relevant *host State*.

5.3.3 G The *FSA* will inform the *person* who made the request as soon as practicable after it has supplied the information to the other competent authority.

#### Certificate received from another competent authority

- 5.3.4 G If the *FSA* receives information referred to in section 87H from another competent authority it will as soon as practicable:
- (1) inform the *issuer, offeror* or *person* requesting admission (as the case may be) that it has received the information; and
- (2) give notice on the *FSA's* website that it has received the information.

## 5.4 Qualified investors register

### Register of qualified investors

- 5.4.1 UK Section 87R of the *Act* provides:
- (1) The [*FSA*] must establish and maintain, in accordance with this section and prospectus rules, a register of investors for the purposes of section 86.
- (2) An individual may not be entered in the register unless –

- (a) he is resident in the United Kingdom; and
  - (b) he meets at least two of the criteria mentioned in Article 2.2 of the prospectus directive.
- (3) A company may not be entered in the register unless –
- (a) it falls within the meaning of "small and medium-sized enterprises" in Article 2.1 of the prospectus directive; and
  - (b) its registered office is in the United Kingdom.
- (4) A person who does not fall within subsection (2) or (3) may not be entered in the register."

#### Applying for registration

- 5.4.2 R (1) An individual or *small and medium sized enterprise* may apply to the *FSA* to be registered as a *qualified investor*.
- (2) The application must be in writing in form B and must certify:
- (a) for a *small and medium sized enterprise* that the enterprise satisfies at least two of the three criteria in article 2.1.(f) of the *prospectus directive* and specify which of the criteria are satisfied; or
  - (b) for an individual that the individual satisfies at least two of the three criteria in article 2.2 of the *prospectus directive* and specify which of the criteria are satisfied.

**Note:** Forms referred to in these *rules* are available on the *FSA* website.

- 5.4.3 G The *FSA* will try to inform the applicant of its decision and (if appropriate) issue a certificate of registration within three *working days* after it receives the application.

#### Renewal of registration

- 5.4.4 R Registration will be valid from July 1 (or such later date as registration occurs) until 30 June each year.
- 5.4.5 R An individual or *small and medium sized enterprise* wishing to remain on the *register* must apply in accordance with *PR 5.4.2R* to renew their registration each year.

#### Removal of name from register

- 5.4.6 R If an individual or a *small and medium sized enterprise* wishes to be removed from the *register*, they must make a written request to the *FSA* to

be removed.

- 5.4.7 G The *FSA* will try to remove the individual or enterprise from the *register*, and inform them that it has done so, within three *working days* of receiving the request.

#### Access to the register

- 5.4.8 R An *issuer* or *offeror* wishing to access the *register* must apply in writing to the *FSA* at least three working days before the day on which access is sought.
- 5.4.9 R The application must be in writing in form C and must include the relevant fee specified in *PR App 2R*.

#### Restriction on use of information obtained from the register

- 5.4.10 R An *issuer* or *offeror* must ensure that information it has obtained from the *register* is not used by it or its agent except for the purpose of:
- (1) determining whether an investor is a *qualified investor*; or
  - (2) making an *offer* to the *qualified investor*,
- in connection with an *offer*.
- 5.4.11 R An *issuer* or *offeror* must ensure that information about a *qualified investor* it has obtained from the *register* is kept secure and is not disclosed by it or its agent to any *person* (other than to the *qualified investor* themselves or to a *person* acting on the *qualified investor's* behalf in relation to the *offer*).

**Note:** Information obtained from the *register* is confidential information under section 348 of the *Act*. Therefore a recipient of the information is also likely to be subject to the restrictions on disclosure of confidential information set out in that section. Use of the information for any purpose other than that referred to in *PR 5.4.10R* or disclosure to any other *person* may result in a breach of section 348 (contravention of which is punishable by a fine or imprisonment or both).

## 5.5 Persons responsible for a prospectus

### Persons responsible for a prospectus

- 5.5.1 R The *rules* in this section specify in accordance with section 84(1)(d) of the *Act* and for the purposes of Part 6 of the *Act*, the *persons* responsible for a *prospectus*.

**Note:** In accordance with *PR 1.1.9R* a reference in this section to a *prospectus* includes a *supplementary prospectus*.

Rules only apply if UK is home State

- 5.5.2 R The *rules* in this section only apply in respect of a *prospectus* if the *United Kingdom* is the *Home State* for the *issuer* in relation to the *transferable securities* to which the *prospectus* relates.

Equity shares

- 5.5.3 R (1) This *rule* applies to a *prospectus* relating to:
- (a) *equity shares*;
  - (b) warrants or options to subscribe for *equity shares*, that are issued by the *issuer* of the *equity shares*; and
  - (c) other *transferable securities* that have similar characteristics to *transferable securities* referred to in paragraphs (a) or (b).
- (2) Each of the following *persons* are responsible for the *prospectus*:
- (a) the *issuer* of the *transferable securities*;
  - (b) if the *issuer* is a *body corporate*:
    - (i) each *person* who is a *director* of that *body corporate* when the *prospectus* is published; and
    - (ii) each *person* who has authorised himself to be named, and is named, in the *prospectus* as a *director* or as having agreed to become a *director* of that *body corporate* either immediately or at a future time;
  - (c) each *person* who accepts, and is stated in the *prospectus* as accepting, responsibility for the *prospectus*;
  - (d) in relation to an *offer*:
    - (i) the *offeror*, if this is not the *issuer*; and
    - (ii) if the *offeror* is a *body corporate* and is not the *issuer*, each *person* who is a *director* of the *body corporate* when the *prospectus* is published;
  - (e) in relation to a request for the *admission to trading* of *transferable securities*:
    - (i) the *person* requesting admission, if this is not the *issuer*; and
    - (ii) if the *person* requesting admission is a *body corporate* and is not the *issuer*, each *person* who is a *director* of the *body corporate* when the *prospectus* is published; and

- (f) each *person* not falling within any of the previous paragraphs who has authorised the contents of the *prospectus*.

All other securities

- 5.5.4 R (1) This *rule* applies to a *prospectus* relating to *transferable securities* other than those to which *PR 5.5.3R* applies.
- (2) Each of the following *persons* are responsible for the *prospectus*:
- (a) the *issuer* of the *transferable securities*;
  - (b) each *person* who accepts, and is stated in the *prospectus* as accepting, responsibility for the *prospectus*;
  - (c) in relation to an *offer*, the *offeror* of the *transferable securities*, if this is not the *issuer*;
  - (d) in relation to a request for an *admission to trading* of *transferable securities*, the *person* requesting admission, if this is not the *issuer*;
  - (e) if there is a *guarantor* for the issue, the *guarantor* in relation to information in the *prospectus* that relates to the *guarantor* and the *guarantee*; and
  - (f) each *person* not falling within any of the previous paragraphs who has authorised the contents of the *prospectus*.

Issuer not responsible if it has not authorised offer or admission to trading

- 5.5.5 R A *person* is not responsible for a *prospectus* under *PR 5.5.3R(2)(a)* or (b) or *PR 5.5.4R(2)(a)* if the *issuer* has not made or authorised the *offer* or the request for *admission to trading* in relation to which the *prospectus* was published.

Publication without directors consent

- 5.5.6 R A *person* is not responsible for a *prospectus* under *PR 5.5.3R(2)(b)(i)* if it is published without his knowledge or consent and on becoming aware of its publication he, as soon as practicable, gives reasonable public notice that it was published without his knowledge or consent.

Offeror not responsible in certain circumstances

- 5.5.7 R A *person* is not responsible for a *prospectus* under *PR 5.5.3R(2)(d)* or *PR 5.5.4(2)(c)* if:
- (1) the *issuer* is responsible for the *prospectus* in accordance with the *rules* in this section;
  - (2) the *prospectus* was drawn up primarily by the *issuer*, or by one or

more *persons* acting on behalf of the *issuer*; and

- (3) the *offeror* is making the *offer* in association with the *issuer*.

Person may accept responsibility for, or authorise, part of contents

- 5.5.8 R A *person* who accepts responsibility for a *prospectus* under *PR* 5.5.3R(2)(c) or *PR* 5.5.4R(2)(b) or authorises the contents of a *prospectus* under *PR* 5.5.3R(2)(f) or *PR* 5.5.4R(2)(f), may state that they do so only in relation to specified parts of the *prospectus*, or only in specified respects, and in that case the *person* is responsible under those paragraphs:

- (1) only to the extent specified; and
- (2) only if the material in question is included in (or substantially in) the form and context to which the *person* has agreed.

Advice in a professional capacity

- 5.5.9 R Nothing in the *rules* in this section is to be construed as making a *person* responsible for any *prospectus* by reason only of the *person* giving advice about its contents in a professional capacity.

## 5.6 Miscellaneous

Information to be disclosed to all investors to whom offer addressed

- 5.6.1 R Where, in relation to an *offer* in the *United Kingdom*, no *prospectus* is required under the *Act*, the *issuer* and *offeror* must ensure that material information they provide to *qualified investors* or special categories of investors, including information disclosed in the context of meetings relating to *offers*, is disclosed to all *qualified investors* or special categories of investors to whom the *offer* is exclusively addressed. [**Note:** article 15.5 *PD*]

- 5.6.2 G Where a *prospectus* is required to be made available to the public under the *Act*, information referred to in *PR* 5.6.1R should be included in the *prospectus* or in a *supplementary prospectus*.

Exercise of powers under section 87K or 87L of the *Act*

- 5.6.3 G Under sections 87K and 87L of the *Act*, the *FSA* has various powers including powers to prohibit or suspend an *offer* and to prohibit or suspend an *advertisement*. The *FSA* will use these powers if it is necessary to protect investors or the smooth operation of the market is, or may be, jeopardised.

Calculation of amounts not denominated in euros

- 5.6.4 R For the purposes of these *rules*, an amount (in relation to an amount denominated in euros) is an "equivalent amount" if it is an amount of equal value denominated wholly or partly in another currency or unit of account,

calculated at:

- (1) in relation to a *prospectus* drawn up as a single document, the date on which the *prospectus* is approved;
- (2) in relation to a *prospectus* consisting of a *registration document* together with a *securities note* and a *summary*, the date on which the *registration document* is approved;
- (3) in relation to a *prospectus* consisting of a *base prospectus* and final terms of the *offer*, the date on which the final terms are filed.

Property company valuation reports

- 5.6.5 G To comply with paragraph 145 of the *CESR recommendations*, the *FSA* would expect a valuation report for a property company incorporated in the *United Kingdom* to be in accordance with the Appraisal and Valuation Standards (5<sup>th</sup> edition) issued by the Royal Institution of Chartered Surveyors.

## PR Appendix 1

### PR App 1.1 Note Relevant definitions

#### App 1.1.1 Note

**Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

<i>Act</i>	the Financial Services and Markets Act 2000.
<i>admission to trading</i>	admission to trading on a <i>regulated market</i> .
<i>advertisement</i>	(as defined in the <i>PD Regulation</i> ) announcements: <ol style="list-style-type: none"><li>(1) relating to a specific offer to the public of securities or to an admission to trading on a regulated market; and</li><li>(2) aiming to specifically promote the potential subscription or acquisition of securities.</li></ol>
<i>annual information update</i>	the document referred to in <i>PR 5.2.1R</i> .
<i>applicant</i>	an <i>applicant</i> for approval of a <i>prospectus</i> or <i>supplementary prospectus</i>

relating to *transferable securities*.

*asset backed security* (as defined in the *PD Regulation*) securities which:

- (1) represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable there under; or
- (2) are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets.

*base prospectus* a base prospectus referred to in *PR 2.2.7R*.

*body corporate* (in accordance with section 417(1) of the *Act* (Definitions) any body corporate, including a body corporate constituted under the law of a country or territory outside the *United Kingdom*;

*building block* (as defined in the *PD Regulation*) a list of additional information requirements, not included in one of the schedules, to be added to one or more schedules, as the case may be, depending on the type of instrument and/or transaction for which a prospectus or base prospectus is drawn up.

*CARD* *Consolidated Admissions and Reporting Directive*.

*CESR recommendations* the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses no 809/2004 published by the Committee of European Securities Regulators.

*collective investment undertaking other than the closed-end type* (in *PR*) (as defined in Article 2.1(o) of the *prospectus directive*) unit trusts and investment companies:

- (1) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk-spreading;
- (2) the units of which are, at the holder's request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings.

*CARD* *Consolidated Admissions and Reporting Directive*.

<i>Consolidated Admissions and Reporting Directive</i>	Directive 2001/34/EC of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities.
<i>credit institution</i>	as defined in article 1(1) of the <i>Banking Consolidation Directive</i> .
<i>director</i>	(in accordance with section 417(1)(a) of the <i>Act</i> ) a <i>person</i> occupying in relation to it the position of a director (by whatever name called) and, in relation to an <i>issuer</i> which is not a <i>body corporate</i> , a <i>person</i> with corresponding powers and duties.
<i>EEA State</i>	(in accordance with paragraph 8 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, as it has effect for the time being; as at 1 May 2004, the following are the <i>EEA States</i> : Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden and the <i>United Kingdom</i> .
<i>equity security</i>	(as defined in Article 2.1(b) of the <i>prospectus directive</i> ) shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer.
<i>equity share</i>	<i>shares</i> comprised in a <i>company's equity share capital</i> .
<i>equity share capital</i>	(for a <i>company</i> ), its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.
<i>executive procedures</i>	the procedures relating to the giving of <i>warning notices</i> , <i>decision notices</i> and <i>supervisory notices</i> that the <i>FSA</i> proposes to follow in the circumstances specified in <i>DEC</i> 4.1.6G (Decisions to be taken by executive procedures), and that are described in <i>DEC</i> 4.3 (Executive procedures for statutory notice decisions and statutory notice associated decisions).
<i>FSA</i>	the Financial Services Authority.
<i>guarantee</i>	(as defined in the <i>PD Regulation</i> ) any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, keep well agreement, mono-line insurance policy

or other equivalent commitment.

*guarantor* a person that provides a *guarantee*.

*Home State or Home Member State* (as defined in section 102C of the *Act*) in relation to an issuer of *transferable securities*, the *EEA State* which is the "home Member State" for the purposes of the *prospectus directive* (which is to be determined in accordance with Article 2.1(m) of that directive).

*Host State or Host Member State* (as defined in Article 2.1(n) of the *prospectus directive*) the *EEA State* where an offer to the public is made or admission to trading is sought, when different from the home State.

*Investment Services Directive* the Council Directive of 10 May 1993 on investment services in the securities field (No 93/22/EEC).

*ISD* *Investment Services Directive*.

*issuer* (as defined in section 102A of the *Act*) a legal person who issues or proposes to issue the *transferable securities* in question.

*non-equity transferable securities* (as defined in section 102A of the *Act*) all *transferable securities* that are not *equity securities*.

**Note:** In the *prospectus directive* and the *PD Regulation*, the Commission uses the term "non-equity securities" rather than "non-equity transferable securities".

*offer of transferable securities to the public* (as defined in section 102B of the *Act*), in summary:

- (a) a communication to any person which presents sufficient information on:
  - (i) the transferable securities to be offered, and
  - (ii) the terms on which they are offered,to enable an investor to decide to buy or subscribe for the securities in question;
- (b) which is made in any form or by any means;
- (c) including the placing of securities through a financial intermediary;
- (d) but not including a communication in connection with trading on:

- (i) a regulated market;
- (ii) a multilateral trading facility; or
- (iii) any market prescribed by an order under section 130A of the *Act*.

**Note:** This is only a summary, to see the full text of the definition, readers should consult section 102B of the *Act*.

<i>offer</i>	an <i>offer of transferable securities to the public</i> .
<i>offeror</i>	a <i>person</i> who makes an <i>offer of transferable securities to the public</i> .
<i>offering programme</i>	(as defined in Article 2.1(k) of the <i>prospectus directive</i> ) a plan which would permit the issuance of non-equity securities, including warrants in any form, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period.
<i>overseas company</i>	a company incorporated outside the <i>United Kingdom</i> .
<i>Part 6 rules</i>	(in accordance with section 73A(1) of the <i>Act</i> ), <i>rules</i> made for the purposes of Part 6 of the <i>Act</i> .
<i>PD</i>	<i>prospectus directive</i> .
<i>PD Regulation</i>	Regulation number 809/2004 of the European Commission.
<i>person</i>	(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporated that is, a natural person, a legal person and, for example, a <i>partnership</i> ).
<i>PR</i>	the Prospectus Rules sourcebook.
<i>profit forecast</i>	(as defined in the <i>PD Regulation</i> ) a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used.

<i>profit estimate</i>	(as defined in the <i>PD Regulation</i> ) a profit forecast for a financial period which has expired and for which results have not yet been published.
<i>property collective investment undertaking</i>	(as defined in the <i>PD Regulation</i> ) a collective investment undertaking whose investment objective is the participation in the holding of property in the long term.
<i>prospectus</i>	a prospectus required under the <i>prospectus directive</i> .
<i>prospectus directive</i>	the Directive of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (No 2003/71/EC).
<i>Prospectus Rules</i>	(as defined in section 73A(4) of the <i>Act</i> ) <i>rules</i> expressed to relate to <i>transferable securities</i> .
<i>Public international body</i>	(as defined in the <i>PD Regulation</i> ) a legal entity of public nature established by an international treaty between sovereign States and of which one or more Member States are members.
<i>qualified investor</i>	(as defined in section 86(7) of the <i>Act</i> ): <ul style="list-style-type: none"> <li>(a) any entity falling within the meaning of Article 2(1)(e)(i), (ii) or (iii) of the <i>prospectus directive</i>;</li> <li>(b) an investor registered on the register maintained by the competent authority under section 87R;</li> <li>(c) an investor authorised by an <i>EEA State</i> other than the <i>United Kingdom</i> to be considered as a qualified investor for the purposes of the <i>prospectus directive</i>.</li> </ul>
<i>register</i>	register of <i>qualified investors</i> maintained by the <i>FSA</i> under section 87R of the <i>Act</i> .
<i>registration document</i>	a registration document referred to in <i>PR 2.2.2R</i> .
<i>regulated information</i>	(as defined in the <i>PD Regulation</i> ) all information which the issuer, or any person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under Directive 2001/34/EC or under Article 6 of Directive 2003/6/EC.
<i>regulated</i>	(a) (as defined in article 1 of the <i>ISD</i> ) a market for the instruments listed

<i>market</i>	<p>in Section B of the Annex to the <i>ISD</i> which:</p> <ul style="list-style-type: none"> <li>(i) appears on the list of such markets drawn up by the market's <i>Home State</i> as required by article 16 of the <i>ISD</i>;</li> <li>(ii) functions regularly;</li> <li>(iii) is characterised by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market; and</li> <li>(iv) requires compliance with all the reporting and transparency requirements laid down by articles 20 and 21 of the <i>ISD</i>; and</li> </ul> <p>(b) a market notified under article 16 of the <i>ISD</i>, as included in point 30b of Annex IX to the Agreement of the European Economic Area, to the Standing Committee of the EFTA States as defined in that agreement.</p>
<i>RIS</i>	<i>Regulatory Information Service.</i>
<i>risk factors</i>	(as defined in the <i>PD Regulation</i> ) a list of risks which are specific to the situation of the issuer and/or the securities and which are material for taking investment decisions.
<i>rule</i>	(in accordance with section 417(1) of the <i>Act</i> (Definitions)) a rule made by the <i>FSA</i> under the <i>Act</i> .
<i>schedule</i>	(as defined in the <i>PD Regulation</i> ) a list of minimum information requirements adapted to the particular nature of the different types of issuers and/or the different securities involved.
<i>securities issued in a continuous and repeated manner</i>	(as defined in Article 2.1(l) of the <i>prospectus directive</i> ) issues on tap or at least two separate issues of securities of a similar type and/or class over a period of 12 months.
<i>securities note</i>	a securities note referred to in <i>PR 2.2.2R</i> .
<i>small and medium-sized</i>	(as defined in Article 2.1(f) of the <i>prospectus directive</i> ) companies, which, according to their last annual or consolidated accounts, meet at least two of

<i>enterprise</i>	the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €13,000,000 and an annual net turnover not exceeding €50,000,000.
<i>special purpose vehicle</i>	(as defined in the <i>PD Regulation</i> ) an <i>issuer</i> whose objects and purposes are primarily the issue of <i>securities</i> .
<i>statutory notice decision</i>	a decision by the <i>FSA</i> on whether or not to give a <i>statutory notice</i> .
<i>statutory notice associated decision</i>	a decision which is made by the <i>FSA</i> and which is associated with a decision to give a <i>statutory notice</i> , including a decision: <ul style="list-style-type: none"> <li>(a) to determine or extend the period for making representations;</li> <li>(b) to determine whether a copy of the <i>statutory notice</i> needs to be given to any third party and the period for him to make representations;</li> <li>(c) to refuse access to <i>FSA</i> material;</li> <li>(d) as to the information which it is appropriate to publish about the matter to which a <i>final notice</i> or an effective <i>supervisory notice</i> relates.</li> </ul>
<i>summary</i>	(in relation to a <i>prospectus</i> ) the summary included in the <i>prospectus</i> .
<i>supplementary prospectus</i>	a supplementary prospectus containing details of a new factor, mistake or inaccuracy.
<i>transferable security</i>	(as defined in section 102A of the <i>Act</i> ) anything which is a transferable security for the purposes of the <i>investment services directive</i> , other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.
<b>Note:</b> In the <i>prospective directive</i> and <i>PD regulation</i> , the Commission uses the term "security" rather than "transferable security".	
<i>umbrella collective investment scheme</i>	(as defined in the <i>PD Regulation</i> ) a collective investment undertaking invested in one or more collective investment undertakings, the asset of which is composed of separate class(es) or designation(s) of securities.
<i>United Kingdom</i>	England and Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

*units of a collective investment scheme* (as defined in Article 2.1(p) of the *prospectus directive*) securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets.

*working day* (as defined in section 103 of the *Act*) any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the *United Kingdom*.

## PR Appendix 2

### PR App 2R Fees

#### App 2.1.1R

Fees for the period from 1 July 2005 to 31 March 2006

These fees relate to approval or vetting of the documents referred to in the second column of this table arising in relation to specific events or transactions that an *issuer, offeror* or *person* requesting admission might be involved in during the year and fall due when documentation is first submitted to the *FSA*.

Category 1	Equity <i>prospectus</i>	£5,700
	Equivalent document referred to in <i>PR</i> 1.2.2R(2) or (3) or <i>PR</i> 1.2.3R(3) or (4)	
Category 2	Equity <i>registration document</i>	£4,000
Category 3	Equity <i>securities note and summary</i>	£2,500
	Summary document referred to in <i>PR</i> 1.2.3R(8)	
Category 4	Non-equity <i>prospectus</i> or <i>base prospectus</i>	£2,500
	Equivalent document referred to in <i>PR</i> 1.2.2R(2) or (3) or <i>PR</i> 1.2.3R(3) or (4)	

Category 5	Non-equity <i>registration document</i>	£1,750
Category 6	Non-equity <i>securities note and summary</i>	£1,000
	Summary document referred to in <i>PR</i> 1.2.3R(8)	
Category 7	<i>Supplementary prospectus</i>	£500

Tranches – upfront fee per tranche for draw downs in the following 12 months. £100

Payment in advance for more than 75 draw downs will attract a 10% discount.

For the purposes of categories 1-3 of this fee schedule, equity does not include convertible securities or depositary receipts. These are treated as non-equity.

Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.

## **PR Appendix 3**

### **PR 3.1 Schedules and Building Blocks and Table of Combinations of Schedules and Building Blocks**

**App 3.1.1 EU**      **The following *schedules* and *building blocks* and tables of combinations are copied from the *PD Regulation*:**

## ANNEX I

### Minimum Disclosure Requirements for the Share Registration Document (schedule)

#### 1. PERSONS RESPONSIBLE

1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.

1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

#### 2. STATUTORY AUDITORS

2.1. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).

2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.

#### 3. SELECTED FINANCIAL INFORMATION

3.1. Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information.

The selected historical financial information must provide the key figures that summarise the financial condition of the issuer.

3.2. If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.

#### 4. RISK FACTORS

Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed "Risk Factors".

#### 5. INFORMATION ABOUT THE ISSUER

##### 5.1. History and Development of the Issuer.

5.1.1. the legal and commercial name of the issuer;

5.1.2. the place of registration of the issuer and its registration number;

5.1.3. the date of incorporation and the length of life of the issuer, except where indefinite;

5.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);

5.1.5. the important events in the development of the issuer's business.

##### 5.2. Investments

5.2.1. A description, (including the amount) of the issuer's principal investments for each financial year for the period covered by the historical financial information up to the date of the registration document;

5.2.2. A description of the issuer's principal investments that are in progress, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external);

- 5.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.
6. BUSINESS OVERVIEW
- 6.1. Principal Activities
- 6.1.1. A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the historical financial information; and
- 6.1.2. An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.
- 6.2. Principal Markets  
A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each financial year for the period covered by the historical financial information.
- 6.3. Where the information given pursuant to items 6.1 and 6.2 has been influenced by exceptional factors, mention that fact.
- 6.4. If material to the issuer's business or profitability, a summary information regarding the extent to which the issuer is dependent, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes.
- 6.5. The basis for any statements made by the issuer regarding its competitive position.
7. ORGANIZATIONAL STRUCTURE
- 7.1. If the issuer is part of a group, a brief description of the group and the issuer's position within the group.
- 7.2. A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.
8. PROPERTY, PLANTS AND EQUIPMENT
- 8.1. Information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon.
- 8.2. A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.
9. OPERATING AND FINANCIAL REVIEW
- 9.1. Financial Condition  
To the extent not covered elsewhere in the registration document, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.
- 9.2. Operating Results
- 9.2.1. Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.
- 9.2.2. Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.
- 9.2.3. Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
10. CAPITAL RESOURCES
- 10.1. Information concerning the issuer's capital resources (both short and long term);
- 10.2. An explanation of the sources and amounts of and a narrative description of the issuer's cash flows;
- 10.3. Information on the borrowing requirements and funding structure of the issuer;
- 10.4. Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
- 10.5. Information regarding the anticipated sources of funds needed to fulfil commitments referred to in items 5.2.3. and 8.1.

11. **RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES**  
Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.
12. **TREND INFORMATION**
  - 12.1. The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document.
  - 12.2. Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.
13. **PROFIT FORECASTS OR ESTIMATES**  
If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 13.1 and 13.2:
  - 13.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.  
  
There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.
  - 13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
  - 13.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.
  - 13.4. If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.
14. **ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT**

14.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:

- a) members of the administrative, management or supervisory bodies;
- b) partners with unlimited liability, in the case of a limited partnership with a share capital;
- c) founders, if the issuer has been established for fewer than five years; and
- d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business.

The nature of any family relationship between any of those persons.

In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information:

(a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;

(b) any convictions in relation to fraudulent offences for at least the previous five years;

(c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years;

(d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.

If there is no such information to be disclosed, a statement to that effect is to be made.

14.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests  
Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 14.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.

Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management. Details of any restrictions agreed by the persons referred to in item 14.1 on the disposal within a certain period of time of their holdings in the issuer's securities.

15. REMUNERATION AND BENEFITS

In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1.:

- 15.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.  
That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.
- 15.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.
16. **BOARD PRACTICES**  
In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1. :
- 16.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.
- 16.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.
- 16.3. Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.
- 16.4. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.
17. **EMPLOYEES**
- 17.1. Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.
- 17.2. **Shareholdings and stock options**  
With respect to each person referred to in points (a) and (d) of the first subparagraph of item 14.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.
- 17.3. Description of any arrangements for involving the employees in the capital of the issuer.
18. **MAJOR SHAREHOLDERS**
- 18.1. In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.
- 18.2. Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.
- 18.3. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
- 18.4. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

19. RELATED PARTY TRANSACTIONS

Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable.

If such standards do not apply to the issuer the following information must be disclosed:

a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.

b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.

20. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES

20.1. Historical Financial Information

Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.

The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:

- (a) balance sheet;
- (b) income statement;
- (c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners;
- (d) cash flow statement;
- (e) accounting policies and explanatory notes

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

- 20.2. Pro forma financial information  
 In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.
- This requirement will normally be satisfied by the inclusion of pro forma financial information.
- This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.
- Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.
- 20.3. Financial statements  
 If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.
- 20.4 Auditing of historical annual financial information
- 20.4.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.
- 20.4.2. Indication of other information in the registration document which has been audited by the auditors.
- 20.4.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.
- 20.5. Age of latest financial information
- 20.5.1. The last year of audited financial information may not be older than one of the following:  
 (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;  
 (b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.
- 20.6. Interim and other financial information
- 20.6.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.
- 20.6.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.
- 20.7. Dividend policy  
 A description of the issuer's policy on dividend distributions and any restrictions thereon.
- 20.7.1. The amount of the dividend per share for each financial year for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.
- 20.8. Legal and arbitration proceedings  
 Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.

- 20.9. Significant change in the issuer's financial or trading position  
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 information or interim financial information have been published, or provide an appropriate negative statement.
21. ADDITIONAL INFORMATION
- 21.1. Share Capital  
The following information as of the date of the most recent balance sheet included in the historical financial information:
- 21.1.1. The amount of issued capital, and for each class of share capital:
- (a) the number of shares authorised;
  - (b) the number of shares issued and fully paid and issued but not fully paid;
  - (c) the par value per share, or that the shares have no par value; and
  - (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.
- 21.1.2. If there are shares not representing capital, state the number and main characteristics of such shares.
- 21.1.3. The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
- 21.1.4. The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.
- 21.1.5. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.
- 21.1.6. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.
- 21.1.7. A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.
- 21.2. Memorandum and Articles of Association
- 21.2.1. A description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.
- 21.2.2. A summary of any provisions of the issuer's articles of association, statutes, charter or bylaws with respect to the members of the administrative, management and supervisory bodies.
- 21.2.3. A description of the rights, preferences and restrictions attaching to each class of the existing shares.
- 21.2.4. A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.
- 21.2.5. A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.
- 21.2.6. A brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.
- 21.2.7. An indication of the articles of association, statutes, charter or bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.
- 21.2.8. A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaw governing changes in the capital, where such conditions are more stringent than is required by law.

22. MATERIAL CONTRACTS

A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document.

A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.

23. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST

23.1. Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.

23.2. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.

24. DOCUMENTS ON DISPLAY

A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:

(a) the memorandum and articles of association of the issuer;

(b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;

(c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.

An indication of where the documents on display may be inspected, by physical or electronic means.

25. INFORMATION ON HOLDINGS

Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.

ANNEX II

Pro forma financial information building block

1. The pro forma information must include a description of the transaction, the businesses or entities involved and the period to which it refers, and must clearly state the following:
  - a) the purpose to which it has been prepared;
  - b) the fact that it has been prepared for illustrative purposes only;
  - c) the fact that because of its nature, the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the company's actual financial position or results.
2. In order to present pro forma financial information, a balance sheet and profit and loss account, and accompanying explanatory notes, depending on the circumstances may be included.
3. Pro forma financial information must normally be presented in columnar format, composed of:
  - a) the historical unadjusted information;
  - b) the pro forma adjustments; and
  - c) the resulting pro forma financial information in the final column.

The sources of the pro forma financial information have to be stated and, if applicable, the financial statements of the acquired businesses or entities must be included in the prospectus.

4. The pro forma information must be prepared in a manner consistent with the accounting policies adopted by the issuer in its last or next financial statements and shall identify the following:
  - a) the basis upon which it is prepared;
  - b) the source of each item of information and adjustment.
5. Pro forma information may only be published in respect of
  - a) the current financial period;
  - b) the most recently completed financial period; and/or
  - c) the most recent interim period for which relevant unadjusted information has been or will be published or is being published in the same document.
6. Pro forma adjustments related to the pro forma financial information must be:
  - a) clearly shown and explained;
  - b) directly attributable to the transaction;
  - c) factually supportable.

In addition, in respect of a pro forma profit and loss or cash flow statement, they must be clearly identified as to those expected to have a continuing impact on the issuer and those which are not.

7. The report prepared by the independent accountants or auditors must state that in their opinion:
  - a) the pro forma financial information has been properly compiled on the basis stated;
  - b) that basis is consistent with the accounting policies of the issuer.

### ANNEX III

#### Minimum Disclosure Requirements for the Share Securities Note (schedule)

#### 1. PERSONS RESPONSIBLE

- 1.1. All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
- 1.2. A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

#### RISK FACTORS

2. Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed "Risk Factors".

#### 3. KEY INFORMATION

##### 3.1 Working capital Statement

Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed.

##### 3.2 Capitalization and indebtedness

A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness.

##### 3.3 Interest of natural and legal persons involved in the issue/offer

A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.

##### 3.4 Reasons for the offer and use of proceeds

Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.

#### 4. INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING

- 4.1 A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.

- 4.2 Legislation under which the securities have been created.
- 4.3 An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
- 4.4 Currency of the securities issue.
- 4.5 A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.

Dividend rights:

- Fixed date(s) on which the entitlement arises,
- Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,
- Dividend restrictions and procedures for non-resident holders,
- Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments.

Voting rights.

Pre-emption rights in offers for subscription of securities of the same class.

Right to share in the issuer's profits.

Rights to share in any surplus in the event of liquidation.

Redemption provisions.

Conversion provisions.

- 4.6 In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.
- 4.7 In the case of new issues, the expected issue date of the securities.
- 4.8 A description of any restrictions on the free transferability of the securities.
- 4.9 An indication of the existence of any mandatory takeover bids and/or squeeze-out and sellout rules in relation to the securities.
- 4.10 An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.
- 4.11 In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought:
- Information on taxes on the income from the securities withheld at source,
  - Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.

5. TERMS AND CONDITIONS OF THE OFFER

- 5.1 Conditions, offer statistics, expected timetable and action required to apply for the offer
- 5.1.1. Conditions to which the offer is subject.
- 5.1.2 Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.
- 5.1.3 The time period, including any possible amendments, during which the offer will be open and description of the application process.
- 5.1.4 An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.
- 5.1.5 A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.
- 5.1.6 Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).
- 5.1.7 An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.

- 5.1.8 Method and time limits for paying up the securities and for delivery of the securities.
- 5.1.9 A full description of the manner and date in which results of the offer are to be made public.
- 5.1.10 The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.
- 5.2 Plan of distribution and allotment
- 5.2.1. The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
- 5.2.2. To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.
- 5.2.3. Pre-allotment Disclosure:
- a) The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches;
  - b) The conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches;
  - c) The allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches;
  - d) A description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups.
  - e) Whether the treatment of subscriptions or bids to subscribe in the allotment may be determined on the basis of which firm they are made through or by;
  - f) A target minimum individual allotment if any within the retail tranche;
  - g) The conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest;
  - h) Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.
- 5.2.4. Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.
- 5.2.5. Over-allotment and 'green shoe':
- a) The existence and size of any over-allotment facility and/or 'green shoe'.
  - b) The existence period of the over-allotment facility and/or 'green shoe'.
  - c) Any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.
- 5.3 Pricing
- 5.3.1. An indication of the price at which the securities will be offered. If the price is not known or if there is no established and/or liquid market for the securities, indicate the method for determining the offer price, including a statement as to who has set the criteria or is formally responsible for the determination. Indication of the amount of any expenses and taxes specifically charged to the subscriber or purchaser.
- 5.3.2. Process for the disclosure of the offer price.
- 5.3.3. If the issuer's equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, indication of the basis for the issue price if the issue is for cash, together with the reasons for and beneficiaries of such restriction or withdrawal.

5.3.4 Where there is or could be a material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offer and the effective cash contributions of such persons.

#### 5.4. Placing and Underwriting

5.4.1 Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.

5.4.2 Name and address of any paying agents and depository agents in each country.

5.4.3. Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.

5.4.4. When the underwriting agreement has been or will be reached.

#### 6. ADMISSION TO TRADING AND DEALING ARRANGEMENTS

6.1 An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.

6.2 All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.

6.3 If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number and characteristics of the securities to which they relate.

6.4 Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.

6.5 Stabilization: where an issuer or a selling shareholder has granted an over-allotment option or it is otherwise proposed that price stabilizing activities may be entered into in connection with an offer:

6.5.1. The fact that stabilization may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time,

6.5.2. The beginning and the end of the period during which stabilization may occur,

6.5.3. The identity of the stabilization manager for each relevant jurisdiction unless this is not known at the time of publication,

6.5.4. The fact that stabilization transactions may result in a market price that is higher than would otherwise prevail.

#### 7. SELLING SECURITIES HOLDERS

- 7.1 Name and business address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three years with the issuer or any of its predecessors or affiliates.
- 7.2 The number and class of securities being offered by each of the selling security holders.
- 7.3 Lock-up agreements  
The parties involved.  
Content and exceptions of the agreement.  
Indication of the period of the lock up.
- 8. **EXPENSE OF THE ISSUE/OFFER**
- 8.1. The total net proceeds and an estimate of the total expenses of the issue/offer.
- 9. **DILUTION**
- 9.1 The amount and percentage of immediate dilution resulting from the offer.
- 9.2. In the case of a subscription offer to existing equity holders, the amount and percentage of immediate dilution if they do not subscribe to the new offer.
- 10. **ADDITIONAL INFORMATION**
- 10.1. If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.
- 10.2. An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.
- 10.3. Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Securities Note.
- 10.4. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.

#### ANNEX IV

##### Minimum Disclosure Requirements for the Debt and Derivative Securities Registration Document (schedule)

(Debt and derivative securities with a denomination per unit of less than EUR 50 000)

- 1. **PERSONS RESPONSIBLE**
- 1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.

- 1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
2. **STATUTORY AUDITORS**
  - 2.1. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).
  - 2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, details if material.
3. **SELECTED FINANCIAL INFORMATION**
  - 3.1. Selected historical financial information regarding the issuer, presented, for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information.  
The selected historical financial information must provide key figures that summarise the financial condition of the issuer.
  - 3.2. If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the year end balance sheet information.
4. **RISK FACTORS**  
Prominent disclosure of risk factors that may affect the issuer's ability to fulfil its obligations under the securities to investors in a section headed "Risk Factors".
5. **INFORMATION ABOUT THE ISSUER**
  - 5.1. History and development of the Issuer:
    - 5.1.1. the legal and commercial name of the issuer;
    - 5.1.2. the place of registration of the issuer and its registration number;
    - 5.1.3. the date of incorporation and the length of life of the issuer, except where indefinite;
    - 5.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);
    - 5.1.5. any recent events particular to the issuer which are to a material extent relevant to the evaluation of the issuer's solvency.
  - 5.2. Investments
    - 5.2.1. A description of the principal investments made since the date of the last published financial statements.
    - 5.2.2. Information concerning the issuer's principal future investments, on which its management bodies have already made firm commitments.
    - 5.2.3. Information regarding the anticipated sources of funds needed to fulfil commitments referred to in item 5.2.2.
6. **BUSINESS OVERVIEW**
  - 6.1. Principal activities:
    - 6.1.1. A description of the issuer's principal activities stating the main categories of products sold and/or services performed; and
    - 6.1.2. an indication of any significant new products and/or activities.
  - 6.2. Principal markets  
A brief description of the principal markets in which the issuer competes.
  - 6.3. The basis for any statements made by the issuer regarding its competitive position.
7. **ORGANISATIONAL STRUCTURE**
  - 7.1. If the issuer is part of a group, a brief description of the group and of the issuer's position within it.

- 7.2. If the issuer is dependent upon other entities within the group, this must be clearly stated together with an explanation of this dependence.
8. TREND INFORMATION
- 8.1. Include a statement that there has been no material adverse change in the prospects of the issuer since the date of its last published audited financial statements. In the event that the issuer is unable to make such a statement, provide details of this material adverse change.
- 8.2. Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.
9. PROFIT FORECASTS OR ESTIMATES
- If an issuer chooses to include a profit forecast or a profit estimate, the registration document must contain the information items 9.1 and 9.2:
- 9.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.

There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.

- 9.2. A report prepared by independent accountants or auditors must be included stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
- 9.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.
10. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES
- 10.1. Names, business addresses and functions in the issuer of the following persons, and an indication of the principal activities performed by them outside the issuer where these are significant with respect to that issuer:

(a) members of the administrative, management or supervisory bodies;

(b) partners with unlimited liability, in the case of a limited partnership with a share capital.

- 10.2. Administrative, Management, and Supervisory bodies conflicts of interests  
Potential conflicts of interests between any duties to the issuing entity of the persons referred to in item 10.1 and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, make a statement to that effect.
11. BOARD PRACTICES
- 11.1. Details relating to the issuer's audit committee, including the names of committee members and a summary of the terms of reference under which the committee operates.
- 11.2. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.
12. MAJOR SHAREHOLDERS
- 12.1. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control, and describe the measures in place to ensure that such control is not abused.
- 12.2. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

13. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES

13.1. Historical Financial Information

Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.

The most recent year's historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:

- (a) balance sheet;
- (b) income statement;
- (c) cash flow statement; and
- (d) accounting policies and explanatory notes

The historical annual financial information must have been independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

13.2. Financial statements

If the issuer prepares both own and consolidated financial statements, include at least the consolidated financial statements in the registration document.

13.3. Auditing of historical annual financial information

13.3.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.

13.3.2. An indication of other information in the registration document which has been audited by the auditors.

13.3.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is un-audited.

- 13.4. Age of latest financial information
- 13.4.1. The last year of audited financial information may not be older than 18 months from the date of the registration document.
- 13.5. Interim and other financial information
- 13.5.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited the audit or review report must also be included. If the quarterly or half yearly financial information is un-audited or has not been reviewed state that fact.
- 13.5.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, covering at least the first six months of the financial year. If the interim financial information is un-audited state that fact. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.
- 13.6. Legal and arbitration proceedings
- Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past, significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
- 13.7. Significant change in the issuer's financial or trading position
- 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 information or interim financial information have been published, or an appropriate negative statement.
14. **ADDITIONAL INFORMATION**
- 14.1. Share Capital
- 14.1.1. The amount of the issued capital, the number and classes of the shares of which it is composed with details of their principal characteristics, the part of the issued capital still to be paid up, with an indication of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down where applicable according to the extent to which they have been paid up.
- 14.2. Memorandum and Articles of Association.
- 14.2.1. The register and the entry number therein, if applicable, and a description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.
15. **MATERIAL CONTRACTS**
- A brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or entitlement that is material to the issuer's ability to meet its obligation to security holders in respect of the securities being issued.
- 16 **THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST**
- 16.1 Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report 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 Registration Document.

16.2 Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information.

17. DOCUMENTS ON DISPLAY

A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:

(a) the memorandum and articles of association of the issuer;

(b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;

(c) the historical financial information of the issuer or, in the case of a group, the historical financial information of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.

An indication of where the documents on display may be inspected, by physical or electronic means.

#### ANNEX V

Minimum Disclosure Requirements for the Securities Note related to Debt securities (schedule)  
(Debt securities with a denomination per unit of less than EUR 50 000)

1. PERSONS RESPONSIBLE

1.1 All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.

1.2 A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

2. RISK FACTORS

2.1 Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed "Risk Factors".

3. KEY INFORMATION

3.1 Interest of natural and legal persons involved in the issue/offer

A description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest.

- 3.2 Reasons for the offer and use of proceeds  
Reasons for the offer if different from making profit and/or hedging certain risks. Where applicable, disclosure of the estimated total expenses of the issue/offer and the estimated net amount of the proceeds. These expenses and proceeds shall be broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed.
4. INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING
- 4.1 A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.
- 4.2 Legislation under which the securities have been created.
- 4.3 An indication of whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
- 4.4 Currency of the securities issue.
- 4.5 Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer
- 4 A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.
- 6
- 4.7 The nominal interest rate and provisions relating to interest payable.
- The date from which interest becomes payable and the due dates for interest.
  - The time limit on the validity of claims to interest and repayment of principal
- Where the rate is not fixed, description of the underlying on which it is based and of the method used to relate the two and an indication where information about the past and the further performance of the underlying and its volatility can be obtained.
- A description of any market disruption or settlement disruption events that affect the underlying
  - Adjustment rules with relation to events concerning the underlying
  - Name of the calculation agent
- If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident.
- 4.8 Maturity date and arrangements for the amortization of the loan, including the repayment procedures. Where advance amortization is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating amortization terms and conditions
- 4.9 An indication of yield. Describe the method whereby that yield is calculated in summary form
- 4.10 Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where the public may have access to the contracts relating to these forms of representation

4.11 In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.

4.12 In the case of new issues, the expected issue date of the securities.

4.13 A description of any restrictions on the free transferability of the securities.

4.14 In respect of the country of registered office of the issuer and the country(ies) where the offer being made or admission to trading is being sought:

- Information on taxes on the income from the securities withheld at source;

- Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.

## 5 TERMS AND CONDITIONS OF THE OFFER

5.1 Conditions, offer statistics, expected timetable and action required to apply for the offer

5.1.1 Conditions to which the offer is subject.

5.1.2 Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.

5.1.3 The time period, including any possible amendments, during which the offer will be open and description of the application process.

5.1.4 A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.

5.1.5 Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest).

5.1.6 Method and time limits for paying up the securities and for delivery of the securities.

5.1.7 A full description of the manner and date in which results of the offer are to be made public.

5.1.8 The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.

5.2 Plan of distribution and allotment

5.2.1 The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.

5.2.2 Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.

5.3 Pricing

5.3.1 An indication of the expected price at which the securities will be offered or the method of determining the price and the process for its disclosure. Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.

5.4 Placing and Underwriting

5.4.1 Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.

5.4.2 Name and address of any paying agents and depository agents in each country.

5.4.3 Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.

5.4.4 When the underwriting agreement has been or will be reached.

## 6 ADMISSION TO TRADING AND DEALING ARRANGEMENTS

6.1 An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, give the earliest dates on which the securities will be admitted to trading.

6.2 All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.

6.3 Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.

## 7. ADDITIONAL INFORMATION

7.1 If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.

7.2 An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.

7.3 Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report 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 Securities Note.

7.4 Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.

7.5 Credit ratings assigned to an issuer or its debt securities at the request or with the cooperation of the issuer in the rating process. A brief explanation of the meaning of the ratings if this has previously been published by the rating provider.

## ANNEX VI

### Minimum Disclosure Requirements for Guarantees

(Additional building block)

## NATURE OF THE GUARANTEE

1. A description of any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, Keep well Agreement, Mono-line Insurance policy or other equivalent commitment (hereafter referred to generically as “guarantees” and their provider as “guarantor” for convenience).

Without prejudice to the generality of the foregoing, such arrangements encompass commitments to ensure obligations to repay debt securities and/or the payment of interest and the description shall set out how the arrangement is intended to ensure that the guaranteed payments will be duly serviced.

## SCOPE OF THE GUARANTEE

2. Details shall be disclosed about the terms and conditions and scope of the guarantee. Without prejudice to the generality of the foregoing, these details should cover any conditionality on the application of the guarantee in the event of any default under the terms of the security and the material terms of any Mono-line Insurance or Keep well Agreement between the issuer and the guarantor. Details must also be disclosed of any guarantor’s power of veto in relation to changes to the security holder’s rights, such as is often found in Mono-line Insurance.

## INFORMATION TO BE DISCLOSED ABOUT THE GUARANTOR

3. The guarantor must disclose information about itself as if it were the issuer of that same type of security that is the subject of the guarantee.

## DOCUMENTS ON DISPLAY

4. Indication of the places where the public may have access to the material contracts and other documents relating to the guarantee.

## ANNEX VII

### Minimum Disclosure Requirements for Asset Backed Securities Registration Document (schedule)

#### 1. PERSONS RESPONSIBLE

- 1.1 All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.

- 1.2 A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information given in the registration document is, to the best of their knowledge, in accordance with the facts and does not omit anything likely to affect its import. As the case may be, declaration by those responsible for certain parts of the registration document that having taken all reasonable care to ensure that such is the case, the information contained in that part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

#### 2. STATUTORY AUDITORS

- 2.1 Names and addresses of the issuer’s auditors for the period covered by the historical financial information (together with any membership of any relevant professional body).

#### 3. RISK FACTORS

- 3.1 The document must prominently disclose risk factors in a section headed "Risk Factors" that are specific to the issuer and its industry.

#### 4. INFORMATION ABOUT THE ISSUER:

- 4.1 A statement whether the issuer has been established as a special purpose vehicle or entity for the purpose of issuing asset backed securities;
- 4.2 The legal and commercial name of the issuer;
- 4.3 The place of registration of the issuer and its registration number;
- 4.4 The date of incorporation and the length of life of the issuer, except where indefinite;

- 4.5 The domicile and legal form of the issuer, the legislation under which the issuer operates its country of incorporation and the address and telephone number of its registered office (or principal place of business if different from its registered office).
- 4.6 Description of the amount of the issuer'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.
5. BUSINESS OVERVIEW
- 5.1 A brief description of the issuer's principal activities.
- 5.2 A global overview of the parties to the securitisation program including information on the direct or indirect ownership or control between those parties.
6. ADMINISTRATIVE, MANAGEMENT AND SUPERVISORY BODIES
- 6.1 Names, business addresses and functions in the issuer of the following persons, and an indication of the principal activities performed by them outside the issuer where these are significant with respect to that issuer:
- (a) members of the administrative, management or supervisory bodies;
- (b) partners with unlimited liability, in the case of a limited partnership with a share capital.
7. MAJOR SHAREHOLDERS
- 7.1 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom, and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
8. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION, AND PROFITS AND LOSSES
- 8.1 Where, since the date of incorporation or establishment, an issuer has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect shall be provided in the registration document.
- 8.2 Historical Financial Information
- Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or shorter period that the issuer has been in operation) and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member's State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.
- The most recent year's historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next annual published financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.
- If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards where the issuer is from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least the following:

- (a) the balance sheet;
- (b) the income statement;
- (c) the accounting policies and explanatory notes.

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

8.2 bis

This paragraph may be used only for issues of asset backed securities having a denomination per unit of at least EUR 50,000.

Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or shorter period that the issuer has been in operation) and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002 or, if not applicable, to a Member's State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. Otherwise, the following information must be included in the registration document:

(a) a prominent statement that the financial information included in the registration document has not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 been applied to the historical financial information;

(b) immediately following the historical financial information a narrative description of the differences between the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and the accounting principles adopted by the issuer in preparing its annual financial statements.

The most recent year's historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least the following:

- (a) the balance sheet;
- (b) the income statement;
- (c) the accounting policies and explanatory notes.

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

Otherwise, the following information must be included in the Registration Document:

a) a prominent statement disclosing which auditing standards have been applied;

b) an explanation of any significant departures from International Standards on Auditing.

8.3 Legal and arbitration proceedings

Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the company is aware), during a period covering at least the previous 12 months, which may have, or have had in the recent past, significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.

8.4 Material adverse change in the issuer's financial position

Where an issuer has prepared financial statements, include a statement that there has been no material adverse change in the financial position or prospects of the issuer since the date of its last published audited financial statements. Where a material adverse change has occurred, this must be disclosed in the registration document.

9. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST

9.1 Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report 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 Registration Document.

9.2 Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information.

10. DOCUMENTS ON DISPLAY

10.1 A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:

(a) the memorandum and articles of association of the issuer;

(b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;

(c) the historical financial information of the issuer or, in the case of a group, the historical financial information of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.

An indication of where the documents on display may be inspected, by physical or electronic means.

## ANNEX VIII

### Minimum Disclosure Requirements for the Asset Backed Securities additional Building Block

#### 1 THE SECURITIES

1.1 The minimum denomination of an issue

1.2 Where information is disclosed about an undertaking/obligor which is not involved in the issue, provide a confirmation that the information relating to the undertaking/obligor has been accurately reproduced from information published by the undertaking/obligor. So far as the issuer is aware and is able to ascertain from information published by the undertaking/obligor no facts have been omitted which would render the reproduced information misleading.

In addition, identify the source(s) of information in the Securities Note that has been reproduced from information published by an undertaking/obligor.

#### 2 THE UNDERLYING ASSETS

2.1 Confirmation that the securitised assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities.

2.2 In respect of a pool of discrete assets backing the issue:

2.2.1 The legal jurisdiction by which the pool of assets is governed

2.2.2 (a) In the case of a small number of easily identifiable obligors, a general description of each obligor.

(b) In all other cases, a description of: the general characteristics of the obligors; and the economic environment, as well as global statistical data referred to the securitised assets.

2.2.3 the legal nature of the assets;

2.2.4 the expiry or maturity date(s) of the assets;

2.2.5 the amount of the assets;

2.2.6 loan to value ratio or level of collateralisation;

2.2.7 the method of origination or creation of the assets, and for loans and credit agreements, the principal lending criteria and an indication of any loans which do not meet these criteria and any rights or obligations to make further advances;

2.2.8 an indication of significant representations and collaterals given to the issuer relating to the assets;

2.2.9 any rights to substitute the assets and a description of the manner in which and the type of assets which may be so substituted; if there is any capacity to substitute assets with a different class or quality of assets a statement to that effect together with a description of the impact of such substitution;

2.2.10 a description of any relevant insurance policies relating to the assets. Any concentration with one insurer must be disclosed if it is material to the transaction.

2.2.11 Where the assets comprise obligations of 5 or fewer obligors which are legal persons or where an obligor accounts for 20% or more of the assets, or where an obligor accounts for a material portion of the assets, so far as the issuer is aware and/or is able to ascertain from information published by the obligor(s) indicate either of the following:

(a) information relating to each obligor as if it were an issuer drafting a Registration Document for debt and derivative securities with an individual denomination of at least EUR 50 000;

(b) if an obligor or guarantor has securities already admitted to trading on a regulated or equivalent market or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.

- 2.2.12 If a relationship exists that is material to the issue, between the issuer, guarantor and obligor, details of the principal terms of that relationship.
- 2.2.13 Where the assets comprise obligations that are not traded on a regulated or equivalent market, a description of the principal terms and conditions of the obligations.
- 2.2.14 Where the assets comprise equity securities that are admitted to trading on a regulated or equivalent market indicate the following:
- a) a description of the securities;
  - b) a description of the market on which they are traded including its date of establishment, how price information is published, an indication of daily trading volumes, information as to the standing of the market in the country and the name of the market's regulatory authority;
  - c) the frequency with which prices of the relevant securities, are published.
- 2.2.15 Where more than ten (10) per cent of the assets comprise equity securities that are not traded on a regulated or equivalent market, a description of those equity securities and equivalent information to that contained in the schedule for share Registration Document in respect of each issuer of those securities.
- 2.2.16 Where a material portion of the assets are secured on or backed by real property, a valuation report relating to the property setting out both the valuation of the property and cash flow/income streams.

Compliance with this disclosure is not required if the issue is of securities backed by mortgage loans with property as security, where there has been no revaluation of the properties for the purpose of the issue, and it is clearly stated that the valuations quoted are as at the date of the original initial mortgage loan origination.

- 2.3 In respect of an actively managed pool of assets backing the issue:
- 2.3.1 equivalent information to that contained in items 2.1 and 2.2 to allow an assessment of the type, quality, sufficiency and liquidity of the asset types in the portfolio which will secure the issue;
  - 2.3.2 the parameters within which investments can be made, the name and description of the entity responsible for such management including a description of that entity's expertise and experience, a summary of the provisions relating to the termination of the appointment of such entity and the appointment of an alternative management entity, and a description of that entity's relationship with any other parties to the issue.
- 2.4 Where an issuer proposes to issue further securities backed by the same assets, a prominent statement to that effect and unless those further securities are fungible with or are subordinated to those classes of existing debt, a description of how the holders of that class will be informed.

### 3 STRUCTURE AND CASH FLOW

- 3.1 Description of the structure of the transaction, including, if necessary, a structure diagram.
- 3.2 Description of the entities participating in the issue and description of the functions to be performed by them.
- 3.3 Description of the method and date of the sale, transfer, novation or assignment of the assets or of any rights and/or obligations in the assets to the issuer or, where applicable, the

manner and time period in which the proceeds from the issue will be fully invested by the issuer.

- 3.4 An explanation of the flow of funds including:
    - 3.4.1 how the cash flow from the assets will meet the issuer's obligations to holders of the securities, including, if necessary, a financial service table and a description of the assumptions used in developing the table;
    - 3.4.2 information on any credit enhancements, an indication of where material potential liquidity shortfalls may occur and the availability of any liquidity supports and indication of provisions designed to cover interest/principal shortfall risks;
    - 3.4.3 without prejudice to item 3.4.2, details of any subordinated debt finance;
    - 3.4.4 an indication of any investment parameters for the investment of temporary liquidity surpluses and description of the parties responsible for such investment;
    - 3.4.5 how payments are collected in respect of the assets;
    - 3.4.6 the order of priority of payments made by the issuer to the holders of the class of securities in question;
    - 3.4.7 details of any other arrangements upon which payments of interest and principal to investors are dependent;
  - 3.5 the name, address and significant business activities of the originators of the securitised assets.
  - 3.6 Where the return on, and/or repayment of the security is linked to the performance or credit of other assets which are not assets of the issuer, items 2.2 and 2.3 are necessary;
  - 3.7 the name, address and significant business activities of the administrator, calculation agent or equivalent, together with a summary of the administrator's/calculation agents responsibilities, their relationship with the originator or the creator of the assets and a summary of the provisions relating to the termination of the appointment of the administrator/calculation agent and the appointment of an alternative administrator/calculation agent;
  - 3.8 the names and addresses and brief description of:
    - (a) any swap counterparties and any providers of other material forms of credit/liquidity enhancement;
    - (b) the banks with which the main accounts relating to the transaction are held.
4. POST ISSUANCE REPORTING
- 4.1 Indication in the prospectus whether or not it intends to provide post-issuance transaction information regarding securities to be admitted to trading and the performance of the underlying collateral. Where the issuer has indicated that it intends to report such information, specify in the prospectus what information will be reported, where such information can be obtained, and the frequency with which such information will be reported.

## ANNEX IX

### Minimum Disclosure Requirements for the Debt and Derivative securities Registration Document (schedule)

(Debt and derivative securities with a denomination per unit of at least EUR50,000)

1. **PERSONS RESPONSIBLE**
  - 1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
  - 1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
2. **STATUTORY AUDITORS**
  - 2.1. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).
  - 2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, details if material.
3. **RISK FACTORS**
  - 3.1. Prominent disclosure of risk factors that may affect the issuer's ability to fulfil its obligations under the securities to investors in a section headed "Risk Factors".
4. **INFORMATION ABOUT THE ISSUER**
  - 4.1. History and development of the Issuer:
    - 4.1.1. the legal and commercial name of the issuer;
    - 4.1.2. the place of registration of the issuer and its registration number;
    - 4.1.3. the date of incorporation and the length of life of the issuer, except where indefinite;
    - 4.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office;
    - 4.1.5. any recent events particular to the issuer and which are to a material extent relevant to the evaluation of the issuer's solvency.
5. **BUSINESS OVERVIEW**
  - 5.1. Principal activities:
    - 5.1.1. A brief description of the issuer's principal activities stating the main categories of products sold and/or services performed;
    - 5.1.2. The basis for any statements in the registration document made by the issuer regarding its competitive position.
6. **ORGANISATIONAL STRUCTURE**
  - 6.1. If the issuer is part of a group, a brief description of the group and of the issuer's position within it.
  - 6.2. If the issuer is dependent upon other entities within the group, this must be clearly stated together with an explanation of this dependence.

7. TREND INFORMATION

- 7.1. Include a statement that there has been no material adverse change in the prospects of the issuer since the date of its last published audited financial statements.

In the event that the issuer is unable to make such a statement, provide details of this material adverse change.

8. PROFIT FORECASTS OR ESTIMATES

If an issuer chooses to include a profit forecast or a profit estimate, the registration document must contain the information items 8.1 and 8.2 the following:

- 8.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.

There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; be readily understandable by investors; be specific and precise; and not relate to the general accuracy of the estimates underlying the forecast.

- 8.2. Any profit forecast set out in the registration document must be accompanied by a statement confirming that the said forecast has been properly prepared on the basis stated and that the basis of accounting is consistent with the accounting policies of the issuer.

- 8.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.

9. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES

- 9.1 Names, business addresses and functions in the issuer of the following persons, and an indication of the principal activities performed by them outside the issuer where these are significant with respect to that issuer:

(a) members of the administrative, management or supervisory bodies;

(b) partners with unlimited liability, in the case of a limited partnership with a share capital.

9.2 Administrative, Management, and Supervisory bodies conflicts of interests

Potential conflicts of interests between any duties to the issuing entity of the persons referred to in item 9.1 and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect.

10. MAJOR SHAREHOLDERS

- 10.1. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom, and describe the nature of such control, and describe the measures in place to ensure that such control is not abused.

- 10.2. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

11. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES

11.1. Historical Financial Information

Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member's State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. Otherwise, the following information must be included in the registration document:

(a) a prominent statement that the financial information included in the registration document has not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 been applied to the historical financial information

(b) immediately following the historical financial information a narrative description of the differences between the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and the accounting principles adopted by the issuer in preparing its annual financial statements

The most recent year's historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least the following:

(a) the balance sheet;

(b) the income statement;

(c) the accounting policies and explanatory notes.

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the registration document:

a) a prominent statement disclosing which auditing standards have been applied;

b) an explanation of any significant departures from International Standards on Auditing

11.2. Financial statements

If the issuer prepares both own and consolidated financial statements, include at least the consolidated financial statements in the registration document.

11.3. Auditing of historical annual financial information

11.3.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.

- 11.3.2. An indication of other information in the registration document which has been audited by the auditors.
- 11.3.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements, state the source of the data and state that the data is unaudited.
- 11.4. Age of latest financial information
- 11.4.1. The last year of audited financial information may not be older than 18 months from the date of the registration document.
- 11.5. Legal and arbitration proceedings  
Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past, significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
- 11.6. Significant change in the issuer's financial or trading position  
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 information or interim financial information have been published, or an appropriate negative statement.
12. **MATERIAL CONTRACTS**  
A brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or entitlement that is material to the issuer's ability to meet its obligation to security holders in respect of the securities being issued.
13. **THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST**
- 13.1 Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report 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 Registration Document.
- 13.2 **THIRD PARTY INFORMATION**  
Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading; in addition, identify the source(s) of the information.
14. **DOCUMENTS ON DISPLAY**  
A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:
- (a) the memorandum and articles of association of the issuer;
  - (b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;
  - (c) the historical financial information of the issuer or, in the case of a group, the historical financial information of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.
- An indication of where the documents on display may be inspected, by physical or electronic means.

## ANNEX X

### Minimum Disclosure Requirements for the Depository Receipts issued over shares (schedule)

#### INFORMATION ABOUT THE ISSUER OF THE UNDERLYING SHARES

1. **PERSONS RESPONSIBLE**
  - 1.1. All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
  - 1.2. A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.
2. **STATUTORY AUDITORS**
  - 2.1. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).
  - 2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.
3. **SELECTED FINANCIAL INFORMATION**
  - 3.1. Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information. The selected historical financial information must provide the key figures that summarise the financial condition of the issuer.
  - 3.2. If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.
4. **RISK FACTORS**

Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed "Risk Factors".
5. **INFORMATION ABOUT THE ISSUER**
  - 5.1. History and Development of the Issuer.
    - 5.1.1. the legal and commercial name of the issuer;
    - 5.1.2. the place of registration of the issuer and its registration number;
    - 5.1.3. the date of incorporation and the length of life of the issuer, except where indefinite;
    - 5.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);
    - 5.1.5. the important events in the development of the issuer's business.
  - 5.2. Investments
    - 5.2.1. A description, (including the amount) of the issuer's principal investments for each financial year for the period covered by the historical financial information up to the date of the prospectus;
    - 5.2.2. A description of the issuer's principal investments that are currently in progress, including the distribution of these investments geographically (home and abroad) and the method of financing (internal or external);

- 5.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.
6. **BUSINESS OVERVIEW**
- 6.1. Principal Activities
- 6.1.1. A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the historical financial information;
- 6.1.2. An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.
- 6.2. Principal Markets
- A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each financial year for the period covered by the historical financial information.
- 6.3. Where the information given pursuant to items 6.1. and 6.2. has been influenced by exceptional factors, mention that fact.
- 6.4. If material to the issuer's business or profitability, disclose summary information regarding the extent to which the issuer is dependent, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes.
- 6.5. The basis for any statements made by the issuer regarding its competitive position.
7. **ORGANIZATIONAL STRUCTURE**
- 7.1. If the issuer is part of a group, a brief description of the group and the issuer's position within the group.
- 7.2. A list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.
8. **PROPERTY, PLANTS AND EQUIPMENT**
- 8.1. Information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon.
- 8.2. A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.
9. **OPERATING AND FINANCIAL REVIEW**
- 9.1. Financial Condition
- To the extent not covered elsewhere in the prospectus, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.
- 9.2. Operating Results
- 9.2.1. Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.
- 9.2.2. Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.
- 9.2.3. Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.
10. **CAPITAL RESOURCES**
- 10.1. Information concerning the issuer's capital resources (both short and long term);
- 10.2. An explanation of the sources and amounts of and a narrative description of the issuer's cash flows;
- 10.3. Information on the borrowing requirements and funding structure of the issuer;
- 10.4. Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.

- 10.5. Information regarding the anticipated sources of funds needed to fulfil commitments referred to in items 5.2.3. and 8.1.
11. **RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES**  
Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.
12. **TREND INFORMATION**
- 12.1. The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the prospectus.
- 12.2. Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.
13. **PROFIT FORECASTS OR ESTIMATES**  
If an issuer chooses to include a profit forecast or a profit estimate the prospectus must contain the information items 13.1 and 13.2:
- 13.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.
- There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.
- 13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
- 13.3. The profit forecast or estimate prepared on a basis comparable with the historical financial information.
- 13.4. If the issuer has published a profit forecast in a prospectus which is still outstanding, provide a statement setting out whether or not that forecast is still correct as at the time of the prospectus, and an explanation of why such forecast is no longer valid if that is the case.

14. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT

14.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:

- (a) members of the administrative, management or supervisory bodies;
- (b) partners with unlimited liability, in the case of a limited partnership with a share capital;
- (c) founders, if the issuer has been established for fewer than five years;
- (d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business.

The nature of any family relationship between any of those persons.

In the case of each member of the administrative, management or supervisory bodies of the issuer and person described in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information:

- (a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;
- (b) any convictions in relation to fraudulent offences for at least the previous five years;
- (c) details of any bankruptcies, receiverships or liquidations with which a person described in points (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in points (a) and (d) of the first subparagraph member of the administrative, management or supervisory bodies was associated for at least the previous five years ;
- (d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.

14.2. If there is no such information to be disclosed, a statement to that effect must be made. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests Potential conflicts of interests between any duties to the issuer of the persons referred to in the first subparagraph of item 14.1. and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, make a statement to that effect.

Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in the first subparagraph of item 14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.

15. **REMUNERATION AND BENEFITS**  
 In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1:
- 15.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted, to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.
- This information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.
- 15.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.
16. **BOARD PRACTICES**  
 In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of item 14.1.
- 16.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.
- 16.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.
- 16.3. Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.
- 16.4. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect together with an explanation regarding why the issuer does not comply with such regime.
17. **EMPLOYEES**
- 17.1. Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical financial information up to the date of the prospectus (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.
- 17.2. Shareholdings and stock options  
 With respect to each person referred to in points (a) and (b) of the first subparagraph of item 14.1., provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.
- 17.3. Description of any arrangements for involving the employees in the capital of the issuer.
18. **MAJOR SHAREHOLDERS**
- 18.1. In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest notifiable under the issuer's national law in the issuer's capital or voting rights, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.
- 18.2. Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.
- 18.3. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.
- 18.4. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

19. RELATED PARTY TRANSACTIONS

Details of related party transactions (which for these purposes are those set out in the Standards adopted according to Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the prospectus must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable.

If such standards do not apply to the issuer the following information must be disclosed:

(a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.

(b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.

20. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES

20.1. Historical Financial Information

Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.

The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least the following:

(a) the balance sheet;

(b) the income statement;

(c) a statement showing either all changes in equity or changes in equity other than those

arising from capital transactions with owners and distributions to owners;

(d) the cash flow statement;

(e) the accounting policies and explanatory notes.

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the prospectus, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

20.1.bis This paragraph may be used only for issues of depository receipts having a denomination per unit of at least EUR 50,000.

Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member's State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. Otherwise, the following information must be included in the prospectus:

a) a prominent statement that the financial information included in the registration document has not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 been applied to the historical financial information;

b) immediately following the historical financial information a narrative description of the differences between the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and the accounting principles adopted by the issuer in preparing its annual financial statements

The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least the following:

(a) the balance sheet;

(b) the income statement;

(c) a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners;

(d) the cash flow statement; (e) the accounting policies and explanatory notes.

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the prospectus, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard. Otherwise, the following information must be included in the prospectus:

a) a prominent statement disclosing which auditing standards have been applied;

b) an explanation of any significant departures from International Standards on Auditing

20.2. Financial statements

If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the prospectus.

- 20.3. Auditing of historical annual financial information
- 20.3.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.
- 20.3.2. Indication of other information in the prospectus which has been audited by the auditors.
- 20.3.3. Where financial data in the prospectus is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.
- 20.4. Age of latest financial information
- 20.4.1. The last year of audited financial information may not be older than:
- (a) 18 months from the date of the prospectus if the issuer includes audited interim financial statements in the prospectus;
- (b) 15 months from the date of the prospectus if the issuer includes unaudited interim financial statements in the prospectus.
- 20.5. Interim and other financial information
- 20.5.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the prospectus. If the quarterly or half yearly financial information has been reviewed or audited the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed, state that fact.
- 20.5.2. If the prospectus is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact shall be stated) covering at least the first six months of the financial year.
- The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.
- 20.6. Dividend policy
- 20.6.1. A description of the issuer's policy on dividend distributions and any restrictions thereon. The amount of the dividend per share for each financial year for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.
- 20.7. Legal and arbitration proceedings
- Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.
- 20.8. Significant change in the issuer's financial or trading position
- 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 information or interim financial information have been published, or provide an appropriate negative statement.
21. **ADDITIONAL INFORMATION**
- 21.1. Share Capital
- The following information as of the date of the most recent balance sheet included in the historical financial information:

- 21.1.1. The amount of issued capital, and for each class of share capital:
- (a) the number of shares authorised;
  - (b) the number of shares issued and fully paid and issued but not fully paid;
  - (c) the par value per share, or that the shares have no par value;
  - (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.
- 21.1.2. If there are shares not representing capital, state the number and main characteristics of such shares.
- 21.1.3. The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
- 21.1.4. The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.
- 21.1.5. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.
- 21.1.6. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.
- 21.1.7. A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.
- 21.2. Memorandum and Articles of Association
- 21.2.1. A description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.
- 21.2.2. A summary of any provisions of the issuer's articles of association, statutes or charter and bylaws with respect to the members of the administrative, management and supervisory bodies.
- 21.2.3. A description of the rights, preferences and restrictions attaching to each class of the existing shares.
- 21.2.4. A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.
- 21.2.5. A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.
- 21.2.6. A brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.
- 21.2.7. An indication of the articles of association, statutes, charter or bylaws provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.
- 21.2.8. A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaws governing changes in the capital, where such conditions are more stringent than is required by law.
22. **MATERIAL CONTRACTS**
- A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the prospectus.
- A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the prospectus.

23. **THIRD PARTY INFORMATION, STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST**

23.1 Where a statement or report attributed to a person as an expert is included in the prospectus provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report 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 prospectus.

23.2 Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information.

24. **DOCUMENTS ON DISPLAY**

A statement that for the life of the prospectus the following documents (or copies thereof), where applicable, may be inspected:

(a) the memorandum and articles of association of the issuer;

(b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the prospectus;

(c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the prospectus.

An indication of where the documents on display may be inspected, by physical or electronic means.

25. **INFORMATION ON HOLDINGS**

25.1. Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.

26. **INFORMATION ABOUT THE ISSUER OF THE DEPOSITORY RECEIPTS**

26.1. Name, registered office and principal administrative establishment if different from the registered office.

26.2. Date of incorporation and length of life of the issuer, except where indefinite.

26.3. Legislation under which the issuer operates and legal form which it has adopted under that legislation.

27. **INFORMATION ABOUT THE UNDERLYING SHARES**

27.1. A description of the type and the class of the underlying shares, including the ISIN (International Security Identification Number) or other such security identification code.

27.2. Legislation under which the underlying shares have been created.

27.3. An indication whether the underlying shares are in registered form or bearer form and whether the underlying shares are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.

27.4. Currency of the underlying shares.

27.5. A description of the rights, including any limitations of these, attached to the underlying shares and procedure for the exercise of said rights.

- 27.6. Dividend rights:
- (a) Fixed date(s) on which the entitlement arises,
  - (b) Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,
  - (c) Dividend restrictions and procedures for non resident holders,
  - (d) Rate of dividend or method of its calculation, periodicity and cumulative or noncumulative nature of payments.
- 27.7. Voting rights.  
Pre-emption rights in offers for subscription of securities of the same class.  
Right to share in the issuer's profits.  
Rights to share in any surplus in the event of liquidation.  
Redemption provisions.  
Conversion provisions.
- 27.8. The issue date of the underlying shares if new underlying shares are being created for the issue of the depository receipts and they are not in existence at the time of issue of the depository receipts.
- 27.9. If new underlying shares are being created for the issue of the depository receipts, state the resolutions, authorisations and approvals by virtue of which the new underlying shares have been or will be created and/or issued.
- 27.10. A description of any restrictions on the free transferability of the underlying shares.
- 27.11. In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought:
- (a) information on taxes on the income from the underlying shares withheld at source
  - (b) indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.
- 27.12. An indication of the existence of any mandatory takeover bids and/or squeeze-out and sell-out rules in relation to the underlying shares.
- 27.13. An indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated.
- 27.14. Lock up agreements:  
the parties involved;  
content and exceptions of the agreement;  
indication of the period of the lock up.
- 27.15. Information about selling share holders if any
- 27.15.1 Name and business address of the person or entity offering to sell the underlying shares, the nature of any position office or other material relationship that the selling persons has had within the past three years with the issuer of the underlying shares or any of its predecessors or affiliates.
- 27.16. Dilution
- 27.16.1 Amount and percentage of immediate dilution resulting from the offer of the depository receipts.
- 27.16.2 In the case of a subscription offer of the depository receipts to existing shareholders, disclose the amount and percentage of immediate dilutions if they do not subscribe to the offer of depository receipts.
- 27.17. Additional information where there is a simultaneous or almost simultaneous offer or admission to trading of the same class of underlying shares as those underlying shares over which the depository receipts are being issued.

- 27.17.1 If simultaneously or almost simultaneously with the creation of the depository receipts for which admission to a regulated market is being sought underlying shares of the same class as those over which the depository receipts are being issued are subscribed for or placed privately, details are to be given of the nature of such operations and of the number and characteristics of the underlying shares to which they relate.
- 27.17.2 Disclose all regulated markets or equivalent markets on which, to the knowledge of the issuer of the depository receipts, underlying shares of the same class of those over which the depository receipts are being issued are offered or admitted to trading.
- 27.17.3 To the extent known to the issuer of the depository receipts, indicate whether major shareholders, members of the administrative, management or supervisory bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.
28. INFORMATION REGARDING THE DEPOSITORY RECEIPTS
- 28.1. A description of the type and class of depository receipts being offered and/or admitted to trading.
- 28.2. Legislation under which the depository receipts have been created.
- 28.3. An indication whether the depository receipts are in registered or bearer form and whether the depository receipts are in certificated or book-entry form. In the latter case, include the name and address of the entity in charge of keeping the records.
- 28.4. Currency of the depository receipts.
- 28.5. Describe the rights attaching to the depository receipts, including any limitations of these attached to the depository receipts and the procedure if any for the exercise of these rights.
- 28.6. If the dividend rights attaching to depository receipts are different from the dividend rights disclosed in relation to the underlying disclose the following about the dividend rights:
- (a) Fixed date(s) on which the entitlement arises,
  - (b) Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,
  - (c ) Dividend restrictions and procedures for non resident holders,
  - (d) Rate of dividend or method of its calculation, periodicity and cumulative or noncumulative nature of payments.
- 28.7. If the voting rights attaching to the depository receipts are different from the voting rights disclosed in relation to the underlying shares disclose the following about those rights:
- Voting rights.
  - Pre-emption rights in offers for subscription of securities of the same class.
  - Right to share in the issuer's profits.
  - Rights to share in any surplus in the event of liquidation.
  - Redemption provisions.
  - Conversion provisions.
- 28.8. Describe the exercise of and benefit from the rights attaching to the underlying shares, in particular voting rights, the conditions on which the issuer of the depository receipts may exercise such rights, and measures envisaged to obtain the instructions of the depository receipt holders - and the right to share in profits and any liquidation surplus which are not passed on to the holder of the depository receipt.
- 28.9. The expected issue date of the depository receipts.
- 28.10. A description of any restrictions on the free transferability of the depository receipts.

- 28.11. In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought:
- (a) information on taxes on the income from the depository receipts withheld at source
- (b) indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.
- 28.12. Bank or other guarantees attached to the depository receipts and intended to underwrite the issuer's obligations.
- 28.13. Possibility of obtaining the delivery of the depository receipts into original shares and procedure for such delivery
29. **INFORMATION ABOUT THE TERMS AND CONDITIONS OF THE OFFER OF THE DEPOSITORY RECEIPTS**
- 29.1. Conditions, offer statistics, expected timetable and action required to apply for the offer
- 29.1.1. Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.
- 29.1.2. The time period, including any possible amendments, during which the offer will be open and description of the application process.
- 29.1.3. An indication of when, and under what circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.
- 29.1.4. A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.
- 29.1.5. Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).
- 29.1.6. An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.
- 29.1.7. Method and time limits for paying up the securities and for delivery of the securities.
- 29.1.8. A full description of the manner and date in which results of the offer are to be made public.
- 29.1.9. The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.
- 29.2. Plan of distribution and allotment
- 29.2.1. The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
- 29.2.2. To the extent known to the issuer, indicate whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.
- 29.2.3. Pre-allotment Disclosure:
- 29.2.3.1. The division into tranches of the offer including the institutional, retail and issuer's employee tranches and any other tranches;
- 29.2.3.2. The conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches;
- 29.2.3.3. The allotment method or methods to be used for the retail and issuer's employee tranche in the event of an over-subscription of these tranches;
- 29.2.3.4. A description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups.
- 29.2.3.5. Whether the treatment of subscriptions or bids to subscribe in the allotment may be determined on the basis of which firm they are made through or by;
- 29.2.3.6. A target minimum individual allotment if any within the retail tranche;
- 29.2.3.7. The conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest;

- 29.2.3.8. Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.
- 29.2.3.9. Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.
- 29.2.4. Over-allotment and 'green shoe':
- 29.2.4.1. The existence and size of any over-allotment facility and / or 'green shoe'.
- 29.2.4.2. The existence period of the over-allotment facility and / or 'green shoe'.
- 29.2.4.3. Any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.
- 29.3. Pricing
- 29.3.1. An indication of the price at which the securities will be offered. When the price is not known or when there is not an established and/or liquid market for the securities, indicate the method for determination of the offer price, including who has set the criteria or is formally responsible for its determination. Indication of the amount of any expenses and taxes specifically charged to the subscriber or purchaser.
- 29.3.2. Process for the disclosure of the offer price.
- 29.3.3. Where there is or could be a material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offer and the effective cash contributions of such persons.
- 29.4. Placing and Underwriting
- 29.4.1. Name and address of the co-coordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer, of the placers in the various countries where the offer takes place.
- 29.4.2. Name and address of any paying agents and depository agents in each country.
- 29.4.3. Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under "best efforts" arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission
- 29.4.4. When the underwriting agreement has been or will be reached.
30. **ADMISSION TO TRADING AND DEALING ARRANGEMENTS IN THE DEPOSITORY RECEIPTS**
- 30.1. An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading necessarily will be approved. If known, the earliest dates on which the securities will be admitted to trading must be given.
- 30.2. All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.
- 30.3. If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, details must be given of the nature of such operations and of the number and characteristics of the securities to which they relate.
- 30.4. Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.
- 30.5. Stabilisation: where an issuer or a selling shareholder has granted an over-allotment option or it is otherwise proposed that price stabilising activities may be entered into in connection with an offer:

- 30.6. The fact that stabilisation may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time,
- 30.7. The beginning and the end of the period during which stabilisation may occur,
- 30.8. The identity of the stabilisation manager for each relevant jurisdiction unless this is not known at the time of publication,
- 30.9. The fact that stabilisation transactions may result in a market price that is higher than would otherwise prevail.
- 31. **KEY INFORMATION ABOUT THE ISSUE OF THE DEPOSITORY RECEIPTS**
- 31.1. Reasons for the offer and use of proceeds
- 31.1.1. Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.
- 31.2. Interest of natural and legal persons involved in the issue/offer
- 31.2.1. A description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest
- 31.3. Risk factors
- 31.3.1. Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed "Risk Factors".
- 32. **EXPENSE OF THE ISSUE/OFFER OF THE DEPOSITORY RECEIPTS**
- 32.1. The total net proceeds and an estimate of the total expenses of the issue/offer.

## ANNEX XI

### MINIMUM DISCLOSURE REQUIREMENTS FOR THE BANKS REGISTRATION DOCUMENT (SCHEDULE)

#### 1. PERSONS RESPONSIBLE

1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.

1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

#### 2. STATUTORY AUDITORS

2.1. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).

2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, details if material.

#### 3. RISK FACTORS

3.1. Prominent disclosure of risk factors that may affect the issuer's ability to fulfil its obligations under the securities to investors in a section headed "Risk Factors".

#### 4. INFORMATION ABOUT THE ISSUER

##### 4.1. History and development of the Issuer:

4.1.1. the legal and commercial name of the issuer;

4.1.2. the place of registration of the issuer and its registration number;

4.1.3. the date of incorporation and the length of life of the issuer, except where indefinite;

4.1.4. the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);

4.1.5. Any recent events particular to the issuer which are to a material extent relevant to the evaluation of the issuer's solvency.

#### 5. BUSINESS OVERVIEW

##### 5.1. Principal activities:

5.1.1. A brief description of the issuer's principal activities stating the main categories of products sold and/or services performed;

5.1.2. An indication of any significant new products and/or activities.

##### 5.1.3. Principal markets

A brief description of the principal markets in which the issuer competes.

5.1.4. The basis for any statements in the registration document made by the issuer regarding its competitive position.

#### 6. ORGANISATIONAL STRUCTURE

6.1. If the issuer is part of a group, a brief description of the group and of the issuer's position within it.

- 6.2. If the issuer is dependent upon other entities within the group, this must be clearly stated together with an explanation of this dependence.
7. **TREND INFORMATION**
- 7.1. Include a statement that there has been no material adverse change in the prospects of the issuer since the date of its last published audited financial statements.

In the event that the issuer is unable to make such a statement, provide details of this material adverse change.

- 7.2. Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.
8. **PROFIT FORECASTS OR ESTIMATES**

If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information items 8.1 and 8.2:

- 8.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.

There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; be readily understandable by investors; be specific and precise; and not relate to the general accuracy of the estimates underlying the forecast.

- 8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
- 8.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.

9. **ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES**

- 9.1. Names, business addresses and functions in the issuer of the following persons, and an indication of the principal activities performed by them outside the issuer where these are significant with respect to that issuer:

(a) members of the administrative, management or supervisory bodies;

(b) partners with unlimited liability, in the case of a limited partnership with a share capital.

- 9.2. Administrative, Management, and Supervisory bodies conflicts of interests

Potential conflicts of interests between any duties to the issuing entity of the persons referred to in item 9.1 and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, make a statement to that effect.

10. **MAJOR SHAREHOLDERS**

- 10.1. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom, and describe the nature of such control, and describe the measures in place to ensure that such control is not abused.
- 10.2. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

11. **FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES**

11.1. Historical Financial Information

Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.

The most recent year's audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited. If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least the following:

- (a) the balance sheet;
- (b) the income statement;
- (c) in the case of an admission of securities to trading on a regulated market only, a cash flow statement;
- (d) the accounting policies and explanatory notes.

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.

11.2. Financial statements

If the issuer prepares both own and consolidated financial statements, include at least the consolidated financial statements in the registration document.

11.3. Auditing of historical annual financial information

- 11.3.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.
- 11.3.2. An indication of other information in the registration document which has been audited by the auditors.
- 11.3.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.

- 11.4. Age of latest financial information  
 11.4.1. The last year of audited financial information may not be older than 18 months from the date of the registration document.
- 11.5. Interim and other financial information  
 11.5.1 If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.  
 11.5.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, covering at least the first six months of the financial year. If the interim financial information is unaudited state that fact.

The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.

- 11.6. Legal and arbitration proceedings  
 Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past, significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.

- 11.7. Significant change in the issuer's financial position  
 A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or an appropriate negative statement.

12. MATERIAL CONTRACTS  
 A brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or entitlement that is material to the issuer's ability to meet its obligation to security holders in respect of the securities being issued.

13 **THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLERATIONS OF ANY INTEREST**

- 13.1 Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report 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 Registration Document.

- 13.2 Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading In addition, the issuer shall identify the source(s) of the information.

14. DOCUMENTS ON DISPLAY

A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:

- (a) The memorandum and articles of association of the issuer;
- (b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;
- (c) the historical financial information of the issuer or, in the case of a group, the historical financial information of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.

An indication of where the documents on display may be inspected, by physical or electronic means.

## ANNEX XII

### MINIMUM DISCLOSURE REQUIREMENTS FOR THE SECURITIES NOTE FOR DERIVATIVE SECURITIES (SCHEDULE)

#### 1 PERSONS RESPONSIBLE

- 1.1. All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
- 1.2. A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

#### 2 RISK FACTORS

Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed "risk factors". This must include a risk warning to the effect that investors may lose the value of their entire investment or part of it, as the case may be, and/or, if the investor's liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect.

#### 3 KEY INFORMATION

- 3.1. Interest of natural and legal persons involved in the issue/offer  
A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.
- 3.2. Reasons for the offer and use of proceeds when different from making profit and/or hedging certain risks.

If reasons for the offer and use of proceeds are disclosed provide the total net proceeds and an estimate of the total expenses of the issue/offer.

#### 4. INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING

- 4.1 Information concerning the securities
  - 4.1.1. A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.
  - 4.1.2. A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities have a denomination per unit of at least EUR 50 000 or can only be acquired for at least EUR 50 000 per security.
  - 4.1.3. Legislation under which the securities have been created.

- 4.1.4 An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.
- 4.1.5 Currency of the securities issue.
- 4.1.6 Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.
- 4.1.7 A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights.
- 4.1.8 In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.
- 4.1.9 The issue date of the securities.
- 4.1.10 A description of any restrictions on the free transferability of the securities.
- 4.1.11 - The expiration or maturity date of the derivative securities  
- The exercise date or final reference date
- 4.1.12 A description of the settlement procedure of the derivative securities.
- 4.1.13 A description of how any return on derivative securities takes place, the payment or delivery date, and the way it is calculated.
- 4.1.14 In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought:
- (a) Information on taxes on the income from the securities withheld at source,
- (b) Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.
- 4.2 Information concerning the underlying
- 4.2.1 The exercise price or the final reference price of the underlying.
- 4.2.2 A statement setting out the type of the underlying and details of where information on the underlying can be obtained
- an indication where information about the past and the further performance of the underlying and its volatility can be obtained
  - where the underlying is a security
    - the name of the issuer of the security
    - the ISIN (International Security Identification Number) or other such security identification code
  - where the underlying is an index
    - the name of the index and a description of the index if it is composed by the issuer. If the index is not composed by the issuer, where information about the index can be obtained
  - where the underlying is an interest rate
    - a description of the interest rate
  - others
- Where the underlying does not fall within the categories specified above the securities note shall contain equivalent information.
- where the underlying is a basket of underlyings
    - disclosure of the relevant weightings of each underlying in the basket
- 4.2.3 A description of any market disruption or settlement disruption events that affect the underlying.
- 4.2.4 Adjustment rules with relation to events concerning the underlying.
5. TERMS AND CONDITIONS OF THE OFFER

5.1 Conditions, offer statistics, expected timetable and action required to apply for the offer

5.1.1 Conditions to which the offer is subject.

5.1.2 Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the amount of the offer.

5.1.3 The time period, including any possible amendments, during which the offer will be open and description of the application process.

5.1.4 Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest).

5.1.5 Method and time limits for paying up the securities and for delivery of the securities.

5.1.6 A full description of the manner and date in which results of the offer are to be made public.

5.2 Plan of distribution and allotment

5.2.1 The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.

5.2.2 Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.

5.3. Pricing

Indication of the expected price at which the securities will be offered or the method of determining the price and the process for its disclosure. Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.

5.4. Placing and Underwriting

5.4.1 Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.

5.4.2 Name and address of any paying agents and depository agents in each country.

5.4.3 Entities agreeing to underwrite the issue on a firm commitment basis, and entities agreeing to place the issue without a firm commitment or under "best efforts" arrangements. Where not all of the issue is underwritten, a statement of the portion not covered.

5.4.4. When the underwriting agreement has been or will be reached.

5.4.5 Name and address of a calculation agent

6. **ADMISSION TO TRADING AND DEALING ARRANGEMENTS**

6.1 An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance shall be mentioned, without creating the impression that the admission to trading necessarily will be approved. If known, the earliest dates on which the securities will be admitted to trading shall be given.

6.2 All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.

6.3 Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.

7. **ADDITIONAL INFORMATION**

7.1. If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.

7.2. An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.

- 7.3.** Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest, if any, in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report 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 Securities Note.
- 7.4.** Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information.
- 7.5.** An indication in the prospectus whether or not the issuer intends to provide postissuance information. Where the issuer has indicated that it intends to report such information, the issuer shall specify in the prospectus what information will be reported and where such information can be obtained.

## ANNEX XIII

### MINIMUM DISCLOSURE REQUIREMENTS FOR THE SECURITIES NOTE FOR DEBT SECURITIES WITH A DENOMINATION PER UNIT OF AT LEAST EUR 50 000

#### (SCHEDULE)

#### 1 PERSONS RESPONSIBLE

1.1 All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.

1.2 A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

#### 2 RISK FACTORS

Prominent disclosure of risk factors that are material to the securities admitted to trading in order to assess the market risk associated with these securities in a section headed "Risk Factors".

#### 3. KEY INFORMATION

##### Interest of natural and legal persons involved in the issue

A description of any interest, including conflicting ones, that is material to the issue, detailing the persons involved and the nature of the interest.

#### 4 INFORMATION CONCERNING THE SECURITIES TO BE ADMITTED TO TRADING

4.1 Total amount of securities being admitted to trading.

4.2 A description of the type and the class of the securities being admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.

4.3 Legislation under which the securities have been created.

4.4 An indication of whether the securities are in registered or bearer form and whether the securities are in certificated or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.

4.5 Currency of the securities issue.

4.6 Ranking of the securities being admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer

4.7 A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of said rights.

- 4.8 The nominal interest rate and provisions relating to interest payable.  
- The date from which interest becomes payable and the due dates for interest.  
- The time limit on the validity of claims to interest and repayment of principal

Where the rate is not fixed, description of the underlying on which it is based and of the method used to relate the two.

- A description of any market disruption or settlement disruption events that affect the underlying
- Adjustment rules with relation to events concerning the underlying
- Name of the calculation agent

- 4.9 Maturity date and arrangements for the amortization of the loan, including the repayment procedures. Where advance amortization is contemplated, on the initiative of the issuer or of the holder, it must be described, stipulating amortization terms and conditions.

- 4.10 An indication of yield.

- 4.11 Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where investors may have access to the contracts relating to these forms of representation.

- 4.12 A statement of the resolutions, authorisations and approvals by virtue of which the securities have been created and/or issued.

- 4.13 The issue date of the securities.

- 4.14 A description of any restrictions on the free transferability of the securities.

5

#### ADMISSION TO TRADING AND DEALING ARRANGEMENTS

- 5.1 Indication of the market where the securities will be traded and for which prospectus has been published. If known, give the earliest dates on which the securities will be admitted to trading.

- 5.2 Name and address of any paying agents and depository agents in each country.

#### 6 EXPENSE OF THE ADMISSION TO TRADING

An estimate of the total expenses related to the admission to trading.

7

#### ADDITIONAL INFORMATION

- 7.1 If advisors are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted

- 7.2 An indication of other information in the Securities Note which has been audited or reviewed by auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.

- 7.3 Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report 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 Securities Note.

- 7.4 Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.

7.5 Credit ratings assigned to an issuer or its debt securities at the request or with the co-operation of the issuer in the rating process.

## ANNEX XIV

### ADDITIONAL INFORMATION BUILDING BLOCK ON UNDERLYING SHARE FOR SOME EQUITY SECURITIES

1. Description of the underlying share
  - 1.1 Describe the type and the class of the shares
  - 1.2 Legislation under which the shares have been or will be created
  - 1.3 Indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records
  - 1.4 Indication of the currency of the shares issue
  - 1.5 A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of those rights
    - Dividend rights:
      - Fixed date(s) on which the entitlement arises,
      - Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,
      - Dividend restrictions and procedures for non resident holders,
      - Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments.
    - Voting rights.
    - Pre-emption rights in offers for subscription of securities of the same class.
    - Right to share in the issuer's profits.
    - Rights to share in any surplus in the event of liquidation.
    - Redemption provisions
    - Conversion provisions
  - 1.6 In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the shares have been or will be created and/or issued and indication of the issue date
  - 1.7 Where and when the shares will be or have been admitted to trading
  - 1.8 Description of any restrictions on the free transferability of the shares
  - 1.9 Indication of the existence of any mandatory takeover bids/or squeeze-out and sell-out rules in relation to the shares
  - 1.10 Indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated
  - 1.11 Impact on the issuer of the underlying share of the exercise of the right and potential dilution effect for the shareholders
2. When the issuer of the underlying is an entity belonging to the same group, the information to provide on this issuer is the one required by the share Registration Document schedule.

## ANNEX XV

### Minimum disclosure requirements for the registration document for securities issued by collective investment undertakings of the closed-end type (schedule)

In addition to the information required in this schedule, the collective investment undertaking must provide the following information as required under paragraphs and items 1, 2, 3, 4, 5.1, 7, 9.1, 9.2.1, 9.2.3, 10.4, 13, 14, 15, 16, 17.2, 18, 19, 20, 21, 22, 23, 24, 25 in annex I (minimum disclosure requirements for the share Registration Document schedule).

#### 1.0 Investment Objective and Policy

1.1. A detailed description of the investment objective and policy which the collective investment undertaking will pursue and a description of how that investment objectives and policy may be varied including any circumstances in which such variation requires the approval of investors. A description of any techniques and instruments that may be used in the management of the collective investment undertaking.

1.2 The borrowing and/or leverage limits of the collective investment undertaking. If there are no such limits, include a statement to that effect.

1.3 The regulatory status of the collective investment undertaking together with the name of any regulator in its country of incorporation.

1.4 The profile of a typical investor for whom the collective investment undertaking is designed.

#### 2. Investment Restrictions

2.1 A statement of the investment restrictions which apply to the collective investment undertaking, if any, and an indication of how the holders of securities will be informed of the actions that the investment manager will take in the event of a breach.

2.2 Where more than 20% of the gross assets of any collective investment undertaking (except where items 2.3 or 2.5 apply) may be:

(a) invested in, either directly or indirectly, or lent to any single underlying issuer (including the underlying issuer's subsidiaries or affiliates); or

(b) invested in one or more collective investment undertakings which may invest in excess of 20% of its gross assets in other collective investment undertakings (open-end and/or closed-end type); or

(c) exposed to the creditworthiness or solvency of any one counterparty (including its subsidiaries or affiliates);

the following information must be disclosed:

(i) information relating to each underlying issuer/collective investment undertaking/counterparty as if it were an issuer for the purposes of the minimum disclosure requirements for the share Registration Document schedule (in the case of (a)) or minimum disclosure requirements for the registration document schedule for securities issued by collective investment undertaking of the closed-end type (in the case of (b)) or the minimum disclosure requirements for the debt and derivative securities with an individual denomination per unit of at least EUR 50 000 Registration Document schedule (in the case of (c)); or

(ii) if the securities issued by the underlying issuer/collective investment undertaking/counterparty have already been admitted to trading on a regulated or equivalent market or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.

This requirement shall not apply where the 20% is exceeded due to appreciations or depreciations, changes in exchange rates, or by reason of the receipt of rights, bonuses, benefits in the nature of capital or by reason of any other action affecting every holder of that investment, provided the investment

- manager has regard to the threshold when considering changes in the investment portfolio.
- 2.3 Where a collective investment undertaking may invest in excess of 20% of its gross assets in other collective investment undertakings (open ended and/or closed ended), a description of if and how risk is spread in relation to those investments. In addition, item 2.2 shall apply, in aggregate, to its underlying investments as if those investments had been made directly.
- 2.4 With reference to point (c) of item 2.2, if collateral is advanced to cover that portion of the exposure to any one counterparty in excess of 20% of the gross assets of the collective investment undertaking, details of such collateral arrangements.
- 2.5 Where a collective investment undertaking may invest in excess of 40% of its gross assets in another collective investment undertaking either of the following must be disclosed:
- (a) information relating to each underlying collective investment undertaking as if it were an issuer under minimum disclosure requirements for the registration document schedule for securities issued by collective investment undertaking of the closed-end type;
- (b) if securities issued by an underlying collective investment undertaking have already been admitted to trading on a regulated or equivalent market or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.
- 2.6 Physical Commodities  
Where a collective investment undertaking invests directly in physical commodities a disclosure of that fact and the percentage that will be so invested.
- 2.7 Property Collective investment undertakings  
Where a collective investment undertaking is a property collective investment undertaking, disclosure of that fact, the percentage of the portfolio that is to be invested in the property, as well as a description of the property and any material costs relating to the acquisition and holding of such property. In addition, a valuation report relating to the properties must be included.
- Disclosure of item 4.1. applies to:
- (a) the valuation entity;
- (b) any other entity responsible for the administration of the property.
- 2.8 Derivatives Financial instruments/Money Market Instruments/Currencies  
Where a collective investment undertaking invests in derivatives financial instruments, money market instruments or currencies other than for the purposes of efficient portfolio management (i.e. solely for the purpose of reducing, transferring or eliminating investment risk in the underlying investments of a collective investment undertaking, including any technique or instrument used to provide protection against exchange and credit risks), a statement whether those investments are used for hedging or for investment purposes, and a description of if and how risk is spread in relation to those investments.
- 2.9 Item 2.2 does not apply to investment in securities issued or guaranteed by a government, government agency or instrumentality of any Member State, its regional or local authorities, or OECD Member State.
- 2.10 Point (a) of item 2.2 does not apply to a collective investment undertaking whose investment objective is to track, without material modification, that of a broadly based and recognised published index. A description of the composition of the index must be provided.
- 3 The applicant's service providers
- 3.1 The actual or estimated maximum amount of all material fees payable directly or indirectly by the collective investment undertaking for any services under arrangements entered into on or prior to the date of the registration document and a description of how these fees are calculated.
- 3.2 A description of any fee payable directly or indirectly by the collective investment undertaking which cannot be quantified under item 3.1 and which is or may be material.
- 3.3 If any service provider to the collective investment undertaking is in receipt of any benefits from third parties (other than the collective investment undertaking) by virtue of providing any services to the collective investment undertaking, and those benefits may not accrue to the collective investment undertaking, a statement of that fact, the name of that third party, if available, and a

- description of the nature of the benefits.
- 3.4. The name of the service provider which is responsible for the determination and calculation of the net asset value of the collective investment undertaking.
- 3.5. A description of any material potential conflicts of interest which any of the service providers to the collective investment undertaking may have as between their duty to the collective investment undertaking and duties owed by them to third parties and their other interests. A description of any arrangements which are in place to address such potential conflicts.
4. Investment Manager/ Advisers
- 4.1. In respect of any Investment Manager such information as is required to be disclosed under items 5.1.1 to 5.1.4 and, if material, under item 5.1.5 of Annex I together with a description of its regulatory status and experience.
- 4.2. In respect of any entity providing investment advice in relation to the assets of the collective investment undertaking, the name and a brief description of such entity.
5. Custody
- 5.1. A full description of how the assets of the collective investment undertaking will be held and by whom and any fiduciary or similar relationship between the collective investment undertaking and any third party in relation to custody:

Where a custodian, trustee, or other fiduciary is appointed

(a) such information as is required to be disclosed under items 5.1.1 to 5.1.4 and, if material, under item 5.1.5 of Annex I;

(b) a description of the obligations of such party under the custody or similar agreement;

(c) any delegated custody arrangements;

(d) the regulatory status of such party and delegates

- 5.2. Where any entity other than those entities mentioned in item 5.1, holds any assets of the collective investment undertaking, a description of how these assets are held together with a description of any additional risks.

6. Valuation

- 6.1. A description of how often, and the valuation principles and the method by which, the net asset value of the collective investment undertaking will be determined, distinguishing between categories of investments and a statement of how such net asset value will be communicated to investors.
- 6.2. Details of all circumstances in which valuations may be suspended and a statement of how such suspension will be communicated or made available to investors.

7. Cross Liabilities

- 7.1. In the case of an umbrella collective investment undertaking, a statement of any cross liability that may occur between classes or investments in other collective investment undertakings and any action taken to limit such liability.

8. Financial Information

- 8.1. Where, since the date of incorporation or establishment, a collective investment undertaking has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect.

Where a collective investment undertaking has commenced operations, the provisions of item 20 of Annex I on the Minimum Disclosure Requirements for the share Registration Document apply.

- 8.2. A comprehensive and meaningful analysis of the collective investment undertaking's portfolio (if un-audited, clearly marked as such).
- 8.3. An indication of the most recent net asset value per security must be included in the securities note schedule (and, if un-audited, clearly marked as such)

## ANNEX XVI

### Minimum Disclosure Requirements for the Registration Document for securities issued by Member States, third countries and their regional and local authorities (schedule)

#### 1. PERSONS RESPONSIBLE

- 1.1 All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.
- 1.2 A declaration by those responsible for the Registration Document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

#### 2. RISK FACTORS

Prominent disclosure of risk factors that may affect the issuer's ability to fulfil its obligations under the securities to investors in a section headed "Risk Factors".

#### 3. INFORMATION ABOUT THE ISSUER

- 3.1. the legal name of the issuer and a brief description of the issuer's position within the national governmental framework
- 3.2. the domicile or geographical location and legal form of the issuer and its contact address and telephone number;
- 3.3. any recent events relevant to the evaluation of the issuer's solvency.
- 3.4. a description of the issuer's economy including:
  - a) the structure of the economy with details of the main sectors of the economy,
  - b) gross domestic product with a breakdown by the issuer's economic sectors over for the previous two fiscal years.
- 3.5. a general description of the issuer's political system and government including details of the governing body of the issuer.

4. **PUBLIC FINANCE AND TRADE**

Information on the following for the two fiscal years prior to the date of the registration document:

a) the tax and budgetary systems,

b) gross public debt including a summary of the debt, the maturity structure of outstanding debt (particularly noting debt with a residual maturity of less than one year) and debt payment record, and of the parts of debt denominated in the domestic currency of the issuer and in foreign currencies.

c) foreign trade and balance of payment figures,

d) foreign exchange reserves including any potential encumbrances to such foreign exchange reserves as forward contracts or derivatives.

e) financial position and resources including liquid deposits available in domestic currency.

f) Income and expenditure figures

Description of any auditing or independent review procedures on the accounts of the issuer.

5. **SIGNIFICANT CHANGE**

5.1. Details of any significant changes to the information provided pursuant to item 4 which have occurred since the end of the last fiscal year, or an appropriate negative statement.

6. **LEGAL AND ARBITRATION PROCEEDINGS**

Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past, significant effects on the issuer financial position, or provide an appropriate negative statement.

6.2 Information on any immunity the issuer may have from legal proceedings.

7. **STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST**

Where a statement or report attributed to a person as an expert is included in the registration document, provide such person's name, business address and qualifications. If the report has been produced at the issuer's request a statement to that effect, that such statement or report 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 registration document.

To the extent known to the issuer, provide information in respect of any interest relating to such expert which may have an effect on the independence of the expert in the preparation of the report.

8. **DOCUMENTS ON DISPLAY**

A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:

(a) financial and audit reports for the issuer covering the last two fiscal years and the budget for the current fiscal year;

(b) all reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document.

An indication of where the documents on display may be inspected, by physical or electronic means.

## ANNEX XVII

### Minimum Disclosure Requirements for the Registration Document for securities issued by Public International Bodies and for debt securities guaranteed by a member state of the OECD (schedule)

#### 1 PERSONS RESPONSIBLE

1.1 All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.

1.2 A declaration by those responsible for the Registration Document, that, having taken all reasonable care to ensure that such is the case, the information contained in the Registration Document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to materially affect its import. As the case may be, declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

#### 2. RISK FACTORS

Prominent disclosure of risk factors that may affect the issuer's ability to fulfil its obligations under the securities to investors in a section headed "Risk Factors".

#### 3. INFORMATION ABOUT THE ISSUER

3.1 The legal name of the issuer and a brief description of the issuer's legal status;

3.2 the location of the principal office and the legal form of the issuer and its contact address and telephone number;

3.3 details of the governing body of the issuer and a description of its governance arrangements, if any;

3.4 a brief description of the issuer's purpose and functions;

3.5 the sources of funding, guarantees and other obligations owed to the issuer by its members;

3.6 any recent events relevant to the evaluation of the issuer's solvency;

3.7 a list of the issuer's members.

#### 4. FINANCIAL INFORMATION

4.1 The two most recently published audited annual financial statements prepared in accordance with the accounting and auditing principles adopted by the issuer, and a brief description of those accounting and auditing principles.

Details of any significant changes to the issuer's financial position which has occurred since the end of the latest published audited annual financial statement, or an appropriate negative statement.

#### 5. LEGAL AND ARBITRATION PROCEEDINGS

5.1 Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which are likely to have, or have had in the recent past, significant effects on the issuer's financial position, or provide an appropriate negative statement.

5.2 Information on any immunity the issuer may have from legal proceedings pursuant to its constituent document.

#### 6. STATEMENT BY EXPERTS AND DECLARATION OF ANY INTERESTS

Where a statement or report attributed to a person as an expert is included in the registration document, provide such person's name, business address and qualifications. If the report has been produced at the issuer's request a statement to that effect, that such statement or report is included, in the form and context in which it is included, with the consent of that person.

To the extent known to the issuer, provide information in respect of any conflict of interests relating to such expert which may have an effect on the independence of the expert in the preparation of the report.

7. DOCUMENTS ON DISPLAY

A statement that for the life of the Registration Document the following documents (or copies thereof), where applicable, will be made available on request:

a) annual and audit reports of the issuer for each of the last two financial years prepared in accordance with the accounting and auditing principles adopted by the issuer;

b) all reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;

c) the issuer's constituent document.

An indication of where the documents on display may be inspected, by physical or electronic means.

ANNEX XVIII Table of combinations

ANNEX XVIII	REGISTRATION DOCUMENT					
	SCHEDULES					BUILDING BLOCK
	SHARE	DEBT and DERIVATIVE (< EUR 50 000)	DEBT and DERIVATIVE (> or = EUR 50 000)	ASSET BACKED SEC.	BANKS DEBT and DERIVATIVE	PUB FORMA INFORMATION
TYPES OF SECURITIES						
Shares (preference shares, redeemable shares, shares with preferential subscription rights; etc...)						
Bonds(vanilla bonds, income bonds, structured bonds, etc...) with a denomination of less than EUR 50 000		OR			OR	
Bonds (vanilla bonds, income bonds, structured bonds, etc...) with a denomination of at least EUR 50 000			OR		OR	
Debt securities guaranteed by a third party		OR	OR		OR	
Derivative sec. guaranteed by a third party		OR	OR		OR	
Asset backed securities						
Bonds exchangeable or convertible into third party shares or issuers' or group shares which are admitted on a regulated market		OR	OR		OR	
Bonds exchangeable or convertible into the issuer's shares not admitted on a regulated market						

Bonds exchangeable or convertible into group's shares not admitted on a regulated market		OR	OR		OR	
Bonds with warrants to acquire the issuer's shares not admitted to trading on a regulated market						
Shares with warrants to acquire the issuer's shares not admitted to trading on a regulated market						
Derivatives sec. giving the right to subscribe or to acquire the issuer's shares not admitted on a regulated market						
Derivatives sec. giving the right to acquire group's shares not admitted on a regulated market		OR	OR		OR	
Derivatives sec. giving the right to subscribe or to acquire issuer's or group shares which are admitted on a regulated market and derivatives sec. linked to any other underlying than issuer's or group shares which are not admitted on a regulated market (including any derivatives sec. entitling to cash settlement)		OR	OR		OR	

ANNEX XVIII	REGISTRATION DOCUMENT		
	SCHEDULES		
TYPES OF SECURITIES	COLLECTIVE INVESTMENT UNDERTAKING OF THE CLOSED-END TYPE	STATES AND THEIR REGIONAL AND LOCAL AUTHORITIES	PUBLIC INTERNATIONAL BODIES/Debt securities guaranteed by a member state of the OECD
Shares (preference shares, redeemable shares, shares with preferential subscription rights; etc...)			
Bonds (vanilla bonds, income bonds, structured bonds, etc with a denomination of less than EUR 50 000			
Bonds (vanilla bonds, income bonds, structured bonds, etc) with a denomination of at least EUR 50 000			
Debt securities guaranteed by a third party			
Derivative sec. guaranteed by a third party			
Asset backed securities			
Bonds exchangeable or convertible into third party shares or issuers' or group shares which are admitted on a regulated market			
Bonds exchangeable or convertible into the issuer's shares not admitted on a regulated market			

Bonds exchangeable or convertible into group's shares not admitted on a regulated market			
Bonds with warrants to acquire the issuer's shares not admitted to trading on a regulated market			
Shares with warrants to acquire the issuer's shares not admitted to trading on a regulated market			
Derivatives sec. giving the right to subscribe or to acquire the issuer's shares not admitted on a regulated market			
Derivatives sec. giving the right to acquire group's shares not admitted on a regulated market			
Derivatives sec. giving the right to subscribe or to acquire issuer's or group shares which are admitted on a regulated market and derivatives sec. linked to any other underlying than issuer's or group shares which are not admitted on a regulated market (including any derivatives sec. entitling to cash settlement)			

ANNEX XVIII	SECURITIES NOTE						
	SCHEDULES				ADDITIONAL BUILDING BLOCKS		
	SHARE	DEBT (< EUR 50 000)	DEBT (> or = EUR 50 000)	DERIVATIVES SEC.	GUARANTEES	ASSET BACKED SEC.	UNDERLYING SHARE
Shares (preference shares, redeemable shares, shares with preferential subscription rights; etc...)							
Bonds (vanilla bonds, income bonds, structured bonds, etc with a denomination of less than EUR 50 000)							
Bonds (vanilla bonds, income bonds, structured bonds, etc) with a denomination of at least EUR 50 000							
Debt securities guaranteed by a third party		OR	OR				
Derivative sec. guaranteed by a third party							
Asset backed securities		OR	OR				

Bonds exchangeable or convertible into third party shares or issuers' or group shares which are admitted on a regulated market		OR	OR	only item 4.2.2			
Bonds exchangeable or convertible into the issuer's shares not admitted on a regulated market		OR	OR				
Bonds exchangeable or convertible into group's shares not admitted on a regulated market		OR	OR				
Bonds with warrants to acquire the issuer's shares not admitted to trading on a regulated market		OR	OR	AND except item 4.2.2			
Shares with warrants to acquire the issuer's shares not admitted to trading on a regulated market				AND except item 4.2.2			
Derivatives sec. giving the right to subscribe or to acquire the issuer's shares not admitted on a regulated market				except item 4.2.2			
Derivatives sec. giving the right to acquire group's shares not admitted on a regulated market				except item 4.2.2			

Derivatives sec. giving the right to subscribe or to acquire issuer's or group shares which are admitted on a regulated market and derivatives sec. linked to any other underlying than issuer's or group shares which are not admitted on a regulated market (including any derivatives sec. entitling to cash settlement)							
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**LISTING RULES AND PROSPECTUS RULES (CONSEQUENTIAL  
AMENDMENTS) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 ("the Act"):
- (a) section 89 (Public censure of sponsor);
  - (b) section 93 (Statement of policy);
  - (c) section 138 (General rule-making power);
  - (d) section 156 (General supplementary powers); and
  - (e) section 157(1) (Guidance); and
- (2) the other powers referred to in Schedule 4 of the General Provisions.
- 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 July 2005

**Amendments to the Handbook**

- D. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Interim Prudential sourcebook for Building Societies (IPRU(BSOC))	Annex B
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex C
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex D
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex E
Conduct of Business sourcebook (COB)	Annex F

Insurance: Conduct of Business sourcebook (ICOB)	Annex G
Mortgages: Conduct of Business sourcebook (MCOB)	Annex H
Market Conduct sourcebook (MAR)	Annex I
Authorisation manual (AUTH)	Annex J
Supervision manual (SUP)	Annex K
Enforcement manual (ENF)	Annex L
Decision Making manual (DEC)	Annex M
Collective Investment Schemes sourcebook (CIS)	Annex N
Credit Unions sourcebook (CRED)	Annex O
Electronic Money sourcebook (ELM)	Annex P
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex Q
Listing Rules (LR), forms	Annex R
Prospectus Rules (PR), forms	Annex S
Disclosure Rules (DR), forms	Annex T

### Notes

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

### Citation

- F. This instrument may be cited as the Listing Rules and Prospectus Rules (Consequential Amendments) Instrument 2005.

By order of the Board  
16 June 2005

## Annex A

### Amendments to the Glossary of definitions

In this annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

Amend the following definitions as shown:

- admission to trading*
- (1) (in LR) admission of securities to trading on an RIE's market for listed securities.
  - ~~(2)~~ (in PR and DR) admission to trading on a regulated market.
  - ~~(23)~~ (elsewhere in the Handbook) (in relation to an investment and an exchange) the process by which the exchange permits members of the exchange to enter into transactions in that investment under and subject to the rules of the exchange.
- associate*
- (1) (in LR) (in relation to a director, substantial shareholder, 50/50 joint venture partner or person exercising significant influence, who is an individual):
    - (a) that individual's spouse or child (together "the individual's family");
    - (b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an occupational pension scheme or an employees' share scheme which does not, in either case, have the effect of conferring benefits on persons all or most of whom are related parties;
    - (c) any company in whose equity securities the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:
      - (i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
      - (ii) to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters.

For the purpose of paragraph (c), if more than one director of the listed company, its parent undertaking or any of its subsidiary undertakings is interested in the equity securities of another company, then the interests of those directors and their associates will be aggregated when determining

whether that *company* is an associate of the *director*.

(2) (in LR) (in relation to a *substantial shareholder, 50/50 joint venture partner or person exercising significant influence, which is a company*):

(a) any other *company* which is its *subsidiary undertaking or parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;

(b) any *company* whose *directors* are accustomed to act in accordance with the *substantial shareholder's, 50/50 joint venture partner's or person exercising significant influence's* directions or instructions.

(3) (except in LR) (in relation to a *person* ("A")):

(a) an *affiliated company* of A;

(b) an *appointed representative* of A or of any *affiliated company* of A;

(c) any other *person* whose business or domestic relationship with A or his *associate* might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties.

*charge* (1) (in LR) (in relation to *securitised derivatives*) means any payment identified under the terms and conditions of the *securitised derivatives*.

U (2) (except in LR) any *fee* or charge made to a *client* in connection with:

(a) *designated investment business*; or

(b) any *insurance mediation activities* in respect of a *non-investment insurance contract*;

whether levied by the *firm* or any other *person*, including a *mark-up* or *mark-down*.

*class* ...

(3) ...

(4) (in LR) *securities* the rights attaching to which are or will be identical and which form a single issue or issues.

*competent authority* (1) in relation to the functions referred to in Part VI of the Act~~admission to an official listing~~:

(a) the authority designated under Schedule 8 to the *Act* (Transfer of functions under Part VI (Official listing)) as

responsible for performing those functions under the Act admitting securities to, and for removing securities from, the official list; for the time being, the *FSA* in its capacity as such; or

- (b) an authority exercising functions corresponding to those functions in (a) in under the laws of another EEA State.

...

*connected person*

...

- (45) (in *DR*, *LR* and *ENF 21* in relation to a *person discharging managerial responsibilities* within an *issuer*) (as defined in section 96B(2) of the Act):

...

*debt security*

- (1) (in *DR* and *LR*) debentures, debenture stock, loan stock, bonds, certificates of deposit or any other instrument creating or acknowledging indebtedness.
- (2) (except in *DR* and *LR* elsewhere in the Handbook) any of the following:
- (a) a *debenture*;
- (b) a *government and public security*;
- (c) a *warrant* which confers a right in respect of an *investment* in (a) or (b).

*depository*

- (1) (except in *LR*):
- (a) ...
- ...
- (2) (in *LR* a person that issues certificates representing certain securities that have been admitted to listing or are the subject of an application for admission to listing).

*director*

- (1) (except in *COLL*, *DR*, *LR*, *PR*, *ENF 21* and *CIS*) in relation to any of the following...
- ...
- (3) (in *DR*, *LR*, *PR* and *ENF 21*) (in accordance with section 417(1)(a))

of the Act) a *person* occupying in relation to it the position of a director (by whatever name called) and, in relation to an *issuer* which is not a *body corporate*, a *person* with corresponding powers and duties.

<i>group</i>	<p>(1) (except in relation to an <i>ICVC</i> and except for the purposes of <i>PRU</i> 8.1 (Group risk systems and controls requirement) and <i>LR</i>) as defined in section 421 of the Act...</p> <p>...</p> <p>(4) <u>(in <i>LR</i>):</u></p> <p style="padding-left: 2em;">(a) <u>(except in <i>LR</i> 6.1.19R) an issuer and its subsidiary undertakings (if any); and</u></p> <p style="padding-left: 2em;">(b) <u>in <i>LR</i> 6.1.19R, as defined in section 421 of the Act.</u></p>
<i>Home State</i>	<p>...</p> <p>(7) ...</p> <p>(8) <u>(in <i>LR</i> and <i>PR</i>) (as defined in section 102C of the Act) in relation to an issuer of <i>transferable securities</i>, the <i>EEA State</i> which is the "home Member State" for the purposes of the <i>prospectus directive</i> (which is to be determined in accordance with Article 2.1(m) of that directive).</u></p>
<i>Host State</i>	<p>(1) <u>(in <i>LR</i> and <i>PR</i>) as defined in Article 2.1(n) of the <i>prospectus directive</i>) the <i>EEA State</i> where an <i>offer to the public</i> is made or <i>admission to trading</i> is sought, when different from the <i>Home State</i>.</u></p> <p>(2) <u>(except in <i>LR</i> and <i>PR</i>) the <i>EEA State</i> in which an <i>EEA firm</i>, a <i>UK firm</i>, or a <i>Treaty firm</i> is exercising an <i>EEA right</i> or <i>Treaty right</i> to establish a <i>branch</i> or provide <i>cross border services</i>.</u></p>
<i>intermediaries offer</i>	<p>(1) <u>(in <i>LR</i>) a marketing of <i>securities</i> already or not yet in issue, by means of an offer by, or on behalf of, the <i>issuer</i> to intermediaries for them to allocate to their own clients.</u></p> <p>(2) (for the purposes of the <i>Code of Market Conduct (MAR 1)</i> ) a marketing of <i>securities</i> not yet in issue, by means of an <i>offer</i> by, or on behalf of, the <i>issuer</i> to intermediaries for them to allocate to their own clients.</p>
<i>issuer</i>	<p>(1) (except in <i>CIS</i>, <i>LR</i>, <i>PR</i> and <i>DR</i>)</p> <p>(1a) ...</p> <p>(2b) ...</p>

	(3c) ...
	(4d) ...
	(52) (in <i>DR</i> ) ...
	(3) <u>(in <i>LR</i>) any company or other legal person or undertaking (including a public sector issuer), any class of whose securities has been admitted to listing or is the subject of an application for admission to listing.</u>
	(4) <u>(in <i>PR</i>) (as defined in section 102A of the Act) a legal person who issues or proposes to issue the transferable securities in question.</u>
<i>listed</i>	(1) (except in <u><i>LR</i>, <i>ENF</i> 21 and <i>LLD</i> and <i>PRU</i></u> ) included in an <i>official list</i> .
	(2) (in <i>LLD</i> and <i>PRU</i> )
	(a) included in an <i>official list</i> ; or
	(b) in respect of which facilities for <i>dealing</i> on a <i>regulated market</i> have been granted.
	(3) <u>(in <i>LR</i> and <i>ENF</i> 21) admitted to the official list maintained by the FSA in accordance with section 74 of the Act.</u>
<i>listing rules</i>	<del>the rules made by UKLA governing admission to listing, the continuing obligations of issuers, the enforcement of those obligations and the suspension and cancellation of listing.</del> <u>(in accordance with section 73A(2) of the Act) rules relating to admission to the official list.</u>
<i>member</i>	(1) (except in <i>PROF</i> , <u><i>LR</i></u> , <i>ENF</i> 18 and <i>REC</i> ) a <i>person</i> admitted to membership of the <i>Society</i> or any <i>person</i> by law entitled or bound to administer his affairs.
	(2) (in <i>PROF</i> , <u><i>LR</i></u> and <i>ENF</i> 18) (as defined in section 325(2) of the Act (Authority's general duty)) (in relation to a profession) a <i>person</i> who is entitled to practise that profession and, in practising it, is subject to the rules of the relevant <i>designated professional body</i> , whether or not he is a member of that body.
	(3) ...
<i>Model Code</i>	The Model Code on directors' dealings in securities set out in <del>the appendix to Chapter 16 of the listing rules</del> <u><i>LR</i> 9 Ann 1.</u>
<i>offer</i>	...

	(3)	<u>(in LR, PR and ENF 21) an offer of transferable securities to the public.</u>
<i>offeror</i>	(1)	(in MAR 1 (The Code of Market Conduct) <u>and LR 5.2.10R</u> ) an offeror as defined in the <i>Takeover Code</i> .
	...	
	(3)	<u>(in LR and in PR and ENF 21) a person who makes an offer of transferable securities to the public.</u>
<i>official list</i>	(1)	<u>(in LR and ENF 21) the list maintained by the FSA in accordance with section 74(1) of the Act for the purposes of Part VI of the Act.</u>
	(2)	<u>(except in LR and ENF 21):</u>
	(a)	the list maintained by the FSA in accordance with section 74(1) of the Act (The official list) for the purposes of Part VI of the Act (Official Listing);
	(b)	any corresponding list maintained by a <i>competent authority</i> for listing in another <i>EEA State</i> .
<i>property investment company</i>	(1)	(in CIS) a <i>body corporate</i> , a substantial activity of which relates to <i>permitted immovables</i> (whether by way of investing, dealing in, developing, redeveloping or refurbishing them and whether directly or indirectly).
	(2)	<u>(in LR) an investment company or an investment trust which invests or intends to invests 20% or more of its gross assets directly in property and satisfies the requirements of LR 15.5 in addition to any other relevant requirements of LR 15.</u>
<i>prospectus</i>	(1)	<u>(in LR and PR) a prospectus required under the prospectus directive.</u>
	(2)	<u>(except in LR and PR) (in relation to a collective investment scheme) a document containing information about the scheme and complying with the requirements in COLL 4.2.5R (Table: contents of the prospectus), COLL 8.3.4R (Table: contents of qualified investor scheme prospectus); COLL 9.3.2R (Additional information required in the prospectus for an application under section 272) or, as the case may be, CIS 3 or CIS 17 applicable to a prospectus of a scheme of the type concerned.</u>
<i>public international body</i>	(1)	<u>(in PR) (as defined in the PD Regulation) a legal entity of public nature established by an international treaty between sovereign States and of which one or more Member States are members.</u>

	(2)	(in <i>LR</i> and <i>DR</i> ) the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Council of Europe Resettlement Fund, the European Atomic Energy Community, the European Bank for Reconstruction and Development, the European Coal and Steel Community, the European Company for the Financing of Railroad Stock, the European Economic Community, the European Investment Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Monetary Fund and the Nordic Investment Bank.
<i>register</i>	(1)	(in <i>PR</i> ) the register of <i>qualified investors</i> maintained by the <i>FSA</i> under section 87R of the <i>Act</i> .
	(2)	(in <i>CIS</i> ) the register of <i>holders</i> kept under Schedule 3 to the <i>OEIC Regulations</i> or <i>CIS</i> 6.2.1R (Basic requirements) or, in relation to a <i>collective investment scheme</i> that is not an <i>authorised fund</i> , a record of the holders (other than of <i>bearer certificates</i> ) of <i>units</i> in it.
	(3)	(in <i>COLL</i> ) the register of <i>unitholders</i> kept under Schedule 3 to the <i>OEIC Regulations</i> or <i>COLL</i> 6.4.4R (Register: general requirements and contents), or <i>COLL</i> 8.5.8R (The register of unitholders: AUTs) as appropriate or, in relation to a <i>collective investment scheme</i> that is not an <i>authorised fund</i> , a record of the holders (other than of <i>bearer certificates</i> ) of <i>units</i> in it.
<i>relevant security</i>	(1)	(in <i>MAR 2</i> , when used with reference to the Buy-Back and Stabilisation Regulation)...
	...	
	(3)	(in <i>LR</i> ) has the same meaning as in section 80 of the Companies Act 1985.
<i>retail securitised derivative</i>		a <i>securitised derivative</i> which is not a specialist securitised derivative; in this definition, a "specialised securitised derivative" is a <i>securitised derivative</i> which, in accordance with <del>paragraphs 24.1(m) and 24.6 of the listing rules</del> , is required to be admitted to listing with <u>listing particulars which contain a clear statement on the front page any disclosure document</u> that the issue is intended for a purchase by only investors who are particularly knowledgeable in investment matters.
<i>securitised derivative</i>		an <i>option</i> or <i>contract for differences</i> which, in either case, is <i>listed</i> under <del>chapter 24</del> <u><i>LR</i> 19</u> of the <i>listing rules</i> (including such an <i>option</i> or <i>contract for differences</i> which is also a <i>debenture</i> ). (see also <i>COB</i> 5.4.3AG for the treatment of a <i>securitised derivative</i> .)
<i>security</i>	(1)	( <u>except in <i>LR</i> and <i>ENF</i> 21</u> ) (in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation) any of the following

	<i>investments</i> specified ...
	(2) <u>(in LR and ENF 21) (in accordance with section 102A of the Act) anything which has been, or may be admitted to the official list.</u>
<i>share</i>	(1) (except in CIS, <u>LR</u> and DR) the <i>investment</i> ...
	...
	(3) (in DR <u>and LR</u> ) (in accordance with section 744 of the Companies Act 1985) a share in the share capital of a <i>company</i> , and includes: <ul style="list-style-type: none"> <li>(a) stock (except where a distinction between shares and stock is express or implied); and</li> <li>(b) <i>preference shares</i>.</li> </ul>
<i>special purpose vehicle</i>	(1) <u>(in PR) (as defined in the PD Regulation) an issuer whose objects and purposes are primarily the issue of securities.</u>
	(2) <u>(except in PR) 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: ...</u>
<i>subsidiary undertaking</i>	... <ul style="list-style-type: none"> <li>(3) <u>(in LR) as defined in section 258 of the Companies Act 1985.</u></li> </ul>
<i>transferable security</i>	(1) <u>(in PR and LR) (as defined in section 102A of the Act) anything which is a transferable security for the purposes of the investment services directive, other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.</u>
	(2) (in COLL and CIS) an <i>investment</i> within COLL 5.2.7R (transferable securities), CIS 5.2.9R (Transferable securities) or, as the case may be, CIS 5A.2.9R (Transferable securities) in relation to <i>schemes</i> falling under COLL 5, CIS 5 or CIS 5A respectively.
<i>trust deed</i>	(1) <u>(in LR) a trust deed or equivalent document securing or constituting debt securities.</u>
	(2) (in COLL and CIS) the deed referred to in COLL 3.2.3R (The trust deed for AUTs or, as the case may be, CIS 2.2.5R (The trust deed for AUTs), together with any deed expressed to be supplemental to it, made between the <i>manager</i> and the <i>trustee</i> (or, in the case of a <i>recognised scheme</i> that is a unit trust scheme, the <i>instrument constituting the scheme</i> as amended from time to time).

Insert the following definitions in the appropriate alphabetical position:

<i>50/50 joint venture</i>	(in <i>LR</i> ) a joint venture where the two parties to the joint venture have a deadlocked interest in the joint venture.
<i>50/50 joint venture partner</i>	(in <i>LR</i> ) a party to a <i>50/50 joint venture</i> with a <i>listed company</i> or its <i>subsidiary undertaking</i> .
<i>admission or admission to listing</i>	(in <i>LR</i> ) <i>admission of securities</i> to the <i>official list</i> .
<i>advertisement</i>	(in <i>PR</i> and <i>LR 4</i> ) (as defined in the <i>PD Regulation</i> ) announcements:  (a) relating to a specific offer to the public of securities or to an admission to trading on a regulated market; and  (b) aiming to specifically promote the potential subscription or acquisition of securities.
<i>annual information update</i>	(in <i>PR</i> ) the document referred to in <i>PR 5.2.1R</i> .
<i>applicant</i>	(1) (in <i>LR</i> ) an <i>issuer</i> which is applying for <i>admission of securities</i> .  (2) (in <i>PR</i> ) an applicant for approval of a <i>prospectus</i> or <i>supplementary prospectus</i> relating to <i>transferable securities</i> .
<i>asset backed security</i>	(as defined in the <i>PD Regulation</i> ) securities which:  (a) represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable thereunder; or  (b) are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets.
<i>authorised property unit trust</i>	(in <i>LR</i> ) a <i>unit trust scheme</i> authorised by the <i>FSA</i> and which is a <i>property scheme</i> or an <i>umbrella scheme</i> each separate part of which would qualify as a <i>property scheme</i> if it were a separate <i>authorised unit trust scheme</i> .
<i>base prospectus</i>	(in <i>Part 6 rules</i> ) a base prospectus referred to in <i>PR 2.2.7R</i> .
<i>book value of</i>	(in <i>LR</i> )(in relation to a <i>property company</i> ) the value of a <i>property</i> (which is

<i>property</i>	not classified as a net current asset) before the deduction of mortgages or borrowings as shown in the <i>company's</i> latest annual report and accounts.
<i>break fee</i>	(in <i>LR</i> ) a fee payable by a <i>listed company</i> if certain specified events occur which have the effect of materially impeding a transaction or causing the transaction to fail.
<i>building block</i>	(in <i>PR</i> and <i>LR</i> ) (as defined in the <i>PD Regulation</i> ) a list of additional information requirements, not included in one of the schedules, to be added to one or more schedules, as the case may be, depending on the type of instrument and/or transaction for which a prospectus or base prospectus is drawn up.
<b>CARD</b>	<i>Consolidated Admissions and Reporting Directive.</i>
<i>certificate representing debt securities</i>	(in <i>LR</i> ) a <i>certificate representing certain securities</i> where the certificate or other instrument confers rights in respect of <i>debentures</i> or <i>government and public securities</i> .
<i>certificate representing equity securities</i>	(in <i>LR</i> ) a <i>certificate representing certain securities</i> where the certificate or other instrument confers rights in respect of <i>equity securities</i> .
<i>certificate representing shares</i>	(in <i>LR</i> ) a <i>certificate representing certain securities</i> where the certificate or other instrument confers rights in respect of <i>equity shares</i> .
<i>CESR recommendations</i>	the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004 published by the Committee of European Securities Regulators.
<i>circular</i>	(in <i>LR</i> ) any document issued to holders of <i>listed securities</i> including notices of meetings but excluding <i>prospectuses</i> , <i>listing particulars</i> , annual reports and accounts, interim reports, proxy cards and dividend or interest vouchers.
<i>class 1 acquisition</i>	(in <i>LR</i> ) a <i>class 1 transaction</i> that involves an acquisition by the relevant <i>listed company</i> or its <i>subsidiary undertaking</i> .
<i>class 1 circular</i>	(in <i>LR</i> ) a <i>circular</i> relating to a <i>class 1 transaction</i> .
<i>class 1 disposal</i>	(in <i>LR</i> ) a <i>class 1 transaction</i> that consists of a disposal by the relevant <i>listed company</i> or its <i>subsidiary undertaking</i> .
<i>class 1 transaction</i>	(in <i>LR</i> ) a transaction classified as a class 1 transaction under <i>LR 10</i> .
<i>class 2 transaction</i>	(in <i>LR</i> ) a transaction classified as a class 2 transaction under <i>LR 10</i> .

<i>class 3 transaction</i>	(in <i>LR</i> ) a transaction classified as a class 3 transaction under <i>LR</i> 10.
<i>class tests</i>	(in <i>LR</i> ) the tests set out in <i>LR</i> 10 Ann 1 (and for certain specialist companies, those tests as modified by <i>LR</i> 10.7), which are used to determine how a transaction is to be classified for the purposes of the <i>listing rules</i> .
<i>closed-ended</i>	(in <i>LR</i> ) (in relation to investment entities) an <i>investment company</i> which is not an <i>open-ended investment company</i> .
<i>close period</i>	(in <i>LR</i> ) as defined in paragraph 1(a) of the <i>Model Code</i> .
<i>collective investment undertaking other than the closed-end type</i>	(in <i>PR</i> ) (as defined in Article 2.1(o) of the <i>prospectus directive</i> ) unit trusts and investment companies: <ul style="list-style-type: none"> <li>(a) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk-spreading;</li> <li>(b) the units of which are, at the holder's request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings.</li> </ul>
<i>Combined Code</i>	(in <i>LR</i> ) the corporate governance code issued by the Financial Reporting Council.
<i>connected client</i>	(in <i>LR</i> ) in relation to a <i>sponsor</i> or securities house, any client of the <i>sponsor</i> or securities house who is: <ul style="list-style-type: none"> <li>(a) a partner, <i>director</i>, employee or controller (as defined in section 422 of the Act) of the <i>sponsor</i> or securities house or of an undertaking described in paragraph (d); or</li> <li>(b) the spouse or child of any individual described in paragraph (a); or</li> <li>(c) a <i>person</i> in his capacity as a trustee of a private trust (other than a pension scheme or an <i>employee's share scheme</i>) the beneficiaries of which include any <i>person</i> described in paragraph (a) or (b); or</li> <li>(d) an undertaking which in relation to the <i>sponsor</i> or securities house is a group undertaking.</li> </ul>
<i>constitution</i>	(in <i>LR</i> ) memorandum and articles of association or equivalent constitutional document.
<i>contract of significance</i>	(in <i>LR</i> ) a contract which represents in amount or value (or annual amount or value) a sum equal to 1% or more, calculated on a <i>group</i> basis where relevant, of: <ul style="list-style-type: none"> <li>(a) in the case of a capital transaction or a transaction of which the principal purpose or effect is the granting of credit, the aggregate of the <i>group's</i> share capital and reserves; or</li> </ul>

	(b) in other cases, the total annual purchases, sales, payments or receipts, as the case may be, of the <i>group</i> .
<i>convertible securities</i>	(in <i>LR</i> ) a <i>security</i> which is: <ul style="list-style-type: none"> <li>(a) convertible into, or exchangeable for, other <i>securities</i>; or</li> <li>(b) accompanied by a <i>warrant</i> or <i>option</i> to subscribe for or purchase other <i>securities</i>.</li> </ul>
<i>document viewing facility</i>	(in <i>LR</i> ) a location identified on the <i>FSA</i> website where the public can inspect documents referred to in the <i>listing rules</i> as being documents to be made available at the document viewing facility.
<i>employees' share scheme</i>	has the same meaning as in section 743 of the Companies Act 1985.
<i>equity security</i>	(1) (in <i>LR</i> ) <i>equity shares</i> and <i>securities</i> convertible into <i>equity shares</i> ; and <ul style="list-style-type: none"> <li>(2) (in <i>PR</i>) (as defined in Article 2.1(b) of the <i>prospectus directive</i>) shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer.</li> </ul>
<i>exercise notice</i>	(in <i>LR</i> ) (in relation to <i>securitised derivatives</i> ), a document that notifies the <i>issuer</i> of a holder's intention to exercise its rights under the <i>securitised derivative</i> .
<i>exercise price</i>	(in <i>LR</i> ) (in relation to <i>securitised derivatives</i> ), the price stipulated by the <i>issuer</i> at which the holder can buy or sell the <i>underlying instrument</i> from or to the <i>issuer</i> .
<i>exercise time</i>	(in <i>LR</i> ) (in relation to <i>securitised derivatives</i> ), the time stipulated by the <i>issuer</i> by which the holder must exercise their rights.
<i>expiration date</i>	(in <i>LR</i> ) (in relation to <i>securitised derivatives</i> ), the date stipulated by the <i>issuer</i> on which the holder's rights in respect of the <i>securitised derivative</i> ends.
<i>extraction</i>	(in relation to <i>mineral companies</i> ), includes mining, production, quarrying or similar activities and the reworking of mine tailings or waste dumps.
<i>final terms</i>	(in <i>LR</i> ) the document containing the final terms of each issue which is intended to be <i>listed</i> .
<i>financial information</i>	(in <i>LR</i> ) financial information presented in tabular form that covers the reporting period set out in <i>LR</i> 13.5.13R in relation to the entities set out in

<i>table</i>	LR 13.5.14R, and to the extent relevant LR 13.5.15R and LR 13.5.16R.
<i>guarantee</i>	<p>(1) (in LR) (in relation to <i>securitised derivatives</i>), either:</p> <ul style="list-style-type: none"> <li>(a) a guarantee given in accordance with LR 19.2.2R(3) (if any); or</li> <li>(b) any other guarantee of the issue of <i>securitised derivatives</i>.</li> </ul> <p>(2) (in PR) (as defined in the <i>PD Regulation</i>) any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, keep well agreement, mono-line insurance policy or other equivalent commitment.</p>
<i>guarantor</i>	(in PR) a person that provides a <i>guarantee</i> .
<i>Home Member State</i>	(in PR and LR) <i>Home State</i> .
<i>Host Member State</i>	(in PR and LR) <i>Host State</i> .
<i>IAS</i>	(in LR) <i>International Accounting Standards</i> .
<i>in the money</i>	<p>(in LR) (in relation to <i>securitised derivatives</i>):</p> <ul style="list-style-type: none"> <li>(a) where the holder has the right to buy the <i>underlying instrument</i> or <i>instruments</i> from the <i>issuer</i>, when the <i>settlement price</i> is greater than the <i>exercise price</i>; or</li> <li>(b) where the holder has the right to sell the <i>underlying instrument</i> or <i>instruments</i> to the <i>issuer</i>, when the <i>exercise price</i> is greater than the <i>settlement price</i>.</li> </ul>
<i>investment company</i>	<p>(in LR) a <i>company</i> whose object is to invest its funds wholly or mainly in:</p> <ul style="list-style-type: none"> <li>(a) any of the following <i>investments</i> specified in the <i>Regulated Activities Order</i>: <ul style="list-style-type: none"> <li>(i) <i>share</i> (article 76);</li> <li>(ii) <i>debenture</i> (article 77);</li> <li>(iii) <i>government and public security</i> (article 78);</li> <li>(iv) <i>warrant</i> (article 79);</li> <li>(v) <i>certificate representing certain securities</i> (article 80);</li> <li>(vi) <i>unit</i> (article 81);</li> <li>(vii) <i>option</i> (article 83);</li> <li>(viii) <i>future</i> (article 84);</li> <li>(ix) <i>contract for differences</i> (article 85);</li> <li>(x) rights to or interests in investments in (i) to (ix) (article 89); or</li> </ul> </li> <li>(b) interests in partnership arrangements, participations, joint ventures</li> </ul>

and other forms of non-corporate investment provided that the conditions of listing are met; or

- (c) interests in any other property provided that the relevant requirements of this chapter are met;

with the object of spreading investment risk and managing its portfolio for the benefit of its shareholders.

<i>LR</i>	the Listing Rules sourcebook.
<i>listed company</i>	(in <i>LR</i> ) a <i>company</i> that has any <i>class</i> of its <i>securities listed</i> .
<i>list of sponsors</i>	(in <i>LR</i> ) the list of <i>sponsors</i> maintained by the <i>FSA</i> in accordance with section 88(3)(a) of the <i>Act</i> .
<i>listing particulars</i>	(in <i>LR</i> ) (in accordance with section 79(2) of the <i>Act</i> ), a document in such form and containing such information as may be specified in <i>listing rules</i> .
<i>London Stock Exchange</i>	(in <i>LR</i> ) London Stock Exchange Plc.
<i>long term incentive scheme</i>	(in <i>LR</i> ) any arrangement (other than a retirement benefit plan, a deferred bonus or any other arrangement that is an element of an executive <i>director's</i> remuneration package) which may involve the receipt of any asset (including cash or any security) by a <i>director</i> or <i>employee</i> of the <i>group</i> :  (a) which includes one or more conditions in respect of service and/or performance to be satisfied over more than one financial year; and  (b) pursuant to which the <i>group</i> may incur (other than in relation to the establishment and administration of the arrangement) either cost or a liability, whether actual or contingent.
<i>MAD</i>	(in <i>LR</i> ) the <i>Market Abuse Directive</i> .
<i>major subsidiary undertaking</i>	(in <i>LR</i> ) a <i>subsidiary undertaking</i> that represents 25% or more of the aggregate of the gross assets or profits (after deducting all charges except taxation) of the <i>group</i> .
<i>mineral company</i>	(in <i>LR</i> ) a <i>company</i> or <i>group</i> , whose principal activity is, or is planned to be, the <i>extraction</i> of <i>mineral resources</i> (which may or may not include exploration for <i>mineral resources</i> ).
<i>mineral resources</i>	(in <i>LR</i> ) include metallic and non-metallic ores, mineral concentrates, industrial minerals, construction aggregates, mineral oils, natural gases, hydrocarbons and solid fuels including coal.
<i>mineral expert's report</i>	(in <i>LR</i> ) a report prepared in accordance with the <i>CESR recommendations</i> .
<i>modified auditor's report</i>	(in <i>LR</i> ) an auditor's report:

- (a) in which the auditor's opinion is qualified; or
- (b) which sets out:
  - (i) a problem relating to the business as a going concern; or
  - (ii) a significant uncertainty, the resolution of which is dependent upon future events.

*net annual rent* (in *LR*) (in relation to a *property*) the current income or income estimated by the valuer:

- (a) ignoring any special receipts or deductions arising from the *property*;
- (b) excluding Value Added Tax and before taxation (including tax on profits and any allowances for interest on capital or loans); and
- (c) after making deductions for superior rents (but not for amortisation) and any disbursements including, if appropriate, expenses of managing the *property* and allowances to maintain it in a condition to command its rent.

*new applicant* (in *LR*) an *applicant* that does not have any *class* of its *securities* already listed.

*non-equity transferable securities* (in *PR*) (as defined in section 102A of the *Act*) all *transferable securities* that are not equity securities.

*offer of transferable securities to the public* (in *PR* and *LR*) (as defined in section 102B of the *Act*), in summary:

- (a) a communication to any person which presents sufficient information on:
  - (i) the transferable securities to be offered, and
  - (ii) the terms on which they are offered;
 to enable an investor to decide to buy or subscribe for the securities in question;
- (b) which is made in any form or by any means;
- (c) including the placing of securities through a financial intermediary;
- (d) but not including a communication in connection with trading on:

- (i) a regulated market;
- (ii) a multilateral trading facility; or
- (iii) any market prescribed by an order under section 130A of the Act.

**Note:** This is only a summary; to see the full text of the definition, readers should consult section 102B of the Act.

<i>offer for sale</i>	(in <i>LR</i> ) an invitation to the public by, or on behalf of, a third party to purchase <i>securities</i> of the <i>issuer</i> already in issue or allotted (and may be in the form of an invitation to tender at or above a stated minimum price).
<i>offer for subscription</i>	(in <i>LR</i> ) an invitation to the public by, or on behalf of, an <i>issuer</i> to subscribe for <i>securities</i> of the <i>issuer</i> not yet in issue or allotted (and may be in the form of an invitation to tender at or above a stated minimum price).
<i>offering programme</i>	(in <i>PR</i> ) (as defined in Article 2.1(k) of the <i>prospectus directive</i> ) a plan which would permit the issuance of non-equity securities, including warrants in any form, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period.
<i>open offer</i>	(in <i>LR</i> ) an invitation to existing <i>securities</i> holders to subscribe or purchase <i>securities</i> in proportion to their holdings, which is not made by means of a renounceable letter (or other negotiable document).
<i>overseas company</i>	(in <i>LR</i> and <i>PR</i> ) a <i>company</i> incorporated outside the <i>United Kingdom</i> .
<i>PD</i>	<i>Prospectus Directive</i> .
<i>PD Regulation</i>	the Prospectus Directive Regulation (No 2004/809/EC).
<i>PR</i>	the Prospectus Rules sourcebook.
<i>percentage ratio</i>	(in <i>LR</i> ) (in relation to a transaction) the figure, expressed as a percentage, that results from applying a calculation under a <i>class test</i> to the transaction.
<i>person exercising significant influence</i>	(in <i>LR</i> ) in relation to a <i>listed company</i> , a <i>person</i> or entity which exercises significant influence over that <i>listed company</i> (other than a <i>50/50 joint venture partner</i> ).
<i>placing</i>	(in <i>LR</i> ) a marketing of <i>securities</i> already in issue but not <i>listed</i> or not yet in issue, to specified <i>persons</i> or clients of the <i>sponsor</i> or any securities house assisting in the placing, which does not involve an offer to the public or to existing holders of the <i>issuer's securities</i> generally.
<i>primary listed issuer</i>	(in <i>LR</i> ) an <i>issuer</i> with a <i>primary listing</i> of its <i>securities</i> .

<i>primary listing</i>	(in <i>LR</i> ) a <i>listing</i> by the <i>FSA</i> by virtue of which the <i>issuer</i> is subject to the full requirements of the <i>listing rules</i> .
<i>probable reserves</i>	(in <i>LR</i> ): <ul style="list-style-type: none"> <li>(a) in respect of <i>mineral companies</i> primarily involved in the <i>extraction</i> of oil and gas resources, those reserves which are not yet <i>proven</i> but which, on the available evidence and taking into account technical and economic factors, have a better than 50% chance of being produced; and</li> <li>(b) in respect of <i>mineral companies</i> other than those primarily involved in the <i>extraction</i> of oil and gas resources, those <i>measured</i> and/or <i>indicated mineral resources</i>, which are not yet <i>proven</i> but of which detailed technical and economic studies have demonstrated that <i>extraction</i> can be justified at the time of the determination and under specified economic conditions.</li> </ul>
<i>profit estimate</i>	(in <i>PR</i> and <i>LR</i> ) (as defined in the <i>PD Regulation</i> ) a profit forecast for a financial period which has expired and for which results have not yet been published.
<i>profit forecast</i>	(in <i>PR</i> and <i>LR</i> ) (as defined in the <i>PD Regulation</i> ) a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used.
<i>prohibited period</i>	(in <i>LR</i> ) as defined by paragraph 1(e) of the <i>Model Code</i> .
<i>property</i>	(in <i>LR</i> ) freehold, heritable or leasehold property.
<i>property collective investment undertaking</i>	(in <i>PR</i> ) (as defined in the <i>PD Regulation</i> ) a collective investment undertaking whose investment objective is the participation in the holding of property in the long term.
<i>property company</i>	(in <i>LR</i> ) a <i>company</i> primarily engaged in <i>property</i> activities including: <ul style="list-style-type: none"> <li>(a) the holding of <i>properties</i> (directly or indirectly) for letting and retention as investments;</li> <li>(b) the development of <i>properties</i> for letting and retention as investments;</li> <li>(c) the purchase and development of <i>properties</i> for subsequent sale;</li> <li>(d) the purchase of land for development <i>properties</i> for retention as investments.</li> </ul>
<i>property valuation</i>	(in <i>LR</i> ) a <i>property</i> valuation report prepared by an independent expert in accordance with the Appraisal and Valuation Standards (5 <sup>th</sup> edition) issued

<i>report</i>	by the Royal Institution of Chartered Surveyors.
<i>Prospectus Rules</i>	(as defined in section 73A(4) of the Act) <i>rules</i> expressed to relate to <i>transferable securities</i> .
<i>proven reserves</i>	(in LR): <ul style="list-style-type: none"> <li>(a) in respect of <i>mineral companies</i> primarily involved in the <i>extraction</i> of oil and gas resources, those reserves which, on the available evidence and taking into account technical and economic factors, have a better than 90% chance of being produced; and</li> <li>(b) in respect of <i>mineral companies</i> other than those primarily involved in the <i>extraction</i> of oil and gas resources, those <i>measured mineral resources</i> of which detailed technical and economic studies have demonstrated that <i>extraction</i> can be justified at the time of the determination, and under specified economic conditions.</li> </ul>
<i>qualified investor</i>	(in PR) (as defined in section 86(7) of the Act): <ul style="list-style-type: none"> <li>(a) any entity within the meaning of Article 2(1)(e)(i), (ii) or (iii) of the <i>prospectus directive</i>; or</li> <li>(b) an investor registered on the register maintained by the competent authority under section 87R of the Act; or</li> <li>(c) an investor authorised by an <i>EEA State</i> other than the <i>United Kingdom</i> to be considered as a qualified investor for the purposes of the <i>prospectus directive</i>.</li> </ul>
<i>registration document</i>	(in Part 6 rules) a registration document referred to in PR 2.2.2R.
<i>regulated information</i>	(in PR) (as defined in the PD Regulation) all information which the issuer, or any person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under Directive 2001/34/EC or under Article 6 of Directive 2003/6/EC.
<i>related party</i>	(in LR) as defined in LR 11.1.4R.
<i>related party circular</i>	(in LR) a <i>circular</i> relating to a <i>related party transaction</i> .
<i>related party transaction</i>	(in LR) as defined in LR 11.1.5R.
<i>reverse takeover</i>	(in LR) a transaction classified as a <i>reverse takeover</i> under LR 10.
<i>rights issue</i>	(in LR) an offer to existing <i>security</i> holders to subscribe or purchase further <i>securities</i> in proportion to their holdings made by means of the issue of a

	renounceable letter (or other negotiable document) which may be traded (as “nil paid” rights) for a period before payment for the <i>securities</i> is due.
<i>risk factors</i>	(in <i>PR</i> ) (as defined in the <i>PD Regulation</i> ) a list of risks which are specific to the situation of the issuer and/or the securities and which are material for taking investment decisions.
<i>schedule</i>	(in <i>Part 6 rules</i> ) (as defined in the <i>PD Regulation</i> ) a list of minimum information requirements adapted to the particular nature of the different types of <i>issuers</i> and/or the different <i>securities</i> involved.
<i>scientific research based company</i>	(in <i>LR</i> ) a <i>company</i> primarily involved in the laboratory research and development of chemical or biological products or processes or any other similar innovative science based company.
<i>secondary listed issuer</i>	(in <i>LR</i> ) an <i>issuer</i> with a <i>secondary listing</i> of its <i>equity securities</i> .
<i>secondary listing</i>	(in <i>LR</i> ) a <i>listing</i> by the <i>FSA</i> of <i>equity securities</i> of an <i>overseas company</i> which is not a <i>primary listing</i> .
<i>securities issued in a continuous and repeated manner</i>	(in <i>PR</i> ) (as defined in Article 2.1(l) of the <i>prospectus directive</i> ) issues on tap or at least two separate issues of securities of a similar type and/or class over a period of 12 months.
<i>securities note</i>	(in <i>Part 6 rules</i> ) a securities note referred to in <i>PR</i> 2.2.2R.
<i>settlement price</i>	(in <i>LR</i> ) (in relation to <i>securitised derivatives</i> ), the reference price or prices of the <i>underlying instrument</i> or <i>instruments</i> stipulated by the <i>issuer</i> for the purposes of calculating its obligations to the holder.
<i>shadow director</i>	(in <i>LR</i> ) as in sub-paragraph (b) of the definition of director in section 417(1) of the <i>Act</i> .
<i>small and medium-sized enterprise</i>	(in <i>PR</i> ) (as defined in Article 2.1(f) of the <i>prospectus directive</i> ) companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43,000,000 and an annual net turnover not exceeding €50,000,000.
<i>specialist investor</i>	(in <i>LR</i> ) an investor who is particularly knowledgeable in investment matters.
<i>specialist securities</i>	(in <i>LR</i> ) <i>securities</i> which, because of their nature, are normally bought and traded by a limited number of investors who are particularly knowledgeable in investment matters.
<i>specialist</i>	(in <i>LR</i> ) a <i>securitised derivative</i> which because of its nature is normally bought

<i>securitised derivative</i>	and traded by a limited number of investors who are particularly knowledgeable in investment matters.
<i>sponsor</i>	(in <i>LR</i> ) a <i>person</i> approved, under section 88 of the <i>Act</i> by the <i>FSA</i> , as a sponsor.
<i>substantial shareholder</i>	(in <i>LR</i> ) any <i>person</i> (excluding a bare trustee) who is entitled to exercise or to control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the <i>company</i> (or any other <i>company</i> which is its <i>subsidiary undertaking</i> or <i>parent undertaking</i> or is a fellow <i>subsidiary undertaking</i> of its <i>parent undertaking</i> ).
<i>summary</i>	(in relation to a <i>prospectus</i> ) the summary included in the <i>prospectus</i> .
<i>supplementary listing particulars</i>	(in <i>LR</i> ) (in accordance with section 81(1) of the <i>Act</i> ), supplementary listing particulars containing details of the change or new matter.
<i>supplementary prospectus</i>	(in <i>Part 6 rules</i> ) a supplementary prospectus containing details of a new factor, mistake or inaccuracy.
<i>target</i>	(in <i>LR</i> ) the subject of a <i>class 1 transaction</i> .
<i>tender offer</i>	(in <i>LR</i> ) an offer by a <i>company</i> to purchase all or some of a <i>class</i> of its <i>listed equity securities</i> or <i>preference shares</i> at a maximum or fixed price (that may be established by means of a formula) that is: <ul style="list-style-type: none"> <li>(a) communicated to all holders of that <i>class</i> by means of a <i>circular</i> or advertisement in two national newspapers;</li> <li>(b) open to all holders of that <i>class</i> on the same terms for at least seven days; and</li> <li>(c) open for acceptance by all holders of that <i>class</i> pro rata to their existing holdings.</li> </ul>
<i>umbrella collective investment scheme</i>	(in <i>PR</i> ) (as defined in the <i>PD Regulation</i> ) a collective investment undertaking invested in one or more collective investment undertakings, the asset of which is composed of separate class(es) or designation(s) of securities.
<i>underlying instrument</i>	(in <i>LR</i> ) (in relation to <i>securitised derivatives</i> ) means either: <ul style="list-style-type: none"> <li>(a) if the <i>securitised derivative</i> is an <i>option</i> or <i>debt security</i> with the characteristics of an <i>option</i>, any of the underlying investments listed in article 83 of the <i>Regulated Activities Order</i>; or</li> <li>(b) if the <i>securitised derivative</i> is a <i>contract for differences</i> or <i>debt security</i> with the characteristics of a <i>contract for differences</i>, any factor by reference to which a profit or loss under article 85 of the <i>Regulated Activities Order</i> can be calculated.</li> </ul>
<i>units of a collective</i>	(in <i>PR</i> ) (as defined in Article 2.1(p) of the <i>prospectus directive</i> ) securities issued by a collective investment undertaking as representing the rights of the

<i>investment scheme</i>	participants in such an undertaking over its assets.
<i>unrecognised scheme</i>	(in <i>LR</i> ) a <i>collective investment scheme</i> which is neither a <i>recognised scheme</i> nor a scheme that is constituted as an <i>authorised unit trust scheme</i> .
<i>vendor consideration placing</i>	(in <i>LR</i> ) a marketing, by or on behalf of vendors, of <i>securities</i> that have been allotted as consideration for an acquisition.
<i>venture capital trust</i>	(in <i>LR</i> ) a <i>company</i> which is, or which is seeking to become, approved as a venture capital trust under section 842AA of the Income and Corporation Taxes Act 1988.
<i>working day</i>	(in <i>PR</i> ) (as defined in section 103 of the <i>Act</i> ) any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the <i>United Kingdom</i> .

## Annex B

### Amendments to the Interim Prudential sourcebook for Building Societies

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

#### VOLUME 1: PRUDENTIAL STANDARDS

X Introductory Chapter

X.1 Introduction

...

X.3.1 G ... The constitutional chapters replace Guidance Notes previously issued by the Commission. In addition, the role of the competent authority for listing in the UK has been transferred to the FSA from the United Kingdom Listing Authority ("UKLA"). This change has been reflected in amendments to the Volume 2 guidance.

...

X.7.2 G Expressions (in italics or not) which are defined in particular chapters of the sourcebook (e.g. Chapters 2 and 3 of Volume 2) have the meanings given there for those chapters (and see GEN 2.2.10G).

X.7.3 G Unless the context otherwise requires or GEN 2.2.11R applies, an expression which has not been defined in this sourcebook has its natural meaning.

...

2 Issued capital

...

2.6 Permanent Interest Bearing Shares

2.6.1 G ... PIBS are usually listed on the London Stock Exchange. ...

...

#### VOLUME 2: CONSTITUTIONAL GUIDANCE

...

2 MERGER PROCEDURES

DEFINITIONS

...

"listed" included in an official list.

...

"official list" (a) the list maintained by the FSA in accordance with section 74(1) of the Financial Services and Markets Act 2000 (The official list) for the purposes of Part VI of the Act (Official Listing);

(b) any corresponding list maintained by a competent authority for listing in another EEA State.

...

"UKLA" The UK Listing Authority (currently the Authority).

...

## 2. PRELIMINARY MATTERS

...

Public Announcement

2.13 ... Societies with ~~listed~~listed PIBS will need to have regard to the ~~UKLA~~FSA's requirement concerning early disclosure of information affecting the price of securities. ...

...

## 3. TRANSFER PROCEDURES

DEFINITIONS AND NOTES

...

"listed" included in an official list.

...

"official list" (a) the list maintained by the FSA in accordance with section 74(1) of the Financial Services and Markets Act 2000 (The official list) for the purposes of Part VI of the Act (Official Listing);

(b) any corresponding list maintained by a competent authority for listing in another EEA State.

...

~~"the UKLA"~~ The UK Listing Authority (currently the Authority).

...

...

## 2. PRELIMINARY MATTERS

...

### Public Announcement

2.5 ... The board will also wish to avoid misleading potential investors and borrowers; and societies with ~~listed~~ listed PIBS must have regard to the ~~UKLA~~ FSA's requirements concerning early disclosure of any information which might affect the price of securities. ...

2.6 ... It should also be made clear, in the case of a takeover, and if such is the case, that the proposal is subject to completion of due diligence investigations by the acquirer and, in either a conversion or takeover when shares in the successor company are to be issued, that the proposal is subject to the shares being ~~listed~~ listed on the London Stock Exchange or elsewhere. ...

...

### Prudential Issues

...

2.11 The Authority will also wish to have a letter ~~of consent~~, from or on behalf of the society's board, ~~to the Authority~~ which consents to the FSA discussing the society's affairs with the Banking Regulator (if a different body) and the ~~UKLA~~ competent authority for listing in the UK (if a different body from the FSA and an issue of shares in the successor company is intended to be made in connection with the transfer).

...

## 4. INFORMATION PROVIDED TO MEMBERS

...

### The Transfer Document

4.5 ... It may also be convenient to include additional material required by the ~~UKLA~~ FSA in connection with a flotation. ...

...

## 9. TIMETABLE

9.1 ... The plan and the timetable will, of course, need to cover all that will be required of the society, and the successor company, in relation to the requirements of the Banking Regulator, and of ~~UKLA~~ the FSA concerning the listing of any shares in the successor company.

...

## Annex C

### Amendments to the Interim Prudential sourcebook for Friendly Societies

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

#### Chapter 7 DEFINITIONS

##### Part 1 Definitions

##### 7.1 ...

...
<i>listed</i> means, in relation to an investment -
(a) <del>that there has been granted and not withdrawn a listing in respect of that investment on any stock exchange in an EEA State which is a stock exchange under the law of that State</del> <u>that the investment is included in an official list</u> ; or
(b) that facilities have been granted for dealing in that investment on a <i>regulated market</i> ,
and <i>unlisted</i> must be construed accordingly;
...

#### Appendix 4 ASSET VALUATION RULES

##### Application

...

2. ...

(9) The conditions referred to in (8) are that-

(a) ...

(b) ...

(i) where the contract is in connection with the delivery of a ~~listed security~~ security or a security admitted to trading, a period commencing on the date of the contract and extending for the usual period of settlement as laid down by the rules of the relevant stock exchange or *regulated market*; or

(ii) ...

...

Securities and beneficial interests in limited partnerships

...

9.

...

(5) (4) must be taken not to apply if it applies by reason only that-

(a) the ~~listing~~listing or admission to trading of the investment has been temporarily suspended following receipt of price sensitive information by the stock exchange on which the investment is listed, or admitted to trading or the *regulated market* on which facilities for dealing have been granted; or

(b) ...

...

Contracts and assets having the effect of derivatives

...

14.

...

(3) A contract or asset does not have the effect of a *derivative contract* by reason only that-

(a) ...

(i) in the case of a ~~listed security~~security or a security admitted to trading, for the usual period for delivery or payment as determined by the rules of the stock exchange or *regulated market* on which the *securities* are listed or admitted to trading, or facilities for dealing have been granted, or

(ii) ...

## Annex D

### Amendments to the Interim Prudential sourcebook for Insurers

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

#### VOLUME ONE

...

#### Chapter 9

#### FINANCIAL REPORTING

##### Part I

##### ACCOUNTS AND STATEMENTS

...

Additional information on derivative contracts

...

9.29

...

(2C) A contract or asset does not have the effect of a *derivative contract* by reason only that-

(a) ...

(i) in the case of a *listed security* or a security admitted to trading, for the usual period for delivery or payment as determined by the rules of the stock exchange or *regulated market* on which the *securities* are listed or admitted to trading, or facilities for dealing have been granted, or

(ii) ...

...

(2D) The conditions referred to in (2C)(b) are that-

...

(b) ...

(i) where the contract is in connection with the delivery of a *listed security* or a security admitted to trading, a period commencing on the date of the contract and extending for the usual period of settlement as laid down by the rules of the relevant stock exchange or *regulated market*, or

(ii) ...

...

Chapter 11

DEFINITIONS

PART I

DEFINITIONS

11.1 ...

Term or phrase	Definition
...	...
<i>listed</i>	in relation to an investment, means that-  (a) <del>that there has been granted and not withdrawn a listing in respect of that investment on any stock exchange in an EEA State which is a stock exchange under the law of that EEA State</del> <u>the investment is included in an official list</u> ; or  (b) ...
...	...

...

## Annex E

### Amendments to the Interim Prudential sourcebook for Investment Businesses

In this Annex striking through indicates deleted text.

Chapter 13: Financial Resource Requirements for Personal Investment Firms

...

Appendix 13 (1) Defined terms for Chapter 13

...

Listing Rules	<del>the rules made by the UKLA governing admission to listing, the continuing obligations of issuers, the enforcement of those obligations and the suspension and cancellation of listing.</del>
...	
public offer	<del>an offer of securities to the public and described in the POS Regulations</del>
...	
readily realisable security	<p>(a) <del>a government or public security</del> denominated in the currency of the country of its issuer;</p> <p>(b) any other <del>security</del> which is:</p> <ul style="list-style-type: none"><li>(i) <del>admitted to official listing on an exchange in an EEA State; or</del></li><li>(ii) <del>regularly traded on or under the rules of such an exchange; or</del></li><li>(iii) <del>regularly traded on or under the rules of a recognised investment exchange or (except in relation to unsolicited real time financial promotions) designated investment exchange;</del></li></ul> <p>(c) <del>a newly issued security which can reasonably be expected to fall within (b) when it begins to be traded.</del></p>
...	

## Annex F

### Amendments to the Conduct of Business sourcebook

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

#### Control of information

- 2.4.4 ...
- (4) For the purposes of section ~~118(8)~~118A(5)(a) of the *Act*, behaviour conforming with *COB* 2.2.4 R(1) does not amount to market abuse.
- ...
- 3.5.3 G ...
- (1) ...
- (2) regulations from any *overseas regulator* (where relevant) if the *firm* intends to market from the *United Kingdom* into any other country;
- (3) ~~the *POS Regulations* [deleted]~~; and
- (4) the Privacy and Electronic Communications (EC Directive) Regulations (SI 2003/2426).
- ...
- 3.8.9 G ...
- (6) ...
- (a) the *securities* are
- (i) ~~listed~~ listed in the *United Kingdom* under ~~chapter 21 of the listing rules (Investment entities) LR 15~~; or
- (ii) ...
- ...
- 3.9.26 R ...
- (1) ...
- (2) ...
- (b) if no prospectus is required ~~by the *POS Regulations* under Part VI of the *Act*~~, the information specified in *COB* 3.9.27G relating to each *company* in which the *Enterprise Investment Scheme* manager has a material interest and intends to acquire interests on behalf of the scheme;
- ...
- ...

COB 3 Annex 1 An overview of some of the main exemptions contained in the Financial Promotion Order G

...

Article no. and name of exemption	Type of promotion: Unsolicited real time, solicited real time, non-real time	Controlled activity/controlled investment	Other conditions
...			
48 Certified high net worth individuals	...	...	1. ... 2. ... 3. accompanied by an indication of the matters specified by article 48(4) (7).
...			
70 Promotions in connection with listing applications	<i>Solicited real time</i> <i>Non-real time</i>	Note 1	<i>Financial promotion to which listing rules apply</i>
71-73 70 and 71 Promotions included in listing particulars and prospectuses	...	...	...

...

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 *LR 19*, which is not an *option* or *contract for differences*, is not a *securitised derivative* for the purposes of *COB*.~~

...

Risk warnings in respect of retail securitised derivatives

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* Annex 1 (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 [deleted]~~
- (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, and in particular (and if applicable):
  - (i) ...
  - ...
- (2) A *firm* should either:
  - (a) require the *private customer* to acknowledge receipt of the ~~document~~ notice or description 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~~ notice or description 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 or description.

5.4.6B G

- (1) A description provided under COB 5.4.6AE (1)(b):
  - (a) may be included in the *prospectus* or the *listing particulars* for the *securitised derivative*;
  - (b) ~~It is appropriate for a notice provided to a *private customer* in accordance with COB 5.4.6AE (1)(e) to~~ may 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; and
- (2) (c) ~~The document provided to a *private customer* in accordance with COB 5.4.6AE (1)(b) or (e)~~ may use another term (such as "covered warrant") to describe a *securitised derivative*, if it is generally accepted market practice to do so.

- (32) In relation to (1) (b) and (c) *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

5.4.6C E ...

(1) ...

(2) (if it provides a right of exercise) the *investment* would comply with ~~paragraph 24.7~~LR 19.2.6R of the *listing rules* (Method of exercising retail securitised derivatives); if it were ~~listed~~ listed on the *UK official list*.

...

## Annex G

### Amendments to the Insurance: Conduct of Business sourcebook

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

ICOB 1: Application and purpose

Annex 2G

Summary of Handbook provisions for insurance intermediaries

...

	Module	Application
...		
Specialist Sourcebooks	...	...
<u>Listing, Prospectus and Disclosure</u>	<u>Listing Rules, LR</u>	<u>May apply if the firm is applying for listing in the United Kingdom, is a listed issuer in the United Kingdom, is a sponsor or is applying for approval as a sponsor.</u>
	<u>Prospectus Rules, PR</u>	<u>May apply if the firm makes an offer of transferable securities to the public in the United Kingdom or is seeking the admission to trading of transferable securities on a regulated market situated or operating in the United Kingdom.</u>
	<u>Disclosure Rules, DR</u>	<u>May apply if the firm is an issuer, any class of whose financial instruments have been admitted to trading on a regulated market, or are the subject of an application for admission to trading on a regulated market, other than issuers who have not requested or approved admission of their financial instruments to trading on a regulated market.</u>

...

## Annex H

### Amendments to the Mortgages: Conduct of Business sourcebook

In this Annex underlining indicates new text.

MCOB 1: Application and purpose

Annex 4G

Summary of the application of the Handbook to firms carrying on regulated mortgage activities and firms that communicate or approve qualifying credit promotions

...

	Module	Application
...		
Specialist Sourcebooks	...	...
<u>Listing, Prospectus and Disclosure</u>	<u>Listing Rules, LR</u>	<u>May apply if the firm is applying for listing in the United Kingdom, is a listed issuer in the United Kingdom, is a sponsor or is applying for approval as a sponsor.</u>
	<u>Prospectus Rules, PR</u>	<u>May apply if the firm makes an offer of transferable securities to the public in the United Kingdom or is seeking the admission to trading of transferable securities on a regulated market situated or operating in the United Kingdom.</u>
	<u>Disclosure Rules, DR</u>	<u>May apply if the firm is an issuer, any class of whose financial instruments have been admitted to trading on a regulated market, or are the subject of an application for admission to trading on a regulated market, other than issuers who have not requested or approved admission of their financial instruments to trading on a regulated market.</u>

...

## Annex I

### Amendments to the Market Conduct sourcebook

In this Annex underlining indicates new text.

#### 5.5.3 G Handbook provisions applicable to ATs

	Part of Handbook	Applicability to ATs
...		
Specialist Sourcebooks	...	...
<u>Listing, Prospectus and Disclosure</u>	<u>Listing Rules (LR)</u>	<u>This may apply if the <i>firm</i> is applying for <i>listing</i> in the <i>United Kingdom</i>, is a <i>listed issuer</i> in the <i>United Kingdom</i>, is a <i>sponsor</i> or is applying for approval as a <i>sponsor</i>.</u>
	<u>Prospectus Rules (PR)</u>	<u>This may apply if the <i>firm</i> makes an <i>offer of transferable securities to the public</i> in the <i>United Kingdom</i> or is seeking the <i>admission to trading of transferable securities</i> on a <i>regulated market</i> situated or operating in the <i>United Kingdom</i>.</u>
	<u>Disclosure Rules (DR)</u>	<u>This may apply if the <i>firm</i> is an <i>issuer</i>, any class of whose <i>financial instruments</i> have been <i>admitted to trading</i> on a <i>regulated market</i>, or are the subject of an application for <i>admission to trading</i> on a <i>regulated market</i>, other than <i>issuers</i> who have not requested or approved admission of their <i>financial instruments to trading</i> on a <i>regulated market</i>.</u>

...

## Annex J

### Amendments to the Authorisation Manual

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

AUTH 5 Annex 3G

Application of the Handbook to Incoming EEA Firms

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>MAR</i>	...	...
	<p><i>MAR</i> 2 (Price stabilising rules)</p> <p>Applies if the <i>firm</i> undertakes <i>stabilising action</i> and wishes to show that it has acted in conformity with <i>price stabilising rules</i>, or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section <del>118(8)</del> <u>118A(5)(a)</u> of the <i>Act</i> (Market abuse) (<i>MAR</i> 2.1 Application)</p>	<p><i>MAR</i> 2 (Price stabilising rules)</p> <p>Only applies in so far as the <i>firm</i> undertakes <i>stabilising action</i> and wishes to rely on a defence that it has acted in conformity with <i>price stabilising rules</i>, or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section <del>118(8)</del> <u>118A(5)(a)</u> of the <i>Act</i> (Market abuse) (<i>MAR</i> <del>2.1.6R(1)</del> <u>2.1</u> and in particular <i>MAR</i> <u>2.1.3R</u>).</p>
...		
<i>REC</i>	...	...
<u><i>LR</i></u>	<p><u><i>LR</i> (Listing Rules)</u></p> <p><u>May apply if the <i>firm</i> is applying</u></p>	<p><u><i>LR</i> (Listing Rules).</u></p> <p><u>As column (2).</u></p>

	<u>for listing in the United Kingdom, is a listed issuer in the United Kingdom, is a sponsor or is applying for approval as a sponsor.</u>	
<u>PR</u>	<u>PR (Prospectus Rules)</u> <u>May apply if the firm makes an offer of transferable securities to the public in the United Kingdom or is seeking the admission to trading of transferable securities on a regulated market situated or operating in the United Kingdom.</u>	<u>PR (Prospectus Rules). As column (2).</u>
<u>DR</u>	<u>DR (Disclosure Rules)</u> <u>May apply if the firm is an issuer, any class of whose financial instruments have been admitted to trading on a regulated market, or are the subject of an application for admission to trading on a regulated market, other than issuers who have not requested or approved admission of their financial instruments to trading on a regulated market.</u>	<u>DR (Disclosure Rules). As column (2).</u>

...

## Annex K

### Amendments to the Supervision manual

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

- 8.1.3 G This chapter is not relevant to the functions of the ~~UKLA, that is the FSA~~ acting in its capacity as the *competent authority* for the purposes of Part VI of the *Act* (Official Listing).
- ...
- 9.1 Application and purpose
- Application
- 9.1.1 G (1) This chapter applies to:
- (a) every *firm*;
  - (b) persons that are subject to the requirements of the *Part 6 rules*; and
  - (c) ~~to persons~~ generally.
- ...
- (3) ~~This chapter does not apply in relation to *guidance* requested from, or given by, the UKLA, that is the FSA acting in its capacity as the *competent authority* for the purposes of Part VI of the *Act* (Official Listing).~~
- ...
- Discussions on a no-names basis
- 9.2.4 G The *FSA* does not expect to enter into discussions on a ‘no-names’ basis about the affairs of an individual *person*- except in relation to *SUP 9.2.4AG*.
- 9.2.4A G The *FSA* may enter into discussions with a *person* on a ‘no-names’ basis about how a particular requirement in *the Part 6 rules* should be interpreted, but:
- (1) the *FSA* will not be bound by any *guidance* given in response to the request; and
  - (2) the *person* receiving the *guidance* will not be able to rely upon it.
- ...

- 9.5            Disputes as to the interpretation of the Part 6 rules
- 9.5.1        G    Where a *person* that is subject to any requirement of the *Part 6 rules* disagrees with the individual *guidance* given by the *FSA*, he can request that the *guidance* be reviewed at a meeting of senior *FSA* staff.
- 9.5.2        G    Upon receiving a request under *SUP 9.5.1G* senior *FSA* staff will review:
- (1)    the initial request for *guidance*;
- (2)    the individual circumstances of the *person* seeking the review; and
- (3)    the reasons why the *person* does not agree with the individual *guidance*.
- 9.5.3        G    The outcome of the senior *FSA* staff meeting will be communicated to the *person*.
- 9.5.4        G    A *person* that does not agree with the individual *guidance* that results from a senior *FSA* staff meeting, or a third party that is directly affected by that individual *guidance* may request that the *guidance* be reviewed by the Listing Authority Review Committee.
- 9.5.5        G    The Listing Authority Review Committee has powers, delegated by the *FSA* Board, to resolve disputes on the application and interpretation of the requirements set out in *LR*, *DR* and *PR*. A managing *director* of the *FSA* sits as chairman of the Listing Authority Review Committee.
- 9.5.6        G    The *person* requesting the review can make representations to the Listing Authority Review Committee either orally or in writing.
- 9.5.7        G    All decisions of the Listing Authority Review Committee are final and are determinative of the *FSA*'s opinion as to the interpretation or application of the requirement in question.

...

SUP 16            Annex 2G            Reporting requirements

Analysis of profits, Large Exposures and Certain Other Miscellaneous Information (Form B7)

...

## BALANCE SHEET ANALYSIS

### 6.1-6.5 Quoted investments

This should comprise the net long or short position of investments *admitted to trading* or listed on recognised exchanges (the UK and overseas official stock exchanges and the Unlisted Securities Market) and “over the counter” stock markets for which a publicly

ascertainable price is regularly available. ...

...

#### LIQUIDITY RETURN (FORM LR)

...

#### (iv) Equities

Equities which are <u>admitted to trading</u> or listed on a recognised stock index (see paragraph 51).	...
---	-----

...

17.5.3 G ... However, if an instrument is already dealt in on a *regulated market*, all secondary issue transactions are reportable if the new issue ranks equally with those already in issue and the issue is already ~~traded~~ admitted to trading on or listed on a *regulated market*. ...

...

## Annex L

### Amendments to the Enforcement manual

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

- 1.2.2 G ... ~~The Enforcement manual does not (except where expressly stated) include material on the powers relating to the UKLA, which is in the listing rules and related guidance.~~
- 1.2.2A G ENF includes material on the investigation, disciplinary and criminal prosecution powers that are available to the FSA when it is performing functions as the competent authority under Part VI of the Act (see ENF 21). The Act provides a separate statutory framework within which the FSA must operate when it acts in that capacity. Schedule 7 to the Act modifies the application of the Act in relation to the exercise of functions as competent authority under Part VI of the Act. When determining whether to exercise its powers in its capacity as competent authority for listing (for example, the powers described in ENF 21), the FSA will have regard to the matters and objectives which are applicable to the competent authority function.
- ...
- 1.2.3 G In some cases, the Act expressly requires the FSA to prepare and publish statements of policy and procedures on the exercise of its enforcement powers. The Enforcement manual therefore contains statements of policy and procedures on the following matters:
- (1) sections 69 and 210 of the Act require the FSA to publish statements of policy on the imposition of financial penalties on *firms* and *approved persons* (see ENF 13);
  - (1A) section 93 of the Act requires the FSA to publish a statement of its policy on the imposition of financial penalties under section 91 of the Act (see ENF 21);
  - (2) section 124 of the Act requires the FSA to publish a statement of its policy on the imposition of financial penalties for *market abuse* (see ENF 14); and
  - (3) section 169 of the Act (Investigations etc. in support of overseas regulator) requires the FSA to publish a statement of its policy on the conduct of certain interviews in response to requests from *overseas regulators* (see ENF 2).
- ...
- 1.4.19 G ENF 20 (Unfair terms in consumer contracts) describes the FSA's policy on how it will use its powers under the Unfair Terms Regulations.
- 1.4.20 G ENF 21 (Official listing: investigation and discipline powers) describes the FSA's policy on how it will use its investigation and discipline powers relating to official listing cases.
- ...

...

SUBJECT	PART AND SECTION OF THE ACT	ENFORCEMENT MANUAL LOCATION
...		
Disciplinary Powers against Approved Persons		
...		
<u>Disciplinary Powers in official listing cases</u>		
<u>Public censure or statement where an issuer or person fails to comply with his obligations under Part VI of the Act, a provision contained in prospectus rules or any other provision made in accordance with the Prospectus Directive</u>	<u>Part VI, s.87M</u>	<u>ENF 21</u>
<u>Cancellation of sponsor's approval</u>	<u>Part VI, s.88</u>	<u>ENF 21</u>
<u>Public censure of sponsor</u>	<u>Part VI, s.89</u>	<u>ENF 21</u>
<u>Penalties for breach of Part 6 rules</u>	<u>Part VI, s.91</u>	<u>ENF 21</u>
...		
Information Gathering and Investigation powers		
...	...	...
Entry of premises under warrant	...	...
<u>Investigation powers in official listing cases</u>	<u>Part VI, s.97</u>	<u>ENF 21</u>
Investigation powers in relation to collective investment schemes	...	...
...		

The Enforcement manual does not contain *guidance* inter alia, on the following:

sections 77 and 78 Discontinuance and suspension of listing

~~section 91 Penalties for breach of listing rules~~

...

...

2.1.1A G The FSA's policy on how it will use its powers to investigate in support of its enforcement functions, when acting in the capacity of the competent authority under Part VI of the Act, are set out in ENF 21.2 to ENF 21.4. That guidance contains cross references to material in this chapter, where relevant.

...

ENF 2 Ann 1G: Information gathering and investigation powers

...

*Indicators for deciding which agency should take action*

9 (a) Tending towards action by the FSA

...

- proceedings for breaches of listing rules Part VI of the Act, of Part 6 rules or the Prospectus Rules or a provision otherwise made in accordance with the Prospectus Directive.

...

ENF 2 Ann 1G: Information gathering and investigation powers – Appendix to the guidelines on investigation of cases of interest or concern to the Financial Services Authority and other prosecuting and other investigating agencies

1. The FSA

1.1 The FSA is the single statutory regulator for all financial business in the UK. Its regulatory objectives (~~when acting other than in its capacity as the UK listing Authority ("UKLA")~~) under the Financial Services and Markets Act 2000 ("the 2000 Act") are:

...

1.2 ~~The FSA's is also the UKLA. The UKLA's~~ regulatory objectives as the competent authority under Part VI of the Act in this area are:

...

1.3 Under the 2000 Act the FSA has powers to investigate concerns including:

...

- suspected breaches of the Listing Rules and related offences in relation to listing Part VI of the Act, of Part 6 rules or the prospectus rules or a provision otherwise made in accordance with the Prospectus Directive.

The FSA's powers of information gathering and investigation are set out in Part XI of the 2000 Act and in section 97 in relation to its ~~UKLA~~ Part VI functions.

1.4 The FSA has power to take the following enforcement action:

...

- various offences in relation to the *FSA's listing authority function under Part VI* ~~Part VI function~~ ;

...

- Issue public censures, ~~suspend or remove~~ cancel a sponsor's ~~from the UKLA list of approved sponsors~~ approval for breaches of Listing Rules by a sponsor.

...

11.1.2 G ...  
the *money laundering rules*. The FSA's approach to discipline when it is performing functions as the *competent authority* under Part VI of the Act is dealt with in ENF 21.

...

12.1.1 G ...  
(4) the *FSA* may issue a public statement under section 87M (Public censure of issuer) and section 91 of the Act (Penalties for breach of *Part 6 rules of listing rules*) where there has been a contravention of Part VI of the Act, the *Part 6 rules* or the *prospectus rules*, or a provision otherwise made in accordance with the *Prospectus Directive* or a requirement imposed under such provision of the listing rules (see ENF 21). ~~(the powers relating to the UKLA are dealt with in the *listing rules* and related *guidance*)~~

...

13.1.1 G ...  
(4) where there has been a contravention of the *Part 6 rules* on an issuer of listed securities or an applicant for listing where there has been a contravention of the *listing rules* (or on a director of an issuer or applicant who at the material time was knowingly concerned in the contravention) (section 91 of the Act (Penalties for breach of *Part 6 rules* ~~listing rules~~)). The *FSA's* powers ~~relating to the UKLA~~ in this regard are dealt with separately in ENF 21 ~~the *listing rules* and related *guidance*.~~

...

## 13.5 Financial penalties for late submission of reports

13.5.1 G This section sets out the *FSA's* policy and procedures in relation to financial penalties for late submission of reports. It applies to reporting by *firms* required under all *rules* (not including the *Part 6*

*rules 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 following is a list of the main periodic reporting *rules* (the list may not be comprehensive) and those other provision:

...

...

14.9.6 G ...  
 (2) where the behaviour falls within sections 118(2)(a), 118(3) or 118(4) of the *Act* (~~Information not generally available~~);

...

...

15.2.1 G ...  
 (6) ~~failing to register a copy of listing particulars on or before publication (under section 83(3)); [deleted]~~  
 (7) *offering new securities* to the public before publishing a prospectus required by the *prospectus rules listing rules* made under section 84 of the *Act* (section 85(3 2))  
 (8) ~~Issuing an advertisement, or other information specified in the listing rules, without prior approval or authorisation from the competent authority (under section 98(2)); [deleted]~~

...

After ENF 20 insert the following new chapter ENF 21 which is not underlined.

ENF 21 Official Listing - Investigation powers and discipline

21.1 Application and Purpose of this chapter

Application

21.1.1 G *ENF 21* applies to *persons* whose conduct is covered by any provision imposed by or under Part VI of the *Act* (for example, the *Part 6 rules*). This includes *directors* and formers *directors* who may have been knowingly

involved in a relevant contravention.

- 21.1.2 G In this chapter, and unless the context so requires, references to *FSA* are to the *FSA* when it is performing functions as the competent authority under Part VI of the *Act* (see section 72(1)).

#### Purpose

- 21.1.3 G The purpose of:
- (1) *ENF* 21.2 to *ENF* 21.4 is to explain the *FSA's* policy on how it will use its powers to investigate in support of its enforcement functions;
  - (2) *ENF* 21.5 to *ENF* 21.9 is to describe the *FSA's* approach to discipline;
  - (3) *ENF* 21.10 is to explain the *FSA's* policy on how it will use its power to cancel a *sponsor's* approval.
- 21.1.4 G Section 93 of the *Act* (Statement of policy) requires the *FSA* to prepare and publish a statement of its policy with respect to the imposition and amount of penalties under section 91. *ENF* 21.6 to *ENF* 21.7 constitute the *FSA's* statement of policy under section 93. The *FSA* may at any time alter or replace this statement of policy after consultation. The *FSA* will have regard to this statement of policy in exercising, or deciding whether to exercise, its power under section 91 of the *Act* (Penalties for breach of Part 6 rules).
- 21.2 The *FSA's* powers to appoint an investigator
- 21.2.1 G Under section 97 of the *Act* (Appointment by competent authority of persons to carry out investigations), the *FSA* may appoint one or more competent persons to conduct an investigation on its behalf if it appears to the *FSA* that there are circumstances suggesting that:
- (1) there may have been a contravention of a provision of Part VI of the *Act* or of *Part 6 rules* or a provision otherwise made in accordance with the *Prospectus Directive*;
  - (2) a *person* who was at the material time a *person* mentioned in section 91(1) or (1A) of the *Act* has been knowingly concerned in a contravention of a provision of Part VI of the *Act* or of *Part 6 rules* or a provision otherwise made in accordance with the *Prospectus Directive* by that *person*; or
  - (3) there may have been a breach of sections 85 or 87G of the *Act*.
- 21.2.2 G An investigator appointed under section 97 is treated under the *Act* as if they were appointed under section 167(1). It follows that an investigator appointed under section 97 will have the powers of a section 167 investigator, as outlined in *ENF* 2.4.

21.3 The *FSA's* policy on appointing an investigator, use of investigation powers and control of investigations

Appointment of an investigator

21.3.1 G The *FSA's* primary aim when appointing an investigator will be to confirm whether a provision of Part VI of the *Act* (sections 85 and 87G) or *Part 6 rules* or a provision otherwise made in accordance with the *Prospectus Directive* have been complied with and, if they have not, to determine the nature and extent of any breach. The *FSA* will usually appoint a member of *FSA* staff as an investigator, as allowed by section 170(5) of the *Act*.

21.3.2 G The *FSA* may be alerted to possible breaches by complaints from the public or investors, by referrals from prosecuting authorities or through its information gathering activities. It will assess on a case by case basis whether to carry out a formal investigation, after considering all the available information. Factors it will take into account are:

- (1) the elements of the suspected breach;
- (2) whether the *FSA* considers that the *persons* concerned are willing to co-operate with it;
- (3) whether obligations of confidentiality inhibit individuals from providing information without the *FSA* having recourse to its formal powers;
- (4) evidence and information needed to substantiate any suspected breach;
- (5) availability and accessibility of related information or evidence; and
- (6) any other factors (so far as the *FSA* considers them to be applicable).

Use of investigation powers

21.3.3 G The *FSA's* policy on the use of powers by investigators appointed under section 97 is the same as that described in *ENF 2.11.1G* to *ENF 2.11.2G* in the context of investigators appointed by the *FSA* under powers contained in other Parts of the *Act*.

Control and direction of the investigation

21.3.4 G The *FSA* has powers under section 170 of the *Act* to control and direct investigators appointed under section 97 (see *ENF 2.11.4G* and *ENF 2.11.5G* for a summary of the powers under sections 170(7) and (8)).

21.4 The FSA's obligations, powers and policy on various further matters related to investigations

Notification to the person under investigation and other matters

21.4.1 G The *FSA's* obligations, powers and policy on various further matters related to investigations under section 97 broadly mirror those described in the following *ENF 2* guidance:

- (1) *ENF 2.12.1G to ENF 2.12.3G, ENF 2.12.6G and ENF 2.12.7G* - Notification of the *person* under investigation.
- (2) *ENF 2.10* – Provisions of the *Act* on *protected items*, banking confidentiality, and admissibility of statements to investigators.
- (3) *ENF 2.14* – Interviews and interview procedures.
- (4) *ENF 2.15* – Powers to enforce requirements and to co-operate with information gathering and investigation powers.

Publicity during and following investigations

21.4.2 G The *FSA* will not normally make public that it is or is not investigating a particular matter under section 97, or the outcome of any such investigation. Its policy in this area is broadly the same as that described in *ENF 2.13* in the context of investigations by the *FSA* under other provisions of the *Act*, subject to the fact that slightly different considerations to those listed at *ENF 2.13.4G* will be applied. Specifically, where it is investigating any matter, the *FSA* will, in exceptional circumstances, make a public announcement that it is doing so if it considers such an announcement is desirable to:

- (1) maintain public confidence in the market; or
- (2) maintain the smooth operation of the market; or
- (3) protect investors; or
- (4) prevent widespread malpractice; or
- (5) help the investigation itself.

The *FSA's* powers to disclose information gathered in investigations

21.4.3 G In accordance with section 349 of the *Act* (Exceptions from section 348), the *FSA* may also make referrals of information gathered under *LR 1.3.1R* and in investigations where circumstances indicate that such a referral is appropriate.

- 21.5 Discipline
- Discipline: general
- 21.5.1 G The disciplinary measures available to the *FSA* are set out in Part VI of the *Act* and consist of:
- (1) financial penalties (described in *ENF* 21.7); and
  - (2) public censures (described in *ENF* 21.8).
- 21.5.2 G Disciplinary sanctions are one of the regulatory tools available to the *FSA*. They are not the only tool, and it may be possible to address instances of non-compliance without recourse to disciplinary action. However, the effective and proportionate use of the *FSA*'s powers to enforce requirements imposed by or under Part VI of the *Act* (including the *Part 6 rules*) will play an important role in supporting the *FSA*'s pursuit of its regulatory functions.
- 21.5.3 G The imposition of financial penalties and the issuance of censures for breaches of the requirements imposed by or under Part VI of the *Act* help to promote high standards of conduct and ensure that regulatory standards are being upheld by deterring *persons* from further breaching the requirements and by demonstrating generally the benefits of compliant *behaviour*. An increased public awareness of regulatory standards may also contribute to the protection of investors.
- Non-disciplinary measures
- 21.5.4 G Non-disciplinary measures are also available to the *FSA* where it considers that it is necessary to take protective or remedial action. These include the following.
- (1) where the smooth operation of the market is, or may be, temporarily jeopardised or where the protection of investors so requires, the *FSA* may suspend, with effect from such time as it may determine, the *listing* of any *securities* at any time and in such circumstances as it thinks fit (whether or not at the request of the *issuer* or its *sponsor* on its behalf);
  - (2) when the *FSA* is satisfied that there are special circumstances which preclude normal regular dealings in any *listed securities*, it may cancel the *listing* of any *security*;
  - (3) where there are reasonable grounds to suspect non compliance with the *disclosure rules*, the *FSA* may require the suspension of trading of a financial instrument with effect from such time as it may determine; and
  - (4) where there are reasonable grounds for suspecting that a provision of Part VI of the *Act*, a provision contained in the *prospectus rules*, or

any other provision made in accordance with the *Prospectus Directive* has been infringed, the *FSA* may:

- (a) suspend or prohibit the offer to the public of transferable securities as set out in section 87K of the *Act*; or
- (b) suspend or prohibit admission of transferable securities to trading on a regulated market as set out in section 87L of the *Act*.

#### Exercise of powers at request of competent authority of another EEA State

- 21.5.5 G Under section 87P of the *Act* (Exercise of powers at request of competent authority of another EEA State), the *FSA* may exercise its powers under sections 87K and 87L of the *Act* to assist a competent authority of an *EEA State* in the performance of its functions under the law of that State in connection with the *Prospectus Directive*.

#### Criminal prosecution powers and action for market abuse

- 21.5.6 G The *Act* also provides the *FSA* with criminal prosecution powers in relation to offences under sections 85. These are described in *ENF 15*.
- 21.5.7 G The *FSA* has criminal prosecution powers in relation to *insider dealing* and *misleading statements and practices*. Additional considerations apply in determining whether the *FSA* will take disciplinary action for cases of alleged *market abuse* (section 123 of the *Act*) (see *ENF 14*).

#### Private Warnings

- 21.5.8 G In certain cases, despite having concerns regarding the *behaviour* of a *person*, the *FSA* may decide that it is not appropriate, having regard to all the circumstances of the case, to bring formal disciplinary action. For example, the breach may be minor in nature or degree, or the *person* may have taken immediate and full remedial action (although these types of factor by themselves will not determine the course of action taken by the *FSA*). In these types of case, the *FSA* considers that it will be helpful for the *person* to be made aware that they came close to being subject to formal disciplinary action, and may to that end, if appropriate, give a private warning.
- 21.5.9 G The *FSA's* general approach to the content of a private warning in this context and to the relevance of such a warning for disciplinary action in relation to future breaches of provisions imposed by or under Part VI of the *Act* will follow, in broad terms, the approach described in *ENF 11.3.4G* and *ENF 11.3.6G* to *ENF 11.3.9G* in the context of private warnings given to *firms* or *approved persons*.

21.6 Factors relevant to determining whether to take disciplinary action in Part VI cases

- 21.6.1 G In determining whether to take disciplinary action, the *FSA* will consider the full circumstances of each case. A number of factors may be relevant for this purpose. The following list of factors is not exhaustive; not all of these factors may be relevant in a particular case, and there may be other factors that are relevant:
- (1) whether the breach reveals serious or systemic weaknesses in all or part of the *person's* established procedures for compliance with provisions imposed by or under Part VI of the *Act*;
  - (2) whether the *person* has brought the misconduct to the attention of the *FSA*;
  - (3) whether the *person* has admitted the misconduct and provides full and immediate co-operation to the *FSA*;
  - (4) whether the *person* has previously given any undertakings to the *FSA* to do or not to do a particular act or engage or not to engage in particular *behaviour*;
  - (5) whether the *FSA* has previously requested the *person* to take remedial action, and the extent to which such action has been taken;
  - (6) whether the *FSA* has given any *guidance* on the conduct in question and the extent to which the *person* has sought to follow the *guidance* (the *FSA* will not take action against a *person* for *behaviour* in line with current written *guidance* or binding oral *guidance* in the circumstances contemplated by the *guidance*);
  - (7) where other regulatory authorities (including the *FSA* under other regulatory powers) propose to take action in respect of the same or similar breach which is under consideration by the *FSA*, the *FSA* will consider whether their action would be adequate to address the *FSA's* concerns, or whether it would be appropriate for the *FSA* to take its own action.

Action against directors, former directors and persons discharging managerial responsibilities

- 21.6.2 G The primary responsibility for ensuring compliance with Part VI of the *Act*, the *Part 6 rules* or the *prospectus rules*, or a provision otherwise made in accordance with the *Prospectus Directive* or a requirement imposed under such provision rests with the persons identified in section 91(1) and section 91(1A) of the *Act* respectively. Normally therefore, any disciplinary action taken by the *FSA* for contraventions of these obligations will in the first instance be against those persons.

21.6.3 G However, in the case of a contravention by a *person* referred to in section 91(1)(a) or section 91(1)(b)(i) or section 91(1A) of the *Act* ("P"), where the *FSA* considers that another *person* who was at the material time a *director* of P was knowingly concerned in the contravention, the *FSA* may take disciplinary action that *person*. In circumstances where the *FSA* does not consider it appropriate to seek a disciplinary sanction against P (notwithstanding a breach of relevant requirements by such person), the *FSA* may nonetheless seek a disciplinary sanction against any other person who was at the material time a *director* of P and was knowingly concerned in the contravention.

21.6.4 G *Persons* discharging managerial responsibilities within an issuer and their *connected persons*, who has requested or approved the admission of a *financial instrument* to trading on a *regulated market*, and *connected persons* have their own responsibilities under the *disclosure rules*, as set out in *DR 3* for which they are primarily responsible. Accordingly, disciplinary action for a breach of the *disclosure rules* will not necessarily involve the issuer.

#### Discipline for breaches of Listing Principles

21.6.5 G The *Listing Principles* are set out in *LR 7*. The *Listing Principles* are a general statement of the fundamental obligations of issuers of equities with a primary listing. The *Listing Principles* derive their authority from the *FSA's* rule-making powers set out in section 74(4) of the *Act*. A breach of a *Listing Principle* will make an issuer of equities with a primary listing liable to disciplinary action by the *FSA*.

21.6.6 G In determining whether a *Listing Principle* has been broken, it is necessary to look to the standard of conduct required by the *Listing Principle* in question. Under each of the *Listing Principles*, the onus will be on the *FSA* to show that an issuer has been at fault in some way. This requirement will differ depending upon the *Listing Principle*.

21.6.7 G In certain cases, it may be appropriate to discipline an issuer on the basis of the *Listing Principles* alone. Examples include the following:

- (1) where there is no detailed *listing rule* which prohibits the *behaviour* in question, but the *behaviour* clearly contravenes a *Listing Principle*;
- (2) where an issuer of equities with a primary listing has committed a number of breaches of detailed rules which individually may not merit disciplinary action, but the cumulative effect of which indicates the breach of a *Listing Principle*.

- 21.7 G Financial penalties in Part VI cases
- Powers to impose penalties
- 21.7.1 G Section 91(1) of the *Act* enables the *FSA* to impose a penalty of such amount as it considers appropriate, if it considers that:
- (a) in relation to a listed security, an issuer of *listed securities* or applicant for *listing*; or
  - (b) in relation to a *financial instrument*:
    - (i) an issuer who has requested or approved the admission of the instrument to trading on a *regulated market*;
    - (ii) a *person discharging managerial responsibilities* within such an issuer; or
    - (iii) a *person* connected to such a person discharging managerial responsibilities;
- has contravened any provision of the *Part 6 rules*.
- 21.7.2 G Section 91(1A) of the *Act* enables the *FSA* to impose a penalty of such amount as it considers appropriate, if it considers that:
- (a) an *issuer of transferable securities*; or
  - (b) a *person offering transferable securities* to the public or requesting their admission to a regulated market; or
  - (c) an applicant for the approval of a prospectus in relation to *transferable securities*; or
  - (d) a *person* on whom a requirement has been imposed under section 87K or 87L; or
  - (e) any other *person* to whom the *Prospectus Directive* applies;
- has contravened a provision of Part VI of the *Act* or of *prospectus rules*, or a provision otherwise made in accordance with the *Prospectus Directive* or a requirement imposed on him under such a provision.
- 21.7.3 G The *Act* provides further that if in such a case the *FSA* considers that another *person*, who was at the material time a *director* of a *person* referred to in section 91(1)(a), (1)(b)(i) or (1A) of the *Act*, was knowingly concerned in the contravention, it may impose on him a penalty of such amount as it considers appropriate (section 91(2)).

Factors relevant to determining the appropriate level of financial penalty

- 21.7.4 G The *FSA* will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the contravention in question. The *FSA* does not use a tariff of penalties for different kinds of breach. This is because there are very few cases in which the circumstances are essentially the same and the *FSA* considers that, in general, the use of a tariff for particular kinds of breach would inhibit the flexible and proportionate approach it takes in this area.
- 21.7.5 G Section 93(2) of the *Act* requires that the *FSA*'s policy in determining the amount of a penalty must have regard to:
- (a) the seriousness of the breach in question in relation to the nature of the requirement contravened;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether the *person* on whom the penalty is to be imposed is an individual.
- 21.7.6 G The *FSA* will consider any of the following factors that may be relevant to the circumstances of a case when it determines the amount of a penalty to be imposed on a *person*. The following list is not exhaustive; not all of these factors may be relevant in a particular case, and there may be other factors that are relevant:
- (1) (The seriousness of the misconduct) The *FSA* recognises the need for a financial penalty to be proportionate to the nature and seriousness of the breach in question and that, by their nature, some breaches may be more serious than others. The following may be relevant:
    - (a) the duration and frequency of the breach;
    - (b) whether the breach revealed serious or systemic weaknesses in the *person's* procedures;
    - (c) the impact of the breach on the orderliness of capital markets, including whether public confidence in those markets has been damaged;
    - (d) the loss or risk of loss caused to investors or other market participants; and
    - (e) the extent to which the breach departs from current market practice.
  - (2) (The extent to which the breach was deliberate or reckless) In

determining whether a breach was deliberate, the *FSA* may have regard to whether the *behaviour* of the *person* was intentional; that is, whether the *person* intended or foresaw the consequences of their *behaviour*. The matters to which the *FSA* may have regard in determining whether a breach was reckless include, but are not limited to, whether the *person*:

- (a) failed to comply with the *issuer's* or applicant's procedures and/or *FSA guidance*;
- (b) took decisions beyond their field of competence; and
- (c) gave consideration to the consequences of the *behaviour* that constitutes the breach.

If the *FSA* decides that the conduct was deliberate or reckless, it is more likely to impose a higher penalty on the *person* than would otherwise be the case.

- (3) (Whether the person on whom the penalty is to be imposed is an individual) Individuals will not always have the resources of a *body corporate* and this will be taken into account when determining the amount of a penalty. This will be of particular relevance when assessing any verifiable evidence of serious financial hardship or financial difficulties if the individual were to pay the level of penalty decided on in respect of the particular breach.
- (4) (The circumstances of the person on whom the penalty is to be imposed) The *FSA* will have regard to the size, financial resources and other circumstances of the *person*, and may take into account verifiable evidence of serious financial hardship or financial difficulties if the *person* were to pay the level of penalty associated with the particular breach. Size and resources may be relevant considerations for the following reasons:
  - (a) the degree of seriousness of a breach may be linked to the size of the *issuer* or of the applicant. For example, a systemic failure in a large issuer or large applicant could damage or threaten to damage a much larger number of investors than would be the case with a small *issuer* or small applicant. In considering seriousness, the *FSA* will have regard to the length of time over which the breach occurred;
  - (b) the size and resources of the *person* may also be relevant in relation to mitigation, in particular what steps the *person* took after the breach had been identified. The *FSA* will take into account what it is reasonable to expect from the *person* in relation to its size and resources and factors such as what proportion of a *person's* resources were used to resolve a problem; and

- (c) the purpose of a penalty is not to render a *person* insolvent or threaten their solvency. Where this would be a material consideration, the *FSA* will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to *persons* with less financial resource. However, if a *person* reduces their net worth with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to group companies or third parties, the *FSA* will take account of those transferred assets when determining the amount of a penalty.
- (5) (The amount of profits accrued or loss avoided) The *FSA* may have regard to the amount of profits accrued or loss avoided as a result of the breach. For example:
    - (a) the *FSA* will propose a penalty which is consistent with the principle that a *person* should not benefit from their breach; and
    - (b) the penalty should also act as an incentive to the *person* (and others) to comply with regulatory standards.
  - (6) (Conduct before the breach) The *FSA* may have regard to any professional advice that was sought by the *person* before the breach occurred and whether the *person* followed that professional advice.
  - (7) (Conduct following the breach) The *FSA* may also take into account the conduct of the *person* in bringing the breach to the *FSA*'s attention, including:
    - (a) whether the *person* brought the breach to the attention of the *FSA*;
    - (b) how quickly, effectively and completely the *person* brought the breach to the *FSA*'s attention;
    - (c) the degree of co-operation the *person* showed during the investigation of the breach; and
    - (d) any remedial steps the *person* has taken since the breach was identified, including: identifying whether investors suffered loss, compensating them, taking disciplinary action against staff involved (if appropriate) and ensuring that similar problems cannot arise in the future.
  - (8) (Disciplinary record and compliance history) The *FSA* may take into account the previous disciplinary record and general compliance history of the *person*, including whether the *FSA* has taken any

previous formal disciplinary action against the *person*. For example, the disciplinary record of the *person* could lead to the *FSA* increasing the penalty where that *person* has committed similar breaches in the past.

(9) (Previous action taken by the *FSA*) The *FSA* will seek to ensure consistency when it determines the appropriate level of penalty. If it has taken disciplinary action previously in relation to a similar breach, this will clearly be a relevant factor.

(10) (Action by other regulatory authorities) Where action by other regulatory authorities relates to the *person* in question, this may be taken into consideration.

## 21.8 Public statements of censure

### Censuring instead of imposing a penalty

21.8.1 G The *Act* provides that instead of imposing a penalty, the *FSA* may publish a statement of censure (section 91(3)). Where the *FSA* considers it inappropriate to impose a financial penalty on a *person*, it may consider that a statement censuring that *person* may have particular value.

### Sponsors

21.8.2 G The *FSA* has no statutory power to impose a financial penalty on a *sponsor*. As such any references in *ENF* 21 to financial penalties being a disciplinary sanction, or an alternative disciplinary sanction, do not apply to *sponsors*. However, the *Act* enables the *FSA* to publish a statement censuring a *sponsor* (under section 89 of the *Act* (Public censure of sponsor)) where it considers that the *sponsor* has contravened any requirement imposed on him by *listing rules* made as a result of section 88(3)(c) of the *Act*.

### Censuring for failure to comply with obligations under Part VI

21.8.3 G The *Act* further provides that where the *FSA* considers that a *person* identified in section 87M of the *Act* has failed to comply with his obligations under Part VI of the *Act*, it may publish a statement to that effect (section 87M).

### Factors in determining whether to issue a public censure

21.8.4 G The *FSA* regards the decision to issue a statement of censure as a serious sanction. The *FSA* is aware of the effect such a statement may have on the reputation or business of such a *person*.

21.8.5 G The criteria the *FSA* may take into account when determining whether it is appropriate to issue a public censure are similar to those for determining the level of financial penalty listed in *ENF* 21.7.6G. The starting point is that the *FSA* will consider all the relevant circumstances of the breach. Some particular considerations may be relevant when the *FSA* determines whether

to issue a public censure rather than (in the case only of *persons* who may be the subject of a financial penalty under section 91(1) of the *Act*) impose a financial penalty. The following list is not exhaustive; not all of these factors may be relevant in a particular case, and there may be other factors that are relevant:

- (1) if the *person* has made a profit or avoided a loss as a result of the misconduct, this may be a factor in favour of a financial penalty, on the basis that a *person* should not be permitted to benefit from their misconduct;
- (2) if the misconduct is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the misconduct: other things being equal, the more serious the misconduct, the more likely the *FSA* is to impose a financial penalty;
- (3) if the *person* has brought the misconduct to the attention of the *FSA*, this may be a factor in favour of a public censure, depending upon the nature and seriousness of the misconduct;
- (4) if the *person* has admitted the misconduct and provides full and immediate co-operation to the *FSA*, this may be a factor in favour of a public censure, depending upon the nature and seriousness of the misconduct;
- (5) if the *person* has a poor disciplinary record or compliance history (for example, where the *FSA* has previously brought disciplinary action in relation to the same or similar *behaviour*) this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;
- (6) if the *person* has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their misconduct would otherwise attract, this may be a factor in favour of a lower level of financial penalty or a public censure. However, it would be in an exceptional case that the *FSA* would be prepared to agree to impose a public statement rather than a financial penalty, if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include:
  - (a) verifiable evidence that a *person* would suffer serious financial hardship if the *FSA* imposed a financial penalty;
  - (b) the likelihood of a severe adverse impact on a *person's* shareholders or a consequential impact on market confidence or market stability if the *FSA* imposed a financial penalty. However, this does not exclude the imposition of a financial penalty which will have an impact

on a *person's* shareholders.

- 21.9 Action involving other regulatory authorities
- 21.9.1 G The *FSA's* policy on action involving other regulatory authorities mirrors that set out in *ENF 11.8.1G* to *ENF 11.8.5G* in this context.
- 21.10 G Cancellation of approval as a sponsor
- Cancellation of approval: general
- 21.10.1 G The *FSA* may cancel a *sponsor's* approval if it considers that a *sponsor* has failed to meet the criteria for approval as a *sponsor* as set out in *LR 8.6.5R*.
- 21.10.2 G The *FSA* recognises that its decision to cancel a *sponsor's* approval may have a substantial impact on the *sponsor*.
- Criteria the *FSA* will consider
- 21.10.3 G When considering whether to cancel a *sponsor's* approval, the *FSA* will take into account all relevant factors, including, but not limited to, the following:
- (1) the competence of the *sponsor*;
  - (2) the adequacy of the *sponsor's* systems and controls;
  - (3) the *sponsor's* history of compliance with the *listing rules*;
  - (4) the nature, seriousness and duration of the suspected failure of the *sponsor* to meet (at all times) the criteria for approval as a *sponsor* set out in *LR 8.6.5R*;
  - (5) any matter which the *FSA* could take into account if it were considering an application for approval as a *sponsor* made under section 88(3)(d) of the *Act*.

## Annex M

### Amendments to the Decision Making manual

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

1.1.1 G ... 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, persons that are subject to the requirements set out in the *Part 6 rules*, 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*.~~

...

DEC 2: Annex 1G

List of warning notices and decision notices under the Act (~~other than Part VI~~) and certain other enactments

Section of the Act	Description	Handbook reference	Decision maker
...			
<u>67(1)/(4)</u>	...	...	...
<u>76(4)/(5)</u>	<u>when the <i>FSA</i> is proposing/deciding to refuse an application for <i>listing of securities</i></u>	<u><i>LR 2</i> and <u>3</u></u>	<u><i>RDC</i></u>
<u>78(10)/(11) (a)</u>	<u>when the <i>FSA</i> has suspended the <i>listing of securities</i> and is proposing/deciding to refuse an application by an <i>issuer</i> for cancellation of the suspension</u>	<u><i>LR 5</i></u>	<u><i>RDC/Executive procedures</i></u>
<u>87M(2)/(3)</u>	<u>when the <i>FSA</i> is proposing/deciding to publish a statement censuring an <i>issuer of transferable securities, a person offering transferable securities to the public or a person requesting the admission of transferable securities to trading on a regulated market</i>.</u>	<u><i>ENF 21</i></u>	<u><i>RDC</i></u>
<u>88(4)</u>	<u>when the <i>FSA</i> is proposing/deciding to (1) refuse a <i>person's</i> application for approval as a <i>sponsor</i>; or (2) on its own initiative, cancel a <i>person's</i> approval as a <i>sponsor</i></u>	<u><i>LR 8</i></u>	<u><i>RDC</i></u>
<u>88(4)</u>	<u>when the <i>FSA</i> is proposing/deciding to cancel a</u>	<u><i>ENF 21</i></u>	<u><i>Executive</i></u>

	<u>person's approval as a sponsor at the sponsor's request</u>		<u>procedures</u>
89(2)/(3)	<u>when the FSA is proposing/deciding to publish a statement censuring a sponsor</u>	<u>ENF 21</u>	<u>RDC</u>
92(1)/(4)	<u>when the FSA is proposing/deciding to take action against any person described under section 91 for breach of LR</u>	<u>ENF 21</u>	<u>RDC</u>

...

DEC 3 Annex 1G

Statutory notice procedure: Supervisory notice procedure

Section of the Act	Description	Handbook reference	Decision maker
...			
<u>53(4)/(7)/(8)(b)</u>	...	...	...
<u>78(2)/(5)</u>	<u>when the FSA is proposing/discontinues the listing of a security</u>	<u>LR 5</u>	<u>RDC/ Executive procedures</u>
<u>78(2)/(5)</u>	<u>when the FSA is proposing/suspends the listing of a security</u>	<u>LR 5</u>	<u>Executive procedures</u>
<u>87O(2)/(5)</u>	<u>when the FSA is proposing/deciding to exercise or deciding to maintain, vary or revoke any of the powers in sections 87K or 87L in respect of an infringement of any applicable provision.</u>	<u>PR 5</u>	<u>Executive procedures</u>
<u>96C</u>	<u>when the FSA is proposing/suspends trading in a financial instrument</u>	<u>DR</u>	<u>Executive procedures</u>

...

4.1.4 G The RDC has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the FSA proposes or takes any of the following actions:

...

(18) ...; and

- (19) ...;
- (20) to refuse an application for *listing of securities*;
- (21) to discontinue the *listing of securities* on the FSA's own initiative;
- (22) to publish a statement censuring an *issuer of transferable securities*, a *person offering transferable securities* to the public or a *person requesting the admission of transferable securities* to trading on a *regulated market*;
- (23) to refuse an application for approval as a *sponsor*;
- (24) to cancel a *person's* approval as a *sponsor* on the FSA's own initiative;
- (25) to publish a statement censuring a *sponsor*; and
- (26) to impose a financial penalty or to issue a statement censuring a *person* for breach of any requirement set out in *LR*.

Examples of allocation of decision making

- 4.1.8 G Examples of matters decided by *executive procedures* (where the FSA decides or is required to use the statutory powers in question rather than to achieve the action required in other ways, for example through individual *guidance* or securing the agreement of a *firm* to take action on a voluntary basis) include:

...

- (6) ...; ~~and~~
- (7) ...;
- (8) suspending the *listing of securities*;
- (9) suspending trading in a *financial instrument*;
- (10) discontinuing the *listing of securities* at the *issuer's* request;
- (11) exercising any of the powers in sections 87K or 87L of the *Act* in respect of an infringement of any applicable provision;
- (12) cancelling a *person's* approval as a *sponsor* at the *sponsor's* request; and
- (13) refusing an application by an *issuer* for cancellation of a suspension of *listing* made under s. 77 of the *Act*.

...

4.3.7A    G    The following decisions will be taken by an individual FSA staff member under executive procedures:

- (1)    the suspension of *listing* on the FSA's own initiative or at the request of the *issuer*;
- (2)    the suspension of trading in a *financial instrument*;
- (3)    the discontinuance of *listing of securities* at the issuer's request;
- (4)    the exercise of any of the powers in sections 87K or 87L of the Act in respect of a breach of any applicable provision;
- (5)    the cancellation of a *person's* approval as a *sponsor* at the *sponsor's* request; and
- (6)    the refusal of an application by an *issuer* for cancellation of a suspension of *listing* made under section 77 of the Act.

## Annex N

### Amendments to the Collective Investment Schemes sourcebook

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

#### Eligible markets: requirements

5A.3.3 R (1) A *securities* market is *eligible* for the purposes of the *rules* in this sourcebook if it is a market established in an *EEA State* on which *transferable securities* admitted to ~~official listing~~ the official list in the *EEA State* are *dealt* in or traded.

(2) ...

...

## Annex O

### Amendments to the Credit Unions sourcebook

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

App 1.1 This is the table referred to in CRED 2.2.2 G

1.1.1 Table

	Sourcebook or manual	Reference code
Specialist sourcebooks	...	...
	...	...
	<del>United Kingdom Listing Authority</del>	<del>UKLA</del>
<u>Listing, Prospectus and Disclosure</u>	<u>Listing Rules</u>	<u>LR</u>
	<u>Prospectus Rules</u>	<u>PR</u>
	<u>Disclosure Rules</u>	<u>DR</u>

## Annex P

### Amendments to the Electronic Money sourcebook

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

#### 1.5.2 G Application of other parts of the Handbook to *ELMIs*

Block	Module	Application
<del>Block 1</del> (High level standards)	...	...
<del>Block 2</del> (Business Standards)	...	...
<del>Block 3</del> (Regulatory processes)	...	...
<del>Block 4</del> (Redress)	...	...
<del>Block 5</del> (Specialist sourcebooks (other than ELM))	...	...
<u>Listing, Prospectus and Disclosure</u>	<u>Listing Rules (LR)</u>	<u>May apply if the <i>ELMI</i> is applying for <i>listing</i> in the <i>United Kingdom</i> or is a <i>listed issuer</i> in the <i>United Kingdom</i>.</u>
	<u>Prospectus Rules (PR)</u>	<u>May apply if the <i>ELMI</i> makes an <i>offer of transferable securities to the public</i> in the <i>United Kingdom</i> or is seeking the <i>admission to trading of transferable securities on a regulated market</i> situated or operating in the <i>United Kingdom</i>.</u>
	<u>Disclosure Rules (DR)</u>	<u>May apply if the <i>ELMI</i> is an <i>issuer</i>, any class of whose <i>financial instruments</i> have been <i>admitted to trading on a regulated market</i>, or are the</u>

		<u>subject of an application for admission to trading on a regulated market, other than issuers who have not requested or approved admission of their financial instruments to trading on a regulated market.</u>
--	--	---

...

## Annex Q

### Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text. Where entire provisions are deleted these are not shown struck through.

2.1.4 G

Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2
...	...	...
Part I of the Schedule	UK RIE recognition requirements	
...		
<del>Paragraph 5</del>	<del>Disclosure by issuers of securities</del>	<del>2.12</del>
...	...	...

...

The provision REC 2.12.3D is deleted in its entirety.

2.12.3 D [deleted]

...

The provision, REC 2.12.13G is deleted in its entirety.

~~Scope of paragraph 5 of the Schedule to the Recognition Requirements Regulations~~

2.12.13 G [deleted]

## Annex R

### Listing Rules Forms

The following 55 pages of this Annex detail new forms that are referred to in the Listing Rules sourcebook. The text in these forms is not underlined.

The forms are listed in column (1) and are referred to in LR as noted in column (2).

(1)	(2)
Shareholder statement	<i>LR 3.3.3R, 8.4.3R, 8.4.9R</i>
Application for admission of securities to the official list	<i>LR 3.3.2R, 3.4.4R, 3.4.8R, 3.4.9R, 3.5.4R</i>
Block listing six monthly return	<i>LR 3.5.6R</i>
Issuer's declaration	<i>LR 3.3.5R</i>
Pricing statement	<i>LR 3.3.3R, 8.4.3R, 8.4.9R, 8.4.13R</i>
Public sector issuer certificate	<i>LR 3.4.11R</i>
Notification of major interests in shares	<i>LR 9.6.7R, 9.6.8R</i>
Contact details	<i>LR 9.2.11R</i>
Sponsor's confirmation of independence	<i>LR 8.7.12R to 8.7.14R</i>
Sponsor's declaration for the production of a circular	<i>LR 8.4.13R, 13.2.4R</i>
Sponsor's declaration on an application for listing	<i>LR 8.4.3R, 8.4.9R</i>
Sponsor employee application form	<i>LR 8.6.2R</i>
Sponsor firm application form	<i>LR 8.6.2R</i>

## SHAREHOLDER STATEMENT

**TO BE COMPLETED BY:**

1. A *SPONSOR* ON BEHALF OF AN *APPLICANT* THAT IS APPLYING FOR A *PRIMARY LISTING OF EQUITY SHARES* FOR THE FIRST TIME; OR
  
2. AN *APPLICANT* THAT IS APPLYING FOR:
  - a. A *PRIMARY LISTING OF PREFERENCE SHARES* FOR THE FIRST TIME ; OR
  - b. A *SECONDARY LISTING OF EQUITY SHARES* FOR THE FIRST TIME.

INFORMATION PROVIDED ON THIS FORM MUST BE TYPED OR PRINTED ELECTRONICALLY.

**To: The FSA**

**Date:** \_\_\_\_\_ 20\_\_

<b>Name of <i>applicant</i>:</b>	
<b>Description of <i>security</i>:</b>	
<b>Total number of <i>securities</i> to be admitted:</b>	
<b>Estimated opening price:</b>	
<b>Name of <i>sponsor</i> (if applicable):</b>	
<b>Name(s) of securities house(s) assisting with the marketing (if any):</b>	

<b>Summary of shareholdings:</b>			
	Number of <i>securities</i>	Number of holders	Percentage of issued <i>equity share capital</i>
<b>Shares in public hands:</b>			
(1) <i>sponsor</i> (including market makers)			
(2) securities house(s) assisting with marketing (if any) (including market makers)			

(3) <i>employees</i> *			
(4) other public *			
SUB TOTAL			
<b>Shares not in public hands: *</b>			
<b>TOTAL</b>			100%

\* see LR 6.1.19R to LR 6.1.20G

SIGNED BY \_\_\_\_\_  
 Suitably experienced *employee*/duly authorised officer,  
 for and on behalf of:

\_\_\_\_\_  
 Name of *sponsor* or name of *applicant*

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

## APPLICATION FOR ADMISSION OF SECURITIES TO THE OFFICIAL LIST

This form should be suitably amended for an *applicant* which is not a public limited company.

*Admission* to the *official list* will be simultaneous with *admission to trading* on an *RIE's* market for listed securities. You will need to complete a separate application form to apply for trading on a *RIE*.

**To: The FSA**

**Date:** \_\_\_\_\_ 20\_\_

\_\_\_\_\_ (the *applicant*) hereby applies for the *securities* described below to be admitted to the *official list* of the FSA.

COMPLETE AS APPROPRIATE:

<b>Details of <i>equity shares</i> already admitted to the <i>official list</i>:</b>		
Authorised	Denomination	Issued and paid up
	in	
	in	
	in	
£		£
<b>Details and the legal description of <i>securities</i> for which this application is being made:</b>		
Authorised	Denomination	Issued and paid up (inclusive of present value)
	in	
	in	
£		£
Nominal value	Redemption date	Coupon
£		

**Amounts and descriptions of *securities* for which application is now being made (include distinctive numbers if any) 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:**


**Type of issue for which application is being made:**


**Please specify where the *applicant* is listed and the nature of the listing:**

Primary

Secondary

**Please specify on which *markets* the *applicant* 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 before the application have been fulfilled in relation to the *issuer* and the *securities* for which application is now made;
- (b) all information required to be included in the *prospectus/listing particulars* has been included or, if the final version has not yet been submitted (or approved), will be included before it is submitted; and
- (c) all the documents and information required to be included in the application have been or will be supplied in line with the *listing rules* and all other requirements of the *FSA* in respect of the application have been or will be complied with.

We undertake to comply with the *listing rules* so far as applicable to the *issuer*.

We undertake to comply with all applicable continuing obligations.

We acknowledge the obligation to comply with the requirement to publish a *supplementary prospectus* or *supplementary listing particulars* if, at any time after a *prospectus* or *listing particulars* have been approved and before dealings in any *securities* covered by this application begin, the *issuer* becomes aware that a significant new factor, material mistake or inaccuracy has arisen or has been noted in relation to the information included in the *prospectus* or *listing particulars*.

SIGNED BY \_\_\_\_\_  
*Director/company secretary/suitably experienced employee/duly authorised officer, for and on behalf of:*

\_\_\_\_\_  
*Name of applicant*

Application to be heard on:	
Admission expected to be effective on:	

Name(s) of contact(s) at <i>applicant</i> regarding the application:	
Telephone number(s) of contact(s) at <i>applicant</i> regarding the application:	

**Additional Information**

Details of how fee's have been paid	
Method	Amount and date
Cheque	
BAC's/CHAP's (reference details required)	
Credit Card	

FTSE Classification (if known)	
FTSE Indices (if known)	
Countries of Secondary Listing (if applicable)	
Accounting Standards used	
Auditing Standards used	

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

## BLOCK LISTING SIX MONTHLY RETURN

INFORMATION PROVIDED ON THIS FORM MUST BE TYPED OR PRINTED ELECTRONICALLY.

**To: The FSA**

**Date:** \_\_\_\_\_20\_\_

AVS No:			
Name of <i>applicant</i> :			
Name of scheme:			
Period of return:	From:	To:	
Balance under scheme from previous return:			
The amount by which the block scheme has been increased, if the scheme has been increased since the date of the last return:			
Number of <i>securities</i> issued/allotted under scheme during period:			
Balance under scheme not yet issued/allotted at end of period			
Number and <i>class</i> of <i>securities</i> originally listed and the date of admission			
Total number of <i>securities</i> in issue at the end of the period			

Name of contact:	
Address of contact:	
Telephone number of contact:	

SIGNED BY \_\_\_\_\_  
*Director/company secretary/suitably experienced employee/duly authorised officer, for and on behalf of*

\_\_\_\_\_  
*Name of applicant*

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

## ISSUER'S DECLARATION

This declaration may be amended to meet individual cases. Paragraph 7 may be deleted where appropriate.

**To: The FSA**

**Date:** \_\_\_\_\_20\_\_

I, \_\_\_\_\_ a *director*/the secretary of \_\_\_\_\_ [name of *applicant*], declare as follows:

1. that to the best of my knowledge, information and belief (having taken reasonable care to ensure that this is the case), compliance has been made with all other legal requirements in connection with such issue/offer/placing/introduction;
2. that all applicable conditions for *listing* set out in *LR 2* and, if applicable, *LR 6* have been fulfilled in relation to the *applicant* and the *securities* of the *applicant* referred to above;
3. that \_\_\_\_\_ *shares* of \_\_\_\_\_ [insert number and *class*] have been subscribed/purchased for cash and fully allotted/transferred to the subscribers/purchasers;
4. that all money due to the *applicant* in respect of the issue/offer/placing has been received by it;
5. that \_\_\_\_\_ *shares* of \_\_\_\_\_ [insert number and *class*] have been issued credited as fully paid by way of conversion/exchange/consideration for property acquired/other consideration not being cash and have been duly allotted/transferred to the persons entitled to them;
6. that the definitive documents of title have been/are ready to be delivered;
7. that completion has taken place of the purchase by the *applicant* of all property stated in the *prospectus*, or *listing particulars* to members dated \_\_\_\_\_ 20\_\_ as having been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied;
8. that all *shares* of each *class* referred to above are in all respects identical\*;
9. that no alterations have been made to the *prospectus*, or *listing particulars* approved for publication by the *FSA* other than in relation to the pricing of the issue or takeover offer, number of *securities*, figures depending on such information, and correction of errors; and

10. that there are no other facts bearing on the *applicant's* application for *listing* of such *securities* which, in my opinion, should be disclosed to the *FSA*.

SIGNED BY \_\_\_\_\_

*Director/company secretary/suitably experienced employee/duly authorised officer, for and on behalf of*

\_\_\_\_\_  
*Name of applicant*

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

\* In this context identical means:

- a) the *securities* are of the same nominal value with the same amount called up or paid up;
- b) they are entitled to dividend/interest at the same rate and for the same period, so that at the next ensuing distribution, the dividend/interest payable per unit will amount to exactly the same sum (gross and net); and
- c) they carry the same rights as to unrestricted transfer, attendance and voting at meetings and are *pari passu* in all other respects.

## PRICING STATEMENT

**TO BE COMPLETED BY:**

- 1. A SPONSOR ON BEHALF OF AN APPLICANT THAT HAS A PRIMARY LISTING THAT IS PLACING EQUITY SHARES OF A CLASS ALREADY LISTED; OR**
- 2. AN APPLICANT THAT HAS A SECONDARY LISTING THAT IS PLACING EQUITY SHARES OF A CLASS ALREADY LISTED.**

INFORMATION PROVIDED ON THIS FORM MUST BE TYPED OR PRINTED ELECTRONICALLY.

**To: The FSA**

**Date:** \_\_\_\_\_20\_\_

<b>1.</b>	<b>Name of <i>applicant</i>:</b>		
<b>2.</b>	<b>Description of <i>equity shares</i>:</b>		
<b>3.</b>	<b>Total number of <i>equity shares</i> being placed:</b>		
<b>4.</b>	<b>Net price to the <i>applicant</i> or vendor:</b>		
<b>5.</b>	<b>Estimated opening price:</b>		
<b>6.</b>	<b>Name of <i>sponsor</i> (if applicable):</b>		
<b>7.</b>	<b>Name(s) of securities house(s) assisting with the marketing (if any):</b>		
<b>8.</b>	<b>Name(s) of market makers offered <i>equity shares</i>:</b>		
<b>9.</b>	<b><i>Placing of further equity shares for cash:</i></b>	Market price with placing arranged	
		Date when placing arranged	20__
<b>10</b>	<b><i>Vendor consideration placing:</i></b>	Price at which allotted to vendor	
		Price at which placed	

		with clients	
		Market price when placing arranged	
		Date when placing arranged	20__

The net price should represent the effective issue price to the *applicant*, or where applicable, the effective sale price to the vendor(s).

SIGNED BY \_\_\_\_\_  
 suitably experienced *employee*/duly authorised officer,  
 for and on behalf of:

\_\_\_\_\_  
 Name of *sponsor* or name of *applicant*

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

## PUBLIC SECTOR ISSUER CERTIFICATE

Certificate to be given by a regional or local authority in an *offer for subscription* or an *offer for sale*.

**To:** The FSA

**Date:** \_\_\_\_\_ 20\_\_

**Full name of issuer:** \_\_\_\_\_

In connection with the issue of \_\_\_\_\_ stock of \_\_\_\_\_ (name of *issuer*) we certify that arrangements to the following effect have been duly made:

(i) **In the case of an *offer for subscription*:** All monies received by \_\_\_\_\_ bank/issuing house under the offer dated \_\_\_\_\_ on behalf of \_\_\_\_\_ and to which the latter are entitled will be paid to the \_\_\_\_\_ bank at \_\_\_\_\_ being the ordinary bankers of \_\_\_\_\_ for credit to a special account which has been opened in the name of the stock within the following periods:

- (a) monies paid before allotment – three days after allotment; and
- (b) all other monies – 24 hours after collection.

**In the case of an *offer for sale*:** Allotment letters and scrip certificates are being issued by \_\_\_\_\_ and on behalf of \_\_\_\_\_ . No such document will be issued until \_\_\_\_\_ has paid to \_\_\_\_\_ at \_\_\_\_\_ being the ordinary bankers of \_\_\_\_\_ for credit to a special banking account which has been opened in the name of the stock all sums due from \_\_\_\_\_ in respect of the amount certified in the document to have been paid by the holder.

- (ii) \_\_\_\_\_ bank/issuing house will:
- (a) supply the registrar of the *issuer* as early as practicable with a complete record of the scrip certificates it issued – showing in each case the number and other identification mark of the certificate, the amount of stock to which it relates and a description of the manner in which it has been authenticated;
  - (b) notify, immediately payment has been made in full on any scrip certificate, the registrar and (if the bank, or issuing house are also registrars of the stock)

\_\_\_\_\_ bank/issuing house who are the duly appointed registrars of the stock; and

- (c) issue scrip certificates within 21 days of allotment, bearing:
- (i) an autographic signature either of an officer of the authority or of an officer (duly authorised by the authority) of the issuing house or bank; or
  - (ii) where mechanical signatures are applied, the initials of a responsible officer of the authority or of the issuing house or bank or both.
  - (iii) The registrar will not register or inscribe any person as a holder of the stock except when fully-paid scrip certificates for that amount are surrendered for cancellation. If a scrip certificate is lost or destroyed, the registrar may not register or inscribe the person claiming to be the holder of the lost or destroyed scrip earlier than the first day on which scrip certificates can be lodged for registration or inscription. The registrar can only do this if the person claiming to be the holder provides such indemnity as may be required.

If scrip certificates are not to be issued, amend by substituting 'fully paid allotment letters' for 'scrip certificates'.

SIGNED BY \_\_\_\_\_  
Duly authorised officer,  
for and on behalf of:

\_\_\_\_\_  
Name of *issuer*

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

## NOTIFICATION OF MAJOR INTERESTS IN SHARES

All relevant boxes should be completed in block capital letters.

<b>1.</b> Name of <i>listed company</i>		<b>2.</b> Name of shareholder with a major interest	
<b>3.</b> Please state whether notification indicates that it is regarding the holding of the shareholder named in 2 above; in respect of a non-beneficial interest; or in the case of an individual holder if it is a holding of that <i>person's</i> spouse or children under the age of 18		<b>4.</b> Name of the registered holder(s) and, if more than one holder, the number of <i>shares</i> held by each of them	
<b>5.</b> Number of <i>shares</i> /amount of stock acquired	<b>6.</b> Percentage of issued <i>class</i> (any <i>treasury shares</i> held by the <i>listed company</i> should not be taken into account when calculating percentage)	<b>7.</b> Number of <i>shares</i> /amount of stock disposed	<b>8.</b> Percentage of issued <i>class</i> (any <i>treasury shares</i> held by the <i>listed company</i> should not be taken into account when calculating percentage)
<b>9.</b> <i>Class of security</i>		<b>10.</b> Date of transaction	<b>11.</b> Date <i>listed company</i> informed
<b>12</b> Total holding following this notification		<b>13</b> Total percentage holding of issued <i>class</i> following this notification (any <i>treasury shares</i> held by the <i>listed company</i> should not be taken into account when calculating percentage)	



## CONTACT DETAILS

Under *LR 9.2.11R* a *listed company* must ensure that the *FSA* is provided with up-to-date contact details of at least one appropriate person it has nominated to act as the first point of contact with the *FSA* in relation to the *listed company's* compliance with the *listing rules* and *disclosure rules*.

A *listed company* should consider *LR 9.2.12G* when nominating a person under *LR 9.2.11R*.

All persons nominated should be contactable on *business days* between the hours of 7am and 7pm.

Please complete all relevant boxes in block capital letters.

**Name of listed company**

### Contact details

Name

Company name

(if different to listed company)

Switchboard number

Direct line

Mobile

Additional contact details (if applicable)

Name

Company name

(if different to  
*listed company*)

Switchboard  
number

Direct line

Mobile

Please send or fax this form to:

Company Monitoring, Markets Division,  
The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London, E14 5HS

Fax: 020 7066 8368

If you have any questions about this form, please call Company Monitoring on 020 7066 8333, Option 4.

## SPONSOR'S CONFIRMATION OF INDEPENDENCE

To: The FSA

Date: \_\_\_\_\_ 20\_\_

Full name of *sponsor*: \_\_\_\_\_

Full name of *listed company or applicant*: \_\_\_\_\_

I, \_\_\_\_\_, a suitably experienced *employee* of the *sponsor* or an officer duly authorised to give this declaration confirm, having made all reasonable enquiries and having regard to LR 8.3.6R and LR 8.3.7G, that:

1. \_\_\_\_\_ (name of *sponsor*) and any other *company* in the *sponsor's group* is independent of the *listed company or applicant* and any other *company* in the *listed company or applicant's group*;
2. none of the *directors*, partners or *employees*, or any of the *directors*, partners or *employees* of any other *company* in the *sponsor's group*, involved in the provision of *sponsor* services has a material interest in the *listed company or applicant* or any other *company* in the *listed company or applicant's group*;
3. there are no other matters of which we are aware, having made all reasonable enquiries, which may affect our independence from the *listed company or applicant* or any other *company* in the *listed company or applicant's group*.

SIGNED BY: \_\_\_\_\_  
Suitably experienced *employee*/duly authorised officer

\_\_\_\_\_  
Name of *sponsor*

**Confirmation of independence by the Compliance Department**

I, \_\_\_\_\_, being a duly authorised compliance officer of the *sponsor*, confirm that I am satisfied that the information provided on this Confirmation of Independence is accurate and complete.

SIGNED BY \_\_\_\_\_  
Compliance Officer  
for and on behalf of:

\_\_\_\_\_  
Name of *sponsor*

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

## SPONSOR'S DECLARATION FOR THE PRODUCTION OF A CIRCULAR

To: The FSA

Date: \_\_\_\_\_ 20\_\_\_\_

Full name of *sponsor*: \_\_\_\_\_

Full name of *listed company*: \_\_\_\_\_

Transaction being undertaken: \_\_\_\_\_

---

I, \_\_\_\_\_ a suitably experienced *employee* of the above *sponsor*, or an officer duly authorised to give this declaration, confirm that we have:

- provided all the necessary services described in *LR 8.2*, *LR 8.3* and *LR 8.4* with due care and skill;
- come to a reasonable opinion, based on our professional experience and after having made due and careful enquiry that:
  1. the *listed company* has satisfied all requirements of the *listing rules* relevant to the production of a *class 1 circular* or other *circular*;
  2. the transaction will not have an adverse impact on the *listed company's* ability to comply with the *listing rules* or the *disclosure rules*; and
  3. the *directors* of the *listed company* have a reasonable basis on which to make the working capital statement required by *LR 9.5.12R*, *LR 13.4.1R* or *LR 13.7.1R*.

I confirm that we have maintained adequate and appropriate records in relation to this transaction that show the basis of our reasonable opinion of the matters set out above.

I also confirm that all matters known to us which, in our opinion, should be taken into account by the *FSA* in considering this transaction have been disclosed with sufficient prominence in the circular or otherwise in writing to the *FSA*.

SIGNED BY \_\_\_\_\_  
Suitably experienced *employee*/duly authorised officer

\_\_\_\_\_  
Name of *sponsor*

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

## SPONSOR'S DECLARATION ON AN APPLICATION FOR LISTING

To: The FSA

Date: \_\_\_\_\_ 20\_\_\_\_\_

Full name of *sponsor*: \_\_\_\_\_

The undersigned request that you will allow \_\_\_\_\_ (number) *equity securities* of \_\_\_\_\_ (denomination) each of \_\_\_\_\_ (name of *applicant*) to be admitted to the *Official List*.

Type of issue for which the application is being made \_\_\_\_\_

---

I, \_\_\_\_\_ a suitably experienced *employee* of the above *sponsor*, or an officer duly authorised to give this declaration, confirm that we have:

- provided all the necessary services set out in *LR 8.2*, *LR 8.3* and *LR 8.4* with due care and skill;
- taken reasonable steps to satisfy ourselves that the *directors* of the *applicant* understand the nature and extent of their responsibilities under the *listing rules* and *disclosure rules*;
- come to a reasonable opinion, based on our professional experience and after having made due and careful enquiry that:
  1. the *applicant* has satisfied all requirements of the *listing rules* relevant to an application for *admission to listing*;
  2. the *applicant* has satisfied all applicable requirements set out in the *prospectus rules*;\*;
  3. the *directors* of the *applicant* have a reasonable basis on which to make the working capital statement required by *LR 6.1.16R*;
  4. the *directors* of the *applicant* have established procedures which enable the *applicant* to comply with the *listing rules* and the *disclosure rules* on an ongoing basis\*\*; and
  5. the *directors* of the *applicant* have established procedures which provide a reasonable basis for them to make proper judgments on an ongoing basis as to the financial position and prospects of the *applicant* and its *group*\*\*.

I confirm that we have maintained adequate and appropriate records in relation to this application that show the basis of our reasonable opinion of the matters set out above.

I also confirm that all matters known to us which, in our opinion, should be taken into account by the FSA:

(a) in considering the application for *admission to listing*; and

(b) in deciding whether the *admission* of the *equity securities* would be detrimental to investors' interests;\*\*\*

have been disclosed with sufficient prominence in the *prospectus* or otherwise in writing to the *FSA*. Should any further information come to our notice before *admission to listing*, I will inform the *FSA* immediately.

The *equity securities* in respect of which the application for *admission to listing* is being made will be included in the \_\_\_\_\_ section of the daily *official list*.

SIGNED BY \_\_\_\_\_  
Suitably experienced *employee*/duly authorised officer

\_\_\_\_\_  
Name of *sponsor*

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

\*Paragraph 2 may be deleted if the *home Member State* of the *applicant* is not, or will not be, the *United Kingdom*.

\*\*Paragraphs 4 and 5 may be deleted if the *applicant* is not a *new applicant*.

\*\*\*Paragraph (b) may be deleted if the *applicant* is not a *new applicant*.

*To be completed in all cases*

Application to be heard on: \_\_\_\_\_ 20\_\_

*Admission* expected to become effective on: \_\_\_\_\_ 20\_\_

Name of contact at *sponsor* regarding application: \_\_\_\_\_

Telephone number: \_\_\_\_\_

## Sponsor Employee Application Form

---

This form is to be completed by a *sponsor* or a *sponsor* applicant when:

- A an initial Sponsor Firm Application Form is submitted by a *sponsor* applicant; or
- B a staff member is to be named by a *sponsor* as being a suitably experienced *employee*.

### 1. Name of *sponsor*

--

### 2. Individual's full name

Title	First name(s)	Surname
Job Title	Date of Birth	
Tel:	e-mail:	Fax:

### 3. Primary contact at *sponsor*

Name:	Title:	Telephone number:	e-mail:
-------	--------	-------------------	---------

**4. Responsibilities** (Include here a summary of the individual's role and responsibilities on:

- transactions which require the appointment of a *sponsor* (see *LR 8.2.1*. In this form these transactions are referred as *Listing Rule Transactions*);
- transactions where a *prospectus* is required under the *Prospectus Directive*; and
- transactions which are similar in terms of size and complexity to those transactions set out in *LR 8.2.1* including whether he/she is authorised, where appropriate, to give signed declarations to the *FSA* on behalf of the *sponsor*)

[Redacted area]

**5. Qualifications**

Provide details of any professional or business qualifications and/or memberships of any professional bodies, exchanges or trade associations obtained.\*

[Redacted area]



**7. Transaction history**

Describe recent experience gained acting in a senior capacity under the employment of a *sponsor* on *Listing Rule Transactions* where the individual provided advice and services on *Listing Rule Transactions*.

The *FSA* may also consider other complementary experience gained by the individual where it is demonstrated to the *FSA's* satisfaction that the individual has acted in a senior capacity, providing advice and services in a competent manner on transactions similar in terms of size and complexity to *Listing Rule Transactions*. Where an individual needs to rely on transactions of the type set out in *LR 8.6.9(2)(a)* and (b) to demonstrate competence, the *FSA* will require as a minimum that the individual has recent experience of one *Listing Rule Transaction* where the individual has acted as the eligible employee or suitably experienced *employee* and is the only individual to claim the transaction as evidence of their experience. An example of a transaction that would be considered similar in terms of size and complexity is an admission of a *company* to AIM where the individual was involved (as a *NOMAD*) in a senior capacity.

When completing this section please detail the role and responsibilities of the individual on the transaction, in particular, whether he or she was acting in the capacity of a suitably experienced *employee* or eligible employee. Please also indicate for each transaction whether the individual is the sole employee of the *sponsor* to claim the transaction or whether other *employees* are citing the transaction as evidence of their experience.

Listing Rule Transactions	Role undertaken on transaction and experience gained.	Named <i>sponsor</i> on the transaction	Date	Claimed by other employee?

Transactions where a <i>prospectus</i> is required [under LR 8.6.9(2)(a)]	Role undertaken on transaction and experience gained. Name and contact at relevant regulatory authority that had oversight of the transaction, if not the <i>FSA</i> .	Named adviser on the transaction	Date	Claimed by other <i>employee</i> ?

Other significant transaction [under LR 8.6.9 (2)(b)]	Role undertaken on transaction and experience gained. Name and contact at relevant regulatory authority that had oversight of the transaction, if not the <i>FSA</i> .	Named adviser on the transaction	Date	Claimed by other <i>employee</i> ?



**10. Other listing rule experience**

Please document below details of any significant dealings the individual has had with the *FSA* that you wish to be taken into consideration. Such experience could include submissions to the UKLA helpdesk on complex class tests or related party issues, or complex circulars vetted by the *FSA* which do not require the appointment of a *sponsor* under *LR 8.2.1*.

Other <i>listing rule</i> experience	Date

**11. Is there any other information that may be relevant to the *FSA* in considering this application? If yes, please give details on a separate sheet.**


**12. Data Protection Act disclosure**

For the purposes of complying with the Data Protection Act, please note that any personal information provided to the *FSA* will be used by the *FSA* to discharge its statutory functions under FSMA and other relevant legislation and that it may be disclosed to third parties for those purposes.

**13. Monitoring *sponsors* under *LR 8***

Please note that the *FSA* will be evaluating and recording the performance of *sponsor* employees in respect of all contact with the *FSA* but, in particular, contact regarding *Listing Rule Transactions*. This information will be used in assessing the ongoing eligibility of the *sponsor* and will form part of any assessment of an application to gain suitably experienced *employee*

status. Information submitted in relation to this application may also be passed to other regulators to enable them to discharge their functions (see *LR 8.7.5*).

#### 14. Declaration by the individual

I confirm that the information supplied is complete and correct to the best of my knowledge and belief.

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 the *sponsor* submitting this application.

I am aware that knowingly or recklessly giving the *FSA* information that is false or misleading in a material particular is a criminal offence.

Individual's full name	Date
Signature	

#### 15. Declaration by the Compliance Officer

I have read Chapter 8 of the *listing rules* and I am satisfied that this individual is considered suitably experienced for the purposes of Chapter 8 of the *listing rules*.

Signature	Date
Name of signatory in block capitals:	
Job Title:	

**Please return this form to:**

**Sponsor Supervision Team  
UK Listing Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS**

***Tel: 020 7066 8333 (option 5)***





**8. What is the applicant's target market (e.g. sector, size of issuer etc)?**

**9. Please describe the applicant's intended activities (e.g. flotations, public offers etc)**

**10. Describe the experience of the applicant in the last three years with respect to:**

- transactions that require or required the appointment of a *sponsor* (see LR 8.2.1. In this form, these transactions are referred to as *Listing Rule Transactions*);
- transactions where a *prospectus* is required under the *Prospectus Directive*; and,
- transactions which are similar in terms of size and complexity to *Listing Rule Transactions* .

Please include the nature of the transaction and the capacity in which the applicant acted (continuing on a separate sheet where necessary).

Transaction	Capacity	Nature of the transaction	Date




**11. State the number of *employees* who will be involved in *sponsor* activities excluding administrative *employees*.**

**12. State the volume and type of *Listing Rule Transactions* the applicant expects to undertake over the next 12 months.**


**13. Please explain how the applicant will staff *Listing Rule Transactions* including the minimum number of employees that will be assigned to a *Listing Rule Transaction* and the level of experience and seniority of each member of the transaction team.**


[Redacted area]

**14. State how many suitably experienced *employees* the firm anticipates it will require over the next 12 months to ensure that each *Listing Rule Transaction* is led by a suitably experienced *employee* and the applicant is able to ensure that it can provide the services described in *LR 8.2*, *LR 8.3* and *LR 8.4* to a competent standard at all times. Consideration should be given to the size, number and nature of *Listing Rule Transactions* undertaken and anticipated by the applicant. If the applicant anticipates that it will require more suitably experienced *employees* over the next 12 months than it currently employs, please explain (on a separate sheet) how the applicant intends to address this shortfall. Please note that the *FSA* does not consider that an applicant can demonstrate competence with fewer than two suitably experienced *employees*.**

[Redacted area]

**15. If the applicant has, or will be entering into any outsourcing agreements or arrangements with a third party please provide details below.**

[Redacted area]


**16. Please list all individuals who are considered suitably experienced *employees* giving details of any professional qualifications and position within the applicant. Please note that a Sponsor Employee Application Form is required for each *employee* detailed below.**

Name	Qualifications	Position


**17. Please describe the systems and controls that are in place to ensure the applicant's compliance with all applicable *listing rules* when performing any of the service set out in *LR 8.2, LR 8.3 or LR 8.4 [LR 8.6.12G(3)]*. Please advise when these systems and controls were last reviewed.**


[Redacted area]

**18. Describe the systems and controls that are in place to ensure that adequate records are made and retained (for 6 years) of all matters relating to the provision of any service to a *listed company* or *applicant* [LR 8.6.12(5)].**

[Redacted area]

[Redacted]

**19. Describe the systems and controls that are in place to ensure that employees do not act beyond their proper authority [LR 8.6.16(2)]. Please advise when these systems and controls were last reviewed.**

[Redacted]

[Redacted area]

**20. Describe the systems and controls that are in place to ensure that *employees* performing any of the services set out in *LR 8.2, 8.3 & 8.4* are adequately supervised. Please advise when these systems and controls were last reviewed.**

[Redacted area]

[Redacted]

**21. Please describe the systems and controls that are in place to identify and manage conflicts of interest, including the arrangements that are in place to ensure that the applicant is independent of any *listed company* or *applicant* that it wishes to provide *sponsor* services to. Please advise when these systems and controls were last reviewed.**

[Redacted]

[Redacted content]

**22. Is there any other information that may be relevant to the FSA in considering this application? If yes, please give details on a separate sheet.**

Yes	No
-----	----

**23. Other information required in support of your application which should be submitted with this application form:**

- A list of all *employees* involved in *sponsor* activities (excluding administrators) together with an internal organisation plan which clearly details respective responsibilities and reporting lines;
- Details of key decision making/risk mitigation committees relevant to *sponsor* activities;
- A copy of the applicant's Compliance/Procedure manual relevant to *sponsor* activities.

**24. Data Protection Act disclosure**

For the purposes of complying with the Data Protection Act, please note that any personal information provided to the FSA will be used by the FSA to discharge its statutory functions under the *Act* and other relevant legislation and that it may be disclosed to third parties for those purposes.

**25. Monitoring of sponsors under LR 8**

Please note that the FSA will be evaluating and recording the performance of *sponsor employees* in respect of all contact with the FSA but, in particular, contact regarding *Listing Rule Transactions*. This information will be used in assessing the ongoing eligibility of the *sponsor* and will form part of any assessment of an application to gain suitably experienced *employee* status. Information submitted in relation to this application may also be passed to other regulators to enable them to discharge their functions (see LR 8.7.5).

## 26. Declaration

I am authorised to make this application for approval as a *sponsor* on behalf of the applicant named in question 1.

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

I have read Chapter 8 of the *listing rules* and believe that this application conforms to the criteria for approval as a *sponsor* set out in Chapter 8 of the *listing rules*.

I confirm that the applicant has adequate systems and controls in place to ensure that it can carry out the role of *sponsor* in compliance with the principles for *sponsors* as set out in LR 8.3.

I authorise the *FSA* to make such enquiries and to seek such further information as it thinks appropriate to verify the information given on this form.

I am aware that knowingly or recklessly giving the *FSA* information that is false or misleading in a material particular is a criminal offence.

I will notify the *FSA* immediately of any significant change to the information given on this form or accompanying documents.

I understand that the *FSA* may require me to provide further information or documents at any time after I have sent the application and before the applicant have been approved as a *sponsor*,

This declaration must be signed by two *directors* of the applicant, or, in the case of a *partnership*, by two *partners*. One should have overall responsibility for *sponsor* activities; the other should have overall responsibility for compliance.

**Name in block capitals**

**Date**

**Position**

**Signature**

**Name in block capitals**

**Date**

**Position**

**Signature**

**Please return this form to:  
Sponsor Supervision Team  
UK Listing Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS  
Tel: 020 7066 8333 (option 5)**

Note: Please ensure that the application fee of £4,000 is enclosed with this application.

The *FSA* will usually notify an applicant of its decision on an application for approval as a *sponsor*:

- within one month beginning with the date on which the application is received; or
- if within that period the *FSA* has required the applicant to provide further information in connection with the application, within one month beginning with the date on which that information is provided.

Applicants should be aware that processing an application will take longer if the information and/or documentation submitted to the *FSA*, at any stage of the approval process, is found to be inaccurate or incomplete.

## Annex S

### Prospectus Rules Forms

The following 6 pages of this Annex detail new forms that are referred to in the Prospectus Rules sourcebook. The text in these forms is not underlined.

The forms are listed in column (1) and are referred to in *PR* as noted in column (2).

(1)	(2)
Form A	<i>PR 3.1.1R</i>
Form B	<i>PR 5.4.2R</i>
Form C	<i>PR 5.4.9R</i>

## FORM A

### Application for the approval of a prospectus in accordance with Part VI of the Financial Services and Markets Act 2000 (FSMA)

To: **Financial Services Authority**

Date:

\_\_\_\_\_ [insert name of issuer, offeror, or person seeking admission to trading on a regulated market] (the 'applicant') hereby applies for the draft prospectus<sup>1</sup>/registration document/securities note and summary<sup>2</sup> attached hereto to be approved by the FSA.

#### **Confirmation:**

We acknowledge our obligations under FSMA, the Prospectus Directive Regulation and the Prospectus Rules and the legal implications of approval of a prospectus/registration document/securities note and summary under those provisions. Accordingly we confirm, in relation to the application for approval of the attached prospectus/registration document/securities note and summary that:

- (a) the United Kingdom is our Home Member State under the Prospectus Directive;
- (b) all information required to be included in a prospectus/registration document/securities note and summary has been included therein, or if the final version has not yet been submitted, will be included therein prior to submission and
- (c) all the documents and information required to be provided with the application have been or will be supplied in accordance with the Prospectus Rules and all other requirements of the FSA in respect of this application have been or will be complied with; and
- (d) We undertake to lodge with you the board resolution required pursuant to [3.1.1(8)R ] of the Prospectus Rules as soon as practicable after approval if this has not been lodged before approval.

Signed

Director or Secretary or other duly authorised officer for and on behalf of

Name of Applicant

#### Attachments:

- Draft prospectus/registration document/securities note and summary
- The documents referred to in PR 3.1.1
- The applicable fee

<sup>1</sup> References to prospectus in this form include a base prospectus and a supplementary prospectus

<sup>2</sup> Please delete as appropriate

## Form B

### Application for the inclusion on the Qualified Investor Register (QIR) in accordance with rule 5.4.3 of the Prospectus Rules

#### Information

We will put the following information on the FSA's Qualified Investor Register.

Issuers or offerors of securities or their agents can obtain a copy of this register on the condition that it is solely for the purpose of determining whether you are a Qualified Investor, and making an offer of securities to you, in connection with an offer of securities they are making.

As a Qualified Investor, there will be no obligation to publish a prospectus when securities are offered to you and therefore any rights or protections that may accrue to you arising from a prospectus will not apply.

The information marked with an asterisk "\*" is mandatory information for inclusion on the register. All information will be included on the copy of register sent to issuers unless otherwise stated. The signing of the attached self-certification form is also mandatory for inclusion.

The information held on this register will be deemed to expire on 30 June of each year. You will be sent a letter confirming that you have been placed on the QIR once we have processed your application.

#### Individuals

Name\*:

Contact address (see below)\*:

Your contact address can be a PO Box, your broker's name and address (with your identification number for them) or the address of an adviser/representative (for example your solicitor/accountant/financial adviser).

Email Address†:

#### Small and Medium Size Enterprises

Company name\*:

Contact name and position\*:

Registered office address\*:

Contact email address†:

† This address will be stored by the FSA but not included in the copy of the register sent out. It will be used to only by the FSA to contact you regarding the QIR.

I/we understand that the information above (unless otherwise stated) will be available on request to the issuers or offerors of securities.

I/we consent that the information may be:

- 1) disclosed by the FSA to an issuer or offeror that applies to view the register; and
- 2) used by the issuer or offeror (or an agent of the issuer or offeror) for the purposes of:
  - (a) determining whether I am/we are a Qualified Investor; or
  - (b) making an offer of securities to me/us,

in connection with an offer of securities to the public by the issuer or offeror.

I/we also accept that the FSA may disclose information to other public authorities, such as other securities regulators, for the purposes of the performance of the FSA's, or their, functions (see section 348 of FSMA).

I/we do not consent to use of the information by the issuer or offeror (or an agent of the issuer or offeror) for any purposes other than those set out above; nor do we consent to disclosure to any other person by the issuer, offeror or their agent, without our express prior permission.

I/we understand that the information given above will remain on the Qualified Investor Register unchanged until 30 June unless I request it to be changed or removed before that date.

Signed:

Date:

To: **Financial Services Authority**

Date:

**For Individuals**

I \_\_\_\_\_ certify that I meet at least two of the following criteria:

- I have carried out transactions of a significant size (at least EUR 1,000) on securities market in the UK at an average frequency of, at least 10 per quarter over the previous four quarters;
  - The size of my securities portfolio exceeds EUR 0.5 million;
  - I work or have worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment.
- 

**For Small and Medium Sizes Enterprises**

I/we \_\_\_\_\_ certify that meets at least two of the following criteria based on our latest annual accounts, for financial year ending \_\_\_\_\_:

- The average number of our employees is less than 250.
  - Our total balance sheet does not exceed EUR 43, 000,000.
  - Our annual net turnover does not exceed EUR 50,000,000.
- 

**If you are unsure whether you meet the criteria to become a Qualified Investor we recommend that you seek advice before proceeding with this application. Also, be aware that consenting to be a Qualified Investor will modify your position under the Data Protection Act 1998 because your private data will be available on, and for the purposes of, the Register.**

**Confirmation**

**I /we acknowledge that I am/we are aware of the implications of certification as a Qualified Investor under FSMA. In particular, I am/we are aware, that as a Qualified Investor, there is no obligation to publish a prospectus when securities are offered to me/us and therefore any rights that may accrue to me/us under a prospectus will be waived as a result.**

Signed

Date

Applicant, director or secretary or other duly authorised officer for and on behalf of

Name of applicant:

For FSA use.

- Application logged
- Information checked
- Register updated
- Application closed

QIR Number: \_\_\_\_\_

## Form C

### Application to receive a copy of the Qualified Investor Register (QIR) in accordance with rules 5.4.8 and 5.4.9 of the Prospectus Rules

#### Information

The information on the Qualified Investor Register (QIR) is designed to facilitate the issue of securities without the requirement to publish a prospectus under the EU Prospectus Directive (2003/71/EC).

It is not to be used for any purpose other than determining whether an investor is a Qualified Investor, and making an offer of securities to the Qualified Investor, in connection with an offer of securities to the public by you.

You must also ensure that the information is kept secure and not disclosed by you or your agent to any other person.

Persons whose names appear on the QIR have certified that they meet the criteria to qualify as Qualified Investors under the Prospectus Directive. Individuals can remove themselves from the QIR at any time and the FSA is only responsible for the accuracy of the QIR at the time it is sent out. If an investor removes themselves from the register within 31 days of you receiving a copy the FSA will send you another copy.

For individuals, the following information will be shown on the QIR: name, QI number and contact address (can be of individual's representative or adviser) or broker identification. For Small and Medium Enterprises (SMEs) the QIR will show: company name, QI number, contact name and registered office address.

To receive a copy of the register please fill out the details below and send this form to the Register Team, FSA, 25 The North Colonnade, Canary Wharf, London, E14 5HS.

There is an administration charge to be paid to receive the QIR.

- To receive a one-off copy of the register, please enclose a cheque for £25.
- To be placed on a year's subscription to receive monthly copies of the QIR, please enclose a cheque for £150.

Cheques should be made out to Financial Services Authority.

The QIR is provided on a spreadsheet (MS Excel 97) and sent out via email only. It is essential, therefore, that you provide us with the email address that we should send the QIR to.

We need all the information requested below to grant your application for the QIR.

Name of Company: \_\_\_\_\_

Company Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Please tick the appropriate selection:

- One-off copy at £25 plus V.A.T
- Annual Subscription for monthly copy of QIR at £150 plus V.A.T

Please remember to enclose the correct payment made out to Financial Services Authority to avoid delays to the processing of your application.

Disclaimer (to be signed by a Director or Company Secretary)

I/we confirm that I am/we are an issuer/offeror of securities and that I/we understand that the data found on the Qualified Investor Register must not be used by me/us (or my/our agents) for any purpose other than:

- 1) determining whether an investor is a Qualified Investor; and/or
- 2) making an offer of securities to a Qualified Investor,

in connection with an offer of securities to the public by me/us.

I/we understand that the Qualified Investors do not consent to the information being used by me/us (or my/our agent) for any purposes other than set out in those set out above or being disclosed to any other person by me/us or my/our agent (without the express prior consent of the qualified investor).

I/we understand that if information is used by me/us (or my/our agent) for any other purpose or disclosed by me/us (or my/our agent) to any other person I/we may be in breach of the Prospectus Rules or section 348 of FSMA (contravention of which may result in a fine or imprisonment or both).

I/we also understand that the investors on the register have certified that they meet the criteria for being a Qualified Investor.

I/We also accept that the FSA may disclose information to other public authorities, such as other securities regulators, for the purposes of the performance of the FSA's, or their, functions.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Position: \_\_\_\_\_

Subscriber Number (to be completed by FSA): \_\_\_\_\_

## Annex T

### Disclosure Rules Forms

The following 2 pages of this Annex detail a new form that is referred to in the Disclosure Rules sourcebook. The text in this form is not underlined.

The form is listed in column (1) and referred to in DR as noted in column (2).

(1)	(2)
Notification of transactions of directors/persons discharging managerial responsibility and connected persons	<i>DR 3.1.4R, 3.1.7G</i>

**NOTIFICATION OF TRANSACTIONS OF DIRECTORS/PERSONS DISCHARGING MANAGERIAL RESPONSIBILITY AND CONNECTED PERSONS**

This form is intended for use by an *issuer* to make a *RIS* notification required by *DR* 3.1.4R(1).

- (1) An *issuer* making a notification in respect of a transaction relating to the *shares* or debentures of the *issuer* should complete boxes 1 to 16, 23 and 24.
- (2) An *issuer* making a notification in respect of a derivative relating the *shares* of the *issuer* should complete boxes 1 to 4, 6, 8,13, 14, 16, 23 and 24.
- (3) An *issuer* making a notification in respect of options granted to a *director/person discharging managerial responsibilities* should complete boxes 1 to 3 and 17 to 24.
- (4) An *issuer* making a notification in respect of a *financial instrument* relating to the *shares* of the *issuer* (other than a debenture) should complete boxes 1 to 4, 6, 8, 9, 11, 13, 14, 16, 23 and 24.

Please complete all relevant boxes should in block capital letters.

1.	Name of the <i>issuer</i>	2.	State whether the notification relates to (i) a transaction notified in accordance with <i>DR</i> 3.1.4R(1)(a); or  (ii) <i>DR</i> 3.1.4(R)(1)(b) a disclosure made in accordance with section 324 (as extended by section 328) of the Companies Act 1985; or  (iii) both (i) and (ii)
3.	Name of <i>person discharging managerial responsibilities/director</i>	4.	State whether notification relates to a <i>person</i> connected with a <i>person discharging managerial responsibilities/director</i> named in 3 and identify the <i>connected person</i>
5.	Indicate whether the notification is in respect of a holding of the <i>person</i> referred to in 3 or 4 above or in respect of a non-beneficial interest <sup>3</sup>	6.	Description of <i>shares</i> (including <i>class</i> ), debentures or derivatives or financial instruments relating to <i>shares</i>
7.	Name of registered shareholders(s) and, if more than one, the number of <i>shares</i> held by each of them	8	State the nature of the transaction

9.	Number of <i>shares</i> , debentures or financial instruments relating to <i>shares</i> acquired	10.	Percentage of issued <i>class</i> acquired ( <i>treasury shares</i> of that <i>class</i> should not be taken into account when calculating percentage)
11.	Number of <i>shares</i> , debentures or financial instruments relating to <i>shares</i> disposed	12.	Percentage of issued <i>class</i> disposed ( <i>treasury shares</i> of that <i>class</i> should not be taken into account when calculating percentage)
13.	Price per <i>share</i> or value of transaction	14.	Date and place of transaction
15.	Total holding following notification and total percentage holding following notification (any <i>treasury shares</i> should not be taken into account when calculating percentage)	16.	Date issuer informed of transaction

If a person discharging managerial responsibilities has been granted options by the issuer complete the following boxes

17.	Date of grant	18.	Period during which or date on which it can be exercised
19.	Total amount paid (if any) for grant of the option	20.	Description of <i>shares</i> or debentures involved ( <i>class</i> and number)
21.	Exercise price (if fixed at time of grant) or indication that price is to be fixed at the time of exercise	22.	Total number of <i>shares</i> or debentures over which options held following notification
23.	Any additional information	24.	Name of contact and telephone number for queries

**Name and signature of duly authorised officer of issuer responsible for making notification**

\_\_\_\_\_

**Date of notification** \_\_\_\_\_

**LISTING RULES AND UKLA GUIDANCE MANUAL (REVOCATION)  
INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 Rules);
  - (2) section 96 (Obligations of issuers of listed securities);
  - (3) section 99 (Fees);
  - (4) section 101 (Listing rules: general provisions);
  - (5) section 157(1) (Guidance); and
  - (6) paragraphs 1 (General), 4 (Rules) and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 July 2005.

**Revocation of the Listing Rules and UKLA Guidance Manual**

- D. The Listing Rules and the UKLA Guidance Manual are revoked.

**Citation**

- E. This instrument may be cited as the Listing Rules and UKLA Guidance Manual (Revocation) Instrument 2005.

By order of the Board  
16 June 2005

**DISCLOSURE RULES FEES AND PERIODIC FEES (2005/2006) INSTRUMENT  
2005**

**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 73A (Part 6 rules);
  - (2) section 99(1A) (Fees);
  - (3) section 101 (Listing rules; general provisions);
  - (4) section 138 (General rule-making power);
  - (5) section 156 (General supplementary powers);
  - (6) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
  - (7) paragraphs 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 July 2005.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex A
Disclosure Rules sourcebook (DR)	Annex B

**Citation**

- E. This instrument may be cited as the Disclosure Rules Fees and Periodic Fees (2005/2006) Instrument 2005.

By order of the Board  
16 June 2005

## Annex A

### Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook

In this Annex underlining indicates new text.

REC 7 Annex 1R Fees payable in relation to the period from 1 April 2005 to 31 March 2006

...

#### Part 2 - Periodic fees for overseas recognised bodies

Name of overseas recognised body	Amount payable	Due date
...		
US Futures Exchange LLC	£10,000	1 July 2005
<u>SIS x-clear AG</u>	<u>£35,000</u>	<u>30 days after the date on which the invoice is issued by the FSA</u>
...		

## Annex B

### Amendments to the Disclosure Rules sourcebook

In this Annex, all the text is new and is not underlined; the place where the change will be made is indicated.

Insert DR 1 Ann 2R as follows:

Annex 2R Fees payable in relation to the period from 1 April 2005 to 31 March 2006

This annex belongs to DR 1.5.1R

Annual fees for the period 1 April 2005 to 31 March 2006	
<p>All non-listed <i>issuers</i> of <i>shares</i>, depositary receipts and securitised derivatives. Annual fees for listed <i>issuers</i> in respect of Disclosure Rules obligations are incorporated in the annual fee for listed issuers under the Listing Rules. A non-listed issuer which becomes subject to the <i>disclosure rules</i> during the course of the financial year must pay a proportion of the annual fee which is calculated in accordance with the following Table 3.</p>	<p>(1) For all non-listed <i>issuers</i> of securitised derivatives, depositary receipts and global depositary receipts the fees payable are set out in Table 1.</p> <p>(2) For all other non-listed <i>issuers</i> fees to be determined according to market capitalisation as set out in Table 2. The fee is calculated as follows:</p> <p>(a) the relevant minimum fee; plus</p> <p>(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche.</p>
<p>Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.</p>	

Table 1

Annual fees for non-listed issuers of securitised derivatives, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers of securitised derivatives</i>	£2,400
<i>Issuers of depositary receipts and global depositary receipts</i>	£2,880

Table 2

Fee payable	
Minimum fee (£)	£2,400
£ million of Market Capitalisation	Fee (£/£m or part £m of Market Capitalisation)
0 – 100	0
>100 – 250	9.448
>250 – 1,000	3.776
>1,000 – 5,000	1.256
>5,000 – 25,000	0.0236
>25,000	0.00632

Table 3

Quarter in which the non-listed issuer becomes subject to the Disclosure Rules	Proportion payable
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%

**CONDUCT OF BUSINESS SOURCEBOOK (USE OF DEALING COMMISSION)  
INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 140 (Restriction on managers of authorised unit trust schemes);
    - (c) section 156 (General supplementary powers);
    - (d) section 157(1) (Guidance);
    - (e) section 242 (Applications for authorisation of unit trust schemes);
    - (f) section 247 (Trust schemes rules); and
    - (g) section 248 (Scheme particulars rules); and
  - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force as follows:
- (1) changes to the Handbook text placed in bold square brackets, irrespective of whether the change takes the form of additional text or deletion of text, come into force on 1 July 2006;
  - (2) otherwise, the instrument comes into force on 1 January 2006.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COB)	Annex B
Market Conduct sourcebook (MAR)	Annex C

**Citation**

- E. This instrument may be cited as the Conduct of Business Sourcebook (Use of Dealing Commission) Instrument 2005.

By order of the Board  
21 July 2005

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Further, in this Annex, changes to Handbook text placed in bold square brackets, irrespective of whether the change takes the form of insertion of additional text or deletion of text, come into force on 1 July 2006. Otherwise, this Annex comes into force on 1 January 2006.

The following amendment comes into force on 1 January 2006:

...

*material interest* (in *COB*) (in relation to a transaction) any interest of a material nature, other than:

- (a) disclosable *commission* on the transaction;
- (b) goods or services which can reasonably be expected to assist in carrying on *designated investment business* with or for *clients* and which are provided or to be provided under a *soft commission agreement* or in compliance with *COB* 7.18.3R (Use of dealing commission to purchase goods or services).

The following amendments, taking account of the above amendment to the definition of 'material interest', come into force on 1 July 2006:

*material interest* (in *COB*) (in relation to a transaction) any interest of a material nature, other than:

- (a) disclosable *commission* on the transaction;
- (b) goods or services which can reasonably be expected to assist in carrying on *designated investment business* with or for *clients* and which are provided or to be provided [~~under a *soft commission agreement* or~~] in compliance with *COB* 7.18.3R (Use of dealing commission to purchase goods or services).

...

[*soft commission agreement* an agreement in any form under which a *firm* receives goods or services in return for *designated investment business* put through or in the way of another person.]

...

## Annex B

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where entire sections of text are being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined. Further, in this Annex, changes to Handbook text placed in bold square brackets, irrespective of whether the change takes the form of insertion of additional text or deletion of text, come into force on 1 July 2006. Otherwise, this Annex comes into force on 1 January 2006.

1.3.5 G ...

- (3) offering, giving, soliciting or accepting inducements for the purpose of or in connection with activities falling within the scope of *COB 2.2* (Inducements [~~and soft commission~~]) will apply in this context;

...

1.6.2 R Table Provisions of COB applied to stock lending activity.  
This table belongs to *COB 1.6.1R*

COB	Subject
...	
2.2	Inducements [ <del>and soft commission</del> ]
...	

...

1.6.4 R Table Provisions of COB applied to corporate finance business  
This table belongs to *COB 1.6.3R*

COB	Subject
...	
2.2	Inducements [ <del>and soft commission</del> ]
...	

...

2.2 Inducements [~~and soft commission~~]

...

The following provisions, *COB 2.2.8R* to *COB 2.2.19R* are deleted in their entirety; the text is not struck through.

*COB 2.2.8R* to *COB 2.2.19R* [deleted]

...

Record keeping

- 2.2.20 R (1) [~~A firm must make records of the reports sent to its customers as required by COB 2.2.18R and retain those records for at least three years from the date on which the soft commission agreement to which they relate is terminated.~~ [deleted]]
- (2) A firm must make a record of each payment of disclosable *commission*, and must retain that record for a period of at least six years from the date of payment.
- (3) A firm must make a record of each benefit given to another firm in accordance with COB 2.2.6G, and must keep that record for at least six years from the date on which it was given.

...

COB 4 Annex 2

COB 4 Content of terms of business provided to a customer: general requirements

Annex 2.1E This table belongs to COB 4.2.11E

A firm's terms of business (including a client agreement) provided to a customer should, where relevant, include some provision about:	
...	
(14)	<p><del>[Use of soft commission agreements</del></p> <p><del>If the firm is to be authorised under the terms of business to undertake transactions with or through the agency of another person with whom the firm has a soft commission agreement, the prior disclosure required by COB 2.2.16R (Prior disclosure).</del></p> <p><u>Use of dealing commission</u></p> <p><u>If the firm receives goods or services in addition to the execution of its customer orders in accordance with COB 7.18 (Use of dealing commission), the prior disclosure required by COB 7.18.12R (Prior and periodic disclosure).</u></p> <p>...</p>
...	

...

5.10.2 G ... It also supplements other provisions in the *Handbook* (see, in particular, *COB 2.2* (Inducements [~~and soft commission~~]), *COB 7.1* (Conflict of interest and material interest) and *COB 7.16* (Investment research).

...

5.10.5 G ...  
(5) having internal arrangements under which allocation recommendations are not determined by the level of business which a *firm* does or hopes to do with any other *client* (see also *COB 2.2* (Inducements [~~and soft commission~~])); for example:

...

After *COB 7.17*, insert the following new section, *COB 7.18*, which is not underlined:

7.18 Use of dealing commission

Application

7.18.1 R (1) This section applies to a *firm* that acts as an *investment manager* when it *executes customer orders* that relate to the *designated investments* specified in (2).

(2) The *designated investments* for the purposes of (1) are:

(a) *shares*; and

(b) (i) *warrants*;

(ii) *certificates representing certain securities*;

(iii) *options*; and

(iv) *rights to or interests in investments* of the nature referred to in (i) to (iii);

to the extent that they relate to *shares*.

Purpose

- 7.18.2 G *Principle 1 (Integrity)* requires a *firm* to conduct its business with integrity. *Principle 6 (Customers' interests)* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 8 (Conflicts of interest)* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. The purpose of this section is to ensure that an *investment manager's* arrangements in relation to dealing commissions are transparent and demonstrate accountability to *customers* where *commissions* are spent in acquiring services in addition to *execution*, and consequently that *customers* are treated fairly.

Use of dealing commission to purchase goods or services

- 7.18.3 R (1) An *investment manager* must not *execute customer orders* under arrangements coming within (2), unless the conditions in (3) are satisfied.
- (2) The arrangements referred to in (1) are that the *investment manager*:
- (a) *executes* its *customer orders* through a broker or another *person*;
  - (b) passes on the broker's or other *person's charges* (whether *commission* or otherwise) to its *customers*; and
  - (c) in return for the *charges* referred to in (b), receives goods or services in addition to the *execution* of its *customer orders*.
- (3) The conditions referred to in (1) are that the *investment manager* has reasonable grounds to be satisfied that the goods or services in (2)(c):
- (a) (i) are related to the *execution* of trades on behalf of the *investment manager's customers*; or
  - (ii) comprise the provision of research; and

- (b) will reasonably assist the *investment manager* in the provision of its services to its *customers* on whose behalf the orders are being *executed* and do not, and are not likely to, impair compliance with the duty of the *investment manager* to act in the best interests of its *customers*.
- 7.18.4 E (1) Where the goods or services relate to the *execution* of trades, an *investment manager* should have reasonable grounds to be satisfied that the requirements of *COB 7.18.3R* are met if the goods or services are:
- (a) linked to the arranging and conclusion of a specific investment transaction (or series of related transactions); and
- (b) provided between the point at which the *investment manager* makes an investment or trading decision and the point at which the investment transaction (or series of related transactions) is concluded.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with *COB 7.18.3R*.
- 7.18.5 E (1) Where the goods or services relate to the provision of research, an *investment manager* will have reasonable grounds to be satisfied that the requirements of *COB 7.18.3R* are met if the research:
- (a) is capable of adding value to the investment or trading decisions by providing new insights that inform the *investment manager* when making such decisions about its *customers'* portfolios;
- (b) whatever form its output takes, represents original thought, in the critical and careful consideration and assessment of new and existing facts, and does not merely repeat or repackage what has been presented before;
- (c) has intellectual rigour and does not merely state what is commonplace or self-evident; and
- (d) involves analysis or manipulation of data to reach meaningful conclusions.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with *COB 7.18.3R*.

- 7.18.6 G An example of goods or services relating to the *execution* of trades that the *FSA* does not regard as meeting the requirements of *COB 7.18.4E(1)* is post-trade analytics.
- 7.18.7 G Examples of goods or services that relate to the provision of research that the *FSA* do not regard as meeting the requirements of *COB 7.18.5E(1)* include price feeds or historical price data that have not been analysed or manipulated to reach meaningful conclusions.
- 7.18.8 G Examples of goods or services that relate to the *execution* of trades or the provision of research that the *FSA* do not regard as meeting the requirements of either *COB 7.18.4E(1)* or *COB 7.18.5E(1)* include:
- (a) services relating to the valuation or performance measurement of portfolios;
  - (b) computer hardware;
  - (c) dedicated telephone lines;
  - (d) seminar fees;
  - (e) subscriptions for publications;
  - (f) travel, accommodation or entertainment costs;
  - (g) office administrative computer software, such as word processing or accounting programmes;
  - (h) membership fees to professional associations;
  - (i) purchase or rental of standard office equipment or ancillary facilities;
  - (j) employees' salaries;
  - (k) direct money payments;
  - (l) publicly available information; and
  - (m) *custody* services relating to *designated investments* belonging to, or managed for, *customers* other than those services that are incidental to the *execution* of trades.

- 7.18.9 G The reference to research in *COB 7.18.3R(3)(a)(ii)* is not confined to *investment research* as defined in the *Glossary*. The *FSA's* view is that research can include, for example, the goods or services encompassed by *investment research*, provided that they are directly relevant to and are used to assist in the management of *investments* on behalf of *customers*. In addition, any goods or services that relate to the provision of research that the *FSA* regards as not acceptable under *COB 7.18.7G* or *COB 7.18.8G* should be viewed as not meeting the requirements of *COB 7.18.3R(3)*, notwithstanding that their content might qualify as *investment research*.
- 7.18.10 G This section applies only to arrangements under which an *investment manager* receives from brokers or other *persons* goods or services that relate to the *execution* of trades or the provision of research. It has no application in relation to *execution* and research generated internally by an *investment manager* itself.
- 7.18.11 G An *investment manager* should not enter into any arrangements that could compromise its ability to comply with its best execution obligations under *COB 7.5* (Best execution).

#### Prior and periodic disclosure

- 7.18.12 R (1) If an *investment manager* enters into arrangements for the receipt of goods or services that relate to the *execution* of trades or the provision of research in accordance with *COB 7.18.3R* (Use of dealing commission to purchase goods or services), it must in a timely manner make adequate:
- (a) prior disclosure; and
  - (b) periodic disclosure;
- to its *customers* of the arrangements entered into.
- (2) The adequate disclosure in (1) must include details of the goods or services that relate to the *execution* of trades and, wherever appropriate, separately identify the details of the goods or services that are attributable to the provision of research.

#### Making prior and periodic disclosure in a timely manner

- 7.18.13 E (1) For the purposes of *COB 7.18.12R*, a *firm* should make prior and periodic disclosure to its *customers* in accordance with the requirements of this *rule*.

- (2) For a new *customer*, the *firm* should make the prior disclosure before it conducts any *designated investment business* for him.
- (3) For an existing *customer*, the *firm* should make the prior disclosure by the earlier of:
  - (a) 1 July 2006; and
  - (b) the date that the *firm* makes its first periodic disclosure to its *customers* in accordance with *COB 7.18.12R*.
- (4) A *firm* will make periodic disclosure to its *customers* in a timely manner if it is made at least once a year.
- (5) Compliance with (1) to (4) may be relied upon as tending to establish compliance with *COB 7.18.12R(1)*.

- 7.18.14      G      (1) The prior disclosure required by *COB 7.18.12R(1)* should include an adequate disclosure of the *firm's* policy relating to the receipt of goods or services that relate to the *execution* of trades or the provision of research in accordance with *COB 7.18.3R* (Use of dealing commission to purchase goods or services). The prior disclosure should explain generally why the *firm* might find it necessary or desirable to use dealing commission to purchase goods or services, bearing in mind the practices in the markets in which it does business on behalf of its *customers*. While the appropriate method of making such a disclosure is for the *firm* to decide, this could, for example, be achieved by a change to its *terms of business*.
- (2) In assessing the adequacy of disclosures made by an *investment manager* under *COB 7.18.12R*, the *FSA* will have regard to the extent to which *investment managers* adopt disclosure standards developed by industry associations such as the Investment Management Association, the National Association of Pension Funds and the London Investment Banking Association.

#### Prohibition of inducements

- 7.18.15      R      *COB 2.2.3R* (Prohibition of inducements) does not apply to an *investment manager* that complies with the requirements of this section in receiving goods or services in accordance with *COB 7.18.3R* (Use of dealing commission to purchase goods or services).

## Record keeping

- 7.18.16 R An *investment manager* must make a record of each periodic disclosure it makes to its *customers* in accordance with *COB 7.18.12R* and must maintain each such record for at least five years from the date on which it is provided.

...

- 10.2.5 R Application of conduct of business rules  
This table belongs to *COB 10.2.1R*

Application of conduct of business rules		
Chapter, Section or Rule	Description	Modifications
...		
2.2	Inducements [ <del>and soft commission</del> ]	[ <del>In the case of a <i>regulated collective investment scheme</i>, <i>COB 2.2.8R(5)</i> and <i>COB 2.2.16R</i> to <i>COB 2.2.19R</i> do not apply</del> ]
...		
<u>7.18</u>	<u>Use of dealing commission</u>	
...		

...

- 10.6.8 E Content of scheme documents  
This table belongs to *COB 10.6.7E*

Content of scheme documents		
...		
(16)	<p>[<del>Use of soft commission agreements if the <i>operator</i> is to be authorised under the agreement or <i>instrument constituting the scheme</i> to effect transactions with or through the agency of another <i>person</i> with whom the <i>operator</i> has a <i>soft commission agreement</i>, the prior disclosure required by <i>COB 2.2.16R</i>;</del>]</p> <p><u>Use of dealing commission</u> if the <i>operator</i> receives goods or services in addition to the <i>execution</i> of its <i>customer orders</i> in accordance with <i>COB 7.18</i> (<u>Use of dealing</u></p>	

	commission), the prior disclosure required by <i>COB 7.18.12R</i> (Prior and periodic disclosure).
...	

...

11.4.3

R Rules applicable to depositaries  
This table belongs to *COB 11.4.1R*

Chapter	Description	Modifications
...		
2.1 to 2.4	Rules which apply to all firms	<del>[<i>COB 2.2.8R</i>—<i>COB 2.2.20R</i> do</del> <i>COB 2.2.20R</i> does] not apply. ...
...		

...

11.5.2

R Rules applicable to trustee firms which are not depositaries and to which *COB 11.5.1R* (1) applies  
This table belongs to *COB 11.5.1R* (1).

Chapter	Description	Modifications
...		
2.2	Inducements [ <del>and soft</del> <del>commission</del> ]	"Customer" means "trustee" or "trust" as appropriate
...		
<u>7.18</u>	<u>Use of dealing commission</u>	<u>"Customer"</u> means <u>"trustee"</u> or <u>"trust"</u> as appropriate
...		

11.5.3

R Rules applicable to trustee firms which are not depositaries and to which *COB 11.5.1R*(2) applies  
This table belongs to *COB 11.5.1R*(2).

Chapter	Description	Modifications
...		
2.2	Inducements [ <del>and soft</del> <del>commission</del> ]	"Customer" means "trustee" or "trust" as appropriate.
...		
<u>7.18</u>	<u>Use of dealing commission</u>	<u>"Customer"</u> means <u>"trustee"</u> or

...		<u>“trust” as appropriate.</u>
-----	--	--------------------------------

COB TP 1.2 COB TR1 Transitional Rules for pre-N2 and ex-Section 43 firms at N2

1 Table

(1)	(2) Material to which the transitional provision applies: The <i>COB</i> provisions in Table COB <del>TR 2</del> TP 1.3 with the labels indicated	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
3.2	<i>TSP2</i>	R	<p>Terms of business and client agreements</p> <p>(1) Subject to (2) and (3), a <i>pre-N2 firm</i> will not contravene any of the provisions in Table <i>COB TP1.3</i> labelled <i>TSP2</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has continued to use, or rely upon, <i>terms of business</i> (including a <i>client agreement</i>), [<del>or a soft commission agreement</del>] given to, or made with, a <i>client</i> before the end of the transitional period in accordance with the corresponding rule</p>	indefinitely	<i>commencement</i>

			of its <i>previous</i> regulator.		
--	--	--	-----------------------------------	--	--

...

COB TP1.3 COB TR 2 Rules benefiting from transitional relief (pre-N2 and ex-Section 43 firms)

This Table belongs to COB TP 1.2

COB Rule	Rule Heading	Label ETP	
		TSP	
		ETP	TSP
...			
<del>[2.2</del>	<del>Inducements and soft commission</del>		
<del>2.2.8R</del>	<del>Requirements when using a soft commission agreement</del>	ETP1	TSP2
<del>2.2.12R</del>	<del>Allowable benefits provided under soft commission agreement</del>	ETP1	
<del>2.2.16R</del>	<del>Prior disclosure</del>	ETP1]	

...

COB TP 4 Miscellaneous transitional rules applying to all firms

COB TP4.4

(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>17</u>	<u>COB 7.18.1R to COB 7.18.16R</u>	<u>R</u>	<u>Use of dealing commission</u>  <u>In relation to any <i>soft commission agreement</i> an <i>investment manager</i> may have on 1 January 2006, the <i>manager</i> may comply with the <i>rules</i> in <i>COB 2.2.8R to COB 2.2.20R(1)</i> (instead of the <i>rules</i> specified in column (2)) until:</u>	<u>From 1 January 2006 to 30 June 2006</u>	<u>1 January 2006</u>

			(1) <u>the date of the expiry of that agreement; or</u>  (2) <u>if earlier, 30 June 2006.</u>		
--	--	--	---	--	--

...

COB Sch. 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
[COB 2.2.20R(1)]	Periodic reports	<del>Details of soft commission agreements</del>	<del>Date of periodic statement</del>	<del>3 years (from termination of relevant soft commission agreement)]</del>
...				
<u>COB 7.18.16R</u>	<u>Periodic disclosure of arrangements entered into</u>	<u>Details of the receipt of appropriate execution or research goods and services</u>	<u>Date of provision of disclosure</u>	<u>5 years (from when the disclosure is provided)</u>
...				

## Annex C

### Amendment to the Market Conduct sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Further, in this Annex, changes to Handbook text placed in bold square brackets, irrespective of whether the change takes the form of insertion of additional text or deletion of text, come into force on 1 July 2006. Otherwise, this Annex comes into force on 1 January 2006.

- 3.4.14            G A *firm* should take reasonable steps to ensure that it, or any *person* acting on its behalf, does not offer, give, solicit or accept an inducement if it is likely to conflict to a material extent with any duty which a recipient *firm* owes to another *person*. Inducement can include entertainment ~~[and soft commissions]~~ **[and soft commissions]**.
- 3.4.15            G If a *firm* gives an inducement and the recipient, although a *market counterparty*, is acting on behalf of *customers*, the *firm* may be subject to the provisions of *COB 2.2* (Inducements ~~[and soft commission]~~ **[and soft commission]**).

...

**TREATING WITH-PROFITS POLICYHOLDERS FAIRLY  
(TAX CHARGE) INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 31 December 2005.

**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 Treating With-Profits Policyholders Fairly (Tax Charge) Instrument 2005.

By order of the Board  
21 July 2005.

## Annex

### Amendments to the Conduct of Business sourcebook

In this Annex, new text is being inserted, the place where the change will be made is indicated and the text is not underlined.

After COB 6.12.72G, insert the following new provisions:

#### Tax charge to a with-profits fund

- 6.12.72A R A *firm* must not charge a contribution to corporation tax to a *with-profits fund*, if that contribution exceeds the notional corporation tax liability that would be charged to that *with-profits fund* if it were assessed to tax as a separate *body corporate*.
- 6.12.72B G If a *firm* carries on *insurance business* outside its *with-profits fund*, it should assess the extent to which the corporation tax liability arising in respect of that business has been affected by the *insurance business* within the *with-profits fund*. If the *insurance business* within the *with-profits fund* has reduced the corporation tax liability that would have otherwise arisen in respect of that other business, the *firm's governing body* should consider whether any unfairness results. In particular, if the *firm* has taken an action, or a series of actions, that were intended to cause a material part of the tax charged to the *with-profits fund* to emerge as a contribution to the profit of the *firm*, it may be unfair if no reduction is made to the amount so charged.

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT No 22)  
INSTRUMENT 2005**

**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); and
  - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 September 2005.

**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 Conduct of Business Sourcebook (Amendment No 22) Instrument 2005.

By order of the Board  
21 July 2005

## Annex

### Amendments to the Conduct of Business sourcebook

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

...

5.4.5 E ~~Contravention of Compliance with COB 5.4.4E~~ may be relied on as tending to establish ~~contravention of compliance with COB 5.4.3R.~~

...

**SUPERVISION MANUAL (CHANGE IN LIABILITY OR LEGAL STATUS)  
INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 August 2005.

**Amendments to the Supervision manual**

- D. The Supervision manual is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Supervision Manual (Change in Liability or Legal Status) Instrument 2005.

By order of the Board  
21 July 2005

## Annex

### Amendments to the Supervision manual

In this Annex underlining indicates new text and striking through indicates deleted text. Where entire sections of text are deleted the place where the change is made is indicated but the text is not struck through.

- 6.2.4 G ...
- 6.2.4A G If a firm intends to transfer its business to a different legal entity (for example, the business is to be transferred from a sole trader to a partnership or the other way around) it will need to apply to the FSA for cancellation of its Part IV permission and the entity to which the business is to be transferred will need to apply for a Part IV permission.
- ...
- 15.3.8 G Compliance with *Principle 11* includes, but is not limited to, giving the *FSA* notice of:
- (1) ...
- (g) ...; or
- (h) any proposed change which limits the liability of any of the members or partners of a firm such as a general partner becoming a limited partner or re-registration as a limited liability company of a company incorporated with unlimited liability;
- ...
- ...

The following provisions, SUP 15.5.5R and SUP 15.5.6G, are deleted in their entirety, the text is not shown struck through.

#### **Change in legal status**

- 15.5.5 R [deleted]
- 15.5.6 G [deleted]

**DESIGNATED INVESTMENT EXCHANGE INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 August 2005.

**Amendments to the Glossary of definitions**

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

**Citation**

- E. This instrument may be cited as the Designated Investment Exchange Instrument 2005.

By order of the Board  
21 July 2005

## Annex

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the definition below as shown:

<i>designated investment exchange</i>	Any of the following investment exchanges: American Stock Exchange Australian Stock Exchange <u>Bermuda Stock Exchange</u> Bolsa Mexicana de Valores ...
---	---

**INTEGRATED PRUDENTIAL SOURCEBOOK (INSURERS)  
(AMENDMENT) INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 29 September 2005.

**Amendments to the Integrated Prudential sourcebook**

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

**Citation**

- E. This instrument may be cited as the Integrated Prudential Sourcebook (Insurers) (Amendment) Instrument 2005.

By order of the Board  
15 September 2005.

## Annex

### Amendments to Integrated Prudential sourcebook

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

#### Stock lending

4.3.36 R (1) For the purposes of *PRU 2 Ann 1R* (Admissible assets in insurance), a *stock lending* transaction is approved if:

~~(1)~~(a) the assets lent are *admissible assets*;

~~(2)~~(b) the *counterparty* is an *authorised person* or an *approved counterparty*; and

~~(3)~~(c) adequate and sufficiently immediate *collateral* (*PRU 4.3.38R* to *PRU 4.3.41R*) is obtained to secure the obligation of the *counterparty*.

(2) *PRU 4.3.36R(1)(c)* does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

...

## **SIMPLIFIED PROSPECTUS (AMENDMENT) INSTRUMENT 2005**

### **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 140 (Restriction on managers of authorised unit trust schemes);
    - (c) section 145 (Financial promotion rules);
    - (d) section 156 (General supplementary powers);
    - (e) section 157(1) (Guidance);
    - (f) section 238(5) (Restrictions on promotion);
    - (g) section 247 (Trust scheme rules);
    - (h) section 248 (Scheme particulars rules); and
    - (i) section 278 (Rules as to scheme particulars); and
  - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### **Commencement**

- C. This instrument comes into force on 1 October 2005.

### **Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COB) is amended in accordance with Annex B to this instrument.

### **Citation**

- F. This instrument may be cited as the Simplified Prospectus (Amendment) Instrument 2005.

By order of the Board  
15 September 2005

## Annex A

### Amendments to the Glossary of definitions

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

Amend the following definitions as shown:

- UCITS scheme* an *authorised fund*;
- (a) whose *instrument constituting the scheme* contains ~~the a~~ statement in *COLL 3.2.6R(2)* (Table: contents of the instrument constituting the scheme) or, that it is;
- (i) a *UCITS scheme*;
- (ii) a *UCITS scheme* that complies with *CIS 5*;
- (iii) a *securities scheme*; or
- (iv) a *warrants scheme*; or
- (b) ~~if it complies with *CIS*, the statement required by *CIS 2.2.6R(2)(a)(i)* (Matters that must be included in the trust deed) or paragraph 4 (1)(b) of Schedule 2 to the *OEIC Regulations* which is an *umbrella scheme* each of whose *sub-funds* would be a *UCITS scheme*, *securities scheme* or *warrants scheme* if it had a separate *authorisation order*;~~
- unless:
- (a) the *scheme* raises capital without promoting the *sale* of
- (c) its *units* to the public within the *EEA* or any part of it; or
- (b) the *scheme's units* under its *trust deed* or its *instrument*
- (d) *constituting the scheme*, may be sold only to the public in non-EEA States.
- umbrella* (in *COLL*, ~~and~~ *CIS* and *COB*), a *collective investment scheme* under which...

## Annex B

### Amendments to the Conduct of Business sourcebook

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

- 1.6.4 R Provisions of COB applied to corporate finance business
- This table belongs to *COB* 1.6.3R
- ...
- COB Subject
- ...
- Chapter 3 Financial promotion, except *COB* 3.8.6G – *COB* 3.8.20AGR ...
- ...
- Application
- 3.8.1 R ...
- (1) ... to *COB* 3.8.20AGR apply to ...
- ...
- Non real time financial promotions: guidance on clear, fair and not misleading
- 3.8.7 G ...
- (2) (a) ...
- (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 *depository*. ~~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. *COB* 3.5.2G 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”.~~
- ...
- Specific non-real time financial promotions: simplified prospectus schemes and equivalent recognised schemes
- 3.8.20A R *A specific non-real time financial promotion relating to a simplified prospectus scheme or a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States) must indicate that a simplified prospectus and prospectus exist for the scheme and the*

places where they may be obtained by the public or how the public may have access to them.

...

#### Packaged products

- 3.9.10 R (1) A direct offer financial promotion relating to a packaged product other than a simplified prospectus scheme or a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States) must contain the information...
- (2) A direct offer financial promotion relating to a simplified prospectus scheme must contain the information required by COB 6.2.37R (Table: Contents of the simplified prospectus) and where a projection has to be provided in accordance with COB 6.2.43R (1) (Projection for simplified prospectus scheme), the required contents of that projection.
- (3) A direct offer financial promotion relating to a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States) must contain the information which the competent authority of the recognised scheme's Home State requires a simplified prospectus to contain.
- (4) Where a direct offer financial promotion relates to a funds supermarket service, the promotion may, instead of meeting the requirements in (1), (2) and (3), take the form of a composite key features document that complies with the requirements of COB 6.5 (Content of key features) provided that it contains a clear statement that the simplified prospectus of each simplified prospectus scheme and simplified prospectus of each recognised scheme to which the service relates is available free of charge on request.

- 3.9.11 G (1) The information should follow ...
- (2) Where the direct offer financial promotion relates to more than one key features scheme, simplified prospectus scheme or recognised scheme under section 264 of the Act (Schemes constituted in other EEA States) or any combination of them, the information to be provided in the promotion may be presented on a composite basis.

...

- 6.2.22 R ...
- (2) ... to COB 6.2.45A R instead of ...

...

- Production and publication of simplified prospectus
- 6.2.26 R ...
- (5) ~~[deleted]~~ Where the simplified prospectus is an umbrella or has more than one class of units, the operator may at its option

produce and publish either a composite *simplified prospectus* covering all the *sub-funds* that comprise the *umbrella* or all the *classes of units*, as applicable, or a separate *simplified prospectus* for each *sub-fund* comprising the *umbrella* or for each *class of units*, as the case may be.

- (6) ~~[deleted]~~ Where in accordance with (5) an *operator* produces and publishes separate *simplified prospectuses* for the *sub-funds* of an *umbrella* or, as the case may be, for each *class of units*, references in *COB 6.2.26R* to *COB 6.2.45R* to “*scheme*” or “*simplified prospectus scheme*” should be taken as referring to the relevant *sub-fund* or *class*, as applicable.

...  
6.2.31

G ...

- (2) *Operators* considering marketing the *units* of their *simplified prospectus schemes* in another *EEA State* in the exercise of an *EEA right* should have regard to the local marketing legislation of such country. In this regard the attention of *firms* is drawn to *COB 6.2.38R(2)* (Reduction in yield), under which an *operator* when it is producing a *simplified prospectus* for a *simplified prospectus scheme* whose *units* are to be marketed in another *EEA State*, need not provide the reduction in yield information or format for that *simplified prospectus*. Inclusion of such information and format might be confusing for investors in such countries who are unlikely to be familiar with them. The *simplified prospectus* that is to be marketed in the United Kingdom must, however, include the reduction in yield information and format. Likewise there is no requirement for a projection under *COB 6.2.43R(1)* to have to be included in a *simplified prospectus* which is being used for marketing purposes in another *EEA State*.

...

Exception from the requirement to ~~offer~~ provide a simplified prospectus: firms offering and intermediaries selling a funds supermarket service

6.2.36

R

- (1) A *firm* to which *COB 6.2.33R* (Obligation on a firm to provide a simplified prospectus) applies ~~that~~ when it:

(a) is offering offers a funds supermarket service; or

(b) sells, personally recommends or arranges (brings about) the sale of a simplified prospectus scheme through a funds supermarket service;

need not, unless a *private customer* requests it, provide a *private customer* with a *simplified prospectus* for any *simplified prospectus scheme* to which ~~its~~ the funds supermarket service relates provided it complies with the condition in (2).

- (2) The condition is that the *firm* must instead provide the *private customer* with ~~a~~ the abbreviated form of composite key features document that meets the requirements of is permitted under COB 6.5 (Content of key features) and which covers each of the *key features schemes* and *simplified prospectus schemes* to which ~~its~~ the funds supermarket service relates.

6.2.37 R Table: Contents of the simplified prospectus  
...

Contents of simplified prospectus
...
Brief presentation ... <del>Where a <i>scheme</i> comprises an <i>umbrella</i> or has more than one <i>class</i> of <i>units</i> and the <i>operator</i> in accordance with COB 6.2.26R(5) is producing a separate <i>simplified prospectus</i> for each <i>sub fund</i> or, as the case may be, for each <i>class</i> of <i>units</i>, references in this Table to <i>scheme</i> should be taken, wherever appropriate, as referring to the relevant <i>sub fund</i> or <i>class</i>, as applicable.</del>
...
General Note:
In making the disclosures required by paragraphs (8) to (19) of this Table, the information must be presented in the form of questions and answers. This format is designed to assist the comprehension of the reader. This requirement will not apply in relation to a <i>simplified prospectus</i> that is to be used to market the <i>units</i> of the <i>scheme</i> in another <i>EEA state</i> <u>or in relation to a <i>simplified prospectus</i> that is to be used to market the <i>units</i> of the <i>scheme</i> exclusively to <i>persons</i> who are not <i>private customers</i>.</u>

6.2.38 R (1) ...  
... (2) Where the *units* of a *simplified prospectus scheme* are to be marketed and sold in another *EEA State* or exclusively to *persons* who are not *private customers*, the *operator* of the *scheme* need not comply with the requirements in (1)...

...  
6.2.42 G *Firms* should bear in mind the *guidance* at COB 6.2.5AG. Where a *simplified prospectus* is provided to a *retail customer* in circumstances where a *distance contract* is being concluded, this chapter does not require the same information to be provided again to the *customer* as a result of COB 6.2.41R. *Firms* should note, however, that while the contents of a *simplified prospectus* and the contractual terms and conditions and the information required by COB Appendix 1.1 substantially overlap,

there are differences between them. Consequently it is necessary for *firms* additionally to provide the contractual terms and conditions and the information required by COB Appendix 1.1 to the extent that such information is not covered by the contents of the *simplified prospectus*. ~~This additional information may accompany, but should not form part of, the *simplified prospectus* itself.~~

...

Child trust fund investments

6.2.45A R When a *firm* sells, *personally recommends* or arranges for the sale of a *unit* in a *simplified prospectus scheme* to a *private customer* which is to be held within a *CTF*, it must provide him with the information required by COB 6.5.40R(7) (Further information for life policies, key features schemes, stocks and shares ISAs, PEPs, CTFs and stakeholder pension schemes).

UCTIS Directive: requirement to offer a simplified prospectus for section 264 schemes

- 6.2.46 R
- (1) When a *firm* sells...recent ~~*simplified prospectus*~~ simplified prospectus before...
  - (2) The ~~*simplified prospectus*~~ simplified prospectus ...
  - (3) When the *scheme holding*...the ~~*simplified prospectus*~~ simplified prospectus ...
  - (4) ...
    - (a) the *scheme's* ~~*simplified prospectus*~~ simplified prospectus
    - ...
    - (b) the information contained in the ~~*simplified prospectus*~~ simplified prospectus...

...

Composite documents for several schemes, sub-funds and classes

6.2.48 G In the *FSA's* view, a *firm* may, for the purposes of COB 6.2.22R and COB 6.2.33R (Obligation on a firm to provide a key features/simplified prospectus), combine the required information on several *simplified prospectus schemes*, *key features schemes* or *recognised schemes* under section 264 of the *Act* (Schemes constituted in other EEA States) or any combination of them into a composite document, provided the document continues to comply with the general requirements such as being clear. Similarly, the information on different *sub-funds* or *classes* within a *scheme* may be combined into a composite document or provided as separate documents. Where the latter approach is adopted, references in COB 6.2.26R to COB 6.2.45R to “*scheme*” or “*simplified prospectus scheme*” should be taken as referring to the relevant *sub-fund* or *class*, as applicable.

Multiclass schemes: use of representative class

- 6.2.49    G    In the FSA's view, where a *simplified prospectus scheme* has more than one *class of unit*, the *simplified prospectus* may be prepared on a representative *class* basis, provided this is made clear and there is no material difference in the *classes* concerned. The same applies for an *umbrella*, as regards any *sub-fund* with more than one *class of units*.

...

**CONDUCT OF BUSINESS SOURCEBOOK (KEY FEATURES FOR AUTOMATIC ENROLMENT) INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 October 2005.

**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 Conduct of Business Sourcebook (Key Features for Automatic Enrolment) Instrument 2005.

By order of the Board  
15 September 2005

## Annex

### Amendments to the Conduct of Business sourcebook (COB)

In the following provisions references to *COB* 6.4.31R are amended to *COB* 6.4.31A R:  
*COB* 6.2.7R, *COB* 6.2.22R, *COB* 6.2.33R and *COB* 6.4.15R.

After *COB* 6.4.31R, insert the following new provision:

- Exemption: automatic enrolment of employees in pension schemes
- 6.4.31A R This exemption applies where a *private customer* is automatically enrolled by his employer in a *stakeholder pension scheme*, a *pension policy* or a *pension contract* provided through the workplace. In that case, in good time before the *private customer* is bound by the contract or offer, he must be provided with the appropriate *key features* or other information.

**SUPERVISION MANUAL (ACTUARIES) (AMENDMENT) INSTRUMENT 2005****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 213 (The compensation scheme); and
  - (5) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 October 2005.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex A
General Provisions (GEN)	Annex B
Authorisation manual (AUTH)	Annex C
Supervision manual (SUP)	Annex D
Dispute Resolution: Complaints sourcebook (DISP)	Annex E
Compensation sourcebook (COMP)	Annex F

**Citation**

- E. This instrument may be cited as the Supervision Manual (Actuaries) (Amendment) Instrument 2005.

By order of the Board  
15 September 2005

## Annex A

### Amendments to the Statements of Principle and Code of Practice for Approved Persons

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

4.1.3 E Deliberately misleading (or attempting to mislead) by act or omission:

...

(2) his *firm* (or its auditors or ~~an appointed~~ actuary appointed by his firm under SUP 4 (Actuaries)); or

...

4.1.4 E Behaviour of the type referred to in *APER* 4.1.3E includes, but is not limited to, deliberately:

...

(10) providing false or inaccurate information to the *firm* (or to the *firm's* auditors or ~~an appointed~~ actuary appointed by the firm under SUP 4 (Actuaries));

...

...

4.1.6 E Deliberately failing to inform, without reasonable cause:

...

(2) his *firm* (or its auditors or ~~an appointed~~ actuary appointed by his firm under SUP 4 (Actuaries)); or

...

...

4.2.3 E Failing to inform:

...

(2) his *firm* (or its auditors or ~~an appointed~~ actuary appointed by his firm under SUP 4 (Actuaries));

...

4.2.4 E Behaviour of the type referred to in *APER* 4.2.3E includes, but is not limited to:

...

(4) providing inaccurate or inadequate information to a *firm*, its auditors or ~~appointed~~ an actuary appointed by his firm under SUP 4 (Actuaries);

...

...

## Annex B

### Amendments to the General Provisions

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

GEN TP1 Transitional provisions

GEN TP 1.2 Table 2: Transitional Provisions applying across the Handbook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
15	...	R	<p><u>Notification</u>  <i>A firm</i> (or its auditor, <del>appointed actuary</del> or <del>appropriate actuary</del> <u>appointed under SUP 4 (Actuaries)</u>) will not contravene a <i>notification rule</i> in the <i>Handbook</i> to the extent that notice of the relevant matter was given to the <i>firm's previous regulator</i> before commencement in accordance with:                      ...</p>	...	...
...					

## Annex C

### Amendments to the Authorisation manual

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

#### AUTH 6 Annex 1 Approved Persons

	Question:	Answer:
...		
6	Can a <i>significant influence function</i> be outsourced?	It is a question of fact in each case who is performing a <i>significant influence function</i> . These functions are mostly described at a high level of responsibility, that is, for example, the <i>director</i> of a <i>company</i> or a <i>partner</i> of a partnership. The <i>persons</i> performing these functions cannot avoid their ultimate responsibility and therefore the need for <del>approval</del> <u>approval</u> . However, some of the <i>significant influence functions</i> may be performed by a <i>person</i> who is specifically brought in to do the job, for example the <i>chief executive function</i> (where it is to be performed by a <i>body corporate</i> ) and the <del>appointed actuary</del> <u>actuarial and with-profits actuary functions</u> .
...		

## Annex D

### Amendments to the Supervision manual

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

Amendments to the Transitional Provisions in the Supervision Manual are set out on page 8 of this instrument.

- 4.3.16A R An *actuary* appointed to perform the *with-profits actuary function* must:
- ...
- (3) at least once a year ~~in respect of each financial year commencing on or after 1 January 2005~~, report to the *firm's governing body* on key aspects (including those aspects of the *firm's application of its Principles and Practices of Financial Management* on which the advice described in (1) has been given) of the discretion exercised in respect of the period covered by his report affecting those classes of *with-profits business* of the *firm*;
- (4) in respect of each financial year ~~commencing on or after 1 January 2005~~, make a written report addressed to the relevant classes of the *firm's with-profits policyholders*, to accompany the *firm's* annual report under COB 6.11.9R, as to whether, in his opinion and based on the information and explanations provided to him by the *firm*, and taking into account where relevant the *rules* and *guidance* in COB 6.12, the annual report and the discretion exercised by the *firm* in respect of the period covered by the report may be regarded as taking, or having taken, the interests of the relevant classes of the *firm's with-profits policyholders* into account in a reasonable and proportionate manner;
- ...
- 4.3.16B G ...
- (1) bonus rates to be applied to *policies* at maturity or on the death of ~~the~~ a *policyholder* or when calculating the annual bonus;
- ...
- (8) communications with *policyholders* or potential *policyholders* on the issues in (1) to (7).
- 4.3.16C G The reports in SUP 4.3.16AR(3) and (4) should be proportionate to the nature of the *with-profits business*. For smaller *firms* with fewer products, the extent of reporting would be proportionately less.

...

SUP 10 Ann 1G: Frequently asked questions

	Question:	Answer:
	Requirement of the regime	
...		
6	Can a <i>significant influence function</i> be outsourced?	It is a question of fact in each case who is performing a <i>significant influence function</i> . These functions are mostly described at a high level of responsibility, that is, for example, the <i>director</i> of a <i>company</i> or a <i>partner</i> in a <i>partnership</i> . The <i>persons</i> performing these functions cannot avoid their ultimate responsibility and therefore the need for approval. However, some of the <i>significant influence functions</i> may be performed by a <i>person</i> who is specifically brought in to do the job, for example the <i>chief executive function</i> (where it is to be performed by a <i>body corporate</i> ) and the <del>appointed</del> <u>actuarial and with-profits actuary functions</u> .
...		

...

18.2.16 G For a transfer of *long-term insurance business* the *independent expert* should be an *actuary* familiar with the role and responsibilities of the *actuarial function* holder and (if the relevant *insurance business* includes *with-profits insurance business*) a *with-profits* ~~an~~ *appointed actuary*.

...

18.2.39 G For a scheme involving *long-term insurance business*, the report should:

...

(7) state whether, in the *independent expert's* opinion, for each relevant *firm* the scheme has sufficient safeguards (such as principles of financial management or certification by ~~the~~ *appointed* a *with-profits actuary* or *actuarial function* holder) to ensure that the scheme operates as presented.

...

18.2.58 G For *long-term insurance business*, the affidavit evidence to the court would normally include copies of reports on the transfer by the *actuarial function* holder and (if the *insurance business* includes *with-profits business*) the *with-profits actuary* of ~~appointed actuaries~~ of both *firms*, which should be provided to the *FSA* at an early stage. *SUP* 4.3.17R(4) requires a *firm* to request the advice of ~~consult~~ its ~~appointed~~ *with-profits actuary* about the likely effect of

material changes in its business plans on the rights and reasonable expectations of the relevant classes of its *with-profits policyholders*. A transfer would be material unless the liabilities transferred were not material relative to the total liabilities of the *firm*. The advice on a transfer would normally be in the form of a formal report by the *appointed with-profits actuary*.

...

SUP Sch 1 Record keeping requirements

...

SUP Sch 1.2G

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
<i>SUP</i> 4.3.17R (3)	Data for <i>appointed actuary (or actuaries) appointed under SUP 4 (Actuaries)</i>	Such data as the <i>appointed actuary (or actuaries) appointed under SUP 4 (Actuaries)</i> reasonably requires	...	...
...				

SUP TP1 Transitional Provisions applying to the Supervision manual only

SUP TP1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
4	SUP 4.3.1R(1) and SUP 4.4.1R(1)	R	<p>Actuaries</p> <p><i>A firm will not contravene SUP 4.3.1R(1) or SUP 4.4.1R(1) to the extent that the office of <u>actuarial function holder, with-profits actuary appointed actuary or appropriate actuary, respectively, is filled by an actuary appointed on or before 31 December 2004, provided that that actuary was appointed as at commencement and the appointment was made in accordance with the relevant statutory requirements, or the requirements of the regulatory system, in force at that time.</u></i></p>	...	...
...					
4B	<del>SUP 4.3.1R</del> [deleted]	R	<p><del>A firm must notify the FSA immediately of all appointments under SUP 4.3.1R (as amended) which come into, or are in, effect on 31 December 2004, advising the FSA of the name and business address of each actuary appointed and the functions each actuary is to perform.</del></p>	From 31 December 2004	31 December 2004
4BA	SUP 4.3.16AR(3)	R	The rules apply in	From 31	31

	and (4)		respect of each financial year commencing on or after 1 January 2005.	December 2004	December 2004
4C	<del>SUP 4.5.9R</del>	R	An <i>actuary</i> , who immediately before 31 December 2004 is the <i>appointed actuary</i> of a <i>firm</i> , must notify the <i>FSA</i> under <del>SUP 4.5.9R</del> (as amended) if on that date he is not appointed by the <i>firm</i> under <del>SUP 4.3.1R</del> (as amended).	From 31 December 2004	31 December 2004
4D	<del>SUP 4.5.10R</del>	R	An <i>actuary</i> , who immediately before the relevant time in (a) or (b) below is the <i>appointed actuary</i> of a <i>firm</i> , must notify the <i>FSA</i> under <del>SUP 4.5.10R</del> (as amended) if:  (a) he is not appointed by the <i>firm</i> under <del>SUP 4.3.1R</del> (as amended) on 31 December 2004;  or  (b) he is or has been formally notified that he will not be so appointed by the <i>firm</i> .	From 31 December 2004	31 December 2004
4E	<del>SUP 4.3.1R and SUP 4.3.3R</del>	G	<i>Firms</i> and the <i>FSA</i> will need to make fresh appointments once these proposed amendments come into effect, even if an <i>actuary</i> has already been appointed under the existing provisions. A <i>firm</i> will not need to seek fresh approval under section 60 of the <i>Act</i> for an existing <i>appointed</i>	From 31 December 2004	31 December 2004

			<p><i>actuary</i> who continues to perform the <i>actuarial function</i> (CF 12) or the <i>with-profits actuary function</i> (CF12A). This is because both these <i>controlled functions</i> are already covered by an <i>actuary's</i> existing approval to perform the previous <i>appointed actuary function</i>. However, under <i>SUP TP4B</i> firms are required to notify the <i>FSA</i> of any new or continued appointments to perform either or both of these functions. The effect of <i>SUP TP4CR</i> and <i>SUP TP4DR</i> is to require an existing <i>appointed actuary</i> to notify the <i>FSA</i> under <i>SUP 4.5.9R</i> and <i>SUP 4.5.10R</i> if he ceases to hold any appointment at all under <i>SUP 4.3.1R</i>, but not if he is appointed to perform either or both functions.</p>		
5	<i>SUP 4.3.3R</i>	R	<p>If an <i>appointed firm's actuary</i> of a <i>firm</i> has been appointed by a <i>previous regulator</i> under statutory or contractual powers and remains in office immediately before <i>commencement</i>, that appointment will be deemed to have been made under <i>SUP 4.3.3R</i>, but on the terms of the actual appointment.</p>	...	...

...

## Annex E

### Amendments to the Dispute Resolution: Complaints sourcebook

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

#### DISP App 2.6 Valuing Relevant Benefits

2.6.3 G A *product provider* should ensure that the method it adopts for valuing augmentation benefits is consistent with the 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):-

...

(3) statements in any report produced by any ~~appointed~~ actuary ~~report~~ appointed under SUP 4 (Actuaries) produced for the event;

...

...

2.6.7 G ~~The *product provider's* appointed~~ An actuary, appointed by a *product provider* under SUP 4 (Actuaries), 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 2.6.6G.

...

## Annex F

### Amendments to the Compensation sourcebook

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

- 4.2.2 R Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)  
This table belongs to COMP 4.2.1R

...	
(11)	The auditors of the <i>relevant person in default</i> , or of any <del>body corporate</del> <u>body corporate</u> in the same <i>group</i> as the <i>relevant person in default</i> , or <del>the</del> <u>any appointed actuary appointed under SUP 4 (Actuaries) by</u> <del>of</del> a <i>friendly society or insurance undertaking in default</i>
...	

...

**PERIMETER GUIDANCE (HANDBOOK AMENDMENT NO 2) INSTRUMENT 2005****Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 October 2005.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COB)	Annex B
Insurance: Conduct of Business sourcebook (ICOB)	Annex C
Mortgage: Conduct of Business sourcebook (MCOB)	Annex D

**Citation**

- E. This instrument may be cited as the Perimeter Guidance (Handbook Amendment No 2) Instrument 2005.

By order of the Board  
15 September 2005

## **Annex A**

### **Amendments to the Glossary of definitions**

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

*Financial  
Promotion Order* the Financial Services and Markets Act 2000 (Financial  
Promotion) Order ~~2001 (SI 2005/1335)~~ 2005 (SI 2005/1529).

## Annex B

### Amendments to the Conduct of Business sourcebook

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

- 3.3.2 G (1) ...
- (2) ... the exemption for *incoming electronic commerce communications* (see *PERG 8.12.38G* (Incoming electronic commerce communications (article 20B))).
- ...
- ...
- 3.3.6 R (1) ...
- (4) ...
- (a) ...
- (c) the *financial promotion* is not referred to in, or directly accessible from, any other *financial promotion* which is made to a *person* or directed at *persons* in the *United Kingdom* by ~~or on behalf of~~ the same *person*;
- ...
- ...

COB 3 G An overview of some of the main exemptions contained in the Financial  
Ann 1 Promotion Order

Article no. and name of exemption	Type of promotion: Unsolicited real time, solicited real time, non-real time	Controlled activity/controlle d investment	Other conditions
...			
51 Associations of high net worth or sophisticated investors	Solicited real time Non-real time	Note 1	<p>(1) Made to an association, <u>or to a member of an association</u>, the membership of which the <i>person</i> making the <i>financial promotion</i> believes on reasonable grounds comprises wholly or predominantly <i>persons</i> who are certified high net worth individuals within article 48, high net worth persons within article 49(2)(a) to (d) <del>and</del> certified sophisticated investors within article 50 <u>and self-certified sophisticated investors within article 50A</u>; and</p> <p>(2) relates only to an <i>investment</i> under the terms of which a <i>person</i> cannot incur a liability or obligation to pay or contribute more than he commits by way of <i>investment</i></p>
...			
<u>72 Pension products offered by employers</u>	<u>All</u>	<u>Note 5</u>	<p><u>Made by an employer to an employee about a <i>group personal pension scheme</i> or a <i>stakeholder pension scheme</i> where:</u></p> <p><u>(1) the employer will make a contribution to the scheme in the event of the employee joining</u></p>

			<p><u>the scheme and the <i>financial promotion</i> informs the employee of this fact;</u></p> <p><u>(2) the employer has not and will not receive any direct financial benefit from the scheme;</u></p> <p><u>(3) the employer informs the employee in writing prior to his becoming a member of the scheme of the amount of his contributions to the scheme in respect of that employee; and</u></p> <p><u>(4) where the communication is a <i>non-real time financial promotion</i>, the employee is informed of his right to seek advice from a regulated person.</u></p>
<u>73 Advice centres</u>	<u>All</u>	<u>Note 6</u>	<u>Made by an adviser for or employee of an advice centre (as defined in article 73(3)) in the course of carrying out his duties as such.</u>
<p><b>Notes to Annex 1G</b></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>...</p> <p><u>Note 5:</u></p> <p><u>The <i>controlled activities</i> specified in Note 1 carried on in relation to either:</u></p>			
<u>(1)</u>	<u><i>life policies</i> (paragraph 13); or</u>		
<u>(2)</u>	<u><i>stakeholder pension schemes</i> (paragraph 20).</u>		
<p><u>In both cases, only where relating to a <i>group personal pension scheme</i> or <i>stakeholder pension scheme</i> that the employer is promoting to his employees.</u></p>			

Note 6:

The controlled activities specified in Note 1 carried on in relation to:

<u>(1)</u>	<u>life policies (paragraph 13); or</u>
<u>(2)</u>	<u>qualifying credit (paragraph 26); or</u>
<u>(3)</u>	<u>shares (paragraph 14); or</u>
<u>(4)</u>	<u>debentures (paragraph 15); or</u>
<u>(5)</u>	<u>government and public securities (paragraph 16); or</u>
<u>(6)</u>	<u>units (paragraph 19) in a collective investment scheme; or</u>
<u>(7)</u>	<u>any combination of (1) to (6).</u>

In the case of (3), (4), (5) and (6), only where held under a Child Trust Fund (CTF).

## Annex C

### Amendments to the Insurance: Conduct of Business sourcebook

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

- 3.4.5 R (1) ...
- (4) (a) ...
- (c) *the non-investment financial promotion* is not referred to in, or directly accessible from, any other *non-investment financial promotion* which is made to a *person* or directed at *persons* in the *United Kingdom* by ~~or on behalf of~~ the same *person*;

## Annex D

### Amendments to the Mortgage: Conduct of Business sourcebook

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

- 3.3.7 R (1) ...
- (4) ...
- (a) ...
- (c) the *qualifying credit promotion* is not referred to in, or directly accessible from, any other *qualifying credit promotion* which is made to a *person* or directed at *persons* in the *United Kingdom* by ~~or on behalf of~~ the same *person*;
- 4.8.2 G (1) ... a *firm* should have regard to the *guidance* on scripted questions in ~~AUTH App~~ PERG 4.6.21G to 4.6.2425G.

**PERIMETER GUIDANCE (AMENDMENT) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of its powers under section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 1 October 2005.

**Amendments to Perimeter guidance**

- C. General guidance on FSA regulatory perimeter issues, amending the Perimeter Guidance manual, is made in the form set out in the Annex to this instrument. This general guidance does not form part of the FSA Handbook.

**Citation**

- D. This instrument may be cited as the Perimeter Guidance (Amendment) Instrument 2005.

By order of the Board  
15 September 2005

## Annex

### Amendments to the Perimeter Guidance manual

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

2.6.17 G ...The effect is that an *open-ended investment company* will, in issuing its *shares*, be subject to the restrictions on promotion of *collective investment schemes* in section 238 of the *Act* (rather than to restrictions, ~~such as those in the Public Offers of Securities Regulations 1995~~, that apply to other forms of body corporate). For exclusions...

...

2.8.8 G ...  
(2A) Trustees are excluded from arranging for another person to safeguard and administer assets where that other person is either:

(a) an authorised person who has permission to safeguard and administer investments; or

(b) an exempt person whose exemption permits him to safeguard and administer investments; or

(c) a person to whom (1) applies.

...

...

2.8.10 G There ~~is only one~~ are two exclusions from the range of activities specified as being regulated in relation to *collective investment schemes*. ~~This~~ These exclusions relates to *incoming ECA providers* (see *PERG 2.9.18G*) and to business angel-led enterprise capital funds (see *PERG 2.9.20G*). In other cases, the key issue 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 *PERG 2.6.18G*).

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

2.9.12A G The Treasury, in its consultative document “Financial Services and Markets Act two year review: Changes to secondary legislation Proposals for change, February 2004” proposed changes to these exclusions aimed primarily at limiting their scope in relation to the objective test referred to in PERG 2.9.12G(2). In its response to the comments received during the consultation, the Treasury announced, in its document “Financial Services and Markets Act two year review: Changes to secondary legislation Government response, November 2004”, that it intends to make certain changes to the exclusions in due course.

...

Business angel-led enterprise capital funds

2.9.20 G This group of exclusions applies, in specified circumstances, to the regulated activities of:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (3) *managing investments;*
- (4) *safeguarding and administering investments;*
- (5) *establishing, operating or winding up a collective investment scheme; and*
- (6) *advising on investments.*

2.9.21 G The exclusions apply, in general terms:

- (1) *to a body corporate with limited liability:*
  - (a) *that is formed in accordance with the law of, and having its registered office, central administration or principal place of business in, an EEA State;*
  - (b) *that operates a business angel-led enterprise capital fund, being a fund that invests only in securities of unlisted companies and whose participants are made up solely of*

persons of a specified kind; and

(c) whose members are limited to persons of a specified kind.

...

8.4.22 G ...

(7) Article 15 (Introductions) may apply ~~where the introduction is a real time financial promotion~~ provided certain conditions are met (see PERG 8.12.11G ). In addition, ...

...

8.4.34 G ... 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. Employers who promote pension products to their employees will be able to use the exemption in article 72 (Pension products offered by employers) provided certain conditions are met. These conditions are explained in PERG 8.14.40AG (Pension products offered by employers (article 72)). Any *financial promotion* made by an employer for the purpose of meeting his obligations under the Welfare Reform and Pensions Act 1999 ...

...

8.6.7 G A general point arises about causing and *communicating* on whether a particular exemption that applies to a communication made by a specified *person* also applies to a *person* who is causing that communication to be made. For example, article ~~43~~ 55 of the *Financial Promotion Order* (~~Members and creditors of certain bodies corporate~~ Communications by members of professions) applies only to a communication by ~~a body corporate to its own shareholders or creditors about its own securities~~ an exempt professional firm. This exemption may apply where a ~~company~~ person ('P') requests an exempt professional firm ('E') to ~~wishes to acquire another company ('C') for cash and arranges for C to~~ communicate its ~~an offer to C's shareholders a client of E~~. In this case, where P causes ~~€ E~~ to *communicate*, it is the FSA's view that the exemption that applies to ~~€ E~~ 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 ~~€ E~~.

8.6.7A G The position of an unauthorised person ('U') who, in the course of business, causes an authorised person to communicate a financial promotion is somewhat different. This is because the authorised person ('A') is not

subject to section 21 of the Act and so will not necessarily be communicating the financial promotion in circumstances in which an exemption would apply. To avoid any doubt about the application of section 21 to U, a specific exemption is provided in article 17A of the Financial Promotion Order (Communications caused to be made or directed by unauthorised persons). This exemption applies where U causes A to make or direct a real time financial promotion. It also applies to a non-real time financial promotion but only where the content is prepared by A. This means that U will remain subject to section 21 where, for example, he provides A with copies of a financial promotion for the purpose of A distributing them to other persons or where he is placing an advertisement in a publication issued by A.

...

- 8.8.3 G ...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) the Financial Promotion Order (see This is explained more fully in PERG 8.12.38G).~~ ...

...

- 8.9.5 G The restriction in section 21 is also disapplied by means of an order made 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 PERG 8.12 to PERG 8.15, PERG 8.17 and PERG 8.21 . 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);~~
- (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);~~
- (5) ~~the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (SI 2002/2157);~~
- (6) ~~the Financial Services and Markets Act 2000 (Financial Promotion)~~

~~(Amendment) Order 2003 (SI 2003/1676);~~

- (7) ~~the Financial Services and Markets Act 2000 (Financial Promotion and Promotion of Collective Investment Schemes) (Miscellaneous Amendments) Order 2005 (SI 2005/270).~~

~~A consolidated version of the *Financial Promotion Order* is available on the Treasury website [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk) under Documents/Financial Services/Regulating Financial Services/FSMA/ Secondary legislation ordered by date of laying.~~

...

8.11.3 G 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 overall effect of article 11 is that any relevant exemptions may be combined except where the conditions applicable to an exemption prevent this (see PERG 8.11.4G). ~~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.~~

...

8.11.6 G ...

- (3) in the case of a *person* claiming to be a certified high net worth individual or a sophisticated or self-certified sophisticated investor, asking to see a copy of the current certificate ~~or the signed statement or both.~~

...

8.12.5 G ...

- (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~~ the overseas person who is directing it; and

...

...

8.12.8 G ... 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~~
- (3) previously overseas customers of overseas communicators (article 31); or
- (4) any combination of (1), (2) and (3).

Where a *financial promotion* is also directed at such *persons* ...

...

8.12.11 G This exemption applies ~~only to a real time~~ any financial promotion that is made with a view to or for the purposes of introducing ...

...

8.12.18 G The purpose of ~~this~~ these exemptions 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. *PERG* 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 to the person who causes the mere conduit to make the communication. Neither does it ~~does not~~ apply where the *financial promotion* is an *outgoing electronic commerce communication*. A *person*

...

...

8.12.20 G The conditions in article 18 also require that the *person* acting as the mere conduit must *communicate* in the course of ~~a business~~ an activity 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~~ an activity which has the required principal purpose. Such ~~a business~~ an activity might represent but a part of a *person*'s overall business activities (however small), so long as it represents a discrete ~~business~~ activity. A discrete ~~business~~ activity is an activity whose principal purpose is to receive and transmit other *persons*' communications and which is not simply an activity ~~a service provided that is carried on~~ incidentally or as an adjunct to another activity ~~service~~. For example ...

...

8.12.25 G 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 ...

...

8.12.27 G 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; or
  - (b) the ~~Programme~~ OFCOM Broadcasting Code 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:

...

- 8.12.32 G 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 ...

...

- 8.13.1 G 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~~ and Part VI (see PERG 8.11.3G (Types of exemption under the Financial Promotion Order)).

...

- 8.14.11 G 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* ...

...

- 8.14.25 G ... A high net worth company, unincorporated association or trust is a *person* who satisfies the conditions in article 49(2)(a) to (e ~~d~~) which, for the most part, involve the amount of assets held. In addition, the exemption allows a *financial promotion* that is made to, or directed at, *persons coming under article 49(2)(a) to (d)* also to be made to, or directed at, any other *persons* to whom it may lawfully be made (article 49(2)(e)). This would include *persons* such as overseas recipients (article 12 (Communications to overseas recipients)) and investment professionals (article 19 (Investment professionals)).

...

- 8.14.29 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 made up of certified high net worth individuals, high net worth companies or unincorporated associations or trusts, or certified or self-certified 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 certified

high net worth individuals, high net worth companies or unincorporated associations or trusts, or certified or self-certified 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.~~

- (2) The exemption extends to *financial promotions* made to persons who are members of an association with a particular membership and not simply to *financial promotions* made to the operator or secretariat of the association. It would appear that this includes members who are not themselves certified high net worth individuals, high net worth companies or unincorporated associations or trusts, or certified or self-certified sophisticated investors.

...

#### Pension products offered by employers (article 72)

8.14.40 A G Article 72 exempts any *financial promotion* made by an employer to an employee in relation to a *group personal pension scheme* or a *stakeholder pension scheme*. This is subject to certain requirements as follows:

- (1) the *financial promotion* must inform the employee that the employer will make a contribution to the pension that the employee will receive from the pension scheme to which the *financial promotion* relates in the event of the employee becoming a member;
- (2) the employer must not receive or have received any direct financial benefit from that scheme (such as commission from, or a reduction in the amount of the premium payable by the employer in respect of any insurance policy issued to the employer by, the provider of the scheme);
- (3) the employer must notify the employee in writing, prior to the employee becoming a member, of the amount of the contribution that the employer will make to the scheme in respect of that employee; and
- (4) where the communication is a *non-real time financial promotion*, it must contain, or be accompanied by, a statement informing the employee of his right to seek independent advice from an *authorised person* or an *appointed representative*.

This exemption should enable employers to promote pension schemes to their employees without undue concern that they may be breaching the restriction in section 21 of the Act. PERG 8.4.34G (Communications by employers to their employees) has further guidance about the application of section 21 to employers generally.

Advice centres (article 73)

8.14.40B G Article 73 exempts any financial promotion made by a person in the course of carrying out his duties as an adviser for, or employee of, an advice centre. This is provided the financial promotion relates to:

- (1) qualifying credit; or
- (2) rights under, or rights to or interests in rights under, a life policy; or
- (3) a child trust fund within the meaning of section 1(2) of the Child Trust Funds Act 2004.

8.14.40C G An advice centre is defined in article 73 as a body which:

- (1) gives advice which is free and in respect of which it does not receive any fee, commission or other reward;
- (2) provides debt advice as its principal financial services activity; and
- (3) in the case of a body which is not part of a local authority, holds adequate professional indemnity insurance or a guarantee providing comparable cover.

This exemption should be of particular use to bodies such as Citizens Advice Bureaux.

...

8.15.5 G ~~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 ...~~

8.15.6 G A financial promotion made under article 55A must contain a statement in the following terms: “The [firm/company] is not authorised ... 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. The exemption also provides that a defect in the wording

of the statement does not affect its validity. This is provided that the defect does not alter the meaning of the communication. 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.

...

8.17.11 G ~~[Article 28(4) (One off non-real time communications and solicited real time communications) sets aside the general rule that exemptions in Parts V and VI of the *Financial Promotion Order* cannot be combined by permitting the combination of Article 28 and Article 23 (Deposits: real time communications) where the *financial promotion*:~~

~~(1) is a one-off *solicited real time financial promotion*; and~~

~~(2) is about *providing qualifying credit*.~~

...

8.20.3 G The Treasury has made an order under section 238(6). This is the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (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) and by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion and Promotion of Collective Investment Schemes) (Miscellaneous Amendments) Order 2005 (SI 2005/270) ('the CIS Financial Promotion Order'). The overall effect ...

...

8.21.8 G Article 43 applies to *non-real time* and *solicited real time financial promotions* made by, or on behalf of, a company ('C') to persons who ...

8.21.9 G A 'relevant investment' in article 43 means:

(1) ...

(2) ...

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*.~~

...

8.21.12 G Article 59 imposes certain conditions.

(1) ...

(2) The inducement must not relate to any *investment* other than *shares* or *debentures* ~~of issued, or to be issued, by~~ the *company* making the *financial promotion* (or a member of its *group*) or *warrants* relating to or certificates representing such *shares* or *debentures*.

(3) ...

...

8.21.16 G Article 68 applies where the *financial promotion* relates to *securities* ... 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~~ prospectus rules made under Part VI of the *Act*, ~~(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 ~~rules-Regulations (or other provisions);~~ and

(2) which is not accompanied by any information other than information which is required or permitted to be published by the rules of the relevant *EEA* market.

8.21.17 G Article 69 is somewhat similar to article 59 in the conditions it imposes (see *PERG* 8.21.12G). ~~These~~ There 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 another body corporate in its group (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 *PERG* 8.21.13G ).

8.21.18 G ~~[deleted]~~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':

8.21.19 G 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 or is accompanied by an inducement about certain investments issued, or to be 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) ...

8.21.20 G Article 74 ~~74~~ 70: Promotions included in listing particulars, etc

(1) ~~listing particulars~~ listing particulars;

(2) ~~supplementary listing particulars~~ supplementary listing particulars;

(3) a prospectus approved under ~~listing rules~~ under section 84 or 87 of ~~the Act~~;

(4) a or supplementary prospectus approved ~~under listing rules~~ in line with Prospectus Rules made under section 81 of the *Act* (as applied by section 86 or 87); and

~~(5)~~ (4) any other document required or permitted to be published by ~~listing rules~~ or Prospectus Rules under part VI of the *Act*.

The comments in *PERG* 8.21.14G about when something is required or permitted to be published apply also to ~~(5)~~ (4).

8.21.21 G A requirement common to the exemptions in articles 69, 67 and 69 is that the *financial promotions* must not relate to *investments* other than those issued, or to be issued, by the *company* or a member of its *group* ...

...

8.36.6 G Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
...				
15	Introductions (8.12.11G)	*	*	* —
...				
<u>17A</u>	<u>Communications caused to be made or directed by unauthorised persons (8.6.7AG)</u>	* —	* —	* —
...				
18A	Outgoing electronic commerce communications: mere conduits, caching and hosting (8.12.18G)	*	*	*
...				
<u>28B</u>	<u>Real time communications: introductions in connection with qualifying credit (8.17.12G)</u>	* —	* —	
...				

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
46	Qualifying credit to bodies corporate ( <u>8.17.10G</u> )	*	*	*
...				
<del>70</del>	<del>Promotions in connection with listing applications</del>		*	*
<del>71</del> <u>70</u>	Promotions included in listing particulars etc. ( <u>8.21.20G</u> )			*
<del>72</del>	<del>Promotions included in prospectus for public offer of unlisted securities (8.21.20G)</del>			*
<del>73</del> <u>71</u>	Material relating to prospectus for public offer of unlisted securities			*
<del>74</del>	<del>Approval of communication prior to Order coming into force</del>	<del>*</del> <sup>4</sup>	<del>*</del> <sup>4</sup>	<del>*</del>
<u>72</u>	<u>Pension products offered by employers (8.14.40A)</u>	<u>*</u>	<u>*</u>	<u>*</u>
<u>73</u>	<u>Advice centres (8.14.40B)</u>	<u>*</u>	<u>*</u>	<u>*</u>
<u>1</u> in limited circumstances only - see article 12(2) of the Financial Promotion Order				
<u>2</u> for the purpose of article 16 (2) only				
<u>3</u> for the purpose of article 16 (1) only				
<del>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</del>				

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
<del>accordance with COB 3. Such advertisements and communications are likely to be non-real time communications.</del>				

...

9.10.1 G ...

- (1) the requirements of ~~the Public Offers of Securities Regulations 1995~~ will *Prospectus Rules* relating to the publication of an approved prospectus may apply if its *securities* are offered to the public in the *United Kingdom*; and
- (2) ...

...

**INTERIM PRUDENTIAL SOURCEBOOK FOR BANKS (AMENDMENT NO 8)  
INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 1 December 2005.

**Amendments to the Interim Prudential sourcebook for Banks**

- C. The Interim Prudential sourcebook for Banks is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Banks (Amendment No 8) Instrument 2005.

By order of the Board  
19 October 2005

## Annex

### Amendments to the Interim Prudential sourcebook for Banks

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

Amend IPRU(BANK), Volume 2, Chapter LS, Section 4.4.1 paragraph 9 as follows:

#### 4.4 Definitions relevant to both components

##### 4.4.1 *The stock of sterling liquid assets*

9 The stock of *sterling liquid assets* consists of:

(a) ...

(b) operational balances with the Bank of England;

a) These include reserves that are held with the Bank of England as part of the Bank of England's framework for its operations in the sterling money markets, of the type set out in Section III of the Bank of England's paper 'Reform of the Bank of England's Operations in the Sterling Money Markets: A paper on the new framework by the Bank of England', published 4 April 2005.

ab) Special deposits and cash ratio deposits are excluded.

...

...

**INTERIM PRUDENTIAL SOURCEBOOK FOR BUILDING SOCIETIES  
(AMENDMENT NO 10) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 1 December 2005.

**Amendments to the Interim Prudential sourcebook for Building Societies**

- C. The Interim Prudential sourcebook for Building Societies is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Building Societies (Amendment No 10) Instrument 2005.

By order of the Board  
19 October 2005

## Annex

### Amendments to the Interim Prudential sourcebook for Building Societies

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

Amend IPRU(BSOC), Volume 1, Chapter 5 paragraph 5.4.3 as follows:

5.4.3 G The following liquid assets may be counted as short-term liquidity:

...

(4) ...;

(5) reserves that are held with the Bank of England as part of the Bank of England's framework for its operations in the sterling money markets, of the type set out in Section III of the Bank of England's paper 'Reform of the Bank of England's Operations in the Sterling Money Markets: A paper on the new framework by the Bank of England', published 4 April 2005.

...

**APPOINTED REPRESENTATIVES (NETWORKS) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making powers);
    - (b) section 156 (General supplementary powers); and
    - (c) section 157(1) (Guidance); and
  - (2) the other powers referred to in Schedule 4 of the General Provisions.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 November 2005.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Interim Prudential sourcebook for Investment Businesses is amended in accordance with Annex B to this instrument.
- F. The Supervision manual is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Appointed Representatives (Networks) Instrument 2005.

By order of the Board  
19 October 2005

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

*network*

a *firm*:

- (a) which has five or more *appointed representatives* (not counting introducer appointed representatives); or
- (b) whose *appointed representatives*, not counting introducer appointed representatives (and being fewer than five) have, between them, 26 or more *representatives*;

...

## Annex B

### Amendments to the Interim Prudential sourcebook for Investment Businesses

In this Annex, striking through indicates deleted text.

Delete the following definition in IPRU(INV) 13, Appendix 13(1).

network      ~~an independent intermediary:~~

- ~~(a)      which has five or more appointed representatives; or~~
- ~~(b)      whose appointed representatives (being fewer than five) have, between them, 26 or more financial advisers.~~

## Annex C

### Amendments to the Supervision manual

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

...

What is a "network"?

- 12.2.6 G A *firm* is referred to as a '*network*' if it appoints five or more *appointed representatives* (not counting *introducer appointed representatives*) or if it appoints ~~fewer~~ less than five *appointed representatives* (again, not counting *introducer appointed representatives*) which have, between them, twenty-six or more *representatives*. However, a *network* does not include:

...

**ENFORCEMENT (SETTLEMENT AND OTHER PROCEDURES) INSTRUMENT  
2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in or under the Financial Services and Markets Act 2000:
- (1) section 69(1) (Statement of Policy);
  - (2) section 93(1) (Statement of Policy);
  - (3) section 157(1) (Guidance);
  - (4) section 210(1) (Statement of Policy); and
  - (5) section 395(5) (The Authority's procedures).

**Commencement**

- B. This instrument comes into force on 20 October 2005.

**Amendments to the Handbook**

- C. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Authorisation manual	Annex B
Supervision manual	Annex C
Enforcement manual	Annex D
Decision Making manual	Annex E
Credit Unions sourcebook	Annex F
Electronic Money sourcebook	Annex G

**Citation**

- D. This instrument may be cited as the Enforcement (Settlement and Other Procedures) Instrument 2005.

By order of the Board  
19 October 2005

## Annex A

### Amendments to the Glossary of definitions

In this Annex, entire sections of text are being inserted, the place where the changes will be made is indicated and the text is not underlined.

Insert the following new definitions in the appropriate alphabetical positions:

*settlement decision makers* (in *DEC*) two members of the *FSA's* executive of at least director of division level with responsibility for deciding whether to give *statutory notices* in the circumstances described in *DEC* Appendix 1.2.2AG.

*settlement decision procedure* (in *DEC*) the procedure for the making of *statutory notice decisions* in the circumstances described in *DEC* Appendix 1.2.2AG.

*settlement discount scheme* (in *ENF*) the scheme described in *ENF* 13.7 by which the financial penalty that might otherwise be payable in respect of a *person's* misconduct or contravention may be reduced to reflect the timing of any settlement agreement.

## Annex B

### Amendments to the Authorisation manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not shown struck through.

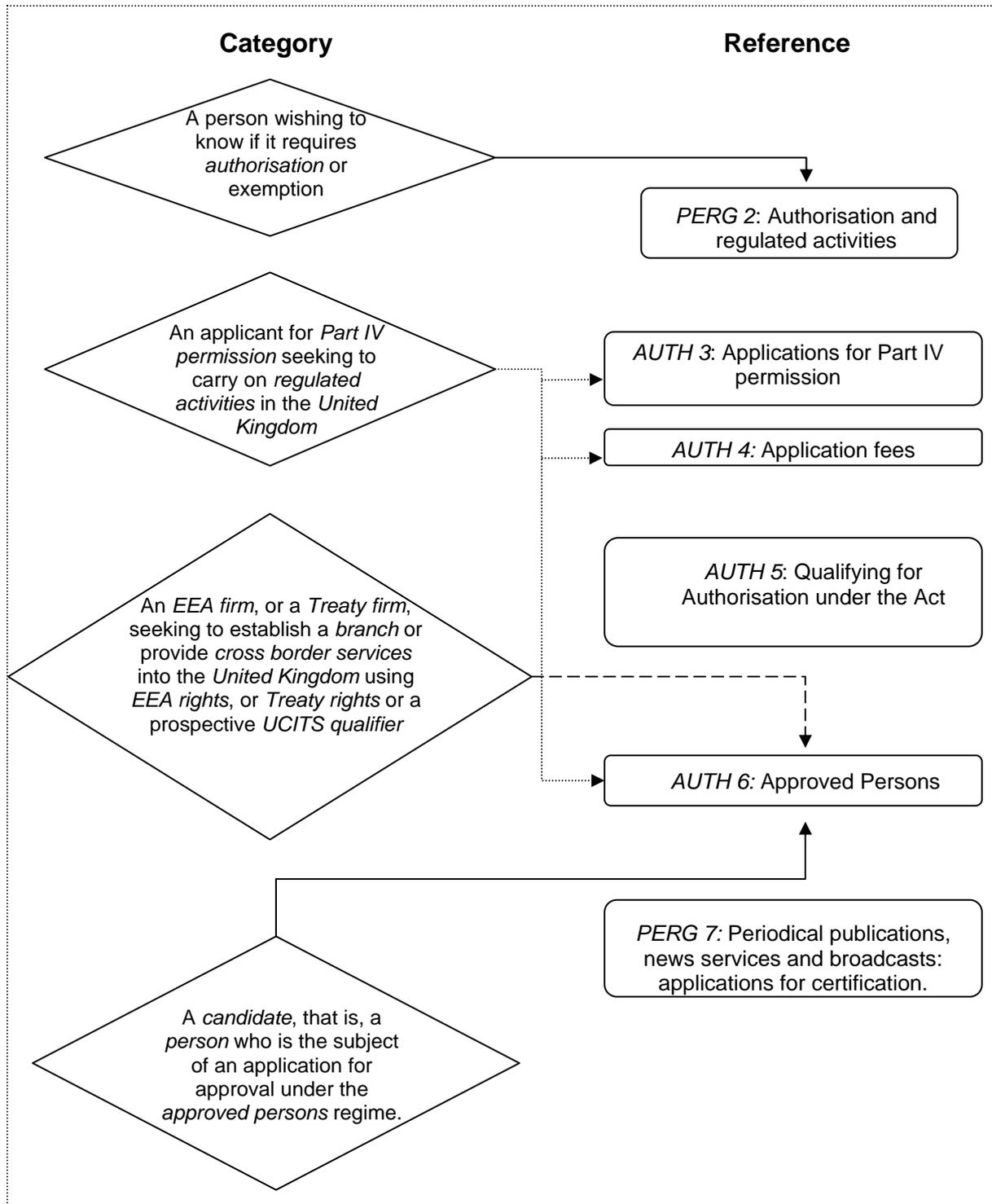
- 1.1.1 G ...
- (4) a *candidate* for approval under Part V of the *Act*, but only in respect of *AUTH* 6 (Approved persons), which is of general relevance, ~~and *AUTH* 8 (Determining applications)~~; and
- ...
- ...
- 1.1.3 G ...
- (4) the *FSA's* powers in relation to *authorisation* and how it will use them (see *AUTH* 3 and *AUTH* 5), ~~including a summary of how applications will be determined; see *AUTH* 8 (Determining applications)~~.
- ...
- 1.3.9 G Summary of *AUTH* and parts of *PERG*
- This table belongs to *AUTH* 1.3.7G.

Chapter:	Applicable to:	On:
...		
<del><i>AUTH</i> 8: Determining applications</del>	1. applicants for <i>Part IV permission</i> generally;	1. the procedures which the <i>FSA</i> will follow when granting an application; and
	<del>2. an <i>EEA firm</i> or a <i>Treaty firm</i> that has submitted an application for approval of a <i>person</i> under the <i>approved persons regime</i>;</del>	2. a summary of the <i>FSA's</i> decision making procedures for: (a) refusing, or proposing to refuse, an application for <i>Part IV permission</i> or an application for approval under the <i>approved persons regime</i> ; or
	<del>3. a <i>candidate</i>.</del>	(b) granting, or proposing to grant, an application for <i>Part IV permission</i> subject to <i>limitations</i> or <i>requirements</i> not applied for or with a narrower description of <i>regulated activity</i> than that to which the application relates.

...

The flowchart in *AUTH 1 Annex 1* is replaced in its entirety by the following flowchart. This change removes references to *AUTH 8* and changes *AUTH 2* and *AUTH 7* to *PERG 2* and *PERG 7* respectively.

**AUTH 1 Annex 1G Introduction to the Authorisation Manual**



3.6.5 G If, after reviewing an application, the *FSA* proposes to impose a *limitation*, the applicant will be advised formally (that is, the applicant will be sent a *warning notice*) and given an opportunity to make representations before the *FSA* reaches a final decision. ~~For an overview of how the *FSA* determines applications and a summary of the *FSA*'s decision-making procedures, see *AUTH 8 (Determining applications)*.~~

...

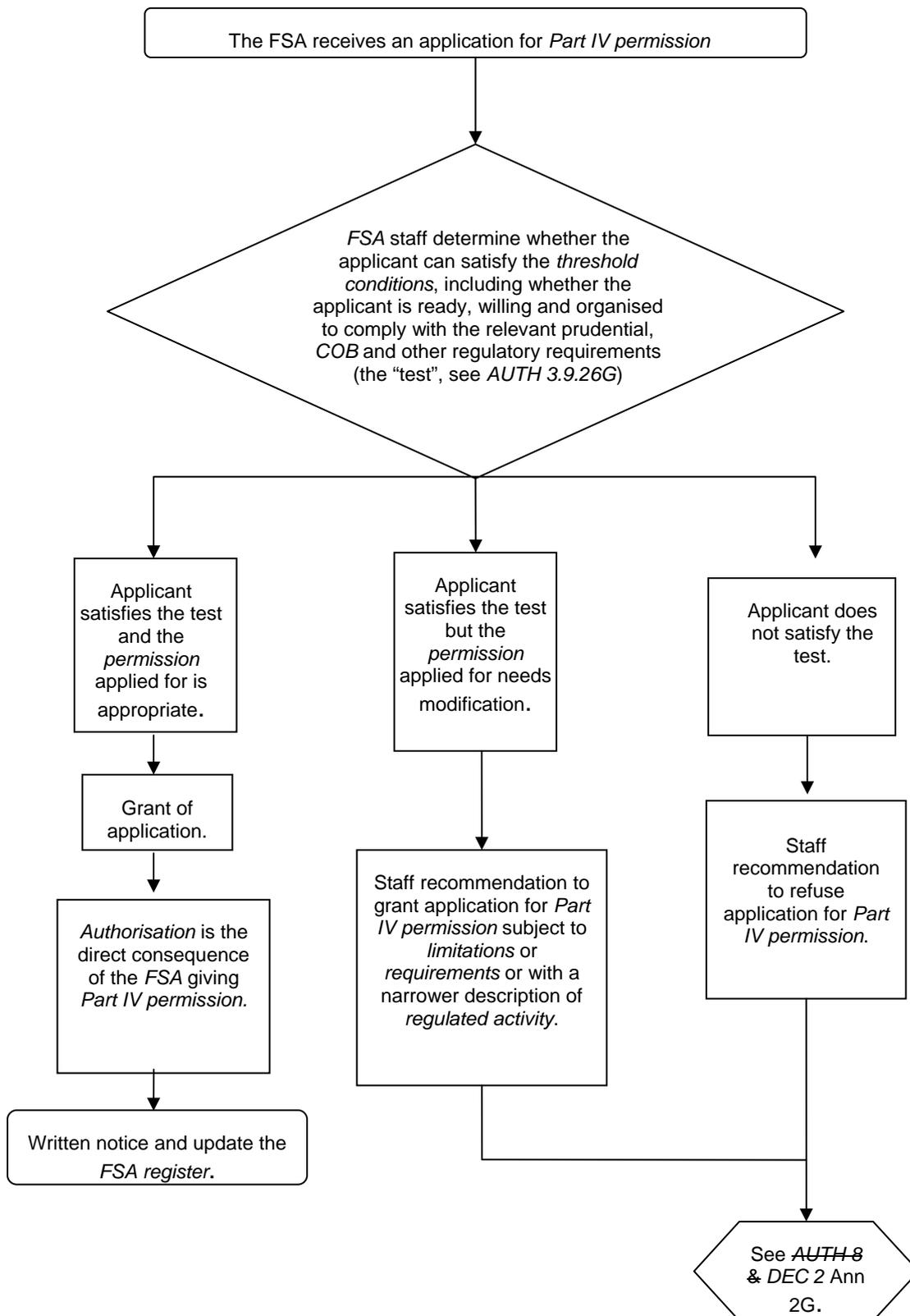
3.7.7 G If, after reviewing an application, the *FSA* proposes to impose a *requirement*, the applicant will be advised formally (that is, the applicant will be sent a *warning notice*) and given an opportunity to make representations before the *FSA* reaches a final decision. ~~For an overview of how the *FSA* determines applications and a summary of the *FSA*'s decision-making procedures, see *AUTH 8*.~~

...

3.9.31 G ~~*AUTH 8 (Determining applications)* gives an overview of how the *FSA* will determine an application.~~ The *FSA*'s decision making procedures are in *DEC* and include the procedures the *FSA* will follow if it proposes to refuse an application for *Part IV permission* or grant an application subject to *limitations* or *requirements* not applied for.

...

### AUTH 3 Annex 1G Application for Part IV Permission



6.3.9 G Before making a decision either to approve or to give a *warning notice* (~~see AUTH 8.3 (Statutory notices and other matters)~~), the *FSA* may request further information about the *candidate* from the applicant for *Part IV permission*. If it does this, the three month approval period:

...

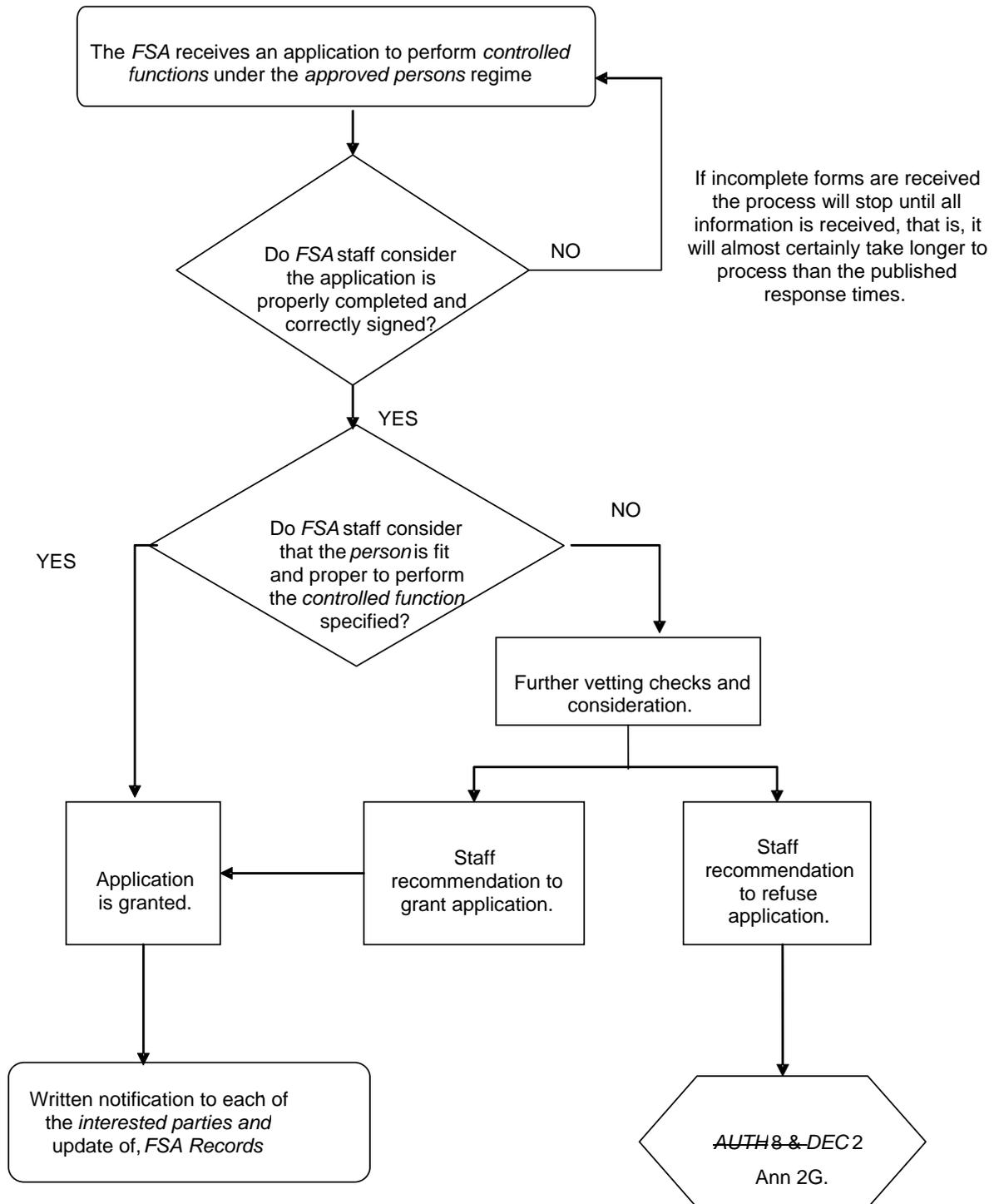
...

Decisions on applications

6.3.12 G ~~See AUTH 8 (Determining applications) for an overview of how applications for *Part IV permission* and for approval of a *candidate* under section 59 of the *Act* (Approval for particular arrangements) will be determined. AUTH 8 also includes a summary of the decision making procedures which apply.~~[deleted]

...

AUTH 6 Annex 2G Approved Persons



AUTH Chapter 8 is deleted in its entirety. The deleted text is not shown struck through.

AUTH 8 [deleted]

## Annex C

### Amendments to the Supervision manual

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

...

- 6.4.28 G A decision to grant an application for cancellation of *permission* will be taken by appropriately experienced *FSA* staff. Where, however, the *FSA* staff dealing with the application recommend that a *firm's* application for cancellation of *Part IV permission* be refused, the decision will be taken by the *RDC*; if the applicant makes representations to the *FSA*. If there are no representations, the decision will be made under *executive procedures*.

...

## Annex D

### Amendments to the Enforcement manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

- 13.3.3 G The factors which may be relevant when the *FSA* determines the amount of financial penalty for a *firm* or *approved person* include the following.
- ...
- (9) The timing of any agreement as to the amount of the disciplinary penalty. The *FSA* and the *person* subject to disciplinary action may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *ENF* 13.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FSA* and the *person* concerned reach an agreement.

...

- 13.5.9 G The *settlement discount scheme* set out in *ENF* 13.7 does not apply to financial penalties for late submission of reports.

...

After *ENF* 13.6 insert the following new section:

- 13.7 Discount for early settlement
- 13.7.1 G *Persons* subject to disciplinary action may be prepared to agree the amount of any financial penalty and other conditions which the *FSA* seeks to impose by way of disciplinary action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The *FSA* recognises the benefits of such agreements, in that they offer the potential for securing earlier redress or protection for consumers and the saving of cost to the *person* concerned and the *FSA* itself in contesting the financial penalty. The penalty that might otherwise be payable in respect of misconduct or contravention by the *person* concerned will therefore be reduced to reflect the timing of any settlement agreement.
- 13.7.2 G In appropriate cases the *FSA's* approach will be to negotiate with the *person* concerned to agree in principle the amount of a financial penalty having regard to the factors set out in *ENF* 13.3. (This starting figure will take no account of the existence of the *settlement discount scheme* described in this section.) Such amount ("A") will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The resulting figure ("B") will be the amount actually payable by the *person* concerned in respect of the misconduct or contravention.

However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.

13.7.3

G

- (1) *FSA* has identified four stages of a disciplinary action for these purposes:
- (a) the period from commencement of an investigation until the *FSA* has
    - (i) a sufficient understanding of the nature and gravity of the misconduct or contravention to make a reasonable assessment of the appropriate penalty; and
    - (ii) communicated that assessment to the *person* concerned and allowed a reasonable opportunity to reach agreement as to the amount of the penalty ("stage 1");
  - (b) the period from the end of stage 1 until the expiry of the period for making written representations or, if sooner, the date on which the written representations are sent in response to the giving of a *warning notice* ("stage 2");
  - (c) the period from the end of stage 2 until the giving of a *decision notice* ("stage 3");
  - (d) the period after the end of stage 3, including proceedings before the *Tribunal* and any subsequent appeals ("stage 4").
- (2) The communication of the *FSA*'s assessment of the appropriate penalty for the purposes of *ENF* 13.7.3G(1)(a) need not be in a prescribed form but will include an indication of the breaches alleged by the *FSA*. It may include the provision of a draft *warning notice*.

- (3) The reductions in penalty will be as follows:

Stage at which agreement reached	Percentage reduction
Stage 1	30
Stage 2	20
Stage 3	10
Stage 4	0

13.7.4

G

- (1) Any settlement agreement between the *FSA* and the *person* concerned will therefore need to include a statement as to the appropriate penalty discount in accordance with this procedure.

- (2) In certain circumstances the *person* concerned may consider that it would have been possible to reach a settlement at an earlier stage in the action, and argue that it should be entitled to a greater percentage reduction in penalty than is suggested by the table at *ENF 13.7.3G(3)*. It may be, for example, that the *FSA* no longer wishes to pursue disciplinary action in respect of all of the acts or omissions previously alleged to give rise to the contravention of a requirement. In such cases, the *person* concerned might argue that it would have been prepared to agree an appropriate penalty at an earlier stage and should therefore benefit from the discount which would have been available at that time. Equally, *FSA* staff may consider that greater openness from the *person* concerned could have resulted in an earlier settlement.
- (3) Arguments of this nature risk compromising the goals of greater clarity and transparency in respect of the benefits of early settlement, and invite dispute in each case as to when an agreement might have been possible. It will not usually be appropriate therefore to argue for a greater reduction in the amount of penalty on the basis that settlement could have been achieved earlier.
- (4) However, in exceptional cases *FSA* may accept that there has been a substantial change in the nature or seriousness of the disciplinary action being taken against the *person* concerned, and that an agreement would have been possible at an earlier stage if the action had commenced on a different footing. In such cases the *FSA* and person concerned may agree that the amount of the reduction in penalty should reflect the stage at which a settlement might otherwise have been possible.

...

14.7.4 G The *FSA* considers that the factors which may be relevant when it sets the amount of a penalty in *market abuse* cases include, the following.

...

- (9) The timing of any agreement as to the amount of the penalty for *market abuse*. The *FSA* and the *person* on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements in disciplinary actions, *ENF 13.7* provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FSA* and the *person* concerned reach an agreement. The same regime is to apply to agreements as to the amount of the penalty in *market abuse* cases.

...

21.7.6 G The FSA will consider any of the following factors ...

...

(11) (The timing of any agreement as to the amount of the penalty for the particular breach) The FSA and the person on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements in disciplinary actions, ENF 13.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement. The same regime is to apply to agreements as to the amount of the penalty in Part VI cases.

...

ENF TP 1.1 Transitional provisions applying to the Enforcement manual

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: Dates in force	(6) Handbook provision coming into force
...					
4	<u>ENF 13.3.3G(9), ENF 13.5.9G, ENF 13.7 (Discount for early settlement), ENF 14.7.4G(9), and ENF 21.7.6G(11)</u>	G	<u>These provisions (in summary, relating to the discount scheme) apply only to cases where investigators are appointed on or after 20 October 2005.</u>	<u>From 20 October 2005</u>	<u>20 October 2005</u>

...

## Annex E

### Amendments to the Decision Making manual

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

- 1.2.6 G Decisions whether to give a *statutory notice* and decisions associated with the *statutory notice* once it has been given (a "*statutory notice associated decision*", see DEC 4.1.2G) will be taken by a "decision maker". References to the "decision maker" concerning *statutory notice decisions* refer to decisions taken by:
- (1) the *Regulatory Decisions Committee (RDC)*; ~~or~~
  - (2) *FSA staff under executive procedures*; or
  - (3) *FSA staff under the settlement decision procedure.*
- 1.2.7 G *DEC 4.1 describes the allocation of decisions between the RDC and executive procedures. DEC 4.2 provides further information on the RDC. DEC 4.3 provides further information on executive procedures. DEC Appendix 1 explains settlement procedures and the mediation scheme for FSA enforcement cases. It includes a description of the circumstances in which decisions that would normally be made by the RDC will be made by FSA staff under settlement decision procedure.*
- 1.2.8 G The *FSA* will make regulatory decisions falling outside section 395 of the *Act*. These will include exercise of statutory powers which do not require *statutory notices* to be given, for example: when the *FSA* grants an application for a *Part IV permission* on the terms applied for (~~such decisions are made by internal staff procedures as described in AUTH 8.2.5 G to AUTH 8.2.8 G~~); when the *FSA* grants other applications; decisions on applications for *waivers*; decisions to give individual *guidance*; and decisions generally in the course of the *FSA's* oversight of regulated institutions. They also include decisions on recommendations by *FSA* staff to the *RDC*.

...

DEC 2 Annex 1G Statutory notice procedure: Warning notice and decision notice procedure

List of warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to <i>FSA</i> material apply to the powers listed in this table where indicated by an asterisk * (see <i>DEC 2.4</i> )			
Section of the Act	Description	Handbook reference	Decision maker
<del>52(6)(a)</del> / <del>52(9)(a)</del>	when the <i>FSA</i> is proposing/ <del>deciding</del> to grant an application for a <i>Part IV permission</i> with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for	<i>AUTH 3</i>	<del>RDC</del> / <del>e</del> <u>Executive procedures</u>
<del>52(6)(b)</del> / <del>52(9)(b)</del>	when the <i>FSA</i> is proposing/ <del>deciding</del> to grant an application to vary a <i>firm's Part IV permission</i> but, otherwise than as part of the application, to restrict the <i>Part IV permission</i> (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)	<i>SUP 6</i>	<del>RDC</del> / <del>e</del> <u>Executive procedures (Note 1)</u>
<del>52(7)</del> / <del>52(9)(e)</del>	when the <i>FSA</i> is proposing/ <del>deciding</del> to refuse an application for a <i>Part IV permission</i>	<i>AUTH 3</i>	<del>RDC</del> / <del>e</del> <u>Executive procedures</u>
<u>52(9)(a)</u>	<u>when the <i>FSA</i> is deciding to grant an application for a <i>Part IV permission</i> with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for</u>	<u><i>AUTH 3</i></u>	<u><i>RDC / executive procedures (Note 1)</i></u>
<u>52(9)(b)</u>	<u>when the <i>FSA</i> is deciding to grant an application to vary a <i>firm's Part IV permission</i> but, otherwise than as part of the application, to restrict the <i>Part IV permission</i> (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)</u>	<u><i>SUP 6</i></u>	<u><i>RDC / executive procedures (Note 1)</i></u>
<u>52(9)(c)</u>	<u>when the <i>FSA</i> is deciding to refuse an application for a <i>Part IV permission</i></u>	<u><i>AUTH 3</i></u>	<u><i>RDC / executive procedures (Note 1A)</i></u>
<del>52(7)</del> / <del>52(9)(e)</del>	when the <i>FSA</i> is proposing/ <del>deciding</del> to refuse an application to vary a <i>firm's Part IV permission</i>	<i>SUP 6</i>	<del>RDC</del> / <del>e</del> <u>Executive procedures (Note 1)</u>
<u>52(9)(c)</u>	<u>when the <i>FSA</i> is deciding to refuse an application to vary a <i>firm's Part IV permission</i></u>	<u><i>SUP 6</i></u>	<u><i>RDC / executive procedures (Note 1)</i></u>
<del>52(7)</del> / <del>52(9)(e)</del>	when the <i>FSA</i> is proposing/ <del>deciding</del> to refuse an application to cancel a <i>firm's Part IV permission</i>	<i>SUP 6</i>	<del>RDC</del> / <del>e</del> <u>Executive procedures</u>

52(9)(c)	<u>when the FSA is deciding to refuse an application to cancel a firm's Part IV permission</u>	SUP 6	<u>RDC / executive procedures (Note 1A)</u>
...			
62(2)/(3)	when the FSA is proposing/ <del>deciding</del> to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> under section 59 of the Act (in conjunction with an application for <i>Part IV permission</i> )	AUTH 6	<del>RDC</del> <u>Executive procedures</u>
62(3)	<u>when the FSA is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> under section 59 of the Act (in conjunction with an application for <i>Part IV permission</i>)</u>	AUTH 6	<u>RDC / executive procedures (Note 1A)</u>
62(2)/(3)	when the FSA is proposing/ <del>deciding</del> to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> (otherwise than in conjunction with an application for <i>Part IV permission</i> )	SUP 10	<del>RDC</del> <u>Executive procedures</u>
62(3)	<u>when the FSA is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> (otherwise than in conjunction with an application for <i>Part IV permission</i>)</u>	SUP 10	<u>RDC / executive procedures (Note 1A)</u>
...			
183(3)/186(1)	when the FSA is proposing/deciding to object to a change in <i>control</i> following receipt of a notice of <i>control</i>	SUP 11	<u>RDC/Executive procedures (Note 13)</u>
185(3)/(4)	when the FSA is proposing/deciding to approve a change in <i>control</i> following receipt of a notice of control but subject to conditions	SUP 11	<u>RDC/Executive procedures (Note 13)</u>
187(1)/(3) and 188(1)	when the FSA is proposing/deciding to object to a <i>person</i> who has failed to submit a notice of <i>control</i> or a notice on acquiring, or increasing, <i>control</i> , or to object to an existing <i>controller</i>	SUP 11	<u>RDC/Executive procedures (Note 13)</u>
...			

Note 1: The decision will be made by the *RDC* if it involves a fundamental (see *DEC 4.1.5G*) change to the nature of a *permission* and the applicant makes representations to the *FSA*.

Note 1A: The decision will be made by the *RDC* if the applicant makes representations to the *FSA*. If there are no representations, the decision will be made under *executive procedures*.

....

Note 13: The decision will be made under *executive procedures* unless the *RDC* is already considering or is shortly to consider a closely related matter and it seems appropriate to those making

the decision under *executive procedures* for the *RDC* to have responsibility for the decision, having regard to such factors as those listed in *DEC 1.2.9G*.

...

4.1.4 G Decisions to be taken by the RDC

The *RDC* has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the *FSA* proposes or takes any of the following actions:

(1) ~~to impose a *limitation* or a *requirement* which was not applied for, or specify a narrower description of *regulated activity* than that applied for, on the grant of a *Part IV permission*; [deleted]~~

...

(3) ~~to refuse an application to vary a *Part IV permission*, or to restrict a *Part IV permission* on the grant of a variation (by imposing a *limitation* or *requirement* which was not applied for or by specifying a narrower description of *regulated activity* than that applied for), in a way that would make a fundamental change (see *DEC 4.1.5G*) to the nature of the *Part IV permission* that would have been held had the application been granted in full (whether indefinitely, or for a limited period); [deleted]~~

(4) ~~to refuse an application for a *Part IV permission*, to refuse an application to cancel a *Part IV permission* or to cancel a *Part IV permission* on the *FSA*'s own initiative;~~

(4A) ~~to refuse an application for, or to revoke, a *small e-money issuer certificate* (see *ELM 8* (Small e-money issuers));~~

(5) ~~to refuse *approved person* status, or withdraw it *approved person status* under section 63 of the *Act* (Withdrawal of approval);~~

...

(25) to publish a statement censuring a *sponsor*; ~~and~~

(26) to impose a financial penalty or to issue a statement censuring a *person* for breach of any requirement set out in *LR*; ~~and~~

(27) to object to the acquisition or increase of *control* under section 186 of the *Act* (Objection to acquisition of control), to object to existing *control* under section 187 of the *Act* (Objecting to existing control) or to attach conditions to an approval to a change in *control* under section 185 of the *Act* (Conditions attached to approval) in circumstances where the *RDC* is already considering or is shortly to consider a closely related matter and it seems appropriate to those making the decision under *executive procedures* for the *RDC* to have responsibility for the decision, having regard to such factors as those

listed in DEC 1.2.9G.

4.1.4A     G     The RDC has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the FSA takes any of the following actions, but only if the action involves a fundamental (see DEC 4.1.5G) change to the nature of a *permission* and the applicant makes representations to the FSA:

(1)     to impose a *limitation* or a *requirement* which was not applied for, or specify a narrower description of *regulated activity* than that applied for, on the grant of a *Part IV permission*; and

(2)     to refuse an application to vary a *Part IV permission*, or to restrict a *Part IV permission* on the grant of a variation (by imposing a *limitation* or *requirement* which was not applied for or by specifying a narrower description of *regulated activity* than that applied for).

4.1.4B     G     The RDC has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the FSA takes any of the following actions but only if the applicant makes representations to the FSA:

(1)     to refuse an application for a *Part IV permission* or to refuse an application to cancel a *Part IV permission*;

(2)     to refuse an application for a *small e-money issuer certificate* (see ELM 8 (Small e-money issuers)); and

(3)     to refuse *approved person* status.

4.1.5     G     In DEC 2 Annex 1G, DEC 4.1.4G(2), ~~(3)~~ and (7), DEC 4.1.4AG and DEC 4.1.8G(5), making a fundamental change to the nature of a *permission* means:

...

...

4.1.7     G     Examples of matters decided by the RDC include:

(1)     deciding to give a *decision notice*, refusing an application to vary a *Part IV permission* to carry on *insurance business* or to *accept deposits* for the first time in circumstances where the applicant makes representations to the FSA; in these cases, the *firm* will normally have been required to complete parts of the application pack (SUP 6.4.14G);

(2)     deciding to give a *decision notice*, refusing an application to vary a *Part IV permission* to carry on *regulated activities* with *private*

customers for the first time in circumstances where the applicant makes representations to the FSA;

- (3) deciding to give a *decision notice*, refusing an application to vary a *Part IV permission* to remove a *requirement* to enable the *firm* to hold or control *client money* for the first time in circumstances where the applicant makes representations to the FSA; and
- (4) varying a *Part IV permission* on the FSA's own initiative by removing a *regulated activity* from a *firm's permission*.

4.1.8 G Examples of matters decided by *executive procedures* (where the FSA decides or is required to use the statutory powers in question rather than to achieve the action required in other ways, for example through individual *guidance* or securing the agreement of a *firm* to take action on a voluntary basis) include:

...

- (5) refusing an application to vary a *Part IV permission*, or ~~to restrict~~ restricting a *Part IV permission* on the grant of a variation (by imposing a *limitation* or *requirement* which was not applied for, or by specifying a narrower description of *regulated activity* than that applied for), in a way that would not make a fundamental change (see DEC 4.1.5G) to the nature of the *Part IV permission* that would have been held had the application been granted in full (indefinitely, or for a limited period) or in a way that would make such a fundamental change in circumstances where the applicant makes no representations to the FSA;
- (6) objecting to the acquisition or increase of *control* under section 186 of the *Act* (Objection to acquisition of control), objecting to existing *control* under section 187 of the *Act* (Objecting to existing control), or attaching conditions to an approval to a change in *control* under section 185 of the *Act* (Conditions attached to approval) unless the RDC is already considering or is shortly to consider a closely related matter and it seems appropriate to those making the decision under *executive procedures* for the RDC to have responsibility for the decision, having regard to such factors as those listed in DEC 1.2.9G, in which case the decision will be made by the RDC;
- (7) refusing a request for an *authorisation order* for an operator's proposed *AUT* or *ICVC* (if the operator is an operator of an existing *AUT* or *ICVC*), refusing approval of a *scheme* becoming a *recognised scheme* authorised in a designated territory under section 270 of the *Act* or refusing an application in respect of a proposed individually recognised overseas *scheme* under section 272 of the *Act*;

...

...

4.2 The Regulatory Decisions Committee

...

4.2.4 G The *RDC* is supported by the *RDC Secretariat Office*. The *RDC Secretariat Office* is separate from *FSA* staff involved in making recommendations to the *RDC*.

...

4.2.10 G (1) If a member of the *RDC* has a potential conflict of interest in any matter before the *RDC* he will disclose the conflict to the Chairman of the *RDC* (or if he is the Chairman of the *RDC*, to the Chairman or Deputy Chairman of the *FSA*). He will also disclose the conflict to the *RDC Secretariat Office*.

...

4.2.11 G The *RDC Secretariat Office* will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

...

4.2.18 G The *FSA RDC Office, in conjunction with the Chairman or a Deputy Chairman of the RDC*, will fix a date or dates for a meeting to consider the representations and to decide:

- (1) whether to take the action proposed;
- (2) if the action has been taken, whether to rescind the action; and
- (3) in either case, whether to take the action in a different way.

4.2.19 G The *RDC Secretariat Office* will ensure that a record is kept of:

- (1) who took the decision;
- (2) the representations made to the *RDC*;
- (3) the material considered by the *RDC*;
- (4) the nature of the decision;
- (5) the reasons for the decision; and
- (6) the dates on which the decision was taken and then communicated by the *FSA* to the *person* concerned.

...

4.3.13 G A *statutory notice* given under *executive procedures* will identify the decision maker. A decision to give a ~~*decision notice*~~ or second *supervisory notice* will normally be made by the same decision maker (that is, the individual or committee) who made the decision to give the ~~*warning notice*~~ or first *supervisory notice*.

...

Modified procedures in straightforward cases

- 4.5.16 G The making of *statutory notice decisions* and *statutory notice associated decisions* falling within DEC 4.1.4G (Decisions to be taken by the RDC) which, in the opinion of the Chairman or a Deputy Chairman of the RDC, are straightforward (see DEC 4.5.17G), may be discharged, on behalf of the RDC, by the Chairman or a Deputy Chairman alone or together with one other member of the RDC if, in the opinion of the Chairman or Deputy Chairman, this is appropriate, so that they will be made by modified rather than full RDC procedure.
- 4.5.17 G The Chairman or a Deputy Chairman of the RDC may decide, whether or not following a recommendation from FSA staff, that a decision falling within DEC 4.5.16G is a straightforward decision, having regard to all the circumstances of the case, including those factors listed in DEC 1.2.9G. However, a *statutory notice decision* falling within DEC 4.5.16G is not a straightforward decision if the *person* concerned makes representations to the RDC and, in such a case, the decision will be made by full RDC procedure.

...

DEC Appendix 1

Settlement procedure and mediation scheme for FSA enforcement cases

- 1.1.1 G *A person* who is or may be subject to enforcement action may discuss the proposed action with FSA staff through settlement discussions. Settlement discussions may take place on an informal basis at any time during the enforcement process. Where FSA staff have recommended that enforcement action be taken against a *person*, the mediation scheme will be available to those *persons* against whom action is proposed where settlement discussions are, in the opinion of either party, unlikely to lead to an agreed settlement. This appendix sets out the procedure for settlement and the framework of the mediation scheme, and explains the special procedure for making *statutory notice decisions* where a settlement is reached.

1.2 Settlement

- 1.2.1 G If a *person* who is or may be subject to enforcement action wishes to discuss the proposed action with FSA staff on an informal basis, he may do so at any time during the enforcement process. This might be before the giving of a *warning notice*, before a *decision notice*, or even after referral of the matter to the *Tribunal*. The FSA and the *person* concerned should agree that discussions will take place on a "without prejudice" basis, and that neither party may subsequently rely on admissions or statements made in the context of the discussions, or documents recording the discussions. Neither FSA staff nor the *person* concerned may disclose to the RDC any such admissions or statements made by the other.

- 1.2.2 G The terms of any proposed settlement will:
- (1) be put in writing and be agreed by *FSA* staff and the *person* concerned;
  - (2) include a statement of the facts and any breaches admitted by the *person* concerned and the proposed action to be taken; and
  - (3) be considered in accordance with the *settlement decision procedure* set out in *DEC App 1.2.2AG* by the *RDC*.
- 1.2.2A G
- (1) The fact that the *person* subject to enforcement action agrees to a financial penalty or other outcome will not usually obviate the need for a *statutory notice* recording the *FSA*'s decision to take that action.
  - (2) Where, however, the *person* subject to enforcement action agrees not to contest the content of a proposed *statutory notice*, the decision whether to give that *statutory notice* will be taken by senior *FSA* staff.
  - (3) The decision will be taken jointly by two members of the *FSA*'s executive of at least director of division level (the "*settlement decision makers*").
  - (4) One of the directors taking the decision will usually be, but need not be, the director of Enforcement. (In exceptional cases, the director of Enforcement may have been directly involved in establishing the evidence on which the decision is based and would not therefore be able to participate (see section 395(2) of the *Act*.)
  - (5) "Statutory notice" for these purposes:
    - (a) means any *statutory notice* the giving of which would otherwise require a decision by the *RDC*;
    - (b) includes a *statutory notice associated decision*.
- 1.2.2B G
- (1) The *settlement decision makers* will often participate in the without prejudice discussions exploring possible settlement. Their involvement may facilitate agreement between *FSA* staff and the *person* concerned and avoid the delay that might otherwise result from needing to explain the basis for any settlement reached.
  - (2) If the *settlement decision makers* have not been involved in the discussions, but an agreement has been reached, they may ask to meet the relevant *FSA* staff or the *person* concerned in order to assist in the consideration of the proposed settlement.
- 1.2.3 G ~~Having considered the terms of the proposed settlement, the *RDC* may ask to meet the relevant *FSA* staff or the *person* concerned in order to assist in its consideration of the proposed settlement. The *RDC* may~~ The *settlement decision makers* may:

- (1) accept the proposed settlement by issuing a *decision notice*, second *supervisory notice* or (where appropriate) *notice of discontinuance* based on the terms of the settlement; or
- (2) decline the proposed settlement;

whether or not the ~~RDC has~~ settlement decision makers have met with the relevant *FSA* staff or the *person* concerned.

- 1.2.4 G (1) ~~Where the RDC declines the proposed settlement, it may invite FSA staff and the person concerned to enter into further discussions to try to achieve a settlement. The RDC may extend the period for representations (if they have not already done so), or, if representations have already been made, the RDC will proceed to give a decisions notice. Where the settlement decision makers decline to issue a statutory notice despite the proposed settlement, they may invite FSA staff and the person concerned to enter into further discussions to try to achieve an outcome the settlement decision makers would be prepared to endorse.~~
- (2) However, if the proposed action by the FSA has been submitted to the RDC for consideration, it will be for the RDC to decide:
- (a) whether to extend the period for representations in response to a warning notice; or
  - (b) if representations have been made in response to a warning notice, whether to proceed to give a decision notice.

...

- 1.3.2 G As mediation will be on a "without prejudice" basis, admissions made by the parties in the course of the mediation and documents prepared for the purposes of the mediation may not be referred to in subsequent proceedings relating to the dispute if the mediation is unsuccessful. However, if the mediation results in a proposed settlement of the dispute which is approved by the ~~RDC~~ settlement decision makers, the terms of the proposed settlement will form the basis of a *decision notice*, and subsequent *final notice*, or second *supervisory notice* or (where appropriate) *notice of discontinuance*, given by the *FSA*.

- 1.3.3 G Following the issue of a *warning notice* the *person* will have access to certain material on which the *FSA* has relied in deciding to commence disciplinary proceedings (see *DEC 2.4.2G*). The period following the issue of the *warning notice* is therefore a natural point for ~~informal settlement discussions to take place in an attempt to resolve the matter. Mediation is intended to supplement those discussions where mediation if~~ the parties consider that the involvement of a neutral mediator is required to facilitate further progress in any settlement discussions.

...

- 1.6.1 G If a case is submitted to mediation, the parties will send a joint mediation notice in an agreed form to:
- (1) the mediation provider; and
  - (2) if the mediation is between the giving of the *warning notice* and the *decision notice*, the secretary to the *RDC Office*.

...

- 1.7.8 G (1) ...
- (2) Under the mediation scheme, however, confidentiality will be limited in that:
- (a) if any information indicating potentially criminal conduct is disclosed to the mediator, the mediator will not be required to keep that matter confidential (and may choose to terminate the mediation);
  - (b) the terms of any settlement reached will, if approved by the *settlement decision makers RDC*, be incorporated in a *decision notice*, and subsequent *final notice* or second *supervisory notice*, or (where appropriate) *notice of discontinuance* which may be made public;

...

- 1.7.9 G (1) A key feature of mediation is the requirement that those who attend the mediation on behalf of each party have full authority to agree proposed settlement terms. ~~In general, the *FSA's decision making procedure for regulatory enforcement cases* requires that the *RDC* approve any decision to take or refrain from taking disciplinary action. (The exception is some cases involving late submission of reports, see *DEC 4.5.2G* to *DEC 4.5.6G*) Therefore, the *RDC* must approve any proposed settlement terms agreed at the mediation.~~
- (2) The *FSA* will be represented during the mediation proceedings and at the mediation itself by the *FSA* staff who initially recommended that disciplinary action be taken. ~~In order to minimise the risk that the proposed settlement terms agreed at the mediation will not be approved, the *FSA* will endeavour to ensure that the relevant members of the *RDC*, or as many of its relevant members as possible, are available for consultation by telephone during the mediation. This is to enable a clear indication to be given to the parties and the mediator whether the *RDC* will find the proposed settlement terms acceptable.~~

- (3) One or both of the *settlement decision makers* who would make the decision as to the giving of the *statutory notice* or notices in the event of a settlement may also attend. If their attendance is impracticable, the *FSA* will endeavour to ensure that the *settlement decision makers* are available for consultation during the mediation. This is to enable a clear indication to be given to the parties and the mediator whether the *settlement decision makers* will find the proposed settlement terms acceptable. However, no involvement of the *RDC* in the mediation will in any way compromise its right subsequently to decline to approve the settlement terms.
- (4) ~~If the *RDC* decides to decline to approve the settlement terms agreed at the mediation, the parties may, with the consent of the *RDC*, return to the mediation process if they wish to explore further settlement options. If they do, the *RDC* will ensure that its views are clearly stated as to why the terms previously agreed were not acceptable. [deleted]~~

...

- 1.10.3 G If a settlement proposal is agreed, it will be considered in accordance with the *settlement decision procedure* by the *RDC*, which will decide whether to approve it. If it is approved, a *decision notice*, and subsequently a *final notice*, will be issued reflecting the terms of the agreement reached. If it is not approved, ~~the parties may return to the mediation only with the *RDC*'s consent. If the *RDC* does not consent,~~ the case will return to the point it had reached in the enforcement process prior to the mediation.

...

DEC App 1.13      Position of third parties on settlement

- 1.13.1      G      (1)      *DEC 2.4.7G* to *DEC 2.4.12G* set out the *FSA*'s approach to giving third parties copies of *statutory notices* pursuant to section 393 of the *Act*.
- (2)      The decision to give a *warning notice* or a *decision notice* to a third party is a *statutory notice associated decision*.
- (3)      In cases therefore where the decision to give a *warning notice* or *decision notice* is taken by *settlement decision makers*, those decision makers will decide whether a copy of the notice should be given to a third party in accordance with section 393 of the *Act*. Any representations made by the third party in response to a *warning notice* will be considered by the *settlement decision makers*.

## Annex F

### Amendments to the Credit Unions sourcebook

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

...

13.3.3 G 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*.

...

13.5.4 G The *FSA's Authorisation* manual (*AUTH*) explains in full the circumstances in which *authorisation* is required, the *authorisation* process and the *FSA's* powers in relation to *authorisation*. The key chapters of *AUTH* for a *person* applying, or considering applying, to the *FSA* to become a *credit union* with a *Part IV permission to accept deposits* are:

- (1) *AUTH 3: Applications for Part IV permission;*
- (2) *AUTH 4: Authorisation fees; and*
- (3) *AUTH 6: Approved persons; and*
- (4) ~~*AUTH 8: Determining applications.*~~

...

CRED Section 13.8 is deleted in its entirety. The deleted text is not shown struck through.

CRED 13.8 [deleted]

## Annex G

### Amendments to the Electronic Money sourcebook

In this Annex, striking through indicates deleted text.

...

- 8.3.9 G The application for a *small e-money issuer certificate* must be determined by the *FSA* within six *months* from when it receives the completed application or, if the application is incomplete, within 12 *months*. The applicant may withdraw his application by written notice. The *FSA* must give the applicant written notice of the grant of the application or a *warning notice* if it proposes to refuse the application. *Guidance* on the decision making procedures is given in ~~*AUTH 8 (Determining applications)*~~ and *DEC 2* (Statutory notice procedure: warning notice and decision notice procedure).

...

**COMPLAINTS AGAINST THE FSA SCHEME (AMENDMENT NO 2)  
INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) paragraph 7 of Schedule 1; and
  - (2) section 157(1) (Guidance).

**Commencement**

- B. This instrument comes into force on 1 November 2005.

**Amendments to the Complaints against the FSA Sourcebook**

- C. The Complaints against the FSA Sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Complaints against the FSA Scheme (Amendment No 2) Instrument 2005.

By order of the Board  
19 October 2005

## Annex

### Amendments to the Complaints against the FSA Sourcebook

In this Annex, underlining indicates new text.

...

- 1.3.4      G    (1)    In circumstances where the *Complaints Commissioner* is unable to investigate a *complaint*, the *FSA* will, subject to the approval of the Treasury, appoint an individual to carry out the functions conferred on the *Complaints Commissioner* by the *complaints scheme*. For example, the *Complaints Commissioner* may be incapacitated by a sudden, but temporary illness or his investigation of a *complaint* may give rise to a conflict of interests.
- (2)    In appointing the individual, the *FSA* will ask the President of the Law Society to nominate a solicitor.
- (3)    The *complaints scheme* will apply in full to an investigator appointed under *COAF 1.3.4G(1)* and the *Complaints Commissioner* will have no interest in investigating that *complaint*.

...

**CIVIL PARTNERSHIPS INSTRUMENT 2005****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 73A (Part 6 rules);
  - (2) section 138 (General rule-making power);
  - (3) section 141 (Insurance business rules);
  - (4) section 145 (Financial promotion rules);
  - (5) section 156 (General supplementary powers);
  - (6) section 157(1) (Guidance);
  - (7) section 213 (The compensation scheme); and
  - (8) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 5 December 2005.

**Amendments to the Handbook**

- D. All references in the Handbook to marriage and related terms (including “spouse” and “widow”) are changed to add the equivalent term for civil partnership, except:
- (1) references to “widow” and “widower” in the definition of “investment business compensation scheme” in the Glossary of definitions;
  - (2) references to “husband and wife” in the definition of “regulated mortgage contract” in the *Glossary*, and in *SUP 16 Ann 19BG 4(iv)(a)(ii)(B)* and *PERG 4.4.9G*;
  - (3) the reference to a “surviving spouse” in *COB 3 Ann 4 6 Table D (1)(e)*;
  - (4) the reference to a “spouse” in *COB 6.5.53R*; and
  - (5) the reference to a “spouse” in *COB 6 Ann 1R*.
- E. The General Provisions (GEN) are amended in accordance with the Annex to this Instrument.

**Citation**

- F. This instrument may be cited as the Civil Partnerships Instrument 2005.

By order of the Board  
17 November 2005

## Annex

### Amendments to the General Provisions

In this Annex, underlining indicates new text.

#### Civil partnership - references to stepchildren etc

- 2.2.12A    R    Any reference in a provision of the *Handbook* made before 5 December 2005 to a stepchild, step-parent, stepdaughter, stepson, stepbrother or stepsister is to be interpreted in accordance with section 246 of the Civil Partnership Act 2004.
- 2.2.12B    G    GEN 2.2.12AR and sections 246 and 247 of the Civil Partnership Act 2004 amend each reference in the *Handbook* to a stepchild, step-parent and certain related expressions to take account of civil partnerships. As a result a reference (for example) to a stepchild of a person (A) includes a reference to the child of the civil partner of A where that child is not A's child.

**INTEGRATED PRUDENTIAL SOURCEBOOK (AMENDMENT)  
INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 December 2005.

**Amendments to the Integrated Prudential sourcebook**

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

**Citation**

- E. This instrument may be cited as the Integrated Prudential Sourcebook (Amendment) Instrument 2005.

By order of the Board  
17 November 2005

## Annex

### Amendments to the Integrated Prudential sourcebook

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

#### PRU TP 1.1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions coming into force
...					
5A	<i>PRU 9.4.5R and PRU 9.4.7R</i>	R	<i>PRU 9.4.5R and PRU 9.4.7R have effect in respect of the use by a firm of the services of another person consisting of insurance mediation and provided from an establishment in an EEA State that has not implemented Article 3 (Registration) of the IMD, as if the condition in paragraph (4) of PRU 9.4.5R and the condition in paragraph (2) of PRU 9.4.7R were a condition that the firm has no reason to doubt the good repute, competence and financial standing of that person.</i>	<u>from 14 January 2005</u> <del>to 14 January 2006</del> <u>until the implementation of Article 3 of the IMD by the relevant EEA State</u>	14 January 2005
...					

**INTEGRATED PRUDENTIAL SOURCEBOOK (INSURERS AND OTHER  
AMENDMENTS) (NO 2) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 31 December 2005.

**Amendments to the Glossary of definitions**

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

**Amendments to the Integrated Prudential sourcebook**

- E. The Integrated Prudential sourcebook is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Integrated Prudential Sourcebook (Insurers and Other Amendments) (No 2) Instrument 2005.

By order of the Board  
17 November 2005

## Annex A

### Amendments to the Glossary of definitions

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

*approved credit institution* ~~an institution~~ a credit 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 Consolidation Directive*.

...

*asset management company* (for the purpose of *ELM* and *PRU* ~~8 (Group risk)~~ and in accordance with Article 2(5) of the *Financial Groups Directive* (Definitions))...

...

*collateral* (1) ...

(2) ...

(3) (in *PRU*):

(a) ~~an asset that is subject to~~ (in relation to any transaction) a mortgage, charge, pledge or other security interest or, as the context may require, an asset that is subject to a mortgage, charge, pledge or other security interest; and

(b) (in relation to a *stock lending*, *repo* or *derivative* transaction only):

(i) a transfer of assets (other than by way of sale) subject to a right of the transferor to have transferred back to it the same, or equivalent, assets or, as the context may require, the assets so transferred by the original transferor; or

(ii) a letter of credit;

where the assets are transferred, or the letter of credit is issued, to secure the performance of the obligations of one of the parties to that transaction.

...

- counterparty (1) ...
- (2) ...
- (d) any group of companies excluding:
- (i) (for the purposes of PRU 3.2) any companies within the group which are subsidiary undertakings of the insurer and which fall within PRU 1.3.31R; and
  - (ii) (for all other purposes) any companies within the group which are subsidiary undertakings of the insurer; or
- ...

...

- gross written premiums the amounts required by the *insurance accounts rules* to be shown in the profit and loss account of an *insurer*;
- (a) (for general insurance business) at general business technical account item I.1.(a), or for class IV insurance business, at long-term business technical account item II.1(a); and
  - (b) (for long-term insurance business) at long term business technical account item II.1.(a).

...

- guarantee fund (1) (a) ...
- (b) where the *firm* is required to calculate a *UK MCR* or an *EEA MCR* under *PRU 7.6*, for the purposes of that section ~~the reference in (1)(a)~~ the reference to the general insurance capital requirement is replaced by UK MCR or EEA MCR, as appropriate, and the reference to the base capital resources requirement is replaced by the amount which is one half of the base capital resources requirement applicable to the firm set out in PRU 2.1.26R.
- (2) (a) ...
- (b) where the *firm* is required to calculate a *UK MCR* or an *EEA MCR* under *PRU 7.6*, for the purposes of that section

~~the reference in (2)(a) the reference to the *long-term insurance capital requirement* is replaced by *UK MCR* or *EEA MCR*, as appropriate, and the reference to the *base capital resources requirement* is replaced by the amount which is one half of the *base capital resources requirement* applicable to the *firm* set out in *PRU 2.1.26R*.~~

...

*long-term insurance liabilities* ~~insurance~~ liabilities arising from *long-term insurance business*.

...

- regulated market* (1) (a) ...
- (b) ...
- (2) (in *PRU*) ~~a market which is characterised by:~~
- (a) ~~regular operation~~ a market as defined in (1); and
- (b) ~~the fact that regulations issued or approved by the appropriate authority of the state where the market is situated~~ a market situated outside the *EEA States* which is characterised by the fact that:
- (i) ~~define the conditions for the operation of and access to the market~~ it meets comparable requirements to those set out in (1)(a)(ii), (iii) and (iv); and
- (ii) ~~define the conditions to be satisfied by a *financial instrument* in order for it to be dealt in on the market;~~ and the *financial instruments* dealt in are of a quality comparable to those in a regulated market in the *United Kingdom*.
- (iii) ~~require compliance with reporting and transparency requirements comparable to those laid down in articles 20 and 21 of the *Investment Services Directive*; and~~
- (e) ~~in the case of a market situated outside the *EEA States*, the fact that the *financial instruments* dealt in are of a quality comparable to those in a regulated market in the *United Kingdom*.~~

## Annex B

### Amendments to the Integrated Prudential sourcebook

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

1.2.34 G Certain risks such as systems and controls weaknesses may not be adequately addressed by, for example, holding additional capital and a more appropriate response would be to rectify the weakness. In such circumstances, the amount of financial resources required to address these risks, ~~which may not be adequately addressed by holding additional capital, will~~ might be zero. However, a *firm* should consider whether holding additional capital might be an appropriate response until the identified weaknesses are rectified. The *firm* must, in accordance with *PRU* 1.2.37R, document the approaches taken to manage these risks.

...

1.3.36 R For the purposes of *PRU* 1.3.35R(1), the regulatory surplus value of an *undertaking* referred to in *PRU* 1.3.31R(1) or *PRU* 1.3.31R(3) is, subject to *PRU* 1.3.37R, the sum of:

- (1) ~~the tier one capital resources~~ total capital after deductions of the *undertaking*; ~~plus~~ less
- (2) ~~the tier two capital resources of the~~ *undertaking*; less
- (3) the individual capital resources requirement of the *undertaking*.

1.3.37 R (1) Subject to *PRU* 1.3.38R, for the purposes of *PRU* 1.3.36R, only the relevant proportion of the:

- (a) ~~tier one capital resources~~ total capital after deductions of the *undertaking*; and
- (b) ~~tier two capital resources of the~~ *undertaking*;
- (e) individual capital resources requirement of the *undertaking*;

is to be taken into account.

- (2) ...

1.3.38 R If the individual capital resources requirement of an *undertaking* in *PRU* 1.3.31R(1) that is a *subsidiary undertaking* exceeds ~~the sum of its tier one capital resources and tier two capital resources~~ total capital after deductions,

the full amount of the items referred to in *PRU* 1.3.37R(1) are to be taken into account for the purposes of *PRU* 1.3.36R.

1.3.39 R For the purposes of *PRU* 1.3.35R to *PRU* 1.3.38R:

- (1) in relation to an *undertaking* referred to in *PRU* 1.3.31R(1):
  - (a) ...
  - (b) ~~the following expressions are to be construed in accordance with *PRU* 8.3.37R~~ total capital after deductions means:
    - (i) ~~tier one capital resources~~ when used in relation to a regulated related undertaking that is subject to *PRU* 2.2.14R, the total capital after deductions (as calculated at stage M of the calculation in *PRU* 2.2.14R) of the undertaking; and
    - (ii) ~~tier two capital resources~~ when used in relation to a regulated related undertaking that is not subject to *PRU* 2.2.14R, the total capital after deductions calculated as if that undertaking were required to calculate its total capital after deductions in accordance with stage M of the calculation in *PRU* 2.2.14R, but with such adjustments being made to secure that the undertaking's calculation of its total capital after deductions complies with the relevant sectoral rules applicable to it; and
  - (c) ineligible surplus capital has the meaning given by *PRU* 8.3.67R;
- (2) in relation to an *undertaking* referred to in *PRU* 1.3.31R(3), ~~the following expressions are to be construed as if that undertaking were an insurance holding company:~~
  - (a) the individual capital resources requirement is zero; and
  - (b) ~~tier one capital resources; and~~ the total capital after deductions means the total capital after deductions of the undertaking calculated as if the undertaking were an insurance holding company required to calculate its total capital resources in accordance with *PRU* 2.2.14R but with such adjustments being made to secure that the undertaking's calculation of its total capital after deductions complies with the sectoral rules for the insurance sector.

(c) ~~tier two capital resources. [deleted]~~

...

2.1.25 R The amount of a *firm's base capital resources requirement* is set out in Table 2.1.26R. If a *firm* falls within more than one of the descriptions of type of *firm* set out in Table 2.1.26R, its *base capital resources requirement* is the highest amount set out against the different types of *firm* within whose description it falls.

2.1.26 R Table: Base capital resources requirement

Firm type			Amount: Currency equivalent of
<i>General insurance business</i>			
	Liability insurer (classes 10-15)	Directive mutual	€2.25 million
		Non-directive insurer	€300,000
		<del>Overseas firm</del>	<del>€1.5 million</del>
		Other	€3 million
	Other insurer	Directive mutual	€1.5 million
		Non-directive insurer (classes 1 to 8, 16 or 18)	€225,000
		Non-directive insurer (classes 9 or 17)	€150,000
		<del>Overseas firm</del>	<del>€1 million</del>
		Other	€2 million

<i>Long-term insurance business</i>			
	<i>Mutual</i>	Directive	€2.25 million
		<i>Non-directive</i>	€600,000
	<i>Overseas firm</i>		€1.5 million
	Any other insurer		€3 million

...

2.1.27 R (1) Subject to ~~(2)~~ and (1A) to (3), the amount of the *base capital resources requirement* specified in the last column of the table in PRU 2.1.26R for a firm which is not a *non-directive insurer* will increase each year, starting on the review date of 20 September 2005 (and annually after that), by the percentage change in the European index of consumer prices (comprising all EU member states, as published by Eurostat) from 20 March 2002, to the relevant review date, rounded up to a multiple of €100,000.

(1A) In the case of a mutual, the amount of the increased base capital resources requirement will be three-quarters of the amount that would apply if it were not a mutual.

(2) ...

(3) The increase will take effect 30 days after the EU Commission has informed the European Parliament and Council of its review and the increased amount ~~relevant percentage change~~.

...

2.2.7 G *Tier two capital* includes forms of capital that do not meet the requirements for permanency and absence of fixed servicing costs that apply to *tier one capital*. *Tier two capital* includes, for example:

(1) capital which is perpetual (that is, has no fixed term) but cumulative (that is, servicing costs cannot be waived at the issuer's option, although they may be deferred – for example cumulative *preference shares*); only perpetual capital instruments may be included in *upper tier two capital*; and

(2) capital which is not perpetual (that is, it has a fixed term) ~~and~~ or which may ~~also~~ have fixed servicing costs that cannot generally be either waived or deferred, for example, most subordinated debt. Such capital should normally be of a medium to long-term maturity (that

is, an original maturity of at least five years). Dated capital instruments are included in *lower tier two capital*.

...

2.2.14 R Table: Capital resources (see *PRU 2.2.12R*)

	Related text	Included in the calculation of capital resources
		A ✓ denotes that the item is included in the calculation of a <i>firm's capital resources</i> ; a ✗ denotes that the item is not included in the calculation of a <i>firm's capital resources</i> .
(A) Core tier one capital		
...		
Fund for future appropriations	<del>None</del> <u><i>PRU</i></u> <u>2.2.81AR</u>	✓
...		
(G) Upper tier two capital		
Perpetual cumulative preference shares	<i>PRU</i> 2.2.101R to <u><i>PRU</i></u> <u>2.2.121R</u>	✓
Perpetual subordinated debt	<i>PRU</i> 2.2.101R to <u><i>PRU</i></u> <u>2.2.121R</u>	✓
Perpetual subordinated securities	<i>PRU</i> 2.2.101R to <u><i>PRU</i></u> <u>2.2.121R</u>	✓

(H) Lower tier two capital

Fixed term <i>preference shares</i>	<i>PRU</i> 2.2.108R to <i>PRU</i> <u>2.2.124R</u>	✓
Fixed term subordinated debt	<i>PRU</i> 2.2.108R to <i>PRU</i> <u>2.2.124R</u>	✓
Fixed term subordinated securities	<i>PRU</i> 2.2.108R to <i>PRU</i> <u>2.2.124R</u>	✓

...

2.2.17 R ...

with the sum of the items listed at stages A, B, G and H in PRU 2.2.14R less the sum of the items listed at stage E in *PRU 2.2.14R*.

2.2.18 R ...

with the sum of the items listed at stages A, B, G and H in PRU 2.2.14R less the sum of the items listed at stage E in *PRU 2.2.14R*.

2.2.18A R In *PRU 2.2.17R* and *PRU 2.2.18R*:

- (1) items listed at stage B in *PRU 2.2.14R* may be included notwithstanding *PRU 2.2.20R(1)*;
- (2) *innovative tier one capital* that meets the conditions (other than *PRU 2.2.108R(11)*) for it to be included as *upper tier two capital* at stage G in *PRU 2.2.14R* may be treated as an item listed at stage G; and
- (3) a *firm* must exclude from the calculation the higher of the following:
  - (a) the amount (if any) by which the sum of the items listed at stages G and H in *PRU 2.2.14R* exceeds the total (net of deductions) of the remaining constituents of adjusted stage M; and

(b) the amount (if any) by which the sum of the items listed at stage H in PRU 2.2.14R exceeds one-third of the total (net of deductions) of the remaining constituents of adjusted stage M:

where adjusted stage M means the amount calculated at stage M of the calculation in PRU 2.2.14R less the amount of any innovative tier one capital that is not treated as upper tier two capital for the purpose of PRU 2.2.17R or PRU 2.2.18R, as the case may be.

...

2.2.22 G R ~~The amount of any capital item excluded from a firm's tier one capital resources under PRU 2.2.20R may form part of its tier two capital resources subject to the limits in PRU 2.2.23R.~~

(1) A firm may, subject to the limits in PRU 2.2.23R, include in its tier two capital resources any capital item excluded from its tier one capital resources under PRU 2.2.20R which meets the conditions for it to be included as tier two capital at stage G or H in PRU 2.2.14R.

(2) For the purpose of (1), the requirement to obtain a legal opinion in PRU 2.2.108R(11) does not apply.

...

2.2.24 R At least 75% of a firm's MCR must be accounted for by the sum of:

(1) the amount calculated at stage A plus, notwithstanding PRU 2.2.20R(1), the amount calculated at stage B less the amount calculated at stage E of the calculation in PRU 2.2.14R; and

(2) the amount calculated at stage G of the calculation in PRU 2.2.14R.

2.2.24A R In PRU 2.2.24R the amount of any innovative tier one capital that meets the conditions for it to be included as upper tier two capital at stage G in PRU 2.2.14R may be included in the amount calculated at stage G.

...

2.2.29 R Subject to PRU 2.2.30R, an item of capital in a firm complies with PRU 2.2.27R(3) if:

...

(7) the firm has the right to choose whether or not is under no obligation

to pay a *coupon* on it in cash at any time; and

- (8) the description of its characteristics used in its marketing is consistent with the characteristics required to satisfy *PRU 2.2.29R(1)* to (7) and, where it applies, *PRU 2.2.93R*.

...

2.2.36 R *Permanent share capital* means an item of capital which (in addition to satisfying *PRU 2.2.29R*) meets the following conditions:

...

- (2) any *coupon* on it is not cumulative, and the *firm* ~~has both the right to choose whether or not~~ is under no obligation to pay a *coupon* and has the right to choose the amount of ~~that any *coupon* that it pays;~~ and

...

...

2.2.38 R In relation to a perpetual non-cumulative *preference share* which is redeemable, a *firm* may not include it in its *tier one capital resources* unless its contractual terms are such that:

- (1) ...
- (2) the *firm* cannot exercise that redemption right:
- (a) ~~on or~~ before the fifth anniversary of its date of issue;

...

...

2.2.47 G ...

- (2) Under *PRU 2.2.29R(7)*, the *firm* ~~has the right not~~ is not obliged to pay a *coupon* in cash at any time.

...

2.2.48 G *PRU 2.2.36R(2)* says that a capital instrument on which a cumulative *coupon* is payable must not be included in a *firm's permanent share capital*. The payment of a *coupon* must be purely discretionary. There must be no obligation to pay a *coupon* and the *firm* must be able to choose the amount

of any coupon paid.

...

2.2.50 R A perpetual non-cumulative *preference share* may be included at stage B of the calculation in *PRU 2.2.14R* if:

...

(2) any *coupon* on it is not cumulative, and the *firm* ~~has the right to choose whether or not~~ is under no obligation to pay a *coupon* in all any circumstances;

...

...

2.2.58 R A *firm* wishing to issue an *innovative tier one instrument* must obtain ~~an~~ a properly reasoned legal opinion from Queen's Counsel or, ~~or~~ where the opinion relates to the law of a jurisdiction outside the *United Kingdom*, from a lawyer in that jurisdiction of equivalent status, confirming that the criteria in *PRU 2.2.29R(5)* and *PRU 2.2.31R* are met.

...

2.2.63 R If a *potential tier one instrument* is or may become subject to a *step-up*, a *firm* must not include it in its *tier one capital resources* if the amount of the *step-up* as calculated as at the date of issue of the instrument exceeds or may exceed:

...

...

2.2.76 R Negative amounts, including any interim net losses, must be deducted from profit and loss account and other reserves ~~*tier one capital resources*~~.

...

#### Fund for future appropriations

2.2.81A R The fund for future appropriations means the fund of the same name required by the *insurance accounts rules*, comprising all funds the allocation of which either to *policyholders* or to shareholders has not been determined by the end of the *financial year*, or the balance sheet items under *international accounting standards* which in aggregate represent as nearly as possible that fund.

...

2.2.86 R For the purposes of *PRU 2.2.14R*, a *firm* must deduct from total *capital resources* the value of any asset which is not an *admissible asset* as listed in *PRU 2 Ann 1R*, unless the asset is held to cover *property-linked liabilities* or *index-linked liabilities* under *PRU 4.2.57R* or *PRU 4.2.58R*.

...

2.2.98 G *Tier two capital resources* is split into upper and lower tiers. ~~The principal~~ A major distinction between *upper* and *lower tier two capital* is that only perpetual instruments may be included in *upper tier two capital* whereas dated instruments, such as fixed term *preference shares* and dated subordinated debt, are included in *lower tier two capital*.

...

2.2.101 R A capital instrument must meet the following conditions before it can be included in a *firm's upper tier two capital resources*:

...

(3) the contractual terms of the instrument must provide for the *firm* to have the option to defer any interest payment in cash on the debt; ~~and~~

(4) the contractual terms of the instrument must provide for the loss-absorption capacity of the debt and unpaid interest, whilst enabling the *firm* to continue its business; and

(5) the contractual terms of the instrument must not provide for the instrument to be redeemable or the debt to be repayable on notice from the holder.

2.2.101 R Where a capital instrument meets *PRU 2.2.101R*, and notice of the  
A redemption or repayment of that instrument has been given by the *firm* in accordance with *PRU 2.2.116AR*, the *firm* must no longer include that instrument in its *tier two capital resources*.

...

2.2.105 R A *firm* wishing to issue an *upper tier two instrument* other than a perpetual ~~cumulative~~ *preference share* must obtain ~~an~~ a properly reasoned legal opinion from Queen's Counsel or, ~~or~~ where the opinion relates to the law of a jurisdiction outside the *United Kingdom*, from a lawyer in that jurisdiction of equivalent status, confirming that the criteria in *PRU 2.2.101R(4)* are met.

...

~~Lower tier two capital~~

- 2.2.107 G ~~Capital instruments that meet the general conditions described in PRU 2.2.108R may be included in lower tier two capital resources. [deleted]~~

General conditions for eligibility as tier two capital

- 2.2.108 R A capital instrument must not form part of the *tier two capital resources* of a *firm* unless it meets the following conditions:

...

- (5) in addition to the requirement about repayment in (1), the debt must not become due and payable before its stated final maturity date (if any) except on an event of default complying with (2) or as permitted by PRU 2.2.116AR or PRU 2.2.123AR;

...

- (10) the description of its characteristics used in its marketing is consistent with the characteristics required to satisfy (1) to (9) and, where it applies, PRU 2.2.93R; and

...

- 2.2.116 R A tier two instrument may be redeemable at the option of the firm, but any  
A contractual term of the instrument providing for the firm to have the right to  
exercise such an option on a specified date must not provide for that right to  
be exercisable earlier than the fifth anniversary of the date of issue of the  
instrument.

...

- 2.2.119 R Where a *tier two instrument* is subject to one or more *step-ups*, the first date that a *step-up* can take effect must be treated, for the purposes of this section, as the instrument's final maturity date if its actual maturity date occurs after that, unless the effect of the *step-up* or *step-ups* as calculated as at the date of issue of the instrument is to increase the *coupon* rate at which payments are to be made by no more than:

...

...

- 2.2.121 R Where a *step-up* arises through a change from paying a *coupon* on a debt instrument to paying a dividend on a *share* issued in settlement of the *coupon*, ~~then~~ any net cost to the *firm* arising from the different tax treatment

of the dividend compared to the tax treatment of interest may be ~~excluded~~ignored for the purpose of assessing the effect of the *step-up*.

...

Other conditions for eligibility as lower tier two capital

2.2.122 A G Capital instruments that meet the general conditions described in PRU 2.2.108R, including perpetual capital instruments that do not meet one or more of the conditions in PRU 2.2.101R(3), (4) and (5), may be included in lower tier two capital resources.

2.2.123 R A capital instrument may be included in *lower tier two capital resources* only if it has an original maturity of at least five years or, ~~where~~ it has no fixed maturity date, ~~notice of repayment of not less than five years has been given.~~

2.2.123 A R A lower tier two instrument may include a contractual term providing for the instrument to be redeemable on notice from the holder, but the period of notice of redemption or repayment required to be given by the holder must not be less than five years.

2.2.124 R ~~In its final five years to maturity, f~~For the purposes of calculating the amount of a *lower tier two instrument* which may be included in a *firm's capital resources*;

(1) in the case of an instrument with a fixed maturity date, in the final five years to maturity; and

(2) in the case of an instrument with or without a fixed maturity date but where five or more years' notice of redemption or repayment has been given, in the final five years to the date of redemption or repayment;

the principal amount must be amortised on a straight line basis.

2.2.125 G ~~PRU 2.2.124R applies both to a tier two instrument with a fixed maturity and to a tier two instrument with no fixed maturity but where the firm has given five years' notice of repayment. [deleted]~~

...

## Annex 1R

### Admissible assets in insurance

...

(2) Debts and claims

(a) ...

(b) ~~deposits~~ deposits with and debts owed by ceding *undertakings*;

...

## Annex 2G

### Guidance on applications for waivers relating to implicit items

#### Implicit items under the Act

1. *PRU 2.2.14R* does not permit *implicit items* to be included in the calculation of a *firm's capital resources*, except subject to a *waiver* under section 148 of the *Act*. Article 27(4) of the *Consolidated Life Directive* states that *implicit items* can be included in the calculation of a *firm's capital resources*, within limits, provided that the supervisory authority agrees. Certain *implicit items*, however, are not eligible for inclusion beyond 31 December 2009 (see paragraph 5). The *FSA* may be prepared to grant a *waiver* from *PRU 2.2.14R* to allow *implicit items*, in line with the purpose of the *Consolidated Life Directive*, and provided the conditions as set out in article 27(4) of the *Consolidated Life Directive* are met. Such a *waiver* would allow an *implicit item* to count towards the *firm's capital resources* available to count against its *capital resources requirement (CRR)* set out for *realistic basis life firms* in *PRU 2.1.15R* and for *regulatory basis only life firms* in *PRU 2.1.20R*. ~~Where a firm applies for an implicit item waiver the firm may also apply for a waiver from PRU 2.2.16R, which requires at least 50% of a firm's MCR to be covered by core tier one capital and perpetual non-cumulative preference shares. An implicit item may potentially count as tier one capital (but not core tier one capital) or tier two capital. Where a waiver is granted allowing an implicit item as tier one capital, the value of the implicit item so allowed must be included at stage B of the calculation in PRU 2.2.14R. If the application of the value of the implicit item is restricted by PRU 2.2.20R(1), which requires that at least 50% of a firm's tier one capital resources must be accounted for by core tier one capital, the remainder may be included at stage G of the calculation in PRU 2.2.14R, subject to PRU 2.2.23R. An implicit item treated as tier two capital will also be included at stage G of the calculation, again subject to PRU 2.2.23R.~~ Article 29(1) of the *Consolidated Life Directive* requires that *implicit items* be excluded from the capital eligible to cover the *guarantee fund*. Under *PRU 2.2.17R* a *firm* must meet the *guarantee fund* from the sum of the items listed at

stages A, B, G and H of the calculation in PRU 2.2.14R less the sum of the items listed at stage E of the calculation in PRU 2.2.14R. PRU 2.2.17R addresses the requirement in article 29(1) of the *Consolidated Life Directive* that *implicit items* should be excluded from capital eligible to cover the *guarantee fund*. ~~Where an *implicit items waiver* is granted, an *implicit item* may potentially count as either *tier one* or *tier two capital*, but not *core tier one capital*. PRU 2.2.20R requires that at least 50 % of a firm's *tier one capital resources* must be accounted for by *core tier one capital*.~~The FSA will only grant an *implicit items waiver* if the *waiver* includes a modification to PRU 2.2.17R to ensure that the *implicit item* does not count towards meeting the *guarantee fund*.

...

15. An application for a *waiver* (which includes an application for an extension to or other variation of a *waiver*) should be prepared using the standard application form for a *waiver* (see *SUP 8 Ann 2D*). In addition, 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 state clearly the nature and the amounts of the *implicit items* that a firm wishes to count against its *capital resources requirement* and ~~the treatment it proposes to adopt in counting the *implicit items* towards the firm's *capital resources*.~~whether it proposes to treat the *implicit item* as *tier one capital* or *tier two capital*. In order to assess an application, the *FSA* needs information as to the make-up of the firm's *capital resources*, the quality of the capital items which have been categorised into each tier of capital and a breakdown of capital both within and outside the firm's *long-term insurance fund* or *funds* and between the firm's *with-profits funds* and *non-profit funds*. An explanation as to the appropriateness of the proposed treatment of the *implicit item* under the calculation in PRU 2.2.14R should also be provided. Furthermore, the application should demonstrate including a demonstration 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.

...

28. The estimated annual profit should be taken as the average annual surplus arising in the *long-term insurance fund* over the last five *financial years* up to the date of the most recent available valuation 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 surplus arising from the transferred block should be included~~ (or excluded) for the full five year period. Where a portion of a block of business is transferred, the surplus included (or excluded) should be a reasonable estimate of the surplus arising from the portion transferred.

...

3.2.22 R ...

(3) ...

(b) ...

(i) 5% for that part of the exposure not arising from short term *deposits* made with an *approved credit institution*; this limit is increased to 10% if the total of ~~such exposures which exceed 5% is less than~~ exposures which are greater than 5% arising from applying a 10% limit does not exceed 40%;

(ii) ...

(c) ...

(i)...

(ii) 1% for that part of the exposure arising from *shares and other variable yield participations*, bonds, *debt securities* and other *money market instruments* and capital market instruments from the same *counterparty* that are not dealt in on a *regulated market*...

...

(4) ...

(c) such amount as the *firm* may select not exceeding, in the case of a *firm* which is not a *participating insurance undertaking*, the amount of the *firm's* total capital after deductions as calculated at stage M of the calculation in *PRU 2.2.14R* or, in the case of a *firm* which is a *participating insurance undertaking*, the amount calculated in accordance with (5A) or, in either case, if higher...

(5) ...

(5A) For the purpose of (4)(c), a *firm* which is a *participating insurance undertaking* must calculate the amount of the *firm's* group capital resources less the difference between:

(a) the firm's group capital resources requirement; and

(b) the firm's capital resources requirement.

(5B) In (3)(b)(i) short term deposit means a deposit which may be withdrawn at the discretion of the lender without penalty or loss of accrued interest by giving notice of withdrawal of one month or less.

(6) ...

#### Large exposure calculation for reinsurance exposures

3.2.23 R A firm must notify the FSA in accordance with SUP 15.7 as soon as it first becomes aware that:

(1) a reinsurance exposure to a reinsurer or group of closely related reinsurers is reasonably likely to exceed 100% of its capital resources, ~~excluding capital resources held to cover property-linked liabilities~~; or

(2) ...

...

3.2.33 R In PRU 3.2.20R and PRU 3.2.22R, references to a counterparty exposure or an asset exposure do not include such an exposure arising from:

(1) ~~a debt which is fully secured on assets whose value at least equals the amount of the debt; [deleted]~~

...

(9) a holding in a collective investment scheme falling within the UCITS Directive scheme.

...

3.2.35 R If:

(1) a firm has a counterparty exposure, an asset exposure or a reinsurance exposure in respect of which it has rights over collateral (except where that collateral is a letter of credit – see PRU 3.2.36R and PRU 3.2.37R); and

(2) ...

...

...

4.2.4 G This section sets out *rules and guidance* relating to *market risk*. Under *PRU 7.2.20R and PRU 7.2.21R*, a *firm* is required to hold *admissible assets* of a value sufficient to cover its *technical provisions* and its other *long-term insurance or general insurance liabilities*. In addition...

...

4.2.7 G *PRU 4.2* addresses the impact of *market risk* on *insurance business* in the ways set out below:

...

(2) For a *firm* that carries on *long-term insurance business*, the assets that it must hold must be of a value sufficient to cover the *firm's ~~mathematical reserve requirements~~ technical provisions and other long-term insurance liabilities*. *PRU 7.3* contains *rules and guidance* as to the methods and assumptions to be used in calculating these *mathematical reserves*. One of these assumptions is the assumed rate of interest to be used in calculating the present value of future payments by or to a *firm*. *PRU 4.2.28R to PRU 4.2.48G* set out the methodology to be used in relation to *long-term insurance liabilities*.

...

4.2.8 R For the purposes of *PRU 4.2*:

(1) ...

(2) a significant territory is any country or territory in which more than 2.5% of a *firm's long-term insurance assets* (by *market value*), excluding assets held to cover *index-linked liabilities* or *property-linked liabilities* (see *PRU 4.2.57R* and *PRU 4.2.58R*), are invested; ~~and~~

(3) the long term gilt yield means the annualised equivalent of the fifteen year gilt yield for the *United Kingdom* Government fixed-interest *securities* index jointly compiled by the Financial Times, the Institute of Actuaries and the Faculty of Actuaries; and

(4) the member states of the European Union which have adopted the Euro as the official currency may be treated as a single territory.

...

- 4.2.10 R (1) ...
- (2) ~~From amongst its long-term insurance assets,~~ The firm must identify relevant assets (see *PRU 4.2.10AR*) which, after applying the scenarios in (3), have a value that is equal to the firm's long-term insurance liabilities under those scenarios.
- (3) For the purpose of (2), the scenarios are:
- (a) for those relevant assets invested in the *United Kingdom*, the *market risk* scenario set out in *PRU 4.2.16R*;
- (b) subject to (c) and to *PRU 4.2.26R*, for those relevant assets invested outside of the *United Kingdom*, the *market risk* scenario set out in *PRU 4.2.23R*; and
- (c) where the relevant assets in (b) are...
- (4) The *resilience capital requirement* is the result of deducting B from A, where:
- (a) A is the value of the relevant assets which will produce the result described in (2); and
- (b) ...
- (5) ...

4.2.10A R In *PRU 4.2.10R* relevant assets means a range of assets which must be selected by the firm from the assets specified in (1) and (2) in the order specified:

- (1) its long-term insurance assets; and
- (2) only where the firm has selected all the assets within (1), its shareholder assets, other than assets of an amount and kind required:
- (a) to cover its liabilities arising outside its long-term insurance funds; or
- (b) to meet any regulatory capital requirements in respect of business written outside its long-term insurance funds.

...

4.2.13 G ...

4.2.13A G In the market risk scenarios set out in PRU 4.2.16R to PRU 4.2.26R, a firm is required to assess the changed value of its assets and liabilities in the economic conditions of the scenarios set out in PRU 4.2.16R and PRU 4.2.23R. A firm is required to assess the changed value of each relevant asset (as defined in PRU 4.2.10AR), notwithstanding any uncertainty about the appropriate valuation basis for that asset. In valuing an asset in the specified scenarios, a firm should have regard to the economic substance of the asset, rather than its legal form, and assess its value accordingly. Consider, for example, a convertible bond that is close to its conversion date and where the conversion option has value. The value of the convertible bond in the specified scenarios is likely to be sensitive primarily to equity market scenarios and to a lesser extent to interest rate scenarios. The firm should value the asset according to its expected market value in the economic conditions underlying the specified scenarios.

4.2.13B G In determining where particular assets are invested for the purpose of determining which market risk scenario should be applied to those assets, or whether a country or territory in which a firm has invested part of its long-term insurance assets is a significant territory, a firm should generally treat:

- (1) a security dealt in on a regulated market as invested in any country or territory in which a regulated market on which the security is dealt is situated;
- (2) a security which is not dealt in on a regulated market as invested in the country or territory in which the issuer has its head office;
- (3) an asset consisting of a claim against a debtor as invested in any country or territory where it can be enforced by legal action;
- (4) real estate as invested in the country or territory in which the land, buildings or other immovable property is situated;
- (5) a tangible asset as invested in the country or territory where it is situated; and
- (6) a derivative or quasi-derivative as invested in the country or territory in which the assets to which the firm is exposed by reason of having entered into the derivative or quasi-derivative are situated.

Where, however, the nature of a firm's investment is such that the economic risks to which it is principally exposed are risks relating to assets invested in, or the currency of, a different country or territory to that in which are invested the assets directly invested in by the firm, then the firm should consider whether it would be more reasonable to treat the assets as invested

in that other country or territory. For example, if a firm has invested in the securities of a collective investment scheme which are dealt in on a regulated market in country A, but the scheme principally invests in real estate situated in country B, the firm should consider whether its principal exposure is in fact to the country in which the underlying assets are situated (that is, country B). Another example might be where a firm has invested in a bond or other fixed interest security that is denominated in the currency of a country or territory other than that in which the security would be treated as invested under (1) or (2) above. The firm may wish to consider whether that bond or fixed interest security should be treated as invested in the country or territory of the currency of denomination.

...

- 4.2.27 G The rates of interest to be used for the calculation of the present values of *general insurance liabilities* are specified in the *insurance accounts rules*, except where benefits resulting from a claim must be paid in the form of an annuity, in which case the rules require calculation by recognised actuarial methods. In the case of claims not payable in the form of an annuity, the ~~These~~ *insurance accounts rules* state that the rate of interest to be used must not exceed the lowest of:

...

Interest rates: long-term insurance liabilities

- 4.2.28 R The rates of interest required by PRU 7.3.33R to be used by a firm for the calculation of the present value of a *long-term insurance liability* must not exceed 97.5% of the risk-adjusted yield (see PRU 4.2.30R to PRU 4.2.48G) that is expected to be achieved on...

...

- 4.2.53 R (1) Subject to PRU 4.2.54R, a firm must hold *admissible assets* in each currency of an amount equal to at least 80% of the amount of its liabilities in that currency arising under or in connection with contracts of insurance (but excluding, for a firm that carries on general insurance business, any equalisation provision) in that ~~currency~~, except where the amount of those assets does not exceed 7% of the assets in other currencies.
- (2) In (1) references to an asset in a currency are to an asset which is expressed in or capable of being realised (without exchange risk) in that currency, and an asset is capable of being so realised if it is reasonably capable of being realised in that currency without risk that changes in exchange rates would reduce the cover for liabilities in that currency.

...

- 4.2.60 G If a *firm* has incurred a *policy* liability which cannot be exactly matched by appropriate assets (for example the Limited Price Index (LPI) ~~and Earnings Index~~), the *firm* should seek to match assets that at least cover the liabilities. For example, an LPI limited to 5% per annum may be matched by ~~a 5% fixed interest bond or an RPI bond or a fixed interest investment matching cash flows increasing at 5% per annum compound.~~

...

~~Over the counter~~ Off-market transactions

- 4.3.34 R ...

...

Stock lending

- 4.3.36 R (1) For the purposes of *PRU 2* Ann 1R (Admissible assets in insurance), a *stock lending* transaction is approved if:

(a) ...

(b) ~~the counterparty is an authorised person or,~~ an approved counterparty, a person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America or a bank, or a branch of a bank, supervised, and authorised to deal in investments as principal, with respect to *OTC derivatives* by at least one of the following federal banking supervisory authorities of the United States of America:

(i) the Office of the Comptroller of the Currency;

(ii) the Federal Deposit Insurance Corporation;

(iii) the Board of Governors of the Federal Reserve System;  
and

(iv) the Office of Thrift Supervision; and

(c) ...

(2) ...

...

## Collateral

- 4.3.38 R For the purposes of *PRU 4.3.36R(31)(c)*, *collateral* is adequate only if it:
- (1) is transferred to the *firm* or its agent or, in the case of a letter of credit, meets the conditions described in *PRU 4.3.38AR*;
  - (2) is, at the time of the transfer or, in the case of a letter of credit, at the time of issue, at least equal in value to the value of the *securities* transferred, or consideration provided, by the *firm*; and
  - (3) ...
- 4.3.38A R The conditions referred to in *PRU 4.3.38R(1)* are that the letter of credit is:
- (1) direct, explicit, unconditional and irrevocable; and
  - (2) issued by an *undertaking* which is:
    - (a) not a *related undertaking* of the *counterparty*; and
    - (b) either an *approved credit institution* or a bank, or a branch of a bank, whether chartered by the federal government of the United States of America or a US state, that is supervised and examined by at least one of the following US federal banking supervisory authorities:
      - (i) the Office of the Comptroller of the Currency;
      - (ii) the Federal Deposit Insurance Corporation;
      - (iii) the Board of Governors of the Federal Reserve System;  
and
      - (iv) the Office of Thrift Supervision.
- 4.3.39 G For the purposes of assessing adequate quality in *PRU 4.3.38R(3)*, reference should be made to the criteria for credit risk loss mitigation set out in *PRU 3.2.16R*. The valuation rules in *PRU 1.3* apply for the purpose of determining the value of both *collateral* received, and the *securities* transferred, by the *firm*. In addition, where *collateral* takes the form of assets transferred, under the rules in *PRU* any such asset that is not an *admissible asset* (see *PRU 2 Ann 1R*) does not have a value (see *PRU 2 Ann*

1R).

4.3.40 R For the purposes of *PRU 4.3.36R(3)(c)*, *collateral* is sufficiently immediate only if:

- (1) it is transferred or, in the case of a letter of credit, issued before, or at the same time as, the transfer of the *securities* by the *firm*; or
- (2) it will be transferred or, in the case of a letter of credit, issued, at latest, by the close of business on the day of the transfer.

4.3.41 R *Collateral* continues to be adequate only if its value is at all times at least equal to the value of the *securities* transferred by the *firm*. This will be satisfied in respect of *collateral* ~~the validity of which~~ where the validity of the *collateral* or the *firm's* interest in the *collateral* is about to expire or has expired ~~where~~ if sufficient *collateral* will again be transferred or issued at the latest by the close of business on the day of expiry.

4.3.42 G References in *PRU 4.3.40R(2)* and *PRU 4.3.41R* to the close of business on the day of the transfer or the day of expiry are to close of business on that day in all time regions.

...

7.2.3 R For a *non-EEA direct insurer* with a *branch* in the *United Kingdom*, the part of this section headed “Capital requirements for insurers” (*PRU 7.2.43G* to *PRU 7.2.91R*) applies to its world-wide activities, whilst the parts of this section headed “Establishing technical provisions” (*PRU 7.2.12R* to *PRU 7.2.19G*), “Assets of a value sufficient to cover technical provisions and other liabilities” (*PRU 7.2.20R* to *PRU 7.2.29G*)...

7.2.4 R For an *EEA-deposit insurer* or a *Swiss general insurer*, the parts of this section headed “Establishing technical provisions” (*PRU 7.2.12R* to *PRU 7.2.19G*), “Assets of a value sufficient to cover technical provisions and other liabilities” (*PRU 7.2.20R* to *PRU 7.2.29G*)...

7.2.5 R For an ~~an~~ *UK-deposit insurer*, the part of this section headed “Capital requirements for insurers” (*PRU 7.2.43G* to *PRU 7.2.91R*) applies to its world-wide activities, whilst the parts of this section headed “Establishing technical provisions” (*PRU 7.2.12R* to *PRU 7.2.19G*), “Assets of a value sufficient to cover technical provisions and other liabilities” (*PRU 7.2.20R* to *PRU 7.2.29G*)...

...

7.2.16 R For *long-term insurance business*, a *firm* must establish adequate technical provisions in respect of its *long-term insurance contracts* as follows:

- (1) ~~for its long-term insurance contracts, mathematical reserves~~ in accordance with the *rules and guidance* in *PRU 7.3* relating to ~~mathematical reserves~~ such reserves, and with due regard to generally accepted actuarial practice; and
- (2) ~~for long-term insurance liabilities which~~ liabilities in respect of such contracts that have fallen due, in accordance with *PRU 1.3.5R*.

...

Assets of a value sufficient to cover technical provisions and other liabilities

7.2.20 R A firm which is not a composite firm must hold *admissible assets* of a value at least equal to the amount of:

- (1) the technical provisions that it is required to establish under *PRU 7.2.12R* and or *PRU 7.2.16R* ~~(excluding technical provisions for property linked and index linked benefits and the assets held to cover them under *PRU 4.2.57R* and *PRU 4.2.58R*);~~ and
- (2) its other general insurance liabilities or long-term insurance liabilities;

but excluding property-linked liabilities and index-linked liabilities and the assets held to cover them under *PRU 4.2.57R* and *PRU 4.2.58R*.

7.2.21 R A *composite firm* must ensure that:

- (1) its separately identified long-term insurance assets have it holds admissible assets separately identified in accordance with *PRU 7.6.18R* of a value at least equal to the amount of:
  - (a) its technical provisions for long-term insurance liabilities the technical provisions that it is required to establish under *PRU 7.2.16R*; and
  - (b) any other liabilities connected with long-term insurance business its other long-term insurance liabilities;

but excluding property-linked liabilities and index-linked liabilities and the assets held to cover them under *PRU 4.2.57R* and *PRU 4.2.58R*; and

- (2) that it has it holds other admissible assets (other than those excluded under (1)) of a value at least equal to the amount of:

(a) ~~its technical provisions for general insurance liabilities~~ the technical provisions that it is required to establish under PRU 7.2.12R; and

(b) its other general insurance liabilities.

...

7.2.23 G When valuing assets for the purposes of PRU 7.2.20R and PRU 7.2.21R, a firm should bear in mind:

(1) that the technical provisions and other long-term insurance liabilities or general insurance liabilities should be covered by admissible assets (see PRU 2 Ann 1R); and

...

7.2.25 R For the purpose of determining the value of assets available to meet technical provisions and other long-term insurance liabilities in accordance with PRU 7.2.20R, PRU 7.2.21R, PRU 7.2.27R and PRU 7.2.28R, no value is to be attributed to ~~debts and claims other than in respect of:~~

(1) ~~amounts that have already fallen due~~ debts owed by reinsurers; or

(2) claims; or

(~~3~~) tax recoveries and; or

(4) claims against compensation funds;

to the extent ~~not~~ already offset in the calculation of mathematical reserves ~~technical provisions.~~

7.2.26 G Certain debts and ~~claims~~ claims are excluded from PRU 7.2.20R, PRU 7.2.21R, PRU 7.2.27R and PRU 7.2.28R to avoid double-counting. The rules and guidance in PRU 7.3 (Mathematical reserves) set out how a firm may offset debts and claims against liabilities in calculating the mathematical reserves required for long-term insurance business. ~~Tax recoveries and claims against compensation funds in PRU 7.2.25R(2) are set out in the list of admissible assets (see PRU 2 Ann 1R).~~

...

7.2.27 R A firm carrying on long-term insurance business must ensure that it has admissible assets in each of its with-profits funds of a value sufficient to cover:

(1) the *technical provisions* in respect of all the business written in that *with-profits fund*; and

(2) its other long-term insurance liabilities in respect of that *with-profits fund*.

...

7.2.29 G PRU 7.2.27R and PRU 7.2.28R support the funding of *policyholder* benefits by requiring *firms* to maintain *admissible assets* in *with-profits funds* to cover the *technical provisions* and other long-term insurance liabilities relating to all the business in that fund and, in the case of a *realistic basis life firm*, realistic assets to cover the realistic liabilities of the *with-profits insurance contracts* written in the fund.

...

7.2.34 R (1) Subject to (4), the assets held by a *firm* to cover its *technical provisions* and other long-term insurance liabilities or general insurance liabilities (see PRU 7.2.20R and PRU 7.2.21R) must:

...

7.2.35 G A *firm* should take account of the amount, currency and timing of its expected cash outflows in determining whether the assets it holds to cover its *technical provisions* and other long-term insurance liabilities or general insurance liabilities meet the requirements of PRU 7.2.34R(2).

7.2.36 G For the purpose of PRU 7.2.34R(2), the relevant cash inflows are those which the *firm* reasonably expects to receive from the *admissible assets* which it holds to cover its *technical provisions* and other long-term insurance liabilities or general insurance liabilities. A *firm* may receive cash inflows as a result of...

...

7.2.40 G PRU 7.2.20R lays down a general requirement for a *firm* that carries on *long-term insurance business* to hold *admissible assets* that are of a value sufficient to cover its ~~mathematical reserves (calculated in accordance with the rules in PRU 7.3)~~ *technical provisions* and other long-term insurance liabilities. The PRU 7.2.34R(2) requirement to match liabilities with assets that allow cash outflows to be met with suitable inflows as the outflows become due may mean that a *firm* has to hold assets of a value greater than would otherwise be required by the general rule in PRU 7.2.20R.

Premiums for new business

- 7.2.41 R A *firm* must not enter into a *long-term insurance contract* unless it is satisfied on reasonable actuarial assumptions that:
- ...
- are sufficient to enable it, when taken together with the *firm's* other resources, to:
- (a) ...
- (b) hold *admissible assets* of a value at least equal to the amount of the *technical provisions and other long-term insurance liabilities* as required by *PRU 7.2.20R to PRU 7.2.28R*; and
- (c) ...
- ...
- 7.2.56 R For the purpose of *PRU 7.2.45R*, the *gross adjusted premiums amount* is the higher of the *gross written premiums* and *gross earned premiums* (as ~~determined~~ adjusted in accordance with *PRU 7.2.66R*) for the *financial year in question*...
- ...
- 7.2.66 R For the purposes of *PRU 7.2.54R*, *PRU 7.2.56R*, *PRU 7.2.60R* and *PRU 7.2.62R*, amounts of *premiums* and *claims* must be:
- (1) determined in accordance with ~~*PRU 1.3 (Valuation)*~~ the *insurance accounts rules* or the *Friendly Societies (Accounts and Related Provisions) Regulations 1994*, as appropriate; and
- (2) ...
- ...
- 7.2.71 R Where there has been a significant change in the business portfolio of the *firm* since the end of the *financial year in question*, for example, a line of business has been transferred to another *firm*, or the *firm* no longer carries on a particular *class of insurance business*, the *gross adjusted premiums amount* and the *gross adjusted claims amount* must both be recalculated to take into account the impact of this change. The recalculation must take into account the requirements of ~~*PRU 1.3 (Valuation)*~~ the *insurance accounts rules* or the *Friendly Societies (Accounts and Related Provisions)*

Regulations 1994, as appropriate.

...

Insurance death risk capital component

7.2.81 R The *insurance death risk capital component* is the aggregate of the amounts which represent the fractions specified by *PRU 7.2.82R* of the capital at risk, defined in *PRU 7.2.83R*, for each category of contracts of insurance (as specified in *PRU 7.2.81AR*), in respect of those contracts where the capital at risk is not a negative figure, multiplied by the higher of:

- (1) 50%; and
- (2) the ratio as at the end of the ~~preceding~~ *financial year in question* of:
  - (a) the aggregate capital at risk in respect of that category of contracts net of reinsurance cessions; to
  - (b) the aggregate capital at risk in respect of that category of contracts gross of reinsurance cessions.

7.2.81A R For the purpose of *PRU 7.2.81R*, the categories of *contracts of insurance* are as follows:

- (1) contracts which fall in *long-term insurance business classes I, II or IX*; and
- (2) contracts which fall in *long-term insurance business classes III, VII or VIII*.

...

Insurance expense risk capital component

7.2.88 R ...

- (1) in respect of *long-term insurance business classes III, VII and VIII*, an amount equivalent to 25% of the net *administrative expenses* in the ~~preceding~~ *financial year in question* relevant to the business of each of those *classes*, in so far as the *firm* bears no investment risk and the allocation to cover *management expenses* in the *contract of insurance* does not have a fixed upper limit which is effective as a limit for a period exceeding 5 years from the commencement of the contract;

- (2) ...
- (3) in the case of any other *long-term insurance business*, 1% of the “adjusted *mathematical reserves*” (as defined in *PRU 7.2.89AR90R* and *PRU 7.2.91R*).

Insurance market risk capital component

- 7.2.89 R The *insurance market risk capital component* is 3% of the “adjusted *mathematical reserves*” (as defined in *PRU 7.2.89AR90R* and *PRU 7.2.91R*) for all ~~*contracts of insurance*~~ insurance liabilities except those of a kind which:
- (1) ~~fall arise from contracts of insurance falling~~ in long-term insurance business classes III, VII or VIII and in respect of which to the extent that the firm does not bear any investment risk; or
  - (2) ~~fall arise from contracts of insurance falling~~ in long-term insurance business class V.

Adjusted mathematical reserves

- 7.2.89A R (1) For the purpose of *PRU 7.2.88R* and *PRU 7.2.89R*, the “adjusted *mathematical reserves*” is the aggregate of the amounts which result from the performance of the calculation in *PRU 7.2.90R* for each category of insurance liability specified in (2).
- (2) The categories of insurance liability referred to in (1) are:
- (a) for the purpose of *PRU 7.2.88R*, those categories described in *PRU 7.2.91R*(1), (2), (3), (4) and (5); and
  - (b) for the purpose of *PRU 7.2.89R*, those categories described in *PRU 7.2.91R*(1), (2), (4) and (5).

- 7.2.90 R ~~For the purpose of *PRU 7.2.88R* and *PRU 7.2.89AR*(1), the “adjusted *mathematical reserves*” is the multiplication of the amount of the *mathematical reserves* (gross of *reinsurance cessions*); multiplied in respect of a category of insurance liability by the higher of:~~
- (1) 85% or, in the case of a *pure reinsurer*, 50%; and
  - (2) the ratio as at the end of the ~~preceding~~ financial year in question of:
    - (a) the *mathematical reserves* in respect of that category of

insurance liability net of *reinsurance* cessions; to

- (b) the *mathematical reserves* in respect of that category of insurance liability gross of *reinsurance* cessions.

7.2.91 R ~~The “adjusted *mathematical reserves*” do not include~~ For the purpose of PRU 7.2.89AR and PRU 7.2.90R, the categories of insurance liability are as follows:

- (1) ~~for the purposes of PRU 7.2.88R(3) and PRU 7.2.89R, amounts arising from *tontines* (*long-term insurance business class V*)~~ liabilities of a kind which arise from contracts of insurance falling in long-term insurance business classes I, II or IX;
- (2) ~~for the purposes of PRU 7.2.88R(3), amounts arising from *insurance business* in classes III, VII or VIII, to the extent that such business meets the conditions in PRU 7.2.88R(1)~~ liabilities of a kind which arise from contracts of insurance falling in long-term insurance business classes III, VII or VIII to the extent that the firm bears an investment risk;
- (3) ~~for the purposes of PRU 7.2.89R, amounts arising from *insurance business* in classes III, VII or VIII, to the extent that such business meets the conditions in PRU 7.2.89R(1)~~ liabilities of a kind which arise from contracts of insurance falling in long-term insurance business classes III, VII or VIII to the extent that the firm bears no investment risk and where the allocation to cover *management expenses* in the contract of insurance has a fixed upper limit which is effective as a limit for a period exceeding 5 years from the commencement of the contract;
- (4) liabilities of a kind which arise from contracts of insurance falling in long-term insurance business class IV; and
- (5) liabilities of a kind which arise from contracts of insurance falling in long-term insurance business class VI.

7.2.92 G Where a firm has written a unit-linked contract, the firm's liability under the contract may consist of a unit liability, where the firm bears no investment risk, and other liabilities for which the firm bears an investment risk, and for which a separate reserve is held. PRU 7.2.91R(2) and (3) require a firm to analyse its liabilities under unit-linked contracts between those for which it bears an investment risk and those for which it does not. PRU 7.2.88R and PRU 7.2.89R taken together result in a capital requirement for any liabilities for which the firm bears an investment risk of 4% of "adjusted *mathematical reserves*" (1% for expense risk and 3% for market risk).

...

7.3.9 R Except in *PRU 7.3.71R(1)*, *PRU 7.3* does not apply to *final bonuses*. In addition, for *realistic basis life firms* only, *PRU 7.3* does not apply to other discretionary benefits, including future annual bonuses.

...

7.3.19 G Further detailed *rules* and *guidance* on margins for adverse deviation are included in *PRU 7.3.32G* to *PRU 7.3.9189G*. In particular...

(5) *reinsurance* (*PRU 7.3.78G77AR* to *PRU 7.3.9189G*).

...

7.3.23 G *PRU 7.3.22R* to *PRU 7.3.9189G* set out *rules* and *guidance* for the separate prospective valuation of each contract. These may be applied instead to groups of contracts where the conditions set out in *PRU 7.3.22R(2)* are satisfied.

...

7.3.28 R ...

(4) amounts to be received or paid in respect of the *long-term insurance contracts* under contracts of *reinsurance* or analogous non-*reinsurance* financing agreements (see *PRU 7.3.78G77AR* to *PRU 7.3.9189G*).

...

7.3.31 G *PRU 7.3.29R(4)* requires *regulatory basis only life firms* to make allowance for any future *annual bonus* that a *firm* would expect to grant, assuming future experience is in line with the assumptions used in the calculation of the *mathematical reserves*. *Final bonuses* do not have to be taken into consideration in these calculations except in relation to *accumulating with-profits policies* (see *PRU 7.3.9R*). The calculations required for *accumulating with-profits policies* are set out in *PRU 7.3.71R(1)*. For *realistic basis life firms*, except for *accumulating with-profits policies*, the *mathematical reserves* may be calculated as ~~the amount required to cover guaranteed benefits without taking into account discretionary benefits, including both *annual bonuses* and *final bonuses*.~~ as for For such *firms* full allowance for discretionary benefits is made in the calculation of the *realistic value of liabilities* (see *PRU 7.4.105R(5)*). ~~The calculations required for *accumulating with-profits policies* are set out in *PRU 7.3.71R(1)*.~~

...

7.3.32 G More detailed *rules* and *guidance* about the valuation of cash flows are set out in *PRU 7.3.33R* to *PRU 7.3.9189G*.

...

7.3.70 R (4) (1) may be applied to a group of similar contracts instead of to the individual contracts within that group except where the cash amount or series of cash payments is the amount or amounts likely to be paid on a voluntary discontinuance.

...

7.3.72 G *PRU 7.3.71R(1)* applies only to *accumulating with-profits policies*; *PRU 7.3.71R(2)* applies to any other type of *policy*, including *non-profit insurance* contracts. In *PRU 7.3.71R(1)(a)* ~~*firms*~~ a *firm* must take into consideration, for example, a market value adjustment where such an adjustment has been described in representations made to *policyholders* by the *firm*. However, any discretionary adjustment, such as a market value adjustment, ~~cannot~~ must not be included in the amount calculated in *PRU 7.3.71R(1)(b)*.

...

#### Reinsurance

7.3.77A R In *PRU 7.3.78G* to *PRU 7.3.89G* references to:

(1) *reinsurance* and contracts of *reinsurance* include analogous non-*reinsurance* financing agreements, including contingent loans, securitisations and any other arrangements giving rise to charges on future surplus arising;

(2) *reinsured risks*, in relation to a contract of *reinsurance* entered into by a *firm*, means that part of:

(a) the risks insured by the *firm* under *long-term insurance contracts* entered into by it; and

(b) the other risks arising directly from the *firm's long-term insurance business*;

that have been transferred to the *reinsurer* under that contract of *reinsurance*; and

(3) *reinsurance* cash outflows include any reduction in *policy liabilities* recognised as covered under a contract of *reinsurance* or any reduction of any debt to the *firm* under or in respect of a contract of

reinsurance.

...

7.3.79 R ...

- (3) *reinsurance* cash inflows that are contingent on factors or conditions other than the ~~*insurance* risks that are reinsured~~ risks must not be valued.

...

7.3.83 G Only *reinsurance* cash inflows that are triggered unambiguously by the ~~*insurance* risks of the firm that are reinsured~~ risks may be valued. *Reinsurance* cash inflows that depend on other contingencies where the outcome does not form part of the valuation basis should not be given credit.

...

7.3.85 R For the purposes of *PRU 7.3.79R(2)*, the “link” must be such that a contingent liability to pay or repay the amount to the *reinsurer* could not arise except when, and to the extent that, the margins in the valuation of the existing *contracts of insurance* emerge as surplus, or the *reinsurer* exercises its rights under a termination clause in the contract of *reinsurance* as a result of:

- (1) ~~fraud~~ fraudulent conduct by the *firm* under or in relation to the contract of *reinsurance*; or
- (2) ~~misrepresentation~~ a representation as to the existence, at or before the time the contract of *reinsurance* is entered into, of a state of affairs which is within the knowledge or control of the *firm* and which is material to the *reinsurer's* decision to enter into the contract being discovered to be false; or
- (3) the non-payment of *reinsurance premiums* by the *firm*; or
- (4) a failure by the *firm* to obtain the agreement of the *reinsurer* to a transfer by the *firm* of the whole or a specified part of its business by the *firm* without the agreement of the *reinsurer*, except where that agreement has been unreasonably withheld.

...

7.3.88 G *PRU 7.3.85R* allows a *firm* not to value *reinsurance* cash outflows provided the contingencies in which the *reinsurance* would require repayment other than out of future surpluses are limited to termination clauses concerning fraud, material misrepresentation, non-payment of *reinsurance premiums* by

the *firm* or a failure by the *firm* to obtain the agreement of the *reinsurer* to a transfer of business by the *firm* without the agreement of the *reinsurer*, except if unreasonably withheld.

...

7.3.90 R ~~In PRU 7.3.78G to PRU 7.3.89G references to *reinsurance* and contracts of *reinsurance* include analogous non-*reinsurance* financing agreements. [deleted]~~

7.3.91 G ~~In PRU 7.3.78G to PRU 7.3.89G references to *reinsurance* cash outflow include any provision for the reduction in *policy* liabilities recognised as covered under a contract of *reinsurance* or for the reduction of any debt to the *firm* previously created under a contract of *reinsurance*. In PRU 7.3.90R analogous non-*reinsurance* financing agreements include contingent loans, securitisations and any other arrangements giving rise to charges on future surplus arising. [deleted]~~

...

7.4.25 R For the purpose of determining the value of a fund's *long-term admissible assets* in accordance with PRU 7.4.24R(1)(a), no value is to be attributed to ~~debts and claims other than in respect of:~~

(1) ~~amounts that have already fallen due~~ debts owed by *reinsurers*; and or

(2) *claims*; or

(~~2~~3) tax recoveries; or

(4) claims against *compensation funds*;

to the extent ~~not~~ already offset in the calculation of *mathematical reserves* technical provisions.

...

7.4.33 R ...

(3) ...

(a) ...

(b) ...

(iii) any additional amount arising from ~~the excess of the~~

present value of future profits (or losses) on any *non-profit insurance contracts* written by B (calculated on a basis consistent with *PRU 7.4.37R*), excluding any amount arising from business that is written in a *with-profits fund*, ~~over any present value of future profits (or losses) used in calculating B's regulatory capital requirements and arising from business outside its *with-profits funds*~~; and

...

(vii) any part of the *with-profits insurance capital component* of B, or of B's *long-term insurance capital requirement* or *resilience capital requirement* in respect of B's *with-profits insurance contracts*, to the extent that this is not covered from the assets of the *with-profits fund* from which it arises after deducting from those assets the amount calculated under (iv); and

...

7.4.37 R A *firm* must calculate the present value of future profits (or losses) on *non-profit insurance contracts* written in the *with-profits fund* using methodology and assumptions which:

...

(4) are derived from current market yields, having regard to International Financial Reporting Standard 4: Insurance Contracts, as if it were being applied to determine the value under that standard for the first time;

...

...

7.4.39 G ...

7.4.39A G In view of *PRU 7.4.39G*, it is likely that the discount rate to be applied to the market-consistent valuation of those annuities that fall within the scope of *PRU 7.4.37R(3)* would not be significantly different from that which applies to other annuities (to which a discount rate based on the return on the matching assets less an allowance for risk which is reasonable but not excessively prudent, in accordance with *PRU 7.4.37R(2)*, might be applied).

7.4.39B G In determining current market yields for the purpose of *PRU 7.4.37R(4)*, a *firm* is required to have regard to IFRS 4 as if it were being applied to determine the value under that standard for the first time, that is, without reference to existing practices. Paragraph 27 of the standard is likely to be of

particular relevance. A *firm* should not include an allowance for future investment margins until they are earned. In particular, a *firm* should not include an allowance for capital growth in determining current market yields for equities and real estate investments.

...

7.4.51 G ...

7.4.51A G In the scenario tests set out in PRU 7.4.62R to PRU 7.4.103G, a *firm* is required to assess the changed value of its assets and liabilities in the economic conditions of the most adverse scenario. A *firm* is required to assess the changed value of each relevant asset (as defined in PRU 7.4.45R), notwithstanding any uncertainty about the appropriate valuation basis for that asset. In valuing an asset in the most adverse scenario, a *firm* should have regard to the economic substance of the asset, rather than its legal form, and assess its value accordingly. Consider, for example, a convertible bond that is close to its conversion date and where the conversion option has value. The value of the convertible bond in the most adverse scenario is likely to be sensitive primarily to equity market scenarios and to a lesser extent to interest rate scenarios. The *firm* should value the asset according to its expected market value in the economic conditions underlying the most adverse scenario.

...

7.4.63 R ...

7.4.63A G Guidance on how a *firm* should determine where particular assets are invested is provided in PRU 4.2.13BG.

...

7.4.66 G ~~In PRU 7.4.62R to PRU 7.4.76G, where there is reference to exposure to assets invested in a territory this should be interpreted as follows:~~

- ~~(1) for equities, a stock that is listed on a stock market in that territory or, if unlisted, the stock of a *company* that is incorporated in that territory;~~
- ~~(2) for bonds, one that is denominated in the currency of that territory, or issued by an institution incorporated in that territory;~~
- ~~(3) for real estate, a property that is located in that territory; and~~
- ~~(4) for derivatives, quasi-derivatives and other instruments, one where the assets to which the instrument is exposed are assets invested in~~

that territory.

In *PRU 7.4.62R to PRU 7.4.76G*, a *preference share* should be subjected to the same stress tests as an equity share. [deleted]

...

7.6.2 R ...

(4) *PRU 7.6.41R to PRU 7.6.57R* (UK branches of certain non-EEA insurers) do not apply to:

...

(b) *non-EEA insurers which are pure reinsurers whose insurance business in the United Kingdom is restricted to reinsurance; or*

...

7.6.18 R A firm carrying on long-term insurance business must identify the assets relating to its long-term insurance business which it is required to hold by virtue of *PRU 7.2.20R* and or *PRU 7.2.21R*.

7.6.19 G *PRU 7.2.16R* requires a firm to establish adequate technical provisions for its long-term insurance contracts. *PRU 7.2.20R* requires a firm to hold *admissible assets* of a value at least equal to the amount of the technical provisions and its other long-term insurance liabilities. *PRU 7.2.21R* ensures that a composite firm identifies separate long-term insurance assets admissible assets with a value at least equal to the technical provisions for long-term insurance business and its other long-term insurance liabilities as well as holding other assets admissible assets of a value at least equal to the amount of its technical provisions for general insurance business and its other general insurance liabilities. The overall impact of these provisions in *PRU 7.2*, and of *PRU 7.6.18R*, is that any firm writing long-term insurance business must identify separately its long-term insurance assets and ensure that their value is admissible assets of a value at least equal to the amount of its long-term insurance business technical provisions and its other long-term insurance liabilities.

...

7.6.29 G *PRU 7.2.27R* and *PRU 7.2.28R* provide further constraints on the transfer of assets out of a with-profits fund. *PRU 7.2.27R* requires a firm to have *admissible assets* in each of its with-profits funds to cover the technical provisions and other long-term insurance liabilities relating to all the business in that fund. *PRU 7.2.28R* requires a realistic basis life firm to ensure that the realistic value of assets for each of its with-profits funds is at

least equal to the *realistic value of liabilities* of that fund.

...

7.6.32 G ...assets of the *firm*. A firm may also lend securities held in a long-term insurance fund under a stock lending transaction or transfer assets as collateral for a stock lending transaction where the firm is the borrower, where such lending or transfer is for the benefit of the long-term insurance business.

...

7.6.48 R A non-EEA direct insurer (except a UK-deposit insurer) must hold:

(1) admissible assets, which are required to cover its *technical provisions* in accordance with PRU 7.2.20R(1) or PRU 7.2.21R(1)(a) and (2)(a); and

(2) other admissible assets not required to cover property-linked liabilities or index-linked liabilities in accordance with PRU 4.2.57R or PRU 4.2.58R which ~~to~~ represent its *UK MCR* as calculated in accordance with PRU 7.6.44R;

as follows:

- (~~1~~a) (where the assets cover the *technical provisions* and the *guarantee fund*) in the *United Kingdom*;
- (~~2~~b) (where the assets represent the amount of the *UK MCR* in excess of the *guarantee fund*) in any *EEA State*.

7.6.49 R A UK-deposit insurer must hold:

(1) admissible assets, which are required to cover its *technical provisions* in accordance with PRU 7.2.20R(1) or PRU 7.2.21R(1)(a) and (2)(a); and

(2) other admissible assets not required to cover property-linked liabilities or index-linked liabilities in accordance with PRU 4.2.57R or PRU 4.2.58R which ~~to~~ represent its *EEA MCR* as calculated in accordance with PRU 7.6.46R;

as follows:

- (~~1~~a) (where the assets cover the *technical provisions* and the *guarantee fund*) within the *EEA states* where the *firm* carries on *insurance*

*business;*

(2b) (where the assets represent the amount of the *EEA MCR* in excess of the *guarantee fund*) in any *EEA State*.

...

7.6.54 R A *non-EEA direct insurer* must keep assets of a value at least equal to one half quarter of the *base capital resources requirement* on deposit in the *United Kingdom* with a *BCD credit institution*.

7.6.55 G The assets deposited as security may count towards the assets required under *PRU 7.6.48R* and *PRU 7.6.49R*. If, after the deposit is made, the value of the deposited assets falls below one half quarter of the *base capital resources requirement*, the *firm* should deposit further *admissible assets* in order to comply with *PRU 7.6.48R* and *PRU 7.6.49R*. Deposited assets may be exchanged for other *admissible assets* and excess assets may be withdrawn, provided that the exchange or deposit does not cause a breach of *PRU 7.6.48R* or *PRU 7.6.49R*.

...

8.3.1 R *PRU 8.3* applies to an *insurer* that is either:

(1) ...

(2) a member of an *insurance group* (which is not a *participating insurance undertaking*) and which is not:

(a) a pure reinsurer; or

(b) a non-EEA insurer; or

(c) a friendly society.

...

8.3.34 R ...

8.3.34A G For the purposes of *PRU 8.3.34R(3)(b)* and (6)(a), where the *solo capital resources requirement* in a *designated State or territory* is ascertained by reference to the trigger for regulatory intervention, the *FSA* considers that the solo capital resources requirement of the insurance undertaking in such a designated State or territory will generally correspond to the highest point at which any regulatory or corrective action is triggered or which is in effect most nearly equivalent to the capital resources requirement which would

apply if the insurance undertaking were an insurer.

...

8.3.45 R (1) ...

(2) For the purposes of *PRU 8.3.9R* and *PRU 8.3.10R*, a firm must ensure that at all times its *tier one capital resources* and *tier two capital resources* are of such an amount that its *group capital resources* comply with the following limit, subject to (4):

$$(P - Q + T) \geq \frac{1}{3}X + (R - S - U - X).$$

(3) ...

(4) For the purposes of (2):

(a) *PRU 8.3.45R(1)(a)* does not apply;

(b) the innovative tier one capital of the firm or its regulated related undertakings that meets the conditions for it to be upper tier two capital may be included as upper tier two capital for the purpose of the calculation in *PRU 8.3.50R*; and

(c) the firm must exclude from the calculation of  $(P - Q + T)$  in (2) the higher of:

(i) any amount by which the total group tier two capital exceeds the group capital resources of the firm less any innovative tier one capital excluded by (b); and

(ii) any amount by which the sum of lower tier two capital resources calculated in accordance with *PRU 8.3.57R* exceeds one third of the group capital resources of the firm less any innovative tier one capital excluded by (b).

...

**PRU TP 1 Transitional Provisions**

**PRU TP 1.1 Transitional Provisions**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
23	<i>PRU</i> 4.3.5R (3) (b)  <i>PRU</i> 4.3.34R  <i>PRU</i> 4.3.35R	R	(1) <i>PRU</i> 4.3.5R(3)(b) has effect as if the words "and is capable of valuation" and "to 4.3.35R" were omitted.  (2) <i>PRU</i> 4.3.34R has effect as if it read "For the purpose of <i>PRU</i> 4.3.5R(3)(b), a transaction is on approved terms only if the <i>firm</i> reasonably believes that it may be readily closed out".  (3) <i>PRU</i> 4.3.35R does not apply.	From 31 December 2004 until 30 December 2005 <del>6</del>	31 December 2004
<u>23A</u>	<u><i>PRU</i> 7.3.85R(2)</u>	<u>R</u>	<u><i>PRU</i> 7.3.85R(2) has effect as if it read "misrepresentation".</u>	From 31 December 2005 until 31 March 2006	<u>31 December 2005</u>
<u>23B</u>	<u><i>PRU</i> 7.3.88G</u>	<u>G</u>	<u><i>PRU</i> 7.3.88G has effect as if the word "material" were omitted.</u>	As <u><i>PRU</i> TR 23AR</u>	As <u><i>PRU</i> TR 23AR</u>

...

**ENHANCED CAPITAL REQUIREMENT CALCULATION  
(REPORTING FORMS) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 31 December 2005.

**Amendments to the Integrated Prudential sourcebook**

- D. The Integrated Prudential sourcebook is amended in accordance with Annex A to this instrument.

**Amendments to the Interim Prudential sourcebook for Insurers**

- E. The Interim Prudential sourcebook for Insurers is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Enhanced Capital Requirement Calculation (Reporting Forms) Instrument 2005.

By order of the Board  
17 November 2005

## Annex A

### Amendments to the Integrated Prudential Sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. In PRU 7.2.79 R some of the entries have been re-ordered; those changes have not been marked.

7.2.79 R Table: Insurance-related Capital Charge Factors

Class of Business	Net Written Premium capital charge factor	Technical provision capital charge factor
[deleted] ...		
<u>Reporting Group: Direct and facultative business</u>		
<u>Direct and facultative accident and health</u>	<u>5.0%</u>	<u>7.5%</u>
<u>Direct and facultative personal lines motor business</u>	<u>10.0%</u>	<u>9.0%</u>
<u>Direct and facultative household and domestic all risks</u>	<u>10.0%</u>	<u>10.0%</u>
<u>Direct and facultative personal lines financial loss</u>	<u>25.0%</u>	<u>14.0%</u>
<u>Direct and facultative commercial motor business</u>	<u>10.0%</u>	<u>9.0%</u>
<u>Direct and facultative commercial lines property</u>	<u>10.0%</u>	<u>10.0%</u>
<u>Direct and facultative commercial lines liability</u>	<u>14.0%</u>	<u>14.0%</u>
<u>Direct and facultative commercial lines financial loss</u>	<u>25.0%</u>	<u>14.0%</u>
<u>Direct and facultative aviation</u>	<u>32.0%</u>	<u>14.0%</u>
<u>Direct and facultative marine</u>	<u>22.0%</u>	<u>17.0%</u>
<u>Direct and facultative goods in transit</u>	<u>12.0%</u>	<u>14.0%</u>
<u>Direct and facultative miscellaneous</u>	<u>25.0%</u>	<u>14.0%</u>
<u>Reporting Group: Non-Proportional Treaty</u>		
Non-proportional accident & health	35.0%	16.0%
Non-proportional motor	10.0%	14.0%
Non-proportional aviation	61.0%	16.0%

Non-proportional marine	38.0%	17.0%
Non-proportional transport	16.0%	15.0%
Non-proportional property <del>non-catastrophe</del>	53.0%	12.0%
<del>Non-proportional property catastrophe</del>	<del>53.0%</del>	<del>12.0%</del>
Non-proportional liability (non-motor)	14.0%	14.0%
Non-proportional <del>pecuniary loss</del> <u>financial lines</u>	39.0%	14.0%
Non-proportional aggregate cover	53.0%	12.0%
Reporting Group: Proportional Treaty		
Proportional <del>assumed</del> accident & health	12.0%	16.0%
Proportional <del>assumed</del> motor	10.0%	12.0%
Proportional aviation	33.0%	16.0%
Proportional marine	22.0%	17.0%
Proportional transport	12.0%	15.0%
Proportional property	23.0%	12.0%
Proportional liability (non-motor)	14.0%	14.0%
Proportional <del>pecuniary loss</del> <u>financial lines</u>	25.0%	14.0%
Proportional aggregate cover	23.0%	12.0%
[deleted] ...		
Reporting Group: Miscellaneous Reinsurance		
Miscellaneous reinsurance accepted business	39.0%	14.0%

## Annex B

### Amendments to the Interim Prudential sourcebook for Insurers

After IPRU(INS) 9.43G insert the following new Part, which is not underlined:

#### **PART VI**

#### **ENHANCED CAPITAL REQUIREMENT**

- 9.44 (1) An *insurer* to which *PRU* 2.3.10R applies must, in respect of each *financial year*, report its *enhanced capital requirement* (calculated in accordance with *PRU* 2.3.11R) as at the end of that *financial year*.
- (2) The report must be in the form of ECR1 set out in Appendix 9.10.
- (3) An *insurer* must deposit a printed copy of the report with the FSA within 2 months and 15 days of the *financial year end* unless, in addition to depositing a printed copy, an *insurer* also deposits an electronic copy, then the period for deposit is within 3 months of the *financial year end*.
- (4) The printed copy of the report must be signed by the persons described in *IPRU(INS)* 9.33(1).

#### **Guidance**

9.45 The report required by rule 9.44(1) does not form part of the *insurer's return*.

9.46 Electronic copies may be sent on disk or by e-mail to [ecrsubmissions@fsa.gov.uk](mailto:ecrsubmissions@fsa.gov.uk).

After Appendix 9.9 in Volume 2 insert the following new Appendix, which is not underlined.

**APPENDIX 9.10** (rule 9.44 and guidance 9.45)

**ENHANCED CAPITAL REQUIREMENT  
(FORM ECR1)**

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**ECR Calculation - Summary**

Form **ECR1**  
Sheet 1

Name of insurer

Financial year ended

	<b>£000</b>	<b>Source:</b>
Capital Resources		<i>Form:1 Line:13 Col:1</i>
Minimum Capital Requirement (MCR)		<i>Form:1 Line:34 Col:1</i>

**ECR Calculation**

Asset Charge		<i>Sheet 2: Asset-related Capital Requirement</i>
Premium Charge - Accident Year Business		<i>Sheet 3: Insurance-related Capital Requirement Accident Year Charge</i>
Technical Provision Charge - Accident Year Business		<i>Sheet 3: Insurance-related Capital Requirement Accident Year Charge</i>
Premium Charge - Underwriting Year Business		<i>Sheet 4: Insurance-related Capital Requirement Underwriting Year Charge</i>
Technical Provision Charge - Underwriting Year Business		<i>Sheet 4: Insurance-related Capital Requirement Underwriting Year Charge</i>
Less Claims Equalisation Reserve		<i>Form:15 Line:14+15 Col:1</i>

<b>ECR</b>	
<b>ICG (if given)</b>	
<b>Capital Resources / ECR</b>	
<b>Capital Resources / ICG (if given)</b>	
<b>ICG / ECR (if given)</b>	

**Asset-Related Capital Requirement (Category of assets 1 only)**
**Form ECR1**
**Sheet 2**

 Name of insurer  
 Financial Year ended

Asset item	FSA return source (Form13 Column 1)	Assets (£ 000)	Derivative adjustment (£ 000)	Asset-related capital charge factor	Asset-related capital charge (£ 000) [ (1)+(2) ] * (4)
		(1)	(2)	(3)	(4)
Land & buildings	L11			7.5%	
Shares in group undertakings excluding participating interests - insurance dependants	L21+23			0.0%	
Shares in group undertakings excluding participating interests - other	L25+27			7.5%	
Debt securities issued by & loans to group undertakings	L22+L24+L26+L28			3.5%	
Participating interests	L29			7.5%	
Debt securities issued by & loans to undertakings in which the insurer has a participating interest	L30			3.5%	
Shares, other variable-yield securities, units in unit trusts and Participation in investment pools	L41+L42+L43+L49			16.0%	
Money market funds				0.0%	
Debt securities and other fixed income securities: approved securities	L45+L47			3.5%	
Debt securities and other fixed income securities: other	L46+L48			3.5%	
Loans secured by mortgages	L50			2.5%	
Other loans	L51+L52+L53			2.5%	
Deposits with approved credit institutions and approved financial institutions	L54+L55			0.0%	
Other financial investments: other	L56+L58+L59			7.5%	
Deposits with ceding undertakings	L57			3.5%	
Reinsurers' share of technical provisions: Provision for unearned premiums	L60			2.5%	
Reinsurers' share of technical provisions: Claims outstanding	L61			2.5%	
Reinsurers' share of technical provisions: Other	L62+63			2.5%	
Debtors arising out of direct insurance operations: policyholders	L71			4.5%	
Debtors arising out of direct insurance operations: intermediaries	L72			3.5%	
Debtors arising out of reinsurance operations	L74+L75			2.5%	
Other debtors	L73+L76+L77+L78+L79			1.5%	
Tangible assets	L80			7.5%	
Cash at bank and in hand	L81+L82			0.0%	
Other Assets	L83			0.0%	
Accrued interest and rent	L84			0.0%	
Deferred acquisition costs	L85			0.0%	
Other prepayments and accrued income	L86			0.0%	
<b>TOTAL</b>	L89+L87-L44				

**Insurance-Related Capital Charge - Accident Year Business**

Name of insurer  
Financial Year ended

FSA Combined Category or Risk Category	Net Written Premium (£ 000)		Net claims outstanding carried forward (£ 000)		Net unearned premium and unexpired risks less deferred acquisition costs (£ 000)		Net Written Premium capital charge factor	Net technical provision capital charge factor	Net Written Premium capital charge (1) * (4)	Net Technical provision capital charge [ (2)+(3) ] * (5)					
	FSA return source	1	FSA return source	2	FSA return source	3					4	5	6	7	
<b>Direct and facultative business</b>															
110: Total primary (direct) and facultative accident and health	1						5.0%	7.5%							
120: Total primary (direct) and facultative personal lines motor business	2						10.0%	9.0%							
160: Primary (direct) and facultative household and domestic all risks	3						10.0%	10.0%							
180: Total primary (direct) and facultative personal lines financial loss business	4	Form 21. Lines(12 +13+14+15). Columns (5+6)	Form22. Lines(13 +14+17+18). Column3	Form21. Line19. Column6 + Form 22. Line(19-29). Column3			25.0%	14.0%							
220: Total primary (direct) and facultative commercial motor business	5						10.0%	9.0%							
260: Total primary (direct) and facultative commercial lines property business	6						10.0%	10.0%							
270: Total primary (direct) and facultative commercial lines liability business	7						14.0%	14.0%							
280: Total primary (direct) and facultative commercial lines financial loss business	8						25.0%	14.0%							
330: Total primary (direct) and facultative aviation business	9						32.0%	14.0%							
340: Total primary (direct) and facultative marine business	10						22.0%	17.0%							
350: Primary (direct) and facultative goods in transit	11						12.0%	14.0%							
400: Miscellaneous primary (direct) and facultative business	12						25.0%	14.0%							
002: Total Primary (Direct) and Facultative Business (sum of lines 1 to 12)	13														
<b>Treaty reinsurance business</b>															
510: Non-proportional accident and health	14						N/A	N/A	N/A			35.0%	16.0%		
520: Non-proportional motor	15											10.0%	14.0%		
530: Non-proportional aviation	16	61.0%	16.0%												
540: Non-proportional marine	17	38.0%	17.0%												
550: Non-proportional transport	18	16.0%	15.0%												
560: Non-proportional property	19	53.0%	12.0%												
570: Non-proportional liability (non-motor)	20	14.0%	14.0%												
580: Non-proportional financial lines	21	39.0%	14.0%												
590: Non-proportional aggregate cover	22	53.0%	12.0%												
500: Total Non-Proportional Reinsurance Treaty Business accepted (sum of lines 14 to 22)	23	F21L(12+13+14+15)C(5+6)	F22L(13+14+17+18)C3	F21L19C6+F22L(19-29)C3											
610: Proportional accident and health	24	N/A	N/A	N/A			12.0%	16.0%							
620: Proportional motor	25						10.0%	12.0%							
630: Proportional aviation	26						33.0%	16.0%							
640: Proportional marine	27						22.0%	17.0%							
650: Proportional transport	28						12.0%	15.0%							
660: Proportional property	29						23.0%	12.0%							
670: Proportional liability (non-motor)	30						14.0%	14.0%							
680: Proportional financial lines	31						25.0%	14.0%							
690: Proportional aggregate cover	32						23.0%	12.0%							
600: Total Proportional Reinsurance Treaty Business accepted (sum of lines 24 to 32)	33						F21L(12+13+14+15)C(5+6)	F22L(13+14+17+18)C3	F21L19C6+F22L(19-29)C3						
700: Miscellaneous treaty reinsurance business accepted	34	N/A	N/A	N/A			39.0%	14.0%							
003: Total Treaty Reinsurance Business (sum of lines 14 to 22, 24 to 32 and 34)	35	F21L(12+13+14+15)C(5+6)	F22L(13+14+17+18)C3	F21L19C6+F22L(19-29)C3											
<b>001: Total Business</b> (sum of lines 1 to 12, 14 to 22, 24 to 32 and 34)	<b>36</b>	F21L(12+13+14+15)C(5+6)	F22L(13+14+17+18)C3	F21L19C6+F22L(19-29)C3											

**Insurance-Related Capital Charge - Underwriting Year Business**

Name of insurer  
Financial Year ended

FSA Combined Category or Risk Category	Net Written Premium (£ 000)		Net claims outstanding carried forward (£ 000)		Net unearned premium and unexpired risks less deferred acquisition costs (£ 000)		Net Written Premium capital charge factor	Net technical provision capital charge factor	Net Written Premium capital charge (1) * (4)	Net Technical provision capital charge [(2)+(3)] * (5)
	FSA return source	1	FSA return source	2	FSA return source	3	4	5	6	7
<b>Direct and facultative business</b>										
110: Total primary (direct) and facultative accident and health	1						5.0%	7.5%		
120: Total primary (direct) and facultative personal lines motor business	2						10.0%	9.0%		
160: Primary (direct) and facultative household and domestic all risks	3						10.0%	10.0%		
180: Total primary (direct) and facultative personal lines financial loss business	4						25.0%	14.0%		
220: Total primary (direct) and facultative commercial motor business	5						10.0%	9.0%		
260: Total primary (direct) and facultative commercial lines property business	6	Form24. Line19. Column99		Form25. Lines(11-12+13-14+15). Column99		Form25. Lines(22+23-24). Column99	10.0%	10.0%		
270: Total primary (direct) and facultative commercial lines liability business	7						14.0%	14.0%		
280: Total primary (direct) and facultative commercial lines financial loss business	8						25.0%	14.0%		
330: Total primary (direct) and facultative aviation business	9						32.0%	14.0%		
340: Total primary (direct) and facultative marine business	10						22.0%	17.0%		
350: Primary (direct) and facultative goods in transit	11						12.0%	14.0%		
400: Miscellaneous primary (direct) and facultative business	12						25.0%	14.0%		
002: Total Primary (Direct) and Facultative Business (sum of lines 1 to 12)	13									
<b>Treaty reinsurance business</b>										
510: Non-proportional accident and health	14						35.0%	16.0%		
520: Non-proportional motor	15						10.0%	14.0%		
530: Non-proportional aviation	16						61.0%	16.0%		
540: Non-proportional marine	17	Form28. Line19. Column99		Form29. Lines(11-12+13-14+15). Column99		Form29. Lines(22+23-24). Column99	38.0%	17.0%		
550: Non-proportional transport	18						16.0%	15.0%		
560: Non-proportional property	19						53.0%	12.0%		
570: Non-proportional liability (non-motor)	20						14.0%	14.0%		
580: Non-proportional financial lines	21						39.0%	14.0%		
590: Non-proportional aggregate cover	22						53.0%	12.0%		
500: Total Non-Proportional Reinsurance Treaty Business accepted (sum of lines 14 to 22)	23	F24L19C99		F25L(11-12+13-14+15)C99		F25L(22+23-24)C99				
610: Proportional accident and health	24						12.0%	16.0%		
620: Proportional motor	25						10.0%	12.0%		
630: Proportional aviation	26						33.0%	16.0%		
640: Proportional marine	27	Form28. Line19. Column99		Form29. Line(11-12+13-14+15). Column99		Form29. Lines(22+23-24). Column99	22.0%	17.0%		
650: Proportional transport	28						12.0%	15.0%		
660: Proportional property	29						23.0%	12.0%		
670: Proportional liability (non-motor)	30						14.0%	14.0%		
680: Proportional financial lines	31						25.0%	14.0%		
690: Proportional aggregate cover	32						23.0%	12.0%		
600: Total Proportional Reinsurance Treaty Business accepted (sum of lines 24 to 32)	33	F24L19C99		F25L(11-12+13-14+15)C99		F25L(22+23-24)C99				
700: Miscellaneous treaty reinsurance business accepted	34	F28L19C99		F29L(11-12+13-14+15)C99		F29L(22+23-24)	39.0%	14.0%		
003: Total Treaty Reinsurance Business (sum of lines 14 to 22, 24 to 32 and 34)	35	F24L19C99		F25L(11-12+13-14+15)C99		F25L(22+23-24)C99				
<b>001: Total Business (sum of lines 1 to 12, 14 to 22, 24 to 32 and 34)</b>	<b>36</b>	F24L19C99		F25L(11-12+13-14+15)C99		F25L(22+23-24)C99				

## Instructions for completion of Form ECR1

1. The amounts entered in the cells in column 1 of sheet 2 and columns 1, 2 and 3 of sheets 3 and 4 must reconcile to the 'FSA return source' column, shown alongside that cell, except where:
  - (a) no FSA return source is shown e.g. sheet 3, lines 14 to 22, columns 1 and 3;
  - (b) in the case of sheets 3 and 4 column 1, the *return* for the *financial year* ended, shown on sheet 1, is for a non 12 month period; or
  - (c) in the case of a cell in sheet 3 or 4, the Form referred to in the 'FSA return source' column, was not prepared for the relevant *combined category* or *risk category* in that *return*.

Where the latter exception applies, the amount entered in that cell must be the amount that would have been reported in that *return* at the 'FSA return source' had the *insurer* prepared that Form for that *combined category* or *risk category*

### ECR Calculation – Summary (Sheet 1)

2. The amount shown on the ICG line must be the most recent Individual Capital Guidance (ICG) amount given by the FSA. The ICG will usually be based on a percentage of the ECR. In this case the percentage should be applied to the current ECR to obtain the ICG amount. If no ICG has been given, enter "N/A".

### Asset-related Capital Requirement Sheet (Sheet 2)

3. The amounts shown in column 1 must be the value, in accordance with *PRU* 1.3, of the listed asset items as at the *financial year* ended date shown on sheet 1.
4. In column 2, derivative adjustments, where a *firm* has entered into a *derivative* then, for the purposes of applying the appropriate capital charge factor as set out in *PRU* 3.3.16R, it must treat the value of the *derivative* and the value of the asset associated with the *derivative* as a single asset of a type and value which most closely reflects the economic risk to the *firm* of the combined rights and obligations associated with the *derivative* and the asset associated with the *derivative* (*PRU* 3.3.11R(4)).
5. Include money market funds as defined in *PRU* 3.3.14R in the line for the asset item "Money market funds".
6. The amount shown under the columns for "Assets" and "Derivative adjustment" for the asset item "Shares, other variable-yield securities, units in unit trusts and Participation in investment pools" should be after deductions of amounts held in money market funds included in **Form 13** at column 1 lines 41, 42, 43 or 49 of the *return* or the *financial year in question*.
7. The sum of the amounts shown in the "Asset" column for the asset items "Shares, other variable-yield securities, units in unit trusts and Participation in investment pools" and "Money market funds" should be equal to the sum of lines 41, 42, 43 and 49 at column of **Form 13** of the *return* for the *financial year in question*.

**Insurance-related Capital Requirement - Accident and Underwriting Year Accounted Business (Sheets 3-4)**

8. Amounts shown in the "Net Written Premium" column must be *net written premiums* before any deduction for commissions in the twelve months preceding the financial year ended date shown on sheet 1.
9. Amounts shown in the "Net claims outstanding carried forward" column must be net of reinsurance and comprise: outstanding claims, provisions for incurred but not reported (IBNR) claims, provisions for incurred but not enough reported (IBNER) claims and related claims management costs as at the financial year ended date shown on sheet 1.
10. Amounts shown in the "Net unearned premium and unexpired risks net of deferred acquisition costs" column must be net of reinsurance and comprise provision for unexpired risk and unearned premium less deferred acquisition costs as at the financial year ended date shown on sheet 1.
11. The amount derived in the "Net technical provision capital charge" column is the net technical provision capital charge factor multiplied by the sum of the net claims outstanding carried forward and the net unearned premium less deferred acquisition costs.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS (PUBLIC DISCLOSURE  
OF GROUP CAPITAL ADEQUACY) INSTRUMENT 2005**

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

**Commencement**

- C. This instrument comes into force on 31 December 2005.

**Amendments to the Interim Prudential sourcebook for Insurers**

- D. The Interim Prudential sourcebook for Insurers is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Public Disclosure of Group Capital Adequacy) Instrument 2005.

By order of the Board  
17 November 2005

## Annex

### Amendments to the Interim Prudential sourcebook for Insurers

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

#### PART V

#### GROUP CAPITAL ADEQUACY

- 9.40 (1) Subject to (2), an *insurer* to which *PRU* 8.3 applies must, in respect of its *ultimate insurance parent undertaking* and its *ultimate EEA insurance parent undertaking* (if different), ~~submit a report of:~~
- (a) the name, location of the head office and principal activity of that undertaking;
  - (ab) the *group capital resources* of that *undertaking* (as calculated in accordance with *PRU* 8.3.36R); ~~and~~
  - (bc) the *group capital resources requirement* of that *undertaking* (as calculated in accordance with *PRU* 8.3.33R); and
  - (d) the difference between (b) and (c).
- (1A) Subject to (2), an *insurer* to which *PRU* 8.3 applies must, in respect of its *ultimate EEA insurance parent undertaking*, report:
- (a) where its *ultimate EEA insurance parent undertaking* has published annual consolidated accounts prepared in accordance with accounting standards, policies and legislation applicable to it, a reconciliation between:
    - (i) the *group capital resources* of the *ultimate EEA insurance parent undertaking*; and
    - (ii) the shareholders' funds, subordinated liabilities and other relevant amounts included in the published annual consolidated accounts of the *ultimate EEA insurance parent undertaking*; and
  - (b) where its *ultimate EEA insurance parent undertaking* includes a capital statement in the form prescribed by the Accounting Standards Board's Financial Reporting Standard 27, an explanation of any differences between:
    - (i) the amounts included in that capital statement; and

(ii) the amounts in (1)(b).

- (2) ~~An insurer is not required to submit the report referred to in (1) where No report is required if:~~
- (a) the insurer is an undertaking listed in PRU 8.3.17R(2); or
  - (b) under Article 4(2) of the *Insurance Groups Directive*, a competent authority of an EEA State other than the United Kingdom has agreed to be the competent authority responsible for exercising supplementary supervision in accordance with PRU 8.3.23R.
- (3) The report ~~required~~ in (1) must:
- (a) comply with the requirements of SUP 16.3;
  - (b) subject to ~~(d4)~~, be signed by the persons described in IPRU(INS) 9.33(1); and
  - (c) include a statement from the auditors of the insurer (or of an insurer under ~~(d4)~~) that, in their opinion, the report in (1) has been properly compiled in accordance with PRU 8.3 from information provided by members of the insurance group and from the insurer's own records; ~~and~~
  - (d) ~~be provided by either the insurer or on behalf of the insurer (the first insurer) by any other insurer to which PRU 8.3 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.~~
- (4) The reports in (1) and (1A) must be provided by either the insurer or on behalf of the insurer (the first insurer) by any other insurer to which PRU 8.3 applies and which is a member of the insurance group (the second insurer) where:
- (a) it is signed by two directors of the second insurer, and
  - (b) it contains a statement that it has been copied to the board of directors of the first insurer.

...

- 9.42 (1) The reports in rule 9.40(1) and rule 9.40(1A) must include information and calculations required by rule 9.40 and rule 9.41:

- (a) as at the end of the *financial year* of:
  - (i) the *insurer*; or
  - (ii) the *ultimate EEA insurance parent undertaking*; or
  - (iii) the *ultimate insurance parent undertaking*.
- (b) subject to (2), as at the same date for every member of the *insurance group* to which the report relates. Where the *financial year* end of a member of the *insurance group* differs from the date chosen for the purposes of 1(a), interim calculations must be prepared for that member as at the date chosen for the purposes of 1(a); 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 required in the report were last provided under this chapter or Chapter 10 of *IPRU(INS)*.

...

- (4) An insurer must submit the reports in rule 9.40(1) and in rule 9.40(1A) 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 report is provided as at the end of its *financial year* under (1)(a).
- (5) If within 24 months of receipt, the *FSA* notifies the *insurer* that a report appears to be inaccurate or incomplete, the *insurer* must, within one month of notification, provide a revised report correcting any inaccuracies and making good any omissions.

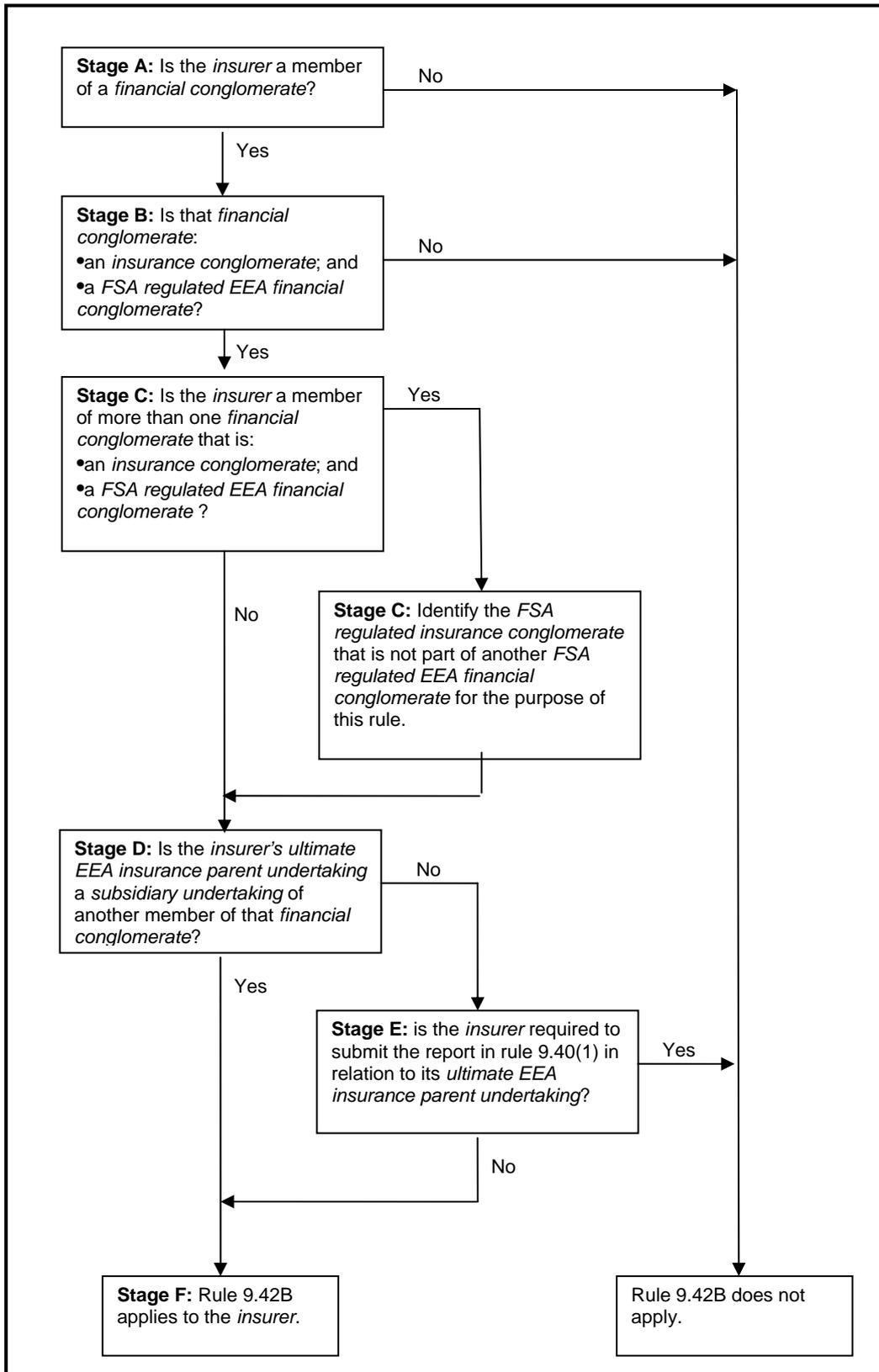
9.42A

- An insurer that reports under rule 9.40(1) must, subject to rule 9.42B, provide to any person, within 30 days of request (or, in the case of (c), the date the revised report is provided to the *FSA* under rule 9.42(5)):
- (a) the following information from the report in respect of the *financial year in question*:
    - (i) the name, location of the head office and principal activity of the *ultimate EEA insurance parent undertaking*;
    - (ii) the amount of the *group capital resources* of the *ultimate EEA insurance parent undertaking*;

- (iii) the amount of the *group capital resources requirement of the ultimate EEA insurance parent undertaking*;
- (iv) the difference between (ii) and (iii); and
- (b) a copy of the report in rule 9.40(1A) in respect of the *financial year in question*; and
- (c) a copy of any information provided under rule 9.42(5) that revises any information provided in (a) and (b),

where the information is available in an electronic form, in the form requested or, if the information is not available electronically, in printed form, but (except in the case of (c)) the *insurer* may make a charge to cover its reasonable costs, including those of printing and postage.

- 9.42B
- (1) An *insurer* identified at stage F of the decision tree in rule 9.42C must provide to any person within 30 days of the request the information in rule 9.42D.
  - (2) The information referred to in (1) must be provided, where the information is available in an electronic form, in the form requested or, if the information is not available electronically, in printed form, but the *insurer* may make a charge to cover its reasonable costs, including those of printing and postage.



- 9.42D (1) An insurer must provide the following information from the report prepared in accordance with SUP 16.7.83R in respect of the financial year in question of the financial conglomerate identified at Stage C of the decision tree in rule 9.42C:
- (a) the capital resources and capital resources requirement identified in (2) of the financial conglomerate;
  - (b) the difference between the capital resources and capital resources requirement of the financial conglomerate referred to in (a);
  - (c) where the parent undertaking in the financial conglomerate that is not a subsidiary of another member of the financial conglomerate has published annual consolidated accounts prepared in accordance with accounting standards, policies and legislation applicable to it, a reconciliation between:
    - (i) the amount of the capital resources of the financial conglomerate in (2); and
    - (ii) the shareholders' funds, subordinated liabilities and other relevant amounts included in the published annual consolidated accounts of that parent undertaking; and
  - (d) where the parent undertaking in the financial conglomerate that is not a subsidiary undertaking of another member of the financial conglomerate includes a capital statement in the form prescribed by the Accounting Standards Board's Financial Reporting Standard 27, an explanation of any differences between:
    - (i) the capital resources of the financial conglomerate in (2); and
    - (ii) the amounts included in that capital statement.
- (2) The capital resources and capital resources requirement of the financial conglomerate identified at Stage C of the decision tree in rule 9.42C are:
- (a) where PRU 8.4.26R applies to the financial conglomerate, the capital resources of the financial conglomerate and the minimum amount of capital resources that the financial conglomerate must have to meet the requirement in PRU 8.4.26R; or
  - (b) where PRU 8.4.29R applies to the financial conglomerate, its conglomerate capital resources and its conglomerate capital resources requirement.

...

9.43 ...

- (2) The reports required by rule 9.40~~(1)~~ does not form part of the *insurer's return*.
- (3) Where several *insurers* to which rule 9.40 applies have the same *ultimate insurance parent undertaking* or *ultimate EEA insurance parent undertaking* or both, rule 9.40 applies to all of them. In these circumstances one *insurer* may submit the reports in rule 9.40 on behalf of the other *insurers* in the *insurance group* as set out in rule 9.40~~(3)(d)~~(4). 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 *insurance group* are aware of the relevance of the group information to themselves.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS  
(AMENDMENT NO 8) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 141 (Insurance business rules);
  - (3) section 150(2) (Actions for damages);
  - (4) section 156 (General supplementary powers);
  - (5) section 157(1) (Guidance); and
  - (6) section 340 (Appointment).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 31 December 2005.

**Amendments to the Interim Prudential sourcebook for Insurers**

- D. The Interim Prudential sourcebook for Insurers is amended in accordance with Annex A to this instrument.

**Amendments to the Interim Prudential sourcebook for Friendly Societies**

- E. The Interim Prudential sourcebook for Friendly Societies is amended in accordance with Annex B to this instrument.

**Amendments to the Conduct of Business sourcebook**

- F. The Conduct of Business sourcebook is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Amendment No 8) Instrument 2005.

By order of the Board  
17 November 2005

## Annex A

### Amendments to the Interim Prudential sourcebook for Insurers

In this Annex underlining indicates new text and striking through indicates deleted text. Where existing text is replaced by new text, this is indicated and the new text is not underlined. Amendments that were made by the Board in the Insurance Regulatory Reporting Instrument 2005 (FSA 2005/3) (to come into effect on 31 December 2005), published within PS05/2, are included in the underlying text.

#### Chapter 3

#### LONG-TERM INSURANCE BUSINESS

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#### CONTENTS

##### Part I - Identification and application of assets and liabilities

- 3.1 ~~Separation of assets and liabilities attributable to long term insurance business~~  
[deleted]

...

#### Chapter 3

#### LONG-TERM INSURANCE BUSINESS

---

##### Part I

##### IDENTIFICATION AND APPLICATION OF ASSETS AND LIABILITIES

##### ~~Separation of assets and liabilities attributable to long term insurance business~~ **business**

- 3.1 (1) [deleted]
- (2) ~~An insurer which carries on ordinary long term insurance business or industrial assurance business must maintain such accounting and other records as are necessary for identifying—~~
- (a) ~~the assets representing the long term insurance fund maintained by it for that business (but without necessarily distinguishing between the funds if more than one); and~~

- (b) ~~the liabilities attributable to each kind of business which it carries on.~~  
[deleted]

...

## Chapter 9

### FINANCIAL REPORTING

---

#### Interpretation

9.2 ...

- (3) In the *Accounts and Statements Rules*, any reference to *long-term insurance business* or to *general insurance business* is –
- (a) in relation to an *external insurer*, to its entire *long-term insurance business* or to its entire *general insurance business* and (except in the case of a ~~*pure reinsurer*~~ *non-EEA insurer whose insurance business in the United Kingdom is restricted to reinsurance or an insurer whose head office is in any EEA State except the United Kingdom whose insurance business in the EEA is restricted to reinsurance*), to any *long-term insurance business* or *general insurance business* carried on by it through a branch in the United Kingdom; and

...

and accordingly any reference to, or requirement imposed in respect of, the accounts and balance sheet (including any notes, statements, reports and certificates annexed to them) relevant to *long-term insurance business* or to *general insurance business* is to, or imposes a requirement in respect of –

...

- (ii) accounts prepared in respect of the *long-term insurance business* or the *general insurance business* carried on, in the case of an *external insurer* (other than a ~~*pure reinsurer*~~ *non-EEA insurer whose insurance business in the United Kingdom is restricted to reinsurance or an insurer whose head office is in any EEA State except the United Kingdom whose insurance business in the EEA is restricted to reinsurance*), by the branch in the United Kingdom and, in the case of a *UK-deposit insurer*, by the branches in question in the *EEA States* taken together.

...

## Half-yearly balance sheet and report for realistic valuation

- 9.3A (1) ...
- (2) ...
- (3) ...
- (4) Rules 9.4, 9.6, 9.10, 9.11, 9.12, 9.33 and 9.34, **Appendices 9.1 and 9.4A** and **Part I of Appendix 9.6** apply to this rule and to any documents required under this rule as if –
- ...
- (h) ... ; ~~and~~
- (i) ... ; and
- (j) in 9.6(2)(a) a single printed copy is required and for both 9.6(2)(a) and 9.6(2)(b) the printed copy must be sent to the *insurer's* normal supervisory contact.
- ...

## Deposit of accounts etc. with the FSA

- 9.6 (1) Every 'account', 'balance sheet', abstract or statement required by rules 9.3, 9.3A, 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 <b>9.36A</b>	otherwise
31 December 2001	4 months	3 months and 15 days
31 December 2002 and following years	3 months	2 months and 15 days

- (1B) (a) ~~An *insurer* must, in respect of any *financial year* ending from 31 December 2003 to 30 December 2004 (inclusive) send to the *FSA*, in addition to the documents in (1), the documents and information in (b).~~

(b) ~~The documents and information are:–~~

- (i) ~~**Forms 11, 12 and 60** as amended by the Interim Prudential Sourcebook for Insurers (Solvency I Directive) Instrument~~

2003, provided that the amended **Form 60** need not be submitted if it contains no information different to the information in the un-amended **Form 60**; and

(ii) ~~the amounts at line 12 of amended **Form 15** and line 61 of amended **Form 13**, if these lines contain amounts different from the amounts at the same lines of the un-amended forms.~~

(c) ~~The documents and information in (b) must be submitted to the insurer's normal supervisory contact at the FSA within four months of the end of the financial year.~~

[deleted]

(2) In (1), the reference to the **required copies** is to -

(a) five printed copies of the document; or

(b) one printed copy of the document and one copy of it in an electronic form which may be readily used or translated by the FSA sent by email to [insurancereturns@fsa.gov.uk](mailto:insurancereturns@fsa.gov.uk).

...

(6) There must be deposited with every revenue 'account' and 'balance sheet' of an *insurer* any statement or report on the affairs of the insurer made or submitted;

(a) to the insurer's shareholders or policyholders; or

(b) to the insurer's with-profits policyholders under COB 6.11.8G, COB 6.11.9R or SUP 4.3.16AR (4),

~~of the insurer~~ in respect of the *financial year* to which the 'account' and 'balance sheet' relate.

(6A) Where a ~~financial statement or other report on the affairs of the insurer~~ has not been made or submitted at the time the revenue 'account' and 'balance sheet' are deposited (see (6)), it must be deposited as soon as possible ~~thereafter~~ after it is submitted.

...

## Balance sheet

9.12 ...

(3A) **Form 10** must be completed by an *external insurer* (other than a ~~*pure reinsurer*~~ *non-EEA insurer* whose *insurance business in the United Kingdom is restricted to reinsurance* or an *insurer* whose head office is in any *EEA State except the United Kingdom* whose *insurance business in the EEA is restricted to reinsurance*), an *EEA-deposit insurer* or a *Swiss general insurer*.

...

(5) **Form 13** must be completed (as appropriate) –

...

(c) by every *external insurer* (other than a ~~*pure reinsurer*~~ *non-EEA insurer* whose *insurance business in the United Kingdom is restricted to reinsurance* or an *insurer* whose head office is in any *EEA State except the United Kingdom* whose *insurance business in the EEA is restricted to reinsurance*) in respect of *long-term insurance business* or *general insurance business* carried on by it through a branch in the United Kingdom in respect of those assets which are –

- (i) deposited under *PRU 7.6.54R*,
  - (ii) maintained in the United Kingdom, and
  - (iii) maintained in the United Kingdom and the other *EEA States*;
- and

...

(6) **Form 14** must be completed by every *long-term insurer* in respect of -

...

(c) subject to (6A), except where the information is provided by virtue of (a) or (b), each *with-profits fund*, with a supplementary note (code 1406) stating the amount, if any, of the increase or decrease, as the case may be, in the value of *non-linked assets*.

...

- 9.20A
- (1) Subject to (2) and (3), If the total of all 'gross undiscounted provisions' in all the **Forms 26 to 29, 31, 32 and 34** required under rules 9.17, 9.19 and 9.20, or included despite rule 9.20(4), is less than 80% of the *insurer's* total 'gross undiscounted provisions', the *insurer* must prepare **Forms 26 to 29, 31, 32 and 34**, as appropriate, for further categories of business (as set out in column 2 of paragraph 2B of **Appendix 9.2**) in decreasing order of size (measured in 'gross undiscounted provisions'), until the 80% criterion is met.
  - (2) An insurer need not prepare a **Form 26, 27, 28, 29, 31, 32 or 34** for a category of business (as set out in column 2 of paragraph 2B of

**Appendix 9.2)** if

- (a) the insurer's gross written premiums in the financial year in question for that category of business are less than £1m; and
- (b) the insurer's 'gross undiscounted provisions' at the end of the financial year in question for that category of business are less than £1m.
- (3) An insurer need only prepare a **Form 26, 27, 28, 29, 31, 32** or **34** for a category of business (as set out in column 2 of paragraph 2B of **Appendix 9.2)** if it is required to prepare a **Form 20** for category number 110, 120, 160, 180, 220, 260, 270, 280, 330, 340, 350, 400, 500, 600 or 700 which includes that category of business.

...

**Additional information on long-term insurance business**

9.23 Every *insurer* which carries on *long-term insurance business* must, in respect of the *financial year in question*, and in accordance with the requirements of **Appendix 9.3**, prepare –

- (a) **Forms 41** to **4543** in respect of each revenue account prepared separately under rule 9.14(b)(i);
- (b) summary **Forms 41** to **4543** if a summary **Form 40** is required under rule 9.14(b)(ii); and
- (c) **Forms 4644** to **59B** and, except in the case of an *EEA-deposit insurer*, **Form 60**

...

**Chapter 11**

**DEFINITIONS**

...

<i>permitted derivative contract</i>	for the purpose of <b>Appendix 3.2</b> , a <i>derivative</i> or <i>quasi-derivative</i> which satisfies the requirements of <i>PRU 4.3.5R</i> to <i>PRU 4.3.35R</i> with the exception of <i>PRU 4.3.18R</i> , as applied in relation to assets covering liabilities in respect of <i>linked long-term contracts of insurance</i> , amended as follows:  (a) in <i>PRU 4.3.5R</i> and <del><i>PRU 4.3.36R</i></del> , "For the purpose of <i>PRU 2</i> Ann 1R (Admissible assets in insurance)" is replaced by "For the purposes of <i>IPRU (INS)</i> rules 3.6 and 3.7 and Appendix 3.2";
--------------------------------------	--

	<p>(b) in <i>PRU 4.3.6R</i> (2) and (3), <i>PRU 4.3.7R</i> (1) and (2), and <i>PRU 4.3.17R</i> (1) and <del><i>PRU 4.3.36R</i></del> (1) "<i>admissible assets</i>" is replaced by "<i>permitted connected property</i>";</p> <p>(c) ...</p>
<i>permitted stock lending transaction</i>	<p>for the purpose of <b>Appendix 3.2</b>, a <i>stock lending transaction</i> which satisfies the requirements of <i>PRU 4.3.36R</i> to <i>PRU 4.3.41R</i>, amended as follows:</p> <p>(a) in <i>PRU 4.3.36R</i> (1), "For the purposes of <i>PRU 2 Ann 1R</i> (Admissible assets in insurance)" is replaced by "For the purposes of <i>IPRU (INS)</i> rules 3.6 and 3.7 and Appendix 3.2";</p> <p>(b) in <i>PRU 4.3.36R</i> (1) (a), "<i>admissible assets</i>" is replaced by "<i>permitted connected property</i>".</p> <p>(c) <i>PRU 4.3.36R</i>(1)(c) is amended to read "<u>adequate and sufficiently immediate collateral which is in the form of permitted connected property or a letter of credit (<i>PRU 4.3.38R</i>, <i>PRU 4.3.38AR</i>, <i>PRU 4.3.40R</i> and <i>PRU 4.3.41R</i>) is obtained to secure the obligation of the counterparty.</u>"</p>

...

<i>readily realisable</i>	<p>in <del>Appendix 3.2</del>, in relation to an investment:</p> <p>...</p>
<i>receivable</i>	<p>in relation to an <i>insurer</i>, a <i>financial year</i> and a premium, means due to the <i>insurer</i> <del>in respect of contracts of insurance incepted during that financial year</del>, whether or not the premium is received during that <i>financial year</i></p>

...

<i>variation margin</i>	<p>(a) in respect of a <i>derivative contract</i>, or a <i>quasi-derivative contract</i> having the effect of a <i>derivative contract</i><sup>++</sup>, ...</p>
-------------------------	--

<sup>++</sup> See rule 4.13

## ANNEX 11.3

### DESCRIPTIONS OF FSA GENERAL INSURANCE BUSINESS REPORTING CATEGORIES

#### Part I

**Categories to which contracts of general insurance business are to be allocated for the purpose of reporting in the return**

Category Number	FSA general insurance business reporting category	Map to classes of business in Annex A of 73/239/EEC
...	...	...
	<b>NON-PROPORTIONAL REINSURANCE TREATY BUSINESS</b>	
500	<b>Total Non-Proportional Reinsurance Treaty Business accepted</b> ( <i>category numbers 510 to 590 combined</i> ).	N/A
510	<b>Non-proportional accident &amp; health</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 1 or 2, and do not fall within category numbers 590 or 710(p).</i>	1,2
520	<b>Non-proportional motor</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 3 or 10, or category number 710(p), and do not fall within category number 590.</i>	3,10
530	<b>Non-proportional aviation</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 5 or 11, or category number 710(p), and do not fall within category number 590.</i>	5,11
540	<b>Non-proportional marine</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 6 or 12, or category number 710(p), and do not fall within category number 590.</i>	6,12
550	<b>Non-proportional transport</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within class 7, and do not fall within category number 590.</i>	7

560	<b>Non-proportional property</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 8 or 9, and do not fall within category number 590.</i>	4,8,9
570	<b>Non-Proportional liability (non-motor)</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within class 13, and do not fall within category numbers 520, 530, 540 or 590.</i>	13
580	<b>Non-proportional financial lines</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 14, 15, 16, 17 or 18, and do not fall within category number 590.</i>	14,15,16,17,18
590	<b>Non-proportional aggregate cover</b> <i>Contracts of insurance, effected or carried out under non-proportional reinsurance treaties or proportional retrocession of non-proportional treaty reinsurance business, which fall within more than one of category numbers 510 to 580, where no one of these categories accounts for more than 90% of the exposure on the contract.</i>	1 to 18
	<b>PROPORTIONAL REINSURANCE TREATY BUSINESS</b>	
600	<b>Total Proportional Reinsurance Treaty Business accepted</b> <i>(category numbers 610 to 690 combined).</i>	N/A
610	<b>Proportional accident &amp; health</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties other than proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 1 or 2 and do not fall within category numbers 690 or 710(p).</i>	1,2
620	<b>Proportional motor</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties other than proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 3 or 10, or category number 710(p) and do not fall within category number 690.</i>	3,10
630	<b>Proportional aviation</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties other than proportional retrocession of non-proportional treaty reinsurance business, which fall within classes 5 or 11, or category number 710(p) and do not fall within category number 690.</i>	5,11

640	<b>Proportional marine</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties <u>other than proportional retrocession of non-proportional treaty reinsurance business</u>, which fall within classes 6 or 12, or category number 710(p) and do not fall within category number 690.</i>	6,12
650	<b>Proportional transport</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties <u>other than proportional retrocession of non-proportional treaty reinsurance business</u>, which fall within class 7 and do not fall within category number 690.</i>	7
660	<b>Proportional property</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties <u>other than proportional retrocession of non-proportional treaty reinsurance business</u>, which fall within classes 8 or 9 and do not fall within category number 690.</i>	4,8,9
670	<b>Proportional liability (excluding motor)</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties <u>other than proportional retrocession of non-proportional treaty reinsurance business</u>, which fall within class 13 and do not fall within category numbers 620, 630, 640 or 690.</i>	13
680	<b>Proportional financial lines</b> <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties <u>other than proportional retrocession of non-proportional treaty reinsurance business</u>, which fall within classes 14, 15, 16, 17 or 18 and do not fall within category number 690.</i>	14,15,16,17,18
690	<b>Proportional aggregate cover</b> (i.e. more than one of the above) <i>Contracts of insurance, effected or carried out under proportional reinsurance treaties <u>other than proportional retrocession of non-proportional treaty reinsurance business</u>, which fall within more than one of category numbers 610 to 680, where no one of these categories accounts for more than 90% of the exposure on the contract.</i>	1 to 18
...	...	...

## Chapter 12

### TRANSITIONAL ARRANGEMENTS

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...

#### 2005 Return Transitional Tables A, B, C and D

12.4 These Tables belong to rule 12.2.

...

#### Table A instruction 2

In columns 1 and 2 the years of origin may be accident years or underwriting years.

In row 1 columns 1 and 2 replace "[year of origin]" with "accident year" if the business reported on the Table is reported on **Forms 26, 27, 31 or 32** or "underwriting year" if the business reported on the Table is reported on **Forms 28, 29 or 34**.

If the years of origin in columns 1 and 2 are accident years, the gross paid claims in each of the years of development 0 to 29 ~~and after the last reported year of development~~ must be in respect of all claims in the *required category* that occurred in the year of origin.

If the years of origin in columns 1 and 2 are underwriting years, the gross paid claims in each of the years of development 0 to 29 ~~and after the last reported year of development~~ must be in respect of all policies in the *required category* written in the year of origin.

#### Table A instruction 3

In row ~~32~~ column 33 the gross claims paid after the last reported year of development are gross claims paid in the 2005 *financial year* in respect of all the years of origin prior to the earliest year of origin for which historic data must be reported in the Table under rule 12.2(7).

...

#### Table B instruction 2

In columns 1 and 2 the years of origin may be accident years or underwriting years.

In row 1 columns 1 and 2 replace "[year of origin]" with "accident year" if the business reported on the Table is reported on **Forms 26, 27, 31 or 32** or "underwriting year" if the business reported on the Table is reported on **Forms 28, 29 or 34**.

If the years of origin in columns 1 and 2 are accident years, the gross ~~paid~~ incurred claims at the end of each of the years of development 0 to 29 ~~and after the last reported year of development~~ must be in respect of all claims in the *required category* that occurred in the year of origin.

If the years of origin in columns 1 and 2 are underwriting years, the gross ~~paid~~ incurred claims at the end of each of the years of development 0 to 29 ~~and after the last reported year of development~~ must be in respect of all policies in the *required category* written in the year of origin.

...

#### Table B instruction 4

In column ~~343~~ gross reported outstanding claims at end of the 2005 *financial year* for a year of origin should equal total gross reported claims at end of the 2005 *financial year* from

column 33 of **Table B** less the total gross claims paid to the end of the 2005 *financial year* from column 34 of **Table A** and should also equal:

...

**Table C instruction 2**

In columns 1 and 2 the years of origin are accident years.

In row 1 columns 1 and 2 replace "[year of origin]" with "accident year".

For each year of origin, the number of claims reported in each of the years of development 0 to 29 ~~and after the last reported year of development~~ must be in respect of all claims in the *required category* that occurred in the year of origin.

...

**Table D instruction 2**

The year of origin is an accident year.

In row 1 columns 1 and 2 replace "[year of origin]" with "accident year".

For each year of origin, the number of claims settled at non-zero cost at the end of each of the development years 0 to 29 must be in respect of all claims in the *required category* that occurred in that year of origin.

...

**APPENDIX 3.2** (rule 3.7)

**PERMITTED LINKS**

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PART I

DESCRIPTIONS OF PROPERTY BY WHICH BENEFITS MAY BE DETERMINED

...

9. *Permitted derivative contracts and permitted stock lending transactions*

...

APPENDIX 9.1 (rules 9.12 and 9.13)

**BALANCE SHEET AND PROFIT AND LOSS ACCOUNT  
(FORMS 1 TO 3 AND 10 TO 19)**

---

...  
**Completion of Forms**

3. ...  
(2) Boxes marked 'GL/UK/CM' must be completed by inserting –  
(a) 'UK' in the case of a form which is –  
...  
(ii) prepared by an *external insurer* (other than a ~~pure reinsurer~~ *non-EEA insurer whose insurance business in the United Kingdom is restricted to reinsurance* or an *insurer whose head office is in any EEA State except the United Kingdom whose insurance business in the EEA is restricted to reinsurance*) in respect of *long-term* or *general insurance business* carried on through a branch in the United Kingdom; or  
...  
7. Where in any form an amount which is shown as brought forward from a previous year differs from the corresponding amount shown as carried forward from that year and the difference is not due solely to the use of a different rate to express other currencies in sterling, an explanation of the reason for the difference must be given by way of a supplementary note to that form. (For Forms 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 the code for the supplementary note is 0111, 0211, 0311, 1011, 1111, 1211, 1311, 1411, 1511, 1611, 1711, 1811 and 1911 respectively.)  
...  
9. All amounts are to be shown to the nearer £1,000. Calculations must be performed using unrounded figures. Figures which are determined from other figures (whether or not on the same form) must be rounded after performing calculations on the unrounded component figures.

**Premiums**

10. ...  
(2) Where any amount included in **Form 11** or **12** pursuant to (1) differs from the aggregate of the corresponding amounts included in **Forms 21, 22, 24** and **25**, there must be stated by way of supplementary note to **Form 11** or **12** (code 1105 or 1205), as the case may be -  
...

[Forms 1-3 and 10-19 to follow]

## Statement of solvency – general insurance business

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Solo solvency calculation / Adjusted solo ~~Group~~ solvency calculation

	Company registration number	GL/UK/CM	day	month	year	units
R1						£000
					<b>As at end of this financial year</b>	<b>As at end of the previous year</b>
					<b>1</b>	<b>2</b>

**Capital resources**

Capital resources arising outside the long-term insurance fund	11		
Capital resources allocated towards long-term insurance business arising outside the long-term insurance fund	12		
Capital resources available to cover general insurance business capital resources requirement (11-12)	13		

**Guarantee Fund**

Guarantee Fund requirement	21		
Excess (deficiency) of available capital resources to cover guarantee fund requirement	22		

**Minimum capital requirement (MCR)**

General insurance capital requirement	31		
Base capital resources requirement	33		
<u>Individual minimum capital requirement</u>	<u>34</u>		
<u>Capital requirements of regulated related undertakings</u>	<u>35</u>		
Minimum capital requirement (34+35)	346		
Excess (deficiency) of available capital resources to cover 50% of MCR	357		
Excess (deficiency) of available capital resources to cover 75% of MCR	368		

**Capital resources requirement (CRR)**

Capital resources requirement	41		
Excess (deficiency) of available capital resources to cover general insurance business CRR (13-41)	42		

**Contingent liabilities**

Quantifiable contingent liabilities in respect of other than long-term insurance business as shown in a supplementary note to Form 15	51		
---	----	--	--

## Instructions for completion of Form 1

1. An insurer (other than a Swiss general insurer or an EEA-deposit insurer) carrying on general insurance business must complete Form 1 in respect of its entire general insurance business. An external insurer (other than a ~~pure reinsurer~~ non-EEA insurer whose insurance business in the United Kingdom is restricted to reinsurance or an insurer whose head office is in any EEA State except the United Kingdom whose insurance business in the EEA is restricted to reinsurance) that is carrying on general insurance business must complete Form 1 in respect of business carried on through a branch in the United Kingdom. An UK-deposit insurer that is carrying on general insurance business must complete Form 1 in respect of business carried on through its branches in EEA States taken together. Form 1 is not required for Swiss general insurers or EEA-deposit insurers.

...

7. The excess (deficiency) of available capital resources to cover the guarantee fund requirement at line 22 is equal to line 81 on Form 3 less line 21, except for a branch. For a branch this is equal to line 13 less line 21 less an adjustment because assets held to cover the guarantee fund must be held in the United Kingdom (or for UK-deposit insurers, in the EEA States where the firm carries on insurance business); the adjustment is the difference between form 13 line 89 for categories 4 and 3 (or 5), except for branches carrying on both long-term insurance business and general insurance business (composite branches); composite branches will need to state how the difference is allocated between general insurance business and long-term insurance business in a note to the Form (Note 0102).

...

9A. The individual minimum capital requirement at line 34 is calculated in accordance with PRU 2.1.21R and is the higher of lines 31 and 33.

9B. The capital requirements of regulated related undertakings at line 35 must be nil.

9C. The minimum capital requirement at line 36 is equal to the sum of lines 34 and 35.

10. The excess (deficiency) of available capital resources to cover 50% of the minimum capital requirement at line 357 is equal to line 82, column 1 on Form 3 less 50% of line 346. For a branch, line 357 is to be left blank.
11. The excess (deficiency) of available capital resources to cover 75% of the minimum capital requirement at line 368 is equal to line 83, column 1 on Form 3 less 75% of line 346. For a branch, line 368 is to be left blank.
12. The capital resources requirement at line 41 is calculated in accordance with PRU 2.1.14R and is equal to line 346.

**Instructions 13-20 only apply to firms that meet the conditions specified in PRU 2.1.9 R(2), i.e. that perform the adjusted solo solvency calculation in accordance with PRU 8.3.**

...

15. ~~Line 31 is not applicable.~~ The general insurance capital requirement at line 31 is taken from the amount shown at line 43 of Form 12, which is calculated in accordance with PRU 2.1.30R.

16. ~~Line 33 is not applicable.~~ The base capital resources requirement at line 33 must be taken from PRU 2.1.26R.

16A. The individual minimum capital requirement at line 34 is calculated in accordance with PRU 2.1.21R and is the higher of lines 31 and 33.

16B. The capital requirements of regulated related undertakings at line 35 is line 36 less line 34.

17. ~~The minimum capital requirement entry at line 346 must equal the amount represented by (R-S) with reference to PRU 8.3.45R in relation to the general insurance business.~~

18. The excess (deficiency) of available capital resources to cover 50% of the minimum capital requirement at line 367 is equal to line 82, column 1 on Form 3 less 50% of line 346.

19. The excess (deficiency) of available capital resources to cover 75% of the minimum capital requirement at line 358 is equal to line 83, column 1 on Form 3 less 75% of line 346.

20. The entry at line 41 must equal the amount represented by R with reference to PRU 8.3.45R ~~in relation to the general insurance business.~~

...

**Statement of solvency – long-term insurance business**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Solo solvency calculation / Adjusted solo ~~Group~~ solvency calculation

Company registration number	GL/UK/CM	day	month	year	units
R2					£000
				<b>As at end of this financial year</b>	<b>As at end of the previous year</b>
				<b>1</b>	<b>2</b>

**Capital resources**

Capital resources arising within the long-term insurance fund	11		
Capital resources allocated towards long-term insurance business arising outside the long-term insurance fund	12		
Capital resources available to cover long-term insurance business capital resources requirement (11+12)	13		

**Guarantee Fund**

Guarantee Fund requirement	21		
Excess (deficiency) of available capital resources to cover guarantee Fund requirement	22		

**Minimum capital requirement (MCR)**

Long-term insurance capital requirement	31		
Resilience capital requirement	32		
Base capital resources requirement	33		
<u>Individual minimum capital requirement</u>	<u>34</u>		
<u>Capital requirements of regulated related undertakings</u>	<u>35</u>		
Minimum capital requirement (34+35)	346		
Excess (deficiency) of available capital resources to cover 50% of MCR	357		
Excess (deficiency) of available capital resources to cover 75% of MCR	368		

**Enhanced capital requirement**

With-profits insurance capital component	379		
Enhanced capital requirement	3840		

**Capital resources requirement (CRR)**

Capital resources requirement (greater of 346 and <u>3840</u> )	41		
Excess (deficiency) of available capital resources to cover long-term insurance business CRR (13-41)	42		

**Contingent liabilities**

Quantifiable contingent liabilities in respect of long-term insurance business as shown in a supplementary note to Form 14	51		
--	----	--	--

## Instructions for completion of Form 2

1. An *insurer* (other than an *EEA-deposit insurer*) carrying on *long-term insurance business* must complete Form 2 in respect of its entire *long-term insurance business*. An *external insurer* (other than a ~~pure reinsurer~~ *non-EEA insurer* whose *insurance business in the United Kingdom* is restricted to *reinsurance* or an *insurer* whose head office is in any *EEA State* except the *United Kingdom* whose *insurance business in the EEA* is restricted to *reinsurance*) or *EEA-deposit insurer* that is carrying on *long-term insurance business* must complete Form 2 in respect of business carried on through a *branch* in the *United Kingdom*. An *UK-deposit insurer* that is carrying on *long-term insurance business* must complete Form 2 in respect of business carried on through its *branches* in *EEA States* taken together.

...

**Instructions 5-14 only apply to firms that do not meet the conditions specified in PRU 2.1.9 R(2), i.e. that are not required to perform an adjusted solo calculation under PRU 8.3.**

...

6. The excess (deficiency) of available *capital resources* to cover the *guarantee fund* requirement at line 22 is equal to line 81, column 2 on Form 3 less line 21, except for a branch. For a *branch* this is equal to line 13 less line 21 less an adjustment because assets held to cover the *guarantee fund* must be held in the *United Kingdom* (or for *UK-deposit insurers*, in the *EEA States* where the *firm* carries on *insurance business*) and cannot include *implicit items*; an analysis would be appropriate in a note (code 0203) to the Form.

...

9A. The individual *minimum capital requirement* at line 34 is calculated in accordance with PRU 2.1.22R and is the greater of line 33 and the sum of lines 31 and 32.

9B. The capital requirements of *regulated related undertakings* at line 35 must be nil.

9C. The *minimum capital requirement* at line 36 is equal to the sum of lines 34 and 35.

10. The excess (deficiency) of available *capital resources* to cover 50% of the *minimum capital requirement* at line 357 is equal to line 82, column 2 on Form 3 less 50% of line 346. For a *branch*, line 357 must be blank.
11. The excess (deficiency) of available *capital resources* to cover 75% of the *minimum capital requirement* at line 368 is equal to line 83, column 2 on Form 3 less 75% of line 346. For a *branch*, line 368 must be blank.
12. The *with-profits insurance capital component* at line 379 must be the total of the amounts shown at line 64 on Forms 18, calculated in accordance with the *rules* in PRU 7.4.
13. The *enhanced capital requirement* at line 3840 is calculated as the sum of lines 31, 32 and 379.

...

**Instructions 15-23 only apply to firms that meet the conditions specified in PRU 2.1.9R(2), i.e. that perform the adjusted solo solvency calculation in accordance with PRU 8.3.**

...

17. ~~Lines 31, 32 and 33 are not applicable.~~ The *long-term insurance capital requirement* at line 31 is taken from the amount shown at line 51 of Form 60, which is calculated in accordance with PRU 2.1.32R.

17A. The *resilience capital requirement* at line 32 is calculated in accordance with the *rules* in PRU 4.2.

17B. The *base capital resources requirement* at line 33 must be taken from PRU 2.1.26R.

17C. The individual *minimum capital requirement* at line 34 is the greater of line 33 and the sum of lines 31 and 32.

17D. The capital requirements of *regulated related undertakings* at line 35 is the amount shown at line 36 less line 34.

18. The entry at line 346 must include the amount represented by (R-S) with reference to PRU 8.3.45R ~~in relation to the long-term insurance business.~~

19. The excess (deficiency) of available *capital resources* to cover 50% of the *minimum capital requirement* at line 357 is equal to line 82, column 2 on Form 3 less 50% of line 346.
20. The excess (deficiency) of available *capital resources* to cover 75% of the *minimum capital requirement* at line 368 is equal to line 83, column 2 on Form 3 less 75% of line 346.
21. The *with-profits insurance capital component* at line 379 must be the total of 'S' with reference to PRU 8.3.45R.
22. The entry at line 3840 must be the sum of lines 346 and 379.
23. The entry at line 41 must equal the amount represented by R with reference to PRU 8.3.45R ~~in relation to the long term insurance business.~~

...

**Instructions 24 onwards apply to all firms**

...

- ~~26. Where a direction under section 148 of the Act has been issued to an *insurer* permitting it to take into account *implicit items on long term insurance business*, that direction may specify that a note is to be included in the *return* explaining such items. That note should be included as a note to **Form 2**. (Code 0202).~~

...

Components of capital resources

Name of insurer  
Global business  
Financial year ended

	Company registration number	GL/UK/CM	day	month	year	units
	R3					£000
		General insurance business	Long-term insurance business	Total as at the end of this financial year	Total as at the end of the previous year	
		1	2	3	4	
<b>Core tier one capital</b>						
Permanent share capital	11					
Profit and loss account and other reserves	12					
Share premium account	13					
Positive valuation differences	14					
Fund for future appropriations	15					
Core tier one capital in related undertakings	16					
Core tier one capital (sum of 11 to 16)	19					
<b>Tier one waivers</b>						
Unpaid share capital / unpaid initial funds and calls for supplementary contributions	21					
Implicit items	22					
Tier one waivers in related undertakings	23					
Total tier one waivers as restricted (21+22+23)	24					
<b>Other tier one capital</b>						
Perpetual non-cumulative preference shares as restricted	25					
Perpetual non-cumulative preference shares in related undertakings	26					
Innovative tier one capital as restricted	27					
Innovative tier one capital in related undertakings	28					
<b>Total tier one capital before deductions (19+24+25+26+27+28)</b>						
Investments in own shares	32					
Intangible assets	33					
Amounts deducted from technical provisions for discounting	34					
Other negative valuation differences	35					
Deductions in related undertakings	36					
Deductions from tier one (32 to 36)	37					
<b>Total tier one capital after deductions (31-37)</b>	39					

Components of capital resources

Name of insurer  
Global business  
Financial year ended

	Company registration number	GL/UK/CM	day	month	year	units
R3						£000
		General insurance business		Long-term insurance business	Total as at the end of this financial year	Total as at the end of the previous year
		<b>1</b>		<b>2</b>	<b>3</b>	<b>4</b>

Tier two capital

Implicit items, (tier two waivers and amounts excluded from line 22)	41				
Perpetual non-cumulative preference shares excluded from line 25	42				
Innovative tier one capital excluded from line 27	43				
Tier two waivers, innovative tier one capital and perpetual non-cumulative preference shares treated as tier two capital (41 to 43)	44				
Perpetual cumulative preference shares	45				
Perpetual subordinated debt and securities	46				
Upper tier two capital in related undertakings	47				
<b>Upper tier two capital (44 to 47)</b>	<b>49</b>				

Fixed term preference shares	51				
Other tier two instruments	52				
Lower tier two capital in related undertakings	53				
<b>Lower tier two capital (51+52+53)</b>	<b>59</b>				

<b>Total tier two capital before restrictions (49+59)</b>	<b>61</b>				
Excess tier two capital	62				
Further excess lower tier two capital	63				
<b>Total tier two capital after restrictions, before deductions (61-62-63)</b>	<b>69</b>				

**Components of capital resources**

Name of insurer  
Global business  
Financial year ended

Company registration number	GL/ UK/ CM	day	month	year	units
R3					£000
		General insurance business	Long-term insurance business	Total as at the end of this financial year	Total as at the end of the previous year
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>

**Total capital resources**

Positive adjustments for regulated non-insurance related undertakings	71				
<b>Total capital resources before deductions (39+69+71)</b>	72				
Inadmissible assets other than intangibles and own shares	73				
Assets in excess of market risk and counterparty limits	74				
Deductions for related ancillary services undertakings	75				
Deductions for regulated non-insurance related undertakings	76				
Total Deductions of ineligible surplus capital	77				
<b>Total capital resources after deductions (72-73-74-75-76-77)</b>	79				

**Available capital resources for PRU tests**

Available capital resources for guarantee fund requirement	81				
Available capital resources for 50% MCR requirement	82				
Available capital resources for 75% MCR requirement	83				

**Financial engineering adjustments**

Implicit items	91				
Financial reinsurance – ceded	92				
Financial reinsurance – accepted	93				
Outstanding contingent loans	94				
Any other charges on future profits	95				
Sum of financial engineering adjustments (91+92-93+94+95)	96				

### Instructions for completion of Form 3

1. An *insurer* (other than a *Swiss general insurer* or an *EEA-deposit insurer*) must complete Form 3 in respect of its entire business. An *external insurer* (other than a ~~pure reinsurer~~ *non-EEA insurer whose insurance business in the United Kingdom is restricted to reinsurance or an insurer whose head office is in any EEA State except the United Kingdom whose insurance business in the EEA is restricted to reinsurance*), an *EEA-deposit insurer* or a *Swiss general insurer* must complete Form 10 in respect of business carried on through a *branch* in the *United Kingdom*. An *UK-deposit insurer* must complete Form 10 in respect of business carried on through its *branches* in *EEA States* taken together.

...

9. *PRU 2.2.78R* and *2.2.79G* explain how to calculate the valuation differences for inclusion at line 14 or 35. Inadmissible assets or assets in excess of *market risk* and *counterparty* limits are not be included in the valuation differences. Net valuation differences are shown at line 14 if positive or in line 35 if negative. The *firm* must state in a supplementary note (code ~~0308~~ 0310) to this form –

...

The amount in (a) plus the amount in (b) less the amount in (c) less the amount in (d) should equal the amount shown at line 14 if positive or at line 35 if negative."

...

**Instructions 10-32 only apply to firms that do not meet the conditions specified in *PRU 2.1.9R(2)*, i.e. that are not required to perform an adjusted solo calculation under *PRU 8.3*.**

...

11. Amounts may only appear in lines 21 and 22 if the *FSA* has issued a *waiver* permitting these amounts to count as *tier one capital* (tier one waivers). These amounts are restricted by *PRU 2.2.20R (1)*, so that amounts in line 24 may not be greater than the sum of the corresponding amounts in lines 19 and 37. If the *FSA* has issued a *waiver* permitting amounts to count as *tier two capital* (tier two waivers), these are to be included at line 41, together with any amounts that arise from the restriction at *PRU 2.2.20R(1)*.

...

13. The entries at lines 25 and 27 must be restricted to comply with *PRU 2.2.20R*, so that the total of the amounts in lines 24, 25 and 27 is not greater than the total amount in line 19 plus line 37, and the amount in line 27 is not greater than 15/85 of the total of the amounts in lines 19, 24 and 25 minus line 37. Amounts in excess of the limits are entered at lines 42 and 43 respectively.

...

30. The entry at line 81 is determined as the amount of the *firm's capital resources* available to meet its *guarantee fund* requirement, having regard to *PRU 2.2.17R*, ~~and *PRU 2.2.18R* and *PRU 2.2.18AR*~~. Unless some innovative tier one capital does not meet the conditions for it to be treated as upper tier two capital (when an adjustment may be needed), ~~line 81~~ must be either:

- line 79; or
- (if less) the sum of lines 19, 25, 27, 42, 43, 45, 46 and 59 less the sum of lines 37, 62 and 63 less the greatest of:
  - zero;
  - the sum of lines 27, 37, 43, 45, 46, 59, 73, 74, 75 and 76 less the sum of lines 19, 25, 42, 62, 63 and 71; and
  - line 59 plus one-third of the sum of lines 37, 73, 74, 75 and 76 less the sum of lines 62 and 63 less one-third of the sum of lines 19, 25, 27, 42, 43, 45, 46 and 71.

...

32. The entry at line 83 is determined as the amount of the *firm's capital resources* available to meet 75% of its *minimum capital requirement*, having regard to *PRU 2.2.24R* and *PRU 2.2.24AR*. Unless some innovative tier one capital does not meet the conditions for it to be treated as upper tier two capital (when an adjustment may be needed), line 83 must be either:

- line 79; or
- (if less) the sum of lines 19, 24, 25, ~~27~~, 41, 42, ~~43~~, 45 and 46 less the sum of line 37 and any excess of the sum of lines 27, 37, 41, 43, 45 and 46 ~~62~~ over the sum of lines 19, 24, 25 and 42~~59~~.

...

35. Amounts may only appear in lines 21-23 if the *FSA* has issued a *waiver* permitting these amounts to count as *tier one capital* (tier one waivers). These amounts are restricted by *PRU 8.3.45R (1)(c)*, so the amounts in line 24 may not be greater than the sum of the corresponding amounts in lines 19 and 37. If the *FSA* has issued a *waiver* permitting amounts to count as *tier two capital* (tier two waivers), these are to be included at line 41, together with any amounts that arise from the restriction at *PRU 8.3.45R (1)(c)*.

...

38. The entries at lines 25-28 must be restricted to comply with *PRU 8.3.45R*, so that the total of the amounts in lines 24-28 is not greater than the total amount in line 19 plus line 37, and the total amount in lines 27 and 28 is not greater than 15/85 of the total of the amounts in lines 19, 24, 25, and 26 minus line 37. Amounts in excess of the limits are entered at lines 42 and 43 as appropriate. If line 42 or 43 includes amounts excluded from line 26 or 28, these amounts must be stated in a supplementary note (code 0304).

...

54. The entry at line 81 is determined as the amount of the *firm's capital resources* available to meet its *guarantee fund* requirement, having regard to *PRU 8.3.45R(2)*. Unless some innovative tier one capital does not meet the conditions for it to be treated as upper tier two capital (when an adjustment may be needed), ~~line~~ line 81 must be either:

- line 79; or
- (if less) the sum of lines ~~19, 25, 26, 39~~ 42, 45, 46 and ~~59~~69 less the sum of lines ~~24 37, 62~~ and ~~41~~63 less the greatest of:
  - zero;
  - the sum of lines 27, 28, 37, 43, 45, 46, 47, 59 and 72 less the sum of lines 19, 25, 26, 42, 62, 63, 71 and 79; and
  - line 59 plus one-third of the sum of lines 24, 41 and 72 less the sum of lines 62 and 63 less one-third of the sum of lines 49, 71 and 79.

...

67 Where a direction under section 148 of the Act has been issued to an insurer permitting it to take into account implicit items on long-term insurance business, that direction may specify that a note is to be included in the return explaining such items. That note must be included as a note to Form 3 (Code 0312).

Replace Form 10 with the following version.



## Instructions for completion of Form 10

1. An external insurer (other than a ~~pure reinsurer~~ non-EEA insurer whose insurance business in the United Kingdom is restricted to reinsurance or an insurer whose head office is in any EEA State except the United Kingdom whose insurance business in the EEA is restricted to reinsurance), an EEA-deposit insurer or a Swiss general insurer must complete ~~Form 10~~ **Form 10** in respect of business carried on through a branch in the United Kingdom. An UK-deposit insurer must complete ~~Form 10~~ **Form 10** in respect of business carried on through its branches in EEA States taken together.

...

Replace Form 11 with the following one page version.

**Calculation of general insurance capital requirement– premiums amount and brought forward amount**

Name of insurer

Global business / UK branch business / EEA branch business

Financial year ended

General/long-term insurance business

		Company registration number	GL/ UK/ CM	day	month	year	units
R11							£000
				This financial year 1		Previous year 2	
Gross premiums written		11					
Premiums taxes and levies (included in line 11)		12					
Premiums receivable net of taxes and levies (11-12)		13					
Premiums for classes 11, 12 or 13 (included in line 13)		14					
Premiums for "actuarial health insurance" (included in line 13)		15					
<b>Sub-total A</b> (13 + ½ 14 - ²/₃ 15)		16					
Gross premiums earned		21					
Premium taxes and levies (included in line 21)		22					
Premiums earned net of taxes and levies (21-22)		23					
Premiums for classes 11, 12 or 13 (included in line 23)		24					
Premiums for "actuarial health insurance" (included in line 23)		25					
<b>Sub-total H</b> (23 + ½ 24 - ²/₃ 25)		26					
<b>Sub-total I</b> (higher of sub-total A and sub-total H)		30					
<b>Adjusted sub-total I</b> if financial year is not a 12 month period to produce an annual figure		31					
Division of gross adjusted premiums amount: sub-total I (or adjusted sub-total I if appropriate)	x 0.18	32					
	Excess (if any) over 50M EURO x 0.02	33					
<b>Sub-total J</b> (32-33)		34					
Claims paid in period of 3 financial years		41					
Claims outstanding carried forward at the end of the 3 year period	For insurance business accounted for on an underwriting year basis	42					
	For insurance business accounted for on an accident year basis	43					
Claims outstanding brought forward at the beginning of the 3 year period	For insurance business accounted for on an underwriting year basis	44					
	For insurance business accounted for on an accident year basis	45					
<b>Sub-total C</b> (41+42+43-44-45)		46					
Amounts recoverable from reinsurers in respect of claims included in Sub-total C		47					
<b>Sub-total D</b> (46-47)		48					
<b>Reinsurance ratio</b> (Sub-total D / sub-total C or, if more, 50% or, if less, 100%)		49					
<b>Premiums amount</b> (Sub-total J x reinsurance ratio)		50					
Provision for claims outstanding (before discounting and net of reinsurance)		51					
<b>Brought forward amount</b> (12.43.2 x 51.1 / 51.2 or, if less, 12.43.2)		52					
Greater of lines 50 and 52		53					

## Instructions for completion of Forms 11 and 12

...

10. ~~PRU 7.2.66R requires amounts of premiums and claims to be determined in accordance with PRU 1.3 and so (by virtue of PRU 1.3.5R) normal accounting conventions will generally apply. However, p~~*Premiums and claims are defined by references to contracts of insurance and these themselves are defined by the Regulated Activities Order so that premiums or claims may be included for contracts that would not be treated as insurance under normal accounting conventions. All direct and indirect costs related to claims must be included.*

...

## Instructions for completion of Form 11

...

2. In accordance with PRU 7.2.54R, the reinsurance ratio calculated at line 49 must be:
  - 100% if sub-total C is zero
  - 100% if sub-total D / sub-total C exceeds 100%;
  - 50% if sub-total D / sub-total C is less than 50%; and
  - sub-total D / sub-total C, otherwise.

The ratio at line 49 must be shown to two decimal places, but the unrounded ratio must be used for calculating Form 11 line 50 and Form 12 line 41.

...

4. If Form 11 line 51 column 2 is zero, Form 11 line 52 column 1 equals Form 12 line 43 column 2.

Replace Form 13 with the following revised version.





**Analysis of admissible assets**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Category of assets

	Company registration number	GL/UK/CM	day	month	year	units	Category of assets
R13						£000	
						<b>As at end of this financial year 1</b>	<b>As at end of the previous year 2</b>

**Reconciliation to asset values determined in accordance with the insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting**

Total admissible assets after deduction of market risk and counterparty limits (as per line 89 above)	91		
Assets in excess of market and counterparty limits	92		
Capital resources requirement deduction of regulated related undertakings	93		
Ineligible surplus capital and restricted assets in regulated related insurance undertakings	94		
Inadmissible assets of regulated related insurance undertakings	95		
Book value of related ancillary services undertakings	96		
Other differences in the valuation of assets (other than for assets not valued above)	97		
Deferred acquisition costs excluded from line 89	98		
Reinsurers' share of technical provisions excluded from line 89	99		
Other asset adjustments (may be negative)	100		
Total assets determined in accordance with the insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting (91 to 100)	101		
Amounts included in line 89 attributable to debts due from related insurers, other than those under contracts of insurance or reinsurance	102		

### Instructions for completion of Form 13

- ...
3. (a) In the case of the *United Kingdom branch return* of an *external insurer* (other than a ~~*pure reinsurer*~~ *non-EEA insurer whose insurance business in the United Kingdom is restricted to reinsurance or an insurer whose head office is in any EEA State except the United Kingdom whose insurance business in the EEA is restricted to reinsurance*) Form 13 must be completed for the following categories of assets -
- ...
8. The entry at line 85 ~~must be equal to the sum of lines 22.29.3 and lines 25.24.99-99~~ must be gross of any related reinsurance commission.
9. The amount to be shown in line 93 ~~shall represent~~ must equal the total of the relevant proportions in accordance with *PRU 1.3.37R* and *PRU 1.3.38R* of the *individual capital resources requirements* of the *regulated related undertakings*.
10. ~~In line 95 "inadmissible assets" refers to those assets described at *PRU 2.2.86R* that are not assets listed in *PRU 2 Annex 1R*. The amount to be shown in line 94 must equal the ineligible surplus capital and any restricted assets of any regulated related undertaking that is an insurance undertaking that are deducted in accordance with *PRU 1.3.35R(3)(b)*.~~
- ...
12. Lines 60 to 63 and 85 must be left blank for "Category of assets" codes "2", "3", "4" and "5".
- ...
14. ~~It would be appropriate to state that~~ The amount of any tangible leased asset included at line 80 must be disclosed by way of a supplementary note (code 1314 for other than *long-term insurance business* and code 1316 for *long-term insurance business*) to this Form.
- ...
16. Lines 98-101 must be completed in accordance with the *insurance accounts rules* or *international accounting standards* as applicable to the *firm* for the purpose of its external financial reporting if the *firm* is required to produce such accounts. Otherwise these lines must be left blank. Line 99 includes the discounting adjustment for the *reinsurers'* share of claims outstanding – see instruction 4 of **Form 15**. Details of amounts in line 100 must be disclosed in a supplementary note (code 1318). The previous year figures for lines 98-101 must be left blank for financial years ending on or before 30 December 2006.

Replace Form 14 with the following revised version.

**Long term insurance business liabilities and margins**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Total business / subfund

Units

		As at end of this financial year 1	As at end of the previous year 2
Mathematical reserves, after distribution of surplus		11	
Cash bonuses which had not been paid to policyholders prior to end of the financial year		12	
Balance of surplus / (valuation deficit)		13	
Long term insurance business fund carried forward (11 to 13)		14	
Claims outstanding	Gross	15	
	Reinsurers' share	16	
	Net (15-16)	17	
Provisions	Taxation	21	
	Other risks and charges	22	
Deposits received from reinsurers		23	
Creditors	Direct insurance business	31	
	Reinsurance accepted	32	
	Reinsurance ceded	33	
Debenture loans	Secured	34	
	Unsecured	35	
Amounts owed to credit institutions		36	
Creditors	Taxation	37	
	Other	38	
Accruals and deferred income		39	
Provision for "reasonably foreseeable adverse variations"		41	
Total other insurance and non-insurance liabilities (17 to 41)		49	
Excess of the value of net admissible assets		51	
Total liabilities and margins		59	

Amounts included in line 59 attributable to liabilities to related companies, other than those under contracts of insurance or reinsurance	61		
Amounts included in line 59 attributable to liabilities in respect of property linked benefits	62		

Total liabilities (11+12+49)	71		
Increase to liabilities – DAC related	72		
Reinsurers' share of technical provisions	73		
Other adjustments to liabilities (may be negative)	74		
Capital and reserves and fund for future appropriations	75		
Total liabilities under insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting (71 to 75)	76		

## Instructions for completion of Form 14

- ...
6. Where the provision required by *PRU* 4.3.17R(3) is implicit (i.e. the obligation to pay the monetary amount is recognised under the *rules* in *PRU* 1.3), ~~it would be appropriate to insurers must state the amount of the provision;~~ in a supplementary note (code 1404) ~~to this Form, the amount of the provision.~~
- ...
8. ~~The entry at line 63 must be zero for financial years ending on or after 31 December 2004. Lines 72-76 must be completed in accordance with the *insurance accounts rules* or *international accounting standards* as applicable to the *insurer* for the purpose of its external financial reporting if the *insurer* is required to produce such accounts. Otherwise, and for **Forms 14** at subfund level, these lines must be left blank. The amount of DAC in line 72 must be adjusted for any associated deferred tax. Details of amounts in line 74 must be disclosed in a supplementary note (code 1405). The previous year figures must be left blank for financial years ending on or before 30 December 2006.~~
9. ~~It would be appropriate to state, in a supplementary note (code 1403) to this Form, the amount of each provision, included in line 22, in respect of a deficit in a *regulated related undertaking* and the identity of the *undertaking* must be disclosed in a supplementary note (code 1403) to this Form.~~

Replace Form 15 with the following revised version.



## Instructions for completion of Form 15

...

4. The amount shown in line 12 may only be discounted or reduced to take account of investment income:
  - (a) for *Class 1* or *2* business; or
  - (b) in respect of annuities; or
  - (c) if the *insurer* is a *pure reinsurer* which does not have permission under the *Act* to effect *contracts of reinsurance*.

So, if the *technical provisions* for *claims* outstanding for other business are discounted or reduced to take account of investment income, then they must be increased by the difference between the undiscounted and the discounted provisions. If the *technical provisions* are increased the amount of the increase must be shown in line 82 by way of a supplementary note (code 1505) to this Form, together with and the corresponding increase in the reinsurers' share shown must be included as a negative item in line 6499 of Form 13.

5. ~~It would be appropriate to state~~ The amount of each provision, included in line 22, in respect of a deficit in a *regulated related undertaking* and the identity of the *undertaking* must be stated in a supplementary note (code 1504) ~~to this Form.~~
6. Where the provision required by *PRU 4.3.17R(3)* is implicit (i.e. the obligation to pay the monetary amount is recognised under the *rules* in *PRU 1.3*), ~~it would be appropriate to state~~ the amount of the provision must be stated, in a supplementary note (code 1506) ~~to this Form, the amount of the provision.~~
7. The amount shown in line 51 must include reinsurance commissions related to *deferred acquisition costs* corresponding to the allowance included in **Form 13** line 85.
8. Lines 81-84 must be completed in accordance with the *insurance accounts rules* or *international accounting standards* as applicable to the *insurer* for the purpose of its external financial reporting if the *insurer* is required to produce such accounts. Otherwise these lines must be left blank. Details of amounts in line 83 must be disclosed in a supplementary note (code 1507). The previous year figures must be left blank for financial years ending on or before 30 December 2006.

...

Replace Form 16 with the following revised version.

**Profit and loss account (non-technical account)**

Name of insurer

Global business/UK branch business/EEA branch  
business

Financial year ended

		Company registration number	GL/ UK/ CM	day	month	year	units
		R16					£000
			This financial year 1	Previous year 2			
Transfer (to) / from the general insurance business technical account	From Form 20	11					
	Equalisation provisions	12					
Transfer from the long term insurance business revenue account		13					
Investment income	Income	14					
	Value re-adjustments on investments	15					
	Gains on the realisation of investments	16					
Investment charges	Investment management charges, including interest	17					
	Value re-adjustments on investments	18					
	Loss on the realisation of investments	19					
Allocated investment return transferred to the general insurance business technical account		20					
Other income and charges (particulars to be specified by way of supplementary note)		21					
Profit or loss on ordinary activities before tax (11+12+13+14+15+16-17-18-19-20+21)		29					
Tax on profit or loss on ordinary activities		31					
Profit or loss on ordinary activities after tax (29-31)		39					
Extraordinary profit or loss (particulars to be specified by way of supplementary note)		41					
Tax on extraordinary profit or loss		42					
Other taxes not shown under the preceding items		43					
Profit or loss for the financial year (39+41-(42+43))		49					
Dividends (paid and proposed)		51					
Profit or loss retained for the financial year (49-51)		59					

Replace Form 17 with the following revised version.

## Analysis of derivative contracts

Name of insurer  
 Global business/UK branch business/EEA branch  
 business  
 Financial year ended  
 Category of assets

		Company registration number	GL/ UK/ CM	day	month	year	units	Category of assets
		R17					£000	
Derivative contracts			As at the end of this financial year		As at the end of the previous year			
			Assets 1	Liabilities 2	Assets 3	Liabilities 4		
Futures contracts	Fixed-interest securities	11						
	Equity shares	12						
	Land	13						
	Currencies	14						
	Other	15						
Options	Fixed-interest securities	21						
	Equity shares	22						
	Land	23						
	Currencies	24						
	Other	25						
Contracts for differences	Fixed-interest securities	31						
	Equity shares	32						
	Land	33						
	Currencies	34						
	Other	35						
Adjustment for variation margin		41						
Total (11 to 41)		49						

**Instructions for completion of Form 17**

9. The entry at 17.49.2 must be included at 14.4738.1 or 15.49.1. as appropriate.

...

**Instructions for completion of Form 19**

...

24A. The entry at line 69 must be shown as a percentage to two decimal places.

...

APPENDIX 9.2 (rules 9.14 to 9.22)

**GENERAL INSURANCE BUSINESS:  
REVENUE ACCOUNT AND ADDITIONAL INFORMATION  
(FORMS 20 TO 39)**

...

**Cases where forms are required**

2A Table: Forms required for the *FSA general insurance business reporting categories*:

FSA general insurance business reporting category	Form			
	F20, F21, F22, F23, F24, F25	F26, F27 F28 F29	F31 F34	F32 F34
<i>Combined categories</i>	√			
<i>Category numbers 160 and 350</i>	√		√	
<i>Risk categories with category numbers 121, 122, 123, 221, 222, 223 (i.e. direct and facultative motor)</i>				√
<i>Risk categories with category numbers below 400 other than category numbers 121, 122, 123, 221, 222, 223, 160 and 350 (i.e. all direct and facultative that is not motor, household or goods in transit and has not been allocated to a miscellaneous category)</i>			√	
<i>Risk categories with category numbers 510 to 590 and 610 to 690 (i.e. treaty reinsurance)</i>		√		
<i>Miscellaneous primary (direct) and facultative business (category number 400)</i>	√		√	
<i>Miscellaneous treaty reinsurance accepted business (category number 700)</i>	√	√		
<i>Balancing categories (category numbers 409, 709)</i>	√			

...

2B Table: Criteria (if any) for whether a Form is required for a category of *general insurance business*. Paragraph 2C belongs to this Table.

Form	Category of business.	Reporting criteria (if any)
<b>F20 to F25</b> Technical provisions and profit & loss account	Category number 001	Forms always required
	Category numbers 002,003	Either -  (a) the <i>insurer's</i> 'gross undiscounted provisions' in the category of business at the end of the <i>financial year</i> exceed zero; or  (b) the <i>insurer's gross written premiums</i> in the category of business in the <i>financial year</i> exceed zero.
	Category numbers 110, 120, 160, 180, 220, 260, 270, 280, 330, 340, 350, 400, 500, 600, 700	Either -  (a) the <i>insurer's</i> 'gross undiscounted provisions' in the category of business at the end of the <i>financial year</i> exceed:  (i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total ' <u>gross undiscounted provisions</u> ' <i>technical provisions</i> and £1 million  or  (b) the <i>insurer's gross written premiums</i> in the category of business in the <i>financial year</i> exceed:  (i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total <i>gross written premiums</i> and £1 million.
	Category number 409	Some business in <i>category number</i> 002 is not reported on <b>Forms 20 to 25</b> for <i>category numbers</i> 110 to 400.
	Category number 709	Some business in <i>category number</i> 003 is not reported on <b>Forms 20 to 25</b> for <i>category numbers</i> 500, 600 and 700.
<b>F26 to F29</b> Results by year of origin for treaties accepted	Category numbers 510 to 590 and 610 to 690 denominated in any one currency.	Either -  (a) the <i>insurer's</i> 'gross undiscounted provisions' in the category of business at the end of the <i>financial year</i> exceed:  (i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total ' <u>gross undiscounted provisions</u> ' <i>technical provisions</i> and £1 million  or  (b) the <i>insurer's gross written premiums</i> in the category of business in the <i>financial year</i> exceed:  (i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total <i>gross written premiums</i> and £1 million.
	Category number 700	
<b>F31, F32, F34</b> Gross results	Category numbers 330 to 350 denominated	Either -  (a) the <i>insurer's</i> 'gross undiscounted provisions' in the category of business at the end of

by year of origin for direct and facultative business	in any one currency. <i>Category numbers 110 to 284</i> denominated or in any one currency carried on in any 'reporting territory'  <i>Category number 400</i>	the <i>financial year</i> exceed:  (i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total ' <u>gross undiscounted provisions</u> ' <del><i>technical provisions</i></del> and £1 million  (b) the <i>insurer's gross written premiums</i> in the category of business in the <i>financial year</i> exceed:  (i) £100m; or (ii) the higher of 5% of the <i>insurer's</i> total <i>gross written premiums</i> and £1 million.
---	---	--

...

### Currency

3. (1) Notwithstanding the provisions of 2, amounts on **Forms 26 to 29, 31, 32 and 34** submitted in accordance with rules 9.17, 9.19 9.20 or 9.20A ~~and on **Forms 31, 32 and 34** submitted in accordance with rules 9.19, 9.20 or 9.20A~~ must be shown in the currency in which the business on the Form is denominated except that figures must be shown in sterling =

(a) in those columns and lines which the forms indicate are always to contain figures expressed in sterling; ~~and-~~

(b) if business on the form is *category number 400* or *700*.

...

- (3) Notwithstanding the provisions of 2, all amounts included in -

(a) columns 1, 2, 3 and 11 of **Form 23**, ~~20A, 20 to 25~~ ; and

(b) columns 1, 2, 3 and 11 of any **Form 26** or **27** to **29, 31, 32** or **34** for *category number 700*; ~~prepared in sterling,~~

(c) columns 3 and 10 of any **Form 31** for *category number 400*; and

(d) columns 1 and 8 of any **Form 34** for *category number 400*.

must be expressed in sterling as if conversion of every currency had taken place at the closing middle rate on the last day for which the appropriate rate is available in the *financial year in question*.

...

7. (1) ...

(2) The *insurer* may make reasonable estimates of the amounts required under (1)(d) to (f) ~~and 17(1)(d) of this Appendix.~~

...

8B. Calculations must be performed using unrounded figures. Figures which are determined from other figures (whether or not on the same form) must be rounded after performing calculations on the unrounded component figures. Ratios must be reported to two decimal places.

...

**Discounting**

- 27. (1) ...
- (2) ...
- (3) ...

(4) In **Form 30**, the value of an asset or liability which would be treated as an asset or liability in a particular currency for the purposes of PRU 4.2.53R ~~rule 7.1 (disregarding rule 7.6(1))~~ (notwithstanding PRU 4.2.54R) must be shown in that currency.

...

31. The currency codes required for **Forms 26 to 29, 31, 32 and 34** and country codes must be in accordance with the following Table:

<u>COUNTRY</u>	<u>CODE</u>	<u>CURRENCY</u>	<u>CODE</u>
...			
Cambodia	QU	<del>ri</del> <u>riel</u>	KHR
...			
Channel Islands	BA	British pound	<u>€GBP</u>
...			
China, Peoples Rep. Of	QJ	<u>Renminbi</u> yuan	CNY
...			
Finland	BR	Euro	<u>EUR</u> <del>CY</del>
...			
India	QB	Indian <u>rupee</u>	INR
Indonesia	QM	<u>Indonesian</u> rupiah	IDR
...			
<del>Kirghizia (alternate name for Kyrgyzstan)</del>	<del>RV</del>	<del><u>Kyrgyzstani</u> som</del>	<del><u>KGS</u></del>
...			
Korea, South	QR	<del>South</del> <u>North</u> Korean won	<del>KRPW</del>
Korea, North	QP	<u>North</u> <del>South</del> Korean won	<del>KPRW</del>
...			
<u>Kyrgyz, republic of (Kyrgyzstan)</u>	RV	<u>Kyrgyzstani</u> som	<u>KGS</u>
...			
Qatar	PG	Qatari <u>riyal</u>	QAR
....			
Russia	RN	<u>rouble</u>	RUB
...			
Saudi Arabia	PF	<u>Saudi</u> riyal	SAR
...			
Uganda	MB	Ugandan <u>shillings</u>	UGX
...			

....

32. The reporting territory codes required for **Forms 30, 31, 32 and 34** must be in accordance with the following Table:

...

Replace Form 20A with the following revised version.

General insurance business – summary of business carried on

Name of insurer  
Global business/UK branch business/EEA branch  
Financial year ended

		Company registration number	GL/UK/CM	day	month	year	units
R20A							£000
Category number	FSA return general insurance business reporting category		Gross premium written in this financial year	Provision for undiscounted gross claims outstanding at the end of this financial year		Provision for gross unearned premium at the end of this financial year	
				Reported	Incurred but not reported		
			1	2	3	4	
001	Total business	1					
002	Total primary (direct) and facultative business	2					
003	Total treaty reinsurance accepted business	3					
110	Total primary (direct) and facultative accident and health (category numbers 111 to 114)	4					
120	Total primary (direct) and facultative personal lines motor business (category numbers 121 to 123)	5					
160	Primary (direct) and facultative household and domestic all risks	6					
180	Total primary (direct) and facultative personal lines financial loss (category numbers 181 to 187)	7					
220	Total primary (direct) and facultative commercial motor business (category numbers 221 to 223)	8					
260	Total primary (direct) and facultative commercial lines property (category numbers 261 to 263)	9					
270	Total primary (direct) and facultative commercial lines liability business (category numbers 271 to 274)	10					
280	Total primary (direct) and facultative commercial lines financial loss (category numbers 281 to 284)	11					
330	Total primary (direct) and facultative aviation (category numbers 331 to 333)	12					
340	Total primary (direct) and facultative marine (category numbers 341 to 347)	13					
350	Total primary (direct) and facultative goods in transit	14					
400	Miscellaneous primary (direct) and facultative business	15					
500	Total non-proportional treaty reinsurance business accepted (category numbers 510 to 590)	16					
600	Total proportional treaty reinsurance business accepted (category numbers 610 to 690)	17					
700	Miscellaneous treaty reinsurance accepted business	18					
	TOTAL (lines 4 to 18)	20					

General insurance business – summary of business carried on

Name of insurer  
Global business/UK branch business/EEA branch  
Financial year ended

		Company registration number	GL/UK/CM	day	month	year	units
		R20A					£000
Category number	FSA return general insurance business reporting category			Gross premium written in this financial year	Provision for undiscounted gross claims outstanding at the end of this financial year		Provision for gross unearned premium at the end of this financial year
					Reported	Incurred but not reported	
				1	2	3	4

PRIMARY (DIRECT) and FACULTATIVE PERSONAL LINES BUSINESS

111	Medical insurance	21				
112	HealthCare cash plans	22				
113	Travel	23				
114	Personal accident or sickness	24				
121	Private motor – comprehensive	25				
122	Private motor – non-comprehensive	26				
123	Motor cycle	27				
160	Household and domestic all risks (equals line 6)	28				
181	Assistance	29				
182	Creditor	30				
183	Extended warranty	31				
184	Legal expenses	32				
185	Mortgage indemnity	33				
186	Pet insurance	34				
187	Other personal financial loss	35				

PRIMARY (DIRECT) and FACULTATIVE COMMERCIAL LINES BUSINESS

221	Fleets	41				
222	Commercial vehicles (non-fleet)	42				
223	Motor other	43				
261	Commercial property	44				
262	Consequential loss	45				
263	Contractors or engineering all risks	46				
271	Employers liability	47				
272	Professional indemnity	48				
273	Public and products liability	49				
274	Mixed commercial package	50				
281	Fidelity and contract guarantee	51				
282	Credit	52				
283	Suretyship	53				
284	Commercial contingency	54				

General insurance business – summary of business carried on

Name of insurer  
Global business/UK branch business/EEA branch  
Financial year ended

		Company registration number	GL/UK/EEA	day	month	year	units
R20A							£000
Category number	FSA return general insurance business reporting category			Gross premium written in this financial year	Provision for undiscounted gross claims outstanding at the end of this financial year		Provision for gross unearned premium at the end of this financial year
					Reported	Incurred but not reported	
				1	2	3	4

PRIMARY (DIRECT) and FACULTATIVE: AVIATION, MARINE and TRANSPORT

331	Aviation liability	61				
332	Aviation hull	62				
333	Space and satellite	63				
341	Marine liability	64				
342	Marine hull	65				
343	Energy (on and off-shore)	66				
344	Protection and indemnity	67				
345	Freight demurrage and defence	68				
346	War risks	69				
347	Yacht	70				
350	Total primary (direct) and facultative goods in transit (equals line 14)	71				

PRIMARY (DIRECT) and FACULTATIVE: MISCELLANEOUS

400	Miscellaneous primary (direct) and facultative business (equals line 15)	72				
-----	--	----	--	--	--	--

NON-PROPORTIONAL TREATY

510	Non-proportional accident & health	81				
520	Non-proportional motor	82				
530	Non-proportional aviation	83				
540	Non-proportional marine	84				
550	Non-proportional transport	85				
560	Non-proportional property	86				
570	Non-proportional liability (non-motor)	87				
580	Non-proportional financial lines	88				
590	Non-proportional aggregate cover	89				

PROPORTIONAL TREATY

610	Proportional accident & health	91				
620	Proportional motor	92				
630	Proportional aviation	93				
640	Proportional marine	94				
650	Proportional transport	95				
660	Proportional property	96				
670	Proportional liability (non-motor)	97				
680	Proportional financial lines	98				
690	Proportional aggregate cover	99				

TREATY REINSURANCE: MISCELLANEOUS

700	Miscellaneous treaty reinsurance accepted business (equals line 18)	101				
-----	---	-----	--	--	--	--

TOTAL (lines 21 to 101)		111				
-------------------------	--	-----	--	--	--	--

**Instructions for completion of Form 20A**

1. The amount to be shown under *gross written premiums* for an *FSA general insurance business reporting category* must equate to  $F21.(11+12+13+14+15).(1+2)$  plus  $F24.11.+12$  as if **Forms 21** or **24** were required for that *FSA general insurance business reporting category*.

...

Replace Forms 20-30 with the following revised versions. Instructions to Forms 20, 21, 22, 23, 24 and 25 are unchanged.

**General insurance business : Technical account (excluding equalisation provisions)**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

FSA general insurance business reporting category

		Company registration number	GL/ UK/ CM	day	month	year	units	Category number
		R20					£000	
Items to be shown net of reinsurance			This financial year 1	Previous year 2				
This year's underwriting (accident year accounting)	Earned premium (21. 19. 5)	11						
	Claims incurred (22. 17. 4)	12						
	Claims management costs (22. 18. 4)	13						
	Adjustment for discounting (22. 52. 4)	14						
	Increase in provision for unexpired risks (22. 19. 4)	15						
	Other technical income or charges (particulars to be specified by way of supplementary note)	16						
	Net operating expenses (22. 42. 4)	17						
	Balance of year's underwriting (11-12-13+14-15+16-17)	19						
Adjustment for prior years' underwriting (accident year accounting)	Earned premium (21.11. 5)	21						
	Claims incurred (22. 13. 4)	22						
	Claims management costs (22. 14. 4)	23						
	Adjustment for discounting (22. 51. 4)	24						
	Other technical income or charges (particulars to be specified by way of supplementary note)	25						
	Net operating expenses (22. 41. 4)	26						
	Balance (21-22-23+24+25-26)	29						
Balance from underwriting year accounting	Per Form 24 (24. 69. 99-99)	31						
	Other technical income and charges (particulars to be specified by way of supplementary note)	32						
	Total	39						
Balance of all years' underwriting (19+29+39)		49						
Allocated investment income		51						
Transfer to non-technical account (49+51)		59						

**General insurance business (accident year accounting): Analysis of premiums**

**Form 21**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

		Company registration number	GL/UK/CM	day	month	year	units	Category number
		R21					£000	
Premiums receivable during the financial year		Gross premiums written		Reinsurers' share		Net of reinsurance		
		Earned in previous financial years 1		Earned in previous financial years 3		Earned in previous financial years 5		
In respect of risk incepted in previous financial years	11							
		Earned in this financial year 1	Unearned at end of this financial year 2	Earned in this financial year 3	Unearned at end of this financial year 4	Earned in this financial year 5	Unearned at end of this financial year 6	
In respect of risks incepted in previous financial years	12							
In respect of risks incepted in this financial year	For periods of less than 12 months	13						
	For periods of 12 months	14						
	For periods of more than 12 months	15						
Premiums receivable (less rebates and refunds) in previous financial years not earned in those years and brought forward to the financial year	16							
Total (12 to 16)	19							

**General insurance business (accident year accounting) : Analysis of claims, expenses and technical provisions**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

FSA general insurance business reporting category

		Company registration number	GL/UK/CM	day	month	year	units	Category number
		R22					£000	
				<b>Amount brought forward from previous financial year</b>	<b>Amount payable / receivable in this financial year</b>	<b>Amount carried forward to next financial year</b>	<b>Amount attributable to this financial year</b>	
				1	2	3	4	
Claims incurred in respect of incidents occurring prior to this financial year	Gross amount	11						
	Reinsurers' share	12						
	Net (11-12)	13						
	Claims management costs	14						
Claims incurred in respect of incidents occurring in this financial year	Gross amount	15						
	Reinsurers' share	16						
	Net (15-16)	17						
	Claims management costs	18						
Provision for unexpired risks		19						
Net operating expenses	Commissions	21						
	Other acquisition expenses	22						
	Administrative expenses	23						
	Reinsurance commissions and profit participations	24						
	Total (21+22+23-24)	29						
Adjustments for discounting in respect of the items shown at lines 11 to 18 above	Gross amount	31						
	Reinsurers' share	32						
	Claims management costs	33						
	Total (31-32+33)	39						
Split of line 29	Prior financial years	41						
	This financial year	42						
Split of line 39	Incidents occurring prior to this financial year	51						
	Incidents occurring in this financial year	52						

**General insurance business (accident year accounting): Analysis of net claims and premiums**

**Form 23**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

Company registration number    GL/UK/CM    day    month    year    units    Category number

Accident year ended		Claims paid (net) during the accident year	Claims outstanding (net) as at end of the accident year	Total claims paid (net) since the end of the accident year but prior to this financial year	Claims paid (net) during this financial year	Claims outstanding carried forward		Claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year <small>(4+5+6-7-8)</small>	Deduction for discounting from claims outstanding carried forward (net)	Earned premiums (net)	Deterioration / (surplus) of original claims reserve %	Claims ratio %
Month	Year					Reported (net)	Incurred but not reported (net)	Reported (net)	Incurred but not reported (net)					
		1	2	3	4	5	6	7	8	9	10	11	12	13
		11												
		12												
		13												
		14												
		15												
		16												
		17												
		18												
		19												
		20												
Prior accident years		21												
Reconciliation		22												
Total (11 to 22)		29												

**General insurance business (underwriting year accounting): Analysis of premiums, claims and expenses**

**Form 24**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

Underwriting year ended		Prior underwriting years		MM		YY		MM		YY		MM		YY		MM		YY		MM		YY		Total all previous columns		
		29	29																					99	99	
Premiums written	Gross amount	11																								
	Reinsurers' share	12																								
	Net (11-12)	19																								
Claims paid	Gross amount	21																								
	Reinsurers' share	22																								
	Net (21-22)	29																								
Claims management costs		39																								
Net operating expenses	Commissions	41																								
	Other acquisition expenses	42																								
	Administrative expenses	43																								
	Reinsurers' commissions and profit participations	44																								
	Payable net (41+42+43-44)	49																								
Technical provisions	Brought forward	Undiscounted	51																							
		Adjustment for discounting	52																							
	Carried forward	Undiscounted	53																							
		Adjustment for discounting	54																							
	Increase (decrease) in the financial year (53-54-51+52)		59																							
Balance on each underwriting year (19-29-39-49-59)		69																								

**General insurance business (underwriting year accounting): Analysis of technical provisions**

**Form 25**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

Underwriting year ended		Prior underwriting years		MM		YY		MM		YY		MM		YY		MM		YY		MM		YY		Total all previous columns	
		29	29																					99	99
Reported claims outstanding	Gross amount	11																							
	Reinsurers' share	12																							
Claims incurred but not reported	Gross amount	13																							
	Reinsurers' share	14																							
Claims management costs		15																							
Adjustment for discounting	Gross amount	16																							
	Reinsurers' share	17																							
	Claims management costs	18																							
Allocation to / (from) another risk category of anticipated surplus		19																							
Balance of the fund		20																							
Claims outstanding (11-12+13-14+15-16+17-18+19+20)		21																							
Provision for unearned premiums		22																							
Provision for unexpired risks		23																							
Deferred acquisition costs		24																							
Other technical provisions (particulars to be specified by way of supplementary note)		25																							
Total (21+22+23-24+25)		29																							

**General insurance business (accident year accounting): Analysis of net claims and premiums by risk category for treaty reinsurance**

**Form 26**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

Currency

Accident year ended		Claims paid (net) during the accident year	Claims outstanding (net) as at end of the accident year	Total claims paid (net) since the end of the accident year but prior to this financial year	Claims paid (net) during this financial year	Claims outstanding carried forward		Claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Deduction for discounting from claims outstanding carried forward (net)	Earned premiums (net)	Deterioration / (surplus) of original claims reserve %	Claims ratio %
Month	Year					Reported (net)	Incurred but not reported (net)	Reported (net)	Incurred but not reported (net)					
		1	2	3	4	5	6	7	8	9	10	11	12	13
		11												
		12												
		13												
		14												
		15												
		16												
		17												
		18												
		19												
		20												
Prior accident years		21												
Reconciliation		22												
Total (11 to 22)		29												

General insurance business (accident year accounting): Analysis of net claims and premiums by risk category for treaty reinsurance

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

FSA general insurance business reporting category

Currency

Accident year ended		Claims paid (net) during the accident year	Claims outstanding (net) as at end of the accident year	Total claims paid (net) since the end of the accident year but prior to this financial year	Claims paid (net) during this financial year	Claims outstanding carried forward		Claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Deduction for discounting from claims outstanding carried forward (net)	Earned premiums (net)	Deterioration / (surplus) of original claims reserve %	Claims ratio %
Month	Year					Reported (net)	Incurred but not reported (net)	Reported (net)	Incurred but not reported (net)					
		1	2	3	4	5	6	7	8	9	10	11	12	13

## Instructions for completing Form 26

...

12. The box marked "currency code" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.

...

**General insurance business (accident year accounting): Analysis of gross claims and premiums by risk category for treaty reinsurance**

**Form 27**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

Currency

Accident year ended		Claims paid (gross) during the accident year	Claims outstanding (gross) as at end of the accident year	Total claims paid (gross) since the end of the accident year but prior to this financial year	Claims paid (gross) during this financial year	Claims outstanding carried forward		Claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Deduction for discounting from claims outstanding carried forward (gross)	Earned premiums (gross)	Deterioration / (surplus) of original claims reserve %	Claims ratio %
						Reported (gross)	Incurred but not reported (gross)	Reported (gross)	Incurred but not reported (gross)					
Month	Year	1	2	3	4	5	6	7	8	9	10	11	12	13
		11												
		12												
		13												
		14												
		15												
		16												
		17												
		18												
		19												
		20												
Prior accident years		21												
Reconciliation		22												
Total (11 to 22)		29												

General insurance business (accident year accounting): Analysis of gross claims and premiums by risk category for treaty reinsurance

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

FSA general insurance business reporting category

Currency

Accident year ended		Claims paid (gross) during the accident year	Claims outstanding (gross) as at end of the accident year	Total claims paid (gross) since the end of the accident year but prior to this financial year	Claims paid (gross) during this financial year	Claims outstanding carried forward		Claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Deduction for discounting from claims outstanding carried forward (gross)	Earned premiums (gross)	Deterioration / (surplus) of original claims reserve %	Claims ratio %
Month	Year					Reported (gross)	Incurred but not reported (gross)	Reported (gross)	Incurred but not reported (gross)					
		1	2	3	4	5	6	7	8	9	10	11	12	13

**Instructions for completing Form 27**

...

12. The box marked "currency code" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.

...

**General insurance business (underwriting year accounting): Analysis of premiums, claims and expenses by risk category for treaty reinsurance**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

FSA general insurance business reporting category

Currency

Underwriting year ended		Prior underwriting years		MM		YY		MM		YY		MM		YY		MM		YY		MM		YY		Total all previous columns			
		29	29																						99	99	
Premiums written	Gross amount	11																									
	Reinsurers' share	12																									
	Net (11-12)	19																									
Claims paid	Gross amount	21																									
	Reinsurers' share	22																									
	Net (21-22)	29																									
Claims management costs		39																									
Net operating expenses	Commissions	41																									
	Other acquisition expenses	42																									
	Administrative expenses	43																									
	Reinsurers' commissions and profit participations	44																									
	Payable net (41+42+43-44)	49																									
Technical provisions	Brought forward	Undiscounted	51																								
		Adjustment for discounting	52																								
	Carried forward	Undiscounted	53																								
		Adjustment for discounting	54																								
	Increase (decrease) in the financial year (53-54-51+52)		59																								
Balance on each underwriting year (19-29-39-49-59)		69																									

**General insurance business (underwriting year accounting): Analysis of premiums, claims and expenses by risk category for treaty reinsurance**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Currency

FSA general insurance business reporting category

		Company registration number		GL/UK/CM		day		month		year		Monetary units		Category number		Currency code			
		MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY		
		<b>R28</b>																	
Underwriting year ended		MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY
Premiums written	Gross amount	11																	
	Reinsurers' share	12																	
	Net (11-12)	19																	
Claims paid	Gross amount	21																	
	Reinsurers' share	22																	
	Net (21-22)	29																	
Claims management costs		39																	
Net operating expenses	Commissions	41																	
	Other acquisition expenses	42																	
	Administrative expenses	43																	
	Reinsurers' commissions and profit participations	44																	
	Payable net (41+42+43-44)	49																	
Technical provisions	Brought forward	Undiscounted	51																
		Adjustment for discounting	52																
	Carried forward	Undiscounted	53																
		Adjustment for discounting	54																
	Increase (decrease) in the financial year (53-54-51+52)	59																	
Balance on each underwriting year (19-29-39-49-59)		69																	

## Instructions for completing Form 28

...

8. The box marked "currency code" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.

...

**General insurance business (underwriting year accounting): Analysis of technical provisions by risk category for treaty reinsurance**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

FSA general insurance business reporting category

Currency

Underwriting year ended		Prior underwriting years		MM		YY		MM		YY		MM		YY		MM		YY		MM		YY		Total all previous columns	
		29	29																					99	99
Reported claims outstanding	Gross amount	11																							
	Reinsurers' share	12																							
Claims incurred but not reported	Gross amount	13																							
	Reinsurers' share	14																							
Claims management costs		15																							
Adjustment for discounting	Gross amount	16																							
	Reinsurers' share	17																							
	Claims management costs	18																							
Allocation to / (from) another risk category of anticipated surplus		19																							
Balance of the fund		20																							
Claims outstanding (11-12+13-14+15-16+17-18+19+20)		21																							
Provision for unearned premiums		22																							
Provision for unexpired risks		23																							
Deferred acquisition costs		24																							
Other technical provisions (particulars to be specified by way of supplementary note)		25																							
Total (21+22+23-24+25)		29																							

**General insurance business (underwriting year accounting): Analysis of technical provisions by risk category for treaty reinsurance**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

FSA general insurance business reporting category

Currency

		Company registration number		GL/UK/CM		day		month		year		Monetary units		Category number		Currency code			
		MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY		
		R29																	
Underwriting year ended		MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY
Reported claims outstanding	Gross amount	11																	
	Reinsurers' share	12																	
Claims incurred but not reported	Gross amount	13																	
	Reinsurers' share	14																	
Claims management costs		15																	
Adjustment for discounting	Gross amount	16																	
	Reinsurers' share	17																	
	Claims management costs	18																	
Allocation to / (from) another risk category of anticipated surplus		19																	
Balance of the fund		20																	
Claims outstanding (11-12+13-14+15-16+17-18+19+20)		21																	
Provision for unearned premiums		22																	
Provision for unexpired risks		23																	
Deferred acquisition costs		24																	
Other technical provisions (particulars to be specified by way of supplementary note)		25																	
Total (21+22+23-24+25)		29																	

## Instructions for completing Form 29

...

10. The box marked "currency code" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.

...

**General insurance business : Expected income and yield from admissible assets covering discounted provisions**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended

											Company registration number	GL/UK/CM	day	month	year	units
											R30					£000
Major currencies	Reporting territory code		Total admissible assets as shown on Form 13	Admissible assets hypothecated to cover the provision for outstanding claims being discounted	Expected income from assets included in column 2	Yield %	Technical provisions	Provision for outstanding claims being discounted		Unwind in the discount in the next financial year	Rates of interest at which the provision is being discounted					
								Before deduction for discounting	Deduction for discounting		Highest	Lowest	Average rate			
			1	2	3	4	5	6	7	8	9	10	11			
		11														
		12														
		13														
		14														
		15														
		16														
		17														
		18														
		19														
		20														
Other currencies		21														
Total		29														

**General insurance business : Expected income and yield from admissible assets covering discounted provisions**

Name of insurer  
Global business/UK branch business/EEA branch business  
Financial year ended

			Company registration number	GL/UK/CM	day	month	year	units
		R30						£000
Type of asset		Value of admissible assets as shown on Form 13	Admissible assets hypothecated to cover the provision for outstanding claims being discounted	Expected income from assets included in column 2	Yield %			
		1	2	3	4			
Land and buildings		31						
Fixed interest securities	Approved securities	32						
	Other	33						
Variable interest and variable yield securities (excluding items shown at line 36)	Approved securities	34						
	Other	35						
Equity shares and holding in collective investment schemes		36						
Loans secured by mortgages		37						
All other assets	Producing income	38						
	Not producing income	39						
Total		49						

**Instructions for completion of Form 30**

...

13. The entry under the column headed 'reporting territory code' must be one of the codes listed in **Appendix 9.2 Paragraph 32.**

...

Replace Form 31 with the following revised version.

**General insurance business (accident year accounting): Analysis of gross claims and premiums by risk category for direct insurance and facultative reinsurance**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

Currency  
 Reporting territory

Accident year ended		Company registration number	GL/UK/CM	day	month	year	Monetary units	Category number	Currency code	Reporting territory code		
		R31										
Month	Year	Number of claims		Gross claims paid		Gross claims outstanding carried forward		Gross claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Gross earned premiums	Claims ratio %
		Closed at some cost during this or previous financial years	Reported claims outstanding	In previous financial years	In this financial year	Reported	Incurred but not reported	Reported	Incurred but not reported			
		1	2	3	4	5	6	7	8	9	10	11
		11										
		12										
		13										
		14										
		15										
		16										
		17										
		18										
		19										
		20										
Prior accident years		21										
Total (11 to 21)		29										
Line 29 expressed in sterling		30										



### Instructions for completing Form 31

...

9. On the continuation sheet, for *category number 274*, the amounts in columns 2 and 4 to 8 for accident years ending prior to 31 December 1996 may be shown in the aggregate and columns 1 and 3 need not be completed for ~~accident-underwriting~~ years ending prior to 31 December 1996.

...

12. The box marked "currency code" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.
13. The entry alongside "reporting territory" must be that required by the relevant 3 character code from the list in the Table in Appendix 9.2 Paragraph 16(3) 32 and the entry in the box marked "reporting territory code" must be the relevant 2 character code from the list in the Table in **Appendix 9.2 Paragraph 32**.

...

Replace Form 32 with the following revised version.

**General insurance business (accident year accounting): Analysis of gross claims and premiums for motor vehicle direct insurance and facultative reinsurance**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

Currency  
 Reporting territory

Accident year ended		Number of claims		Gross claims paid		Gross claims outstanding carried forward		Gross claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year (4+5+6-7-8)	Gross earned premiums	Claims ratio %	Vehicle years (000s)	Claims frequency %
Month	Year	Closed at some cost during this or previous financial years	Reported claims outstanding	In previous financial years	In this financial year	Reported	Incurred but not reported	Reported	Incurred but not reported					
		1	2	3	4	5	6	7	8	9	10	11	12	13
		11												
		12												
		13												
		14												
		15												
		16												
		17												
		18												
		19												
		20												
Prior accident years		21												
Total (11 to 21)		29												
Line 29 expressed in sterling		30												

## Instructions for completing Form 32

...

7. For accident years ended on or after 31 December 2006, the percentage shown at column 13 must be the ratio of the sum of columns 1 and 2 to the unrounded number of years underpinning column 12. For accident years ended before 31 December 2006, the percentage shown at column 13 must be the ratio of the sum of columns 1 and 2 to either the unrounded number of years underpinning column 12 or the product of 1000 and column 12.

...

10. The box marked "currency code" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.

11. The entry alongside "reporting territory" must be that required by the relevant 3 character code from the list in the Table in **Appendix 9.2 Paragraph 16(3) 32** and the entry in the box marked "reporting territory code" must be the relevant 2 character code from the list in the Table in **Appendix 9.2 Paragraph 32**.

...

Replace Form 34 with the following revised version.

General insurance business (underwriting year accounting): Analysis of gross claims and premiums by risk category for direct insurance and facultative reinsurance

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended  
 FSA general insurance business reporting category

Currency  
 Reporting territory

Underwriting year ended		Company registration number	GL/UK/CM	day	month	year	Monetary units	Category number	Currency code	Reporting territory code
		R34								
Month	Year	Gross claims paid		Gross claims outstanding carried forward		Gross claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year  (2+3+4-5-6)	Gross written premiums	Claims ratio %
		In previous financial years	In this financial year	Reported	Incurred but not reported	Reported	Incurred but not reported			
		1	2	3	4	5	6	7	8	9
	11									
	12									
	13									
	14									
	15									
	16									
	17									
	18									
	19									
	20									
Prior underwriting years		21								
Total (11 to 21)		29								
Line 29 expressed in sterling		30								

**Form 34**  
**(continuation sheet)**

**General insurance business (underwriting year accounting): Analysis of gross claims and premiums by risk category for direct insurance and facultative reinsurance**

Name of insurer  
Global business/UK branch business/EEA branch business  
Financial year ended  
FSA general insurance business reporting category

Currency  
Reporting territory

Underwriting year ended		Gross claims paid		Gross claims outstanding carried forward		Gross claims outstanding brought forward		Claims incurred (latest year) or developed (other years) during this financial year  (2+3+4-5-6)	Gross written premiums	Claims ratio %
Month	Year	In previous financial years	In this financial year	Reported	Incurred but not reported	Reported	Incurred but not reported			
		1	2	3	4	5	6	7	8	9

### Instructions for completing Form 34

...

9. On the continuation sheet, for *category number 274*, the amounts in columns 2 to 6 for underwriting ~~accident~~ years ending prior to 31 December 1996 may be shown in the aggregate and column 1 need not be completed for underwriting years ending prior to 31 December 1996."

...

11. The box marked "currency code" must be completed by inserting the relevant 3 character currency code from the list in the Table in **Appendix 9.2 Paragraph 31**.
12. The entry alongside "reporting territory" must be that required by the relevant 3 character code from the list in the Table in Appendix 9.2 Paragraph 16(3) 32 and the entry in the box marked "reporting territory code" must be the relevant 2 character code from the list in the Table in Appendix 9.2 Paragraph 32.

...

Replace Forms 36-39 with the following revised versions. Instructions to these Forms are unchanged.



**Equalisation provisions**

**Form 37**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended

		Company registration number		GL/UK/CM	day	month	year	units
		R37						£000
		Business grouping A (property)	Business grouping B (business interruption)	Business grouping C (marine and aviation)	Business grouping D (nuclear)	Business grouping E (non-proportional treaty)	All business groupings	Credit insurance business
		1	2	3	4	5	6	7
<b>Calculation of the maximum provision</b>								
Total net premiums written in the previous 4 years	11							
Net premiums written in the current year	12							
Maximum provision	13							

**Calculation of the transfer to/from the provision**

Equalisation provision brought forward	21							
Transfers in	22							
Total abnormal loss	23							
Provisional transfers out	24							
Excess of provision transfer out over fund available	25							
Provisional amount carried forward (21+22-24+25)	26							
Excess, if any, of 26 over 13	27							
Equalisation provision carried forward (26-27)	28							
Transfer in/(out) for financial year (28-21)	29							

**Equalisation provisions technical account: Accident year accounting**

**Form 38**

Name of insurer  
 Global business/UK branch business/EEA branch business  
 Financial year ended

Company registration number	GL/UK/CM	day	month	year	units
R38					£000

		Business grouping A (property)	Business grouping B (business interruption)	Business grouping C (marine and aviation)	Business grouping D (nuclear)	Business grouping E (non-proportional treaty)
		1	2	3	4	5
<b>Other than credit business</b>						
Net premiums earned	11					
Claims incurred net of reinsurance	12					
Trigger claims value	13					
Abnormal loss	19					
Trigger claims ratio		72.5%	72.5%	95%	25%	100%

**Credit business**

Net premiums earned	21	
Claims incurred net of reinsurance	22	
Claims management costs	23	
Net operating expenditure	24	
Technical surplus / (deficit) (21-22-23-24)	29	

**Equalisation provisions technical account: Underwriting year accounting**

**Form 39**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Company registration number	GL/UK/CM	day	month	year	units
R39					£000

		Business grouping A (property)	Business grouping B (business interruption)	Business grouping C (marine and aviation)	Business grouping D (nuclear)	Business grouping E (non-proportional treaty)
		1	2	3	4	5
<b>Other than credit business</b>						
Net premiums written	11					
Claims net of reinsurance	12					
Trigger claims value	13					
Abnormal loss	19					
Trigger claims ratio		72.5%	72.5%	95%	25%	100%

**Credit business**

Net premiums written	21	
Claims net of reinsurance	22	
Claims management costs	23	
Net operating expenditure	24	
Technical surplus / (deficit) (21-22-23-24)	29	

...

**APPENDIX 9.3** (rules 9.14 and 9.23)

**LONG-TERM INSURANCE BUSINESS:  
REVENUE ACCOUNT AND ADDITIONAL INFORMATION  
(FORMS 40 TO 60)**

---

...

2. The provisions of paragraph 1(2) and paragraphs 3 to 7 of **Appendix 9.1** must, unless otherwise provided, also apply for the purposes of this Appendix. All amounts must be shown in sterling to the nearer £1,000 except valuation unit prices in Form 55 where the currency and rounding must be that used in the valuation. Calculations must be performed using unrounded figures. Figures which are determined from other figures (whether or not on the same form) must be rounded after performing calculations on the unrounded component figures. Percentages must be shown to two decimal places.
3. For the purposes of this Appendix:
- (a) “overseas business” means *long-term insurance business* which is Overseas Life Assurance Business or Overseas PHI and Sickness Business as defined by the Income and Corporation Taxes Act 1988;

...

7. For *financial years* ending on or before 30 December 2006, an *insurer* is not required to complete entries in the 'previous year' column in **Forms 40 to 46, 50 and 58** if the entry cannot be obtained directly from the previous year's *return*.
8. The full amount of *premiums* and *claims* under a *contract of insurance* must be reported under headings relating to these items. **Forms 40 to 60** must not be completed on the basis of deposit accounting, regardless of whether the *insurer* or any *group* of which it is part uses this basis in accordance with *international accounting standards*.

**FORMS**

[Forms 40 – 60 follow]

## Instructions for completion of Form 40

...

8. Where a transfer is made to the non-technical account, the entry at line 26 must show amounts which have been included at line 47 of Form 58. ~~The amount shown for transfers to the non-technical account (line 26) must agree with the equivalent amount disclosed at line 47 of Form 58— see paragraph 4 of the Instructions for completion of Form 58.~~ However, if there is a net transfer into the fund, the entry at line 26 will be negative, ~~and, by virtue of paragraph 43 of the Instructions for completion of~~ The sum of Form 58 lines 32 and 33 will be positive ~~there will be a positive entry at line 34, lines 13, 1415 and 47 remaining blank.~~

...

14. If the bases of conversion adopted in respect of foreign currency for income and expenditure have not already been stated in a note to Form 16, the bases ~~should~~must be stated in a supplementary note as specified in paragraph 5(2) of Appendix 9.1 [Code 4005].

...

16. Where arrangements have been in force during the *financial year* for the provision either by or to the *insurer* of management services, this fact must be stated in a supplementary note together with the name of the other party (to whom or from whom such services were provided or received) - see paragraph 5 of **Appendix 9.3**. This statement is only needed where a substantial part of the day-to-day administration of an *insurer* is undertaken by another company or vice versa. ~~Note that where the arrangement is between two insurers, the directors will need to consider very carefully the form of their certificate under~~ **Appendix 9.6, Part I paragraph 4(e)**. [Code 4008]

...

**Long-term insurance business: Linked funds balance sheet**

**Form 44**

Name of insurer  
 Total business / ~~subfund~~  
 Financial year ended  
 Units

		<b>Financial year</b>	<b>Previous year</b>
		<b>1</b>	<b>2</b>
<b>Internal linked funds (excluding cross investment)</b>			
Directly held assets (excluding collective investment schemes)	11		
Directly held assets in collective investment schemes of connected companies	12		
Directly held assets in other collective investment schemes	13		
<b>Total assets (excluding cross investment) (11+12+13)</b>	14		
Provision for tax on unrealised capital gains	15		
Secured and unsecured loans	16		
Other liabilities	17		
<b>Total net assets (14-15-16-17)</b>	18		
<b>Directly held linked assets</b>			
Value of directly held linked assets	21		
<b>Total</b>			
Value of directly held linked assets and units held (18+21)	31		
Surplus units	32		
Deficit units	33		
<b>Net unit liability (31-32+33)</b>	34		

...

**Long-term insurance business: revenue account for internal linked funds**

**Form 45**

Name of insurer  
 Total business / ~~subfund~~  
 Financial year ended  
 Units

		<b>Financial year</b>	<b>Previous year</b>
		<b>1</b>	<b>2</b>
<b>Income</b>			
Value of total creation of units	11		
Investment income attributable to the funds before deduction of tax	12		
Increase (decrease) in the value of investments in the financial year	13		
Other income	14		
<b>Total income</b>	19		
<b>Expenditure</b>			
Value of total cancellation of units	21		
Charges for management	22		
Charges in respect of tax on investment income	23		
Taxation on realised capital gains	24		
Increase (decrease) in amount set aside for tax on capital gains not yet realised	25		
Other expenditure	26		
<b>Total expenditure</b>	29		
Increase (decrease) in funds in financial year (19-29)	39		
Internal linked fund brought forward	49		
Internal linked funds carried forward (39+49)	59		

...

### Instructions for completion of Form 47

3. Information must be further divided by product code as follows:

Code	Product description
...	
<u>336</u>	<u>Mortality risk premium reinsurance</u>
...	
<u>411</u>	<u>Group death in service dependants' annuities</u>
...	
<u>506</u>	<u>Life UWP whole life regular premium (ISA)</u>
...	
<u>516</u>	<u>Life UWP endowment regular premium (ISA)</u>
...	
<u>571</u>	<u>Trustee investment plan UWP</u>
...	
<u>600</u>	<u>Income protection claims in payment</u>
...	
<u>901</u>	<u>Index linked income protection claims in payment</u>
<u>902</u>	<u>Group index linked income protection claims in payment</u>
...	

Codes 100-215 are for with-profits business in Form 51.

Codes 300-445 are for non-profit business in Form 51.

Codes 500-610 are for Form 52.

Codes 700-800 are for Form 53.

Codes 900-915 are for Form 54.

Life regular premium product codes include paid-up policies.

CPA annuities include those arising from group death in service policies and bulk purchase of annuities from occupational pension schemes.

For the purposes of allocation to product codes (e.g. code 175), group business is where there is another party in the arrangement, normally an employer. An insurer may use an internal definition to allocate between individual and group business for schemes with less than ten members.

...

5. For direct individual policies, columns 3 and 5 are the number of new plans, i.e. eliminating the effect of multiple policies being issued as part of the same premium, identifiable increments and rider benefits. A policy holder who takes out plans of the same product code during the year will contribute to column 3 or 5 for each such plan. For direct group scheme business, where the insurer has records of benefits at member level, columns 3 and 5 are the number of new members. For group scheme business, where the insurer has no records of benefits at member level, columns 3 and 5 must be zero. For business without such records, the number of new group schemes, divided by product code, must be set out in a supplementary note (code 4701). Details of approximations made in determining columns 3 and 5 ~~should~~ must be given in a note. For reinsurance accepted columns 3 and 5 are nil.

...

7. Details must be given in a supplementary note (code 4702) of approximations used to apportion between product codes.

Long-term insurance business: Non-linked assets

Form 48

Name of insurer

Total business / subfund Category of assets

Financial year ended

Units

		Unadjusted assets	Economic exposure	Expected income from assets in column 2	Yield before adjustment	Return on assets in financial year
		1	2	3	4	5
<b>Assets backing non-profit liabilities and non-profit required minimum margin capital requirements</b>						
Land and buildings	11					
Approved fixed interest securities	12					
Other fixed interest securities	13					
Variable interest securities	14					
UK listed equity shares	15					
Non-UK listed equity shares	16					
Unlisted equity shares	17					
Other assets	18					
<b>Total</b>	19					
<b>Assets backing with-profits liabilities and with-profits capital requirements</b>						
Land and buildings	21					
Approved fixed interest securities	22					
Other fixed interest securities	23					
Variable interest securities	24					
UK listed equity shares	25					
Non-UK listed equity shares	26					
Unlisted equity shares	27					
Other assets	28					
<b>Total</b>	29					
<b>Overall return on with-profits assets</b>						
Post investment costs but pre-tax	31					
Return allocated to non taxable 'asset shares'	32					
Return allocated to taxable 'asset shares'	33					

## Instructions for completion of Form 48

1. Line 11.1 + 21.1 must equal 13.11.1.  
Line 12.1 + 22.1 must equal 13.45.1 + the relevant part of 13.84.1.  
Line 13.1 + 23.1 must equal 13.46.1 + the relevant part of 13.84.1.  
Line 14.1 + 24.1 must equal ~~13.42.1~~ + 13.47.1 + 13.48.1 + the relevant part of 13.84.1.  
Line 15.1 + 25.1 must equal the relevant part of 13.41.1.  
Line 16.1 + 26.1 must equal the relevant part of 13.41.1  
Line 17.1 + 27.1 must equal the relevant part of 13.41.1 + 13.21.1 + 13.23.1 + 13.25.1 + 13.27.1.
5. For a *with-profits fund* the assets backing the non-profit business must equal the amount of the non-profit *mathematical reserves* (lines ~~542~~, ~~545~~ and ~~547~~ of Form 50), plus the relevant part of the *required minimum margin-long-term insurance capital requirement and resilience capital requirement* if ~~this is~~ these are backed by assets in that fund). The remaining assets must be treated as backing the with-profits business. For a fund without with-profits business all assets are to be included in lines 11-19. Allocation of assets to back *mathematical reserves* in the base scenario between lines 11-19 and 21-29 does not prevent switches between these lines for the purposes of the *market risk scenario* used in calculating the *resilience capital requirement*.
6. Where part of the with-profits business is with respect to business which falls within paragraph (1)(b) of the definition of *with-profits fund* and that part represents more than 10% of the total with-profits *mathematical reserves*, the *insurer* must set out in a supplementary note (code 4801):  
...
9. The treatment of the expected income from any asset where the payment of interest is in default and the amount of interest involved must be stated in a supplementary note (code 4802).
10. The gross redemption yield in column 4 for fixed and variable interest securities must be calculated as in PRU 4.2.34R(2) before any allowance for tax required by PRU 4.2.29R, leaving out of account any adjustment considered necessary because of PRU 4.2.41R and PRU 4.2.46R. Where a number of assets with different gross redemption yields are held, the weighted average gross redemption yield must be calculated using as weights the value of the asset applicable for entry into column ~~4~~2. Where *securities* may be redeemed over a period at the option of the guarantor or the issuer, they must be classified on the assumption that they will be redeemed at the latest possible date or, if it is assumed that they will be redeemed at any earlier date, a supplementary note must be provided explaining what assumption has been made. Subject to paragraphs 13 and 14, the yields to be inserted in column 3 for other categories of asset must be the running yields determined in accordance with PRU 4.2.33R to PRU 4.3.34R before any allowance for tax required by PRU 4.2.29R. The entries at 48.19.~~34~~ and 48.29.~~34~~ must be the weighted average of the yields in column 4, where the weight given to each asset is the value of that asset applicable for entry into column 2. Assets not producing income must be included in the calculation (code 4803).
11. Where the yield in column 4 for a type of asset shown at line 18 or 28 is significantly different from the weighted average of the yields for each asset of that type determined in accordance with PRU 4.2.34R(2) before any allowance for tax required by PRU 4.2.29R, then the latter yield figure must be shown in a supplementary note. For this purpose, the weighted average of the yields means an average yield weighted by the value of each asset of that type as entered in column ~~4~~2 (code 4804).
12. Where an entry at 13.87.1 has resulted from excess *exposure* to a *counterparty* or *excess concentration with a number of counterparties*, the aggregate value of the assets of the *insurer* giving rise to *exposure* to such *counterparties* must be stated in a supplementary note (code 4805), together with the expected income from those assets.  
...

15. Firms must state in a supplementary note (code 4806) which assets have been used to calculate the investment returns shown in lines 21-29 column 5. If the firm identifies a portfolio of assets to back asset shares the returns must be based on these assets. If there are several asset share portfolios the return must be based on the largest. The assets used to calculate the investment returns in column 5 will not necessarily be the same as those assets in columns 1 or 2. The returns in lines 21-29 are before allowance for tax and investment costs, as is the return disclosed in Appendix 9.4A paragraph 4(7).

...

**Long-term insurance business: Fixed and variable interest assets**

**Form 49**

Name of insurer

Total business / subfund Category of assets

Financial year ended

Units

		<b>Value of assets</b>	<b>Mean term</b>	<b>Yield before adjustment</b>	<b>Yield after adjustment</b>
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>UK government approved fixed interest securities bonds</b>	11				
<b>Other approved fixed interest securities</b>	21				
<b>Other fixed interest securities</b>					
AAA/Aaa	31				
AA/Aa	32				
A/A	33				
BBB/Baa	34				
BB/Ba	35				
B/B	36				
CCC/Caa	37				
Other (including unrated)	38				
<b>Total other fixed interest securities</b>	39				
<b>Approved variable interest securities</b>	41				
<b>Other variable interest securities</b>	51				
<b>Total (11+21+39+41+51)</b>	61				

### Instructions for completion of Form 49

...

2. The value of assets in column 1 ~~should~~ must correspond to the value of assets in column 2 of Form 48.
3. The mean term in column 2 may be calculated by using the expected yearly cashflows discounted by the internal rate of return, or an alternative actuarial method. Undated stocks ~~should~~ must be assumed to be redeemed after 40 years.

...

5. The gross redemption yield after adjustment in column 4 makes allowance for the risk adjustment required by PRU 4.2.41R and PRU 4.2.4644R.
6. A supplementary note (code 4901) must be provided stating which rating agency has been used to provide the split by credit rating.

...

### Instructions for completion of Form 50

1. ...

2. ...

3. ...

Line 38 is the sum of lines ~~21 to 27~~ 31 to 37.

...

### Instructions for completion of Forms 51, 52, 53 and 54

...

6. For direct individual *policies*, column 3 is the number of plans, i.e. eliminating the effect of multiple policies being issued as part of the same premium, identifiable increments and rider benefits. A *policy holder* who holds plans of the same product code taken out at different dates will contribute to column 3 for each such plan. For direct group scheme business, where the *insurer* has records of benefits at member level, column 3 is the number of members. For group scheme business, where the *insurer* has no records of benefits at member level, column 3 must be zero. For business without such records, the number of group schemes, divided by the *product code*, must be set out in a supplementary note (codes 5101-5401). Details of approximations made in estimating the number of policyholders from the number of contracts ~~should~~ must be given in a supplementary note (codes 5102-5402). For reinsurance accepted and reinsurance ceded column 3 is nil.
7. To avoid double counting, if all the premiums in the plan are invested in the *with-profits fund*, a member of a plan offering a choice of funds may be treated as contributing to column ~~53~~ 53 for unitised with-profits business. For *policies* with protection rider benefits, the entry in column ~~53~~ 53 must be for the main benefit in the plan.

...

9. For non-linked contracts the amount of benefit in column 4 is the current death benefit for assurances, the amount payable on claim for stand-alone critical illness, the annual amount of annuity for deferred annuities and annuities in payment and the annual amount of benefit for income protection and waiver of premium. For *linked long-term contracts* including life assurance, column 4 must be the current amount payable on death.

...

11. Notwithstanding 4, where neither the gross mathematical reserves nor the gross annual premiums with respect to products with the same product code exceed the lesser of £10m and 1% of the total gross mathematical reserves, the products may be entered as the appropriate miscellaneous product code in column 1 and 2. The test of whether the appropriate miscellaneous product code may be used must be carried out at firm level combining all subfunds. The product code for reinsurance must correspond to the product code for the related gross business.

12. Where a product does not appear to fit into any other product code, the miscellaneous product code can be used. Details must be disclosed in a supplementary note (codes 5103-5403) if the amount of business for that product exceeds the threshold in instruction 11.

13. Details must be given in a supplementary note (codes 5104-5404) of approximations used to apportion between product codes.

...

**Long-term insurance business: index linked business**

**Form 56**

Name of insurer  
 Total business / ~~subfund~~  
 Financial year ended  
 Units

<b>Type of assets and liabilities</b>	<b>Name of index link</b>	<b>Value of assets or liabilities</b>	<b>Gross derivative value</b>
	<b>1</b>	<b>2</b>	<b>3</b>
<b>Total assets</b>			n/a
Total liabilities			n/a
Net total assets			n/a

## Instructions for completion of Form 56

1. Assets and liabilities in column 2 must be listed individually except that where a group of assets of similar type is held which is intended to mirror the performance of an index, a description of the type of assets held may be given. Liabilities must be shown between round brackets and must be fully described.
2. ~~A separate sub-total of a~~Assets and liabilities ~~must be used~~ for each index link and for each combination of assets and liabilities matching the *insurer's* liability under any *deposit back arrangement* must be shown separately. Links to different percentages of an index must be treated as different index links.
3. For each index link, the sub-totalled of values in column 2 (excluding those held in respect of any *deposit back arrangement*) must match the appropriate entries in column 12 of Form 54 net of *reinsurance ceded*.
- ...
5. Where there is a liability to repay *variation margin* and there are no arrangements for netting of amounts outstanding or the arrangements would not permit the accounting of such amounts on a net basis in accordance with generally accepted accounting practice, it must be so stated in a supplementary note (code 5601).
6. Any provision for "reasonably foreseeable adverse variations" must be determined in accordance with PRU 4.3.17R(3) and shown in a supplementary note (code 5602).
7. The *insurer* must include a supplementary note (code 5603) of any circumstances which make the natural relationships break down (e.g., particular tax treatments).

**Long-term insurance business – analysis of valuation interest rate**

Name of insurer

Total business / subfund

Financial year ended

~~Category of surplus~~ Units

<b>Product group</b>	<b>Net mathematical reserves</b>	<b>Net valuation interest rate</b>	<b>Gross valuation interest rate</b>	<b>Risk adjusted yield on matching assets</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Total</b>		n/a	n/a	n/a

### Instructions for completion of Form 57

1. This Form must be completed for each ~~separate fund or part of a subfund~~ for which a surplus is ~~determined~~ where *mathematical reserves* for non-linked business exceed £100m. ~~The name of the fund or part of a fund is to be shown against the heading "Category of surplus". The corresponding code box must contain the code numbers consistent with Forms 51-54. Form 57 must not be completed for the total business where the firm has subfunds.~~
2. Separate lines are required for UK Life, UK Pension and overseas business liabilities, ~~for life assurance and annuity business, pension business, permanent health business and other business~~ and for with-profits and non-profit business.

...

**Long-term insurance business: distribution of surplus**

**Form 58**

Name of insurer  
 Total business / subfund  
 Financial year ended  
 Units

		<b>Financial year</b>	<b>Previous year</b>
		<b>1</b>	<b>2</b>
<b>Valuation result</b>			
Fund carried forward	11		
Bonus payments in anticipation of a surplus	12		
Transfer to non-technical account	13		
Transfer to other funds / parts of funds	14		
Subtotal (11 to 14)	15		
Mathematical reserves	21		
Surplus including contingency and other reserves held towards the solvency margin (deficiency) (15-21)	29		
<b>Composition of surplus</b>			
Balance brought forward	31		
Transfer from non-technical account	32		
Transfer from other funds / parts of fund	33		
Surplus arising since the last valuation	34		
Total	39		
<b>Distribution of surplus</b>			
Bonus paid in anticipation of a surplus	41		
Cash bonuses	42		
Reversionary bonuses	43		
Other bonuses	44		
Premium reductions	45		
Total allocated to policyholders (41 to 45)	46		
Net transfer out of fund / part of fund	47		
Total distributed surplus (46+47)	48		
Surplus carried forward	49		
Total (48+49)	59		
<b>Percentage of distributed surplus allocated to policyholders</b>			
Current year	61		
Current year - 1	62		
Current year - 2	63		
Current year - 3	64		

### Instructions for completion of Form 58

1. Separate Forms must be completed ~~in respect of each separate fund or part of a fund for which a surplus is determined~~ for the total business and each subfund.
2. The entry at line 11 must be equal to the entry at line 59 in Form 40 for the relevant subfund ~~or part of fund.~~
3. Where interim, mortuary or terminal bonuses are determined in advance of a valuation and are paid in anticipation of surplus arising at the valuation, the amounts of such bonus actually paid in the period up to the *relevant date* must be entered at lines 12 and 41. To the extent that it is the practice of the *insurer* to make special provision for the cost of such bonuses payable on future *claims* out of surplus arising at a valuation, such amounts must be treated as amounts allocated to *policy holders* at the valuation in question and included at line 44, and the actual amounts paid must not appear at lines 12 and 41 at future valuations. An appropriate supplementary note (code 5801) must identify the various items where necessary.
4. Where *policies* have been transferred from one ~~subfund/part of fund~~ to another, the associated transfer of reserves must not be included as a “transfer” in this Form. Where any other transfer has been made, only one block of lines ~~positive figure must be used inserted either at line 15 or line 34 (lines 13 and 14 or 32 and 33,~~ depending on the direction of the net transfer) leaving the other block ~~line~~ blank. ~~Corresponding entries must be made in either the block comprising lines 13 and 14 or the block comprising lines 32 and 33, as appropriate.~~
- ...
7. Where the entry at line 14 or line 33 represents more than one transaction, each transfer must be separately identified in a supplementary note (code 5802).
- ...
9. For each fund ~~/part of~~ subfund, the entry at line 21 must equal the total liabilities shown at line 48 in column 4 of Form 50.
- ...
11. The figure at line 47 must equal the sum of lines 13 and 14 ~~figure at line 15.~~
12. Lines 61-64 are not applicable for the total business where there is more than one subfund.
- ...

### Instructions for completion of Forms 59A and 59B

- ...
15. Where there is more than one version or premium rate for one of the data lines, the data shown ~~should~~ must be for the version where there is the largest amount of business.

Long term insurance capital requirement

Form 60

Name of insurer

Global business / UK branch / EEA branch

Financial year ended

Units

		LTICR factor	Gross reserves / capital at risk	Net reserves / capital at risk	Reinsurance factor	LTICR Financial year	LTICR Previous year
		1	2	3	4	5	6
<b>Insurance death risk capital component</b>							
Classes I, II and IX	11	0.1%					
Classes I, II and IX	12	0.15%					
Classes I, II and IX	13	0.3%					
Classes III, VII and VIII	14	0.3%					
<b>Total</b>	15						
<b>Insurance health risk capital component</b>							
Class IV and supplementary classes 1 and 2	21						
<b>Insurance expense risk capital component</b>							
Classes I, II and IX	31	1%					
Classes III, VII and VIII (investment risk)	32	1%					
Classes III, VII and VIII (expenses fixed 5 yrs +)	33	1%					
Classes III, VII and VIII (other)	34	25%					
Class IV	35	1%					
Class V	36	1%					
Class VI	37	1%					
<b>Total</b>	38						
<b>Insurance market risk capital component</b>							
Classes I, II and IX	41	3%					
Classes III, VII and VIII (investment risk)	42	3%					
Classes III, VII and VIII (expenses fixed 5 yrs +)	43	0%					
Classes III, VII and VIII (other)	44	0%					
Class IV	45	3%					
Class V	46	0%					
Class VI	47	3%					
<b>Total</b>	48						
<b>Long term insurance capital requirement</b>	51						

## Instructions for completion of Form 60

1. The *insurance death risk capital component* in lines 11-14 column 5 is based on capital at risk for those contracts where it is not negative. Capital at risk is the benefit payable as a result of death less the *mathematical reserves* after distribution of surplus. Business in classes I, II and IX must be split between lines 11, 12 and 13 in accordance with *PRU 7.2.82R*. Line 11 is for temporary insurance on death where the original term of the contract is 3 years or less or for a *pure reinsurer*. Line 12 is for temporary insurance where the original term is 5 years or less but more than 3 years. Line 13 is for other *class I, II or IX* business. For a *pure reinsurer* the factor of 0.3% in column 1 of line 14 ~~should~~ must be replaced by 0.1%.  
  
...
4. For the purpose of calculating the *insurance expense risk capital component* and the *insurance market risk capital component* linked contracts ~~should~~ must be allocated to:
  - lines 32 and 42 where the *firm* bears an investment risk,
  - lines 33 and 43 where the *firm* does not bear an investment risk but where the allocation to cover *management expenses* is fixed for a period exceeding 5 years from the commencement of the contract, and
  - lines 34 and 44, otherwise.  
...
11. ~~For financial years starting before 1 January 2005 lines 11 to 48 of column 6 must be blank. The ratios in column 4 must be shown to 2 decimal places, but the unrounded ratios must be used for the purposes of calculating column 5.~~

APPENDIX 9.4 (rule 9.31)  
ABSTRACT OF VALUATION REPORT

---

...

**Valuation basis (other than for special reserves)**

Where either the gross *mathematical reserves* or the gross annual premiums for a group of products using the same valuation method and basis exceed the lesser of £10m and 1% of the total gross *mathematical reserves*, the method and basis of valuation must be given in accordance with 4(1) to 4(9). Where a prospective method has not been used, the basis reported must be the basis used by the *insurer* to test the adequacy of the reserves.

- ~~4. (1) Where either the reserves or the annual premiums for a product exceed the lesser of £10m and 0.5% of the total *mathematical reserves*, the basis of the valuation. Where a prospective method has not been used, the basis reported must be the basis used by the *insurer* to test the adequacy of the reserves.~~
4. (21) The valuation methods used and the types of product to which each method applies, including a description of any non-standard method. See 5 to 8 for special reserves.
- (32) A table of the interest rates used, showing the product group, the rate used ~~at~~ at ~~in~~ from the end of the *financial year in question*, and, ~~for products which represent a significant amount of business~~, the rate used ~~at~~ at ~~from~~ from the end of the previous *financial year*. Where the valuation with respect to a product involves more than one interest rate (e.g. a rate in deferment and a rate in possession), both interest rates must be shown.
- (43) How the yield was adjusted to allow for risk for equity *shares*, property and other *fixed interest securities* to determine the risk adjusted yield in **Form 57**.
- (54) ~~For products which represent a significant amount of business, a~~ A table of mortality bases used, showing the product group and the bases used at the end of the *financial year in question* and at the end of the previous *financial year*. If a mortality basis cannot be expressed as a flat percentage of a standard table or as a standard table subject to a flat age rating, then the mortality basis should be shown as 'modified <name of table>'. For assurances where the 'modified table' description is used, rates must be provided for ages 25, 35, 45 and 55. For all annuitant mortality bases covered by this paragraph, the expectation of life at age 65 and 75 for annuities in payment and the expectation of life at age 65 for current ages 45 and 55 for deferred annuities must be provided. Allowances made for future changes in mortality ...
- (65) ~~For products which represent a significant amount of business, a~~ A table of morbidity bases used, showing the product group and the bases used at the end of the *financial year in question* and at the end of the previous *financial year*. If a basis cannot be expressed as a simple modification to a standard table (e.g. flat percentage, age rating), the basis must be shown as 'modified <name of

~~table>CMIR12'. If a basis cannot be represented as a standard table, Where the 'modified table' description is used then the morbidity rates and recovery rates must be provided for ages 25, 35, 45 and 55. Inception and recovery rates for income protection business are only required for the most common deferred period in the firm's business and for occupation class 1. The deferred period must be stated. Recovery rates must be provided at durations of 2 and 5 years. Allowances made for future changes in morbidity ...~~

- (76) A table of expense bases used, showing the product group, the basis for the *financial year in question*, and the basis for the previous *financial year*. The table must show zillmer adjustments, expense assumptions for prospective methods where no further premiums are payable, expense assumptions for gross premium valuations of with-profits and non-profit premium paying business and expense assumptions for non-unit liability calculations for linked business, identifying monetary amounts and the percentages of premiums. The table must show the unit growth rates ...
- (87) Future bonus rates for gross premium valuations of with-profits business and for valuations of unitised with-profits business.
- (98) Any other material basis assumptions not stated elsewhere (e.g. persistency).
- (409) How the valuation of liabilities allowed for *derivative contracts* ...

### Options and guarantees

Where the basic reserve exceeds the lesser of £10m and 1% of the total *gross mathematical reserves*, the methods and bases used for the calculation of the reserves for options and guarantees must be given in accordance with 5(1) to 5(4). The bases must include the assumptions for the take-up of the options and guarantees. For the purposes of 5, guarantees do not include those which have already been explicitly valued (e.g. the guaranteed sum assured on endowment contracts).

- ~~5. (1) Where the basic reserve exceeds the lesser of £10m and 1% of the total *mathematical reserves*, in accordance with the following subparagraphs, the methods and bases used for the calculation of the reserves for options and guarantees. The bases must include the assumptions for the take up of the options and guarantees. For the purposes of 5, guarantees do not include those which have already been explicitly valued (e.g. the guaranteed sum assured on endowment contracts):~~
- 5. (21) Guaranteed annuity rate options (where the 'asset share' or amount of benefit may be converted, at the option of the *policy holder* from cash to annuity at a guaranteed rate), including:
  - ...
- (32) Guaranteed surrender and unit-linked maturity values, including:

...

(43) Guaranteed insurability options, including:

...

(54) The nature of any other guarantees and options, including a description of the method and basis used, the amount of business (premium, sum assured or reserve), and the amount of additional reserve.

...

### **Mismatching reserves**

7. (1) ...

(6) In respect of the scenarios described under (64) and (75) which produce the most onerous requirement (whether or not a resilience capital requirement is required),

...

(7) A statement of any further reserve made arising from the test on assets in PRU 7.2.34R(2) together with a brief description of the method used and assumptions made to calculate any such reserve.

ABSTRACT OF VALUATION REPORT FOR REALISTIC VALUATION

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...

**Costs of guarantees, options and smoothing**

6. (1) ...

Notes to Table

...

In carrying out the calculations required to complete the table above, firms ~~should~~ must assume, where appropriate, that the options for which a value is to be included in the table are options which, where appropriate, are based on underlying asset portfolios which are continuously rebalanced to the stated proportions. Swaptions in relation to which a value must be included in the table must be based on swaptions with monthly payments. Firms must include in the table the value that their liability model would produce for such options and values will thus reflect the actual time-intervals underlying their valuation models~~that the underlying asset portfolios are continuously rebalanced to the stated proportions.~~ The property put options should be assumed to relate to a well diversified portfolio of *United Kingdom* commercial property.

...

**Risk capital margin**

10. For the calculation of the *risk capital margin* for each *with-profits fund*:

(a) ...

(i) a statement of the nature of any management actions assumed in the *risk capital margin* calculation that are in addition to those set out in 6(5)(a) above; and any material changes to other assumptions; ny material changes to other assumptions;

(ii) a statement of the impact of such actions and assumption changes on the *risk capital margin*; namely the difference between the *risk capital margin* with such actions and assumption changes, and without. An approximate split of the effect of actions and the effect of assumption changes must be given;

(iii) a statement of the approximate change to the table in 6(5)(b), that shows future proportions of equity assets and bonus rates, resulting from any such additional actions and assumptions changes being

integrated into the projection of assets and liabilities and thus disclosed in 6(5)(a);

- (iv) a statement as to whether the requirements of *PRU 7.4.188R* would be met if any such additional actions and assumptions changes had been integrated into the projection of assets and liabilities and thus disclosed in 6(5)(a);

...

**APPENDIX 9.6** (rules 9.34 and 9.35)

**CERTIFICATE BY DIRECTORS AND REPORT OF THE AUDITORS**

---

...

2. Subject to 3, if the *insurer* carries on *long-term insurance business*, the certificate required by rule 9.34 must also state that -
- (a) in the *directors'* opinion, *premiums* for contracts entered into during the *financial year* and the resulting income earned are sufficient, under reasonable actuarial methods and assumptions, and taking into account the other financial resources of the *insurer* that are available for the purpose, to enable the *insurer* to meet its obligations in respect of those contracts and, in particular, to establish adequate *mathematical reserves*;
  - (b) the sum of the *mathematical reserves* and the deposits received from *reinsurers* as shown in **Form 14**, ~~together with any amount specified at line 63 of **Form 14** (being part of the excess of the value of the *admissible assets* representing the *long-term insurance funds* over the amount of those funds shown in **Form 14**)~~, constitute proper provision at the end of the *financial year in question* for the *long-term insurance business liabilities* (including all liabilities arising from *deposit back arrangements*, but excluding other liabilities which had fallen due before the end of the *financial year*) including any increase in those liabilities arising from a distribution of surplus as a result of an *actuarial investigation* as at that date into the financial condition of the *long-term insurance business*;

**APPENDIX 9.8** (rule 9.36A)

**MARINE MUTUALS: ITEMS TO BE DISREGARDED, DIRECTORS' CERTIFICATES AND AUDITORS REPORTS**

...

**Part III**

**Auditor's reports**

5. Every *marine mutual* must procure an auditor's report, pursuant to *SUP*, stating whether, in the auditors' opinion -

(a) the Forms, information and statements required (except for the directors' certificate prepared in accordance with Part II of this Appendix) have been properly prepared in accordance with the *Accounts and Statements Rules*; and

...

Replace Form M3 with the following version.

**Analysis of admissible assets**

Name of insurer  
Financial year ended

		Company registration number	day	month	year	Units (see instruction 1)
		M3				
					<b>As at end of this financial year 1</b>	<b>As at end of the previous year 2</b>
Land and buildings			11			

**Investments in group undertakings and participating interests**

UK insurance dependants	shares	21		
	debts and loans	22		
Other insurance dependants	shares	23		
	debts and loans	24		
Non- insurance dependants	shares	25		
	debts and loans	26		
Other group undertakings	shares	27		
	debts and loans	28		
Participating interests	shares	29		
	debts and loans	30		

**Other financial investments**

Equity shares		41		
Other shares and other variable yield participations		42		
Holdings in collective investment schemes		43		
Rights under derivative contracts		44		
Fixed interest securities	Approved	45		
	Other	46		
Variable interest securities	Approved	47		
	Other	48		
Participation in investment pools		49		
Loans secured by mortgages		50		
Loans to public or local authorities and nationalised industries or undertakings		51		
Loans secured by policies of insurance issued by the company		52		
Other loans		53		
Bank and approved credit & financial institution deposits	One month or less withdrawal	54		
	More than one month withdrawal	55		
Other financial investments		56		

**Analysis of admissible assets**

Name of insurer  
Financial year ended

		Company registration number	day	month	year	Units (see instruction 1)
		M3				
					<b>As at end of this financial year 1</b>	<b>As at end of the previous year 2</b>
Deposits with ceding undertakings			57			
Assets held to match linked liabilities	Index linked		58			
	Property linked		59			

**Reinsurers' share of technical provisions**

Provision for unearned premiums	60		
Claims outstanding	61		
Provision for unexpired risks	62		
Other	63		

**Debtors and salvage**

Direct insurance business	Policyholders	71		
	Intermediaries	72		
Salvage and subrogation recoveries		73		
Reinsurance	Accepted	74		
	Ceded	75		
Dependants	due in 12 months or less	76		
	due in more than 12 months	77		
Other	due in 12 months or less	78		
	due in more than 12 months	79		

**Other assets**

Tangible assets	80		
Deposits not subject to time restriction on withdrawal with approved institutions	81		
Cash in hand	82		
Other assets (particulars to be specified by way of supplementary note)	83		
Accrued interest and rent	84		
Deferred acquisition costs (general business only)	85		
Other prepayments and accrued income	86		

Deductions from the aggregate value of assets	87		
---	----	--	--

Grand total of admissible assets after deduction of market risk and counterparty limits (11 to 86 less 87)	89		
--	----	--	--

**Analysis of admissible assets**

Name of insurer  
Financial year ended

	Company registration number	day	month	year	Units (see instruction 1)
M3					
				<b>As at end of this financial year 1</b>	<b>As at end of the previous year 2</b>

**Reconciliation to asset values determined in accordance with the insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting**

Total admissible assets after deduction of market risk and counterparty limits (as per line 89 above)	91		
Assets in excess of market and counterparty limits	92		
Capital resources requirement deduction of regulated related undertakings	93		
Ineligible surplus capital and restricted assets in regulated related insurance undertakings	94		
Inadmissible assets of regulated related insurance undertakings	95		
Book value of related ancillary services undertakings	96		
Other differences in the valuation of assets (other than for assets not valued above)	97		
Deferred acquisition costs excluded from line 89	98		
Reinsurers' share of technical provisions excluded from line 89	99		
Other asset adjustments (may be negative)	100		
Total assets determined in accordance with the insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting (91 to 100)	101		
Amounts included in line 89 attributable to debts due from related insurers, other than those under contracts of insurance or reinsurance	102		

### Instructions for completion of Form M3

1. ...
2. ...
  - (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)~~ the rules in PRU 3.2.
3. The aggregate value of those investments which are:
  - (a) *unlisted* investments falling within any of lines 41, 42, 46 or 48 which have been valued in accordance with ~~rule 4.8~~ the rules in PRU 1.3;
  - (b) *listed* investments falling within any of lines 41, 42, 46 or 48 which have been valued in accordance with ~~rule 4.8~~ the rules in PRU 1.3 and which are not *readily realisable*;
  - (c) units or other beneficial interests in *collective investment schemes* ~~falling within paragraph (c) of rule 4.9(1)~~ that:
    - (i) are not schemes falling within the UCITS Directive;
    - (ii) are not authorised unit trust schemes or recognised schemes within the meaning of Part XVII of the Act;
    - (iii) do not employ derivative contracts unless they meet the criteria in PRU 4.3.5R;
    - (iv) do not employ contracts or assets having the effect of derivative contracts unless they have the effect of derivative contracts that meet the criteria in PRU 4.3.5R; and
    - (v) do not include assets other than admissible assets among their property; or
  - (d) reversionary interests or remainders in property other than land or buildings,

must be stated by way of a supplementary note to this Form (code 1301), together with a description of such investments.

...
6. ~~In line 93 "Solvency margin deduction for insurance dependants" refers to deductions under rule 4.3(2)(c). The amount to be shown in line 93 must equal the total of the relevant proportions in accordance with PRU 1.3.37R and PRU 1.3.38R of the individual capital resources requirements of the regulated related undertakings.~~
7. ~~In line 95 "Assets of a type not valued above" refers to those assets left out of account under rule 4.1(3). The amount to be shown in line 94 must equal the ineligible surplus capital and any restricted assets of any regulated related undertaking that is an insurance undertaking that are deducted in accordance with PRU 1.3.35R(3)(b).~~
8. Lines 98-101 must be completed in accordance with the insurance accounts rules or international accounting standards as applicable to the insurer for the purpose of its external financial reporting if the insurer is required to produce such accounts. Otherwise these lines must be left blank. Details of amounts in line 100 must be disclosed in a supplementary note (code 1318). The previous year figures must be left blank for financial years ending on or before 30 December 2006.

## Annex B

### Amendments to the Interim Prudential sourcebook for friendly societies

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

...

#### Chapter 5

#### PRUDENTIAL REPORTING

---

##### Annual actuarial investigation

...

- 5.1A (1) A *directive friendly society* must comply with rules 9.1 to 9.36, 9.37, and 9.39 of *IPRU(INS)* as if references to an *insurer* in those rules included a *directive friendly society*.
- (2) In relation to a *directive friendly society*, references in Forms 13, 14 and 15 in Appendix 9.1 of *IPRU(INS)* to the *insurance accounts rules* must be taken as referring to the *Accounts Regulations*.

...

#### Chapter 7

#### DEFINITIONS

---

##### Part I Definitions

...

*permitted derivative contract*

(1) for a *directive friendly society*, means a *derivative or quasi-derivative* which satisfies the requirements of *PRU 4.3.5R to PRU 4.3.35R* with the exception of *PRU 4.3.18R*, as applied in relation to assets covering liabilities in respect of *linked long-term contracts of insurance*, amended as follows:

(a) in *PRU 4.3.5R* and ~~*PRU 4.3.36R*~~, "For the purpose of *PRU 2 Ann 1R* (Admissible assets in insurance)" is replaced by "For the purposes of *IPRU (FSOC)* rule 4.21 and Appendix 3";

(b) in *PRU 4.3.6R* (2) and (3), *PRU 4.3.7R* (1) and (2), and *PRU 4.3.17R* (1) and ~~*PRU 4.3.36R* (1)~~ "*admissible assets*" is replaced by "*permitted connected property*";

(c) ...

...

*permitted stock lending transaction*, for a *directive friendly society*, means a *stock lending transaction* which satisfies the requirements of *PRU 4.3.36R to PRU 4.3.41R*, amended as follows:

(a) in *PRU 4.3.36R*(1), "For the purposes of *PRU 2 Ann 1R* (Admissible assets in insurance)" is replaced by "For the purposes of *IPRU(FSOC)* rule 4.21 and Appendix 3;

(b) in *PRU 4.3.36R*(1)(a), "*admissible assets*" is replaced by "*permitted connected property*"; and

(c) *PRU 4.3.36R*(1)(c) is amended to read "adequate and sufficiently immediate collateral which is in the form of *permitted connected property* or a letter of credit (*PRU 4.3.38R, PRU 4.3.38AR, PRU 4.3.40R and PRU 4.3.41R*) is obtained to secure the obligation of the *counterparty*.";

...

### Appendix 3

## PERMITTED LINKS

### Part I – Descriptions of property by reference to which benefits may be determined

...

9. *Permitted derivative contracts* and *permitted stock lending transactions*.

...

## Annex C

### Amendments to the Conduct of Business sourcebook

In this Annex underlining indicates new text.

...

6.11.16 G *IPRU(INS) rule 9.6(6) requires an insurer to deposit with the FSA any statement or report made to its with-profits policyholders under COB 6.11.8G, COB 6.11.9R or SUP 4.3.16AR(4) when it deposits its return. If a statement or report has not been made when the return is deposited, IPRU(INS) rule 9.6(6A) requires the insurer to deposit it as soon as possible thereafter.*

**PENSIONS TAX SIMPLIFICATION INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 145 (Financial promotion rules);
  - (3) section 149 (Evidential provisions);
  - (4) section 156 (General supplementary powers); and
  - (5) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 6 April 2006.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Pensions Tax Simplification Instrument 2005.

By order of the Board  
17 November 2005

## Annex A

### Amendments to the Glossary of definitions

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

Amend the following definition:

- income withdrawals*
- (a) ~~*income withdrawals*~~ under section 630 of the Income and Corporation Taxes Act 1988; or (as defined in paragraph 7 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme:
- (i) if the member has not reached the age of 75, amounts (other than the payment of annuity) which the member is entitled to be paid from the member's unsecured pension fund (as defined in paragraph 8 of that Schedule) in respect of an arrangement;
- (ii) if the member has reached the age of 75, amounts which the member is entitled to be paid from the member's alternatively secured pension fund (as defined in paragraph 11 of that Schedule) in respect of an arrangement; or
- (b) payments made under interim arrangements in accordance with section 28A of the Pension Schemes Act 1993;

in respect of an election to make income withdrawals, a reference to a *private customer*, an investor or a *policyholder* includes, after that *person's* death, his surviving spouse, or anyone who is, at that time, his dependant, or both.

Insert the following definitions in the appropriate alphabetical position:

- alternatively secured pension* (as defined in paragraph 5 of Schedule 28 to the Finance Act 2004) *income withdrawal*.
- scheme pension* (1) (as defined in paragraph 2 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme, in the case of a pension scheme with fewer than 50 members, a pension payable to the member if:
- (a) it is payable by an insurance company selected by the scheme administrator or, where the scheme administrator

- is an insurance company, by the scheme administrator; and
- (b) it satisfies the condition in (3);
- (2) in the case of a pension scheme with 50 or more members, a pension payable to the member if:
- (a) it is payable by the scheme administrator or by an insurance company selected by the scheme administrator; and
  - (b) it satisfies the condition in (3);
- (3) the condition is that (subject to (4)):
- (a) the pension is payable (at least annually) until the member's death or until the later of the member's death and the end of a term certain not exceeding ten years; and
  - (b) the rate of pension payable in respect of any relevant 12 month period is not less than the rate payable in respect of the previous 12 month period;
- (4) none of the following prevent the pension satisfying the condition in (3):
- (a) if the ill-health condition (as defined in paragraph 1 of that Schedule) is met when the member becomes entitled to the pension, the pension not being payable for a period during which the individual's physical and mental condition is no longer such as would, under the terms of the scheme, give rise to entitlement to the pension; or
  - (b) a reduction in the rate of the pension which applies to all the scheme pensions being paid to or in respect of members of the pension scheme; or
  - (c) if the member becomes entitled to state retirement pension, a reduction in the rate of the pension which does not exceed the rate at which state retirement pension is payable (or, if the rate at which state retirement pension is payable is greater than the rate of the pension, the pension ceasing to be payable);
- (5) for the purposes of (4)(c) the following constitute "state retirement pension":
- (a) retirement pension under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

- (b) graduated retirement benefit under the National Insurance Act 1965 or the National Insurance Act (Northern Ireland) 1966;
- (6) a pension is payable until the end of a term certain even if it may, after the death of the member during the term, end on the pensioner:
  - (a) marrying; or
  - (b) reaching the age of 18; or
  - (c) ceasing to be in full- time education;
- (7) a relevant 12 month period is any 12 month period which:
  - (a) begins on or after the first anniversary of the day on which the member becomes entitled to the pension; and
  - (b) ends before the day on which the pension ceases to be payable.

short-term annuity

(as defined in paragraph 6 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme, an annuity payable to the member if:

- (a) it is purchased by the application of sums or assets representing the whole or any part of the member's unsecured pension fund (as defined in paragraph 8 of that Schedule) in respect of an arrangement;
- (b) it is payable by an insurance company;
- (c) the member had an opportunity to select an insurance company;
- (d) it is payable for a term which does not exceed five years and ends before the member reaches age 75; and
- (e) it is either a level annuity, an increasing annuity or a relevant linked annuity.

unsecured pension

(as defined in paragraph 4 of Schedule 28 to the Finance Act 2004):

- (a) a short-term annuity; or
- (b) an income withdrawal.

## Annex B

### Amendments to the Conduct of Business sourcebook

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

3.9.3 G Table: Location of the provisions applicable to direct offer financial promotions

This table belongs to *COB 3.9.2G*

...

(9) Information to be contained in direct offer financial promotions regarding:

(a) *investments* which can fluctuate in value

...

(i) *income withdrawals* or short-term annuities

...

...

Income withdrawal and short-term annuity

3.9.29 R A *direct offer financial promotion* relating to, or offering a facility for, *income withdrawals* or a short-term annuity must include the following explanations:

(1) ~~taking withdrawals may erode the capital~~ the value of the fund may be eroded, especially if investment returns are poor and a high level of income is taken; this could result in a lower income ~~when the annuity is eventually purchased~~ in the future;

(2) the investment returns may be less than those shown in the illustrations;

(3) annuity or scheme pension rates may be at a worse level ~~when annuity purchase eventually takes place~~ in the future; and

(4) ~~if the maximum withdrawals permitted by HM Revenue and Customs regulations are to be taken, high income withdrawals may not be sustainable during the deferral period.~~ when maximum withdrawals are taken or the maximum short-term annuity is

purchased, high levels of income may not be sustainable; and

- (5) the maximum income that can be withdrawn under an *alternatively secured pension* after age 75 is significantly less than the maximum that applies before age 75.

...

- 5.3.5 R (1) A *firm* must take reasonable steps to ensure that, if in the course of *designated investment business*:
- (a) it makes any *personal recommendation* to a *private customer* to:
- (i) buy, sell, subscribe for or underwrite a *designated investment* (or to exercise any right conferred by such an *investment* to do so); or
- (ii) elect to make *income withdrawals*, or purchase a *short-term annuity* or not; or

...

...

- 5.3.13 G (4) *COB 5.3.29G* contains *guidance* which is relevant for assessing the suitability of:

...

- (a) *pension transfers* and *pension opt-outs* ;
- (b) *personal pension schemes* and *free-standing additional voluntary contributions (FSAVCs)* compared to *stakeholder pension schemes*;
- (c) hybrid products;
- (d) *industrial assurance policies*;
- (e) *income withdrawals* and *short-term annuities*;
- (f) ...;

...

...

- 5.3.14 R (1) ...
- (2) If, following a *personal recommendation* by a *firm* that does not fall within (1), a *private customer*:

- (a) buys, sells, surrenders, converts, cancels, or suspends *premiums* for or contributions to, a *pension contract* or a *stakeholder pension scheme*; or
- (b) elects to make *income withdrawals* or purchase a short-term annuity; or

...

...

5.3.29 G

...

E. ~~W~~Income withdrawals and short-term annuities

When a *firm* is advising a *customer* about personal pension fund withdrawals or purchase of short-term annuities:

- (a) the *customer's* personal and financial circumstances should be considered carefully, in particular:
  - (i) the *customer's investment* objectives, need for tax-free cash and state of health;
  - (ii) current and future income requirements, existing pension assets and the relative importance of the plan, given the *customer's* financial circumstances;
  - (iii) the *customer's* attitude to risk, ensuring that any discrepancy between his attitude to risk relating to pension fund withdrawals or purchase of a short-term annuity and that in relation to other investments is clearly explained;
- (b) the *suitability letter* should explain:
  - (i) the purpose of the contract for the *customer*;
  - (ii) the relative importance of the contract, given the *customer's* financial circumstances;
  - (iii) the *customer's* attitude to risk; and
  - (iv) the risk factors involved in entering into a pension fund withdrawal or purchase of a short-term annuity which include ~~are~~:
    - ~~taking withdrawals may erode~~ the capital value of the fund may be eroded, especially if

*investment* returns are poor and a high level of income is taken; this could result in a lower income ~~when the annuity is eventually purchased in the future;~~

- the *investment* returns may be less than those shown in the illustrations;
- annuity or *scheme pension* rates may be at a worse level ~~when annuity purchase takes place in the future;~~
- ~~when maximum withdrawals are to be taken, high income withdrawals may not be sustainable during the deferral period;~~
- when maximum withdrawals are taken or the maximum *short-term annuity* is purchased, high levels of income may not be sustainable;
- the maximum income that can be withdrawn under an *alternatively secured pension* after age 75 is significantly less than the maximum that applies before age 75.

...

6.1.1 R COB 6.1 to COB 6.5 apply to a *firm*:

...

(4) which effects, *personally recommends* or arranges *income withdrawals* or *short-term annuities* for ~~or to~~ a *private customer*; or

...

...

6.2.43 R (1) When a *firm* sells, *personally recommends* or arranges for the sale of a *simplified prospectus scheme* to a *private customer* and the proposed transaction is for a *scheme*:

(a) which relates to an election to make *income withdrawals* or purchase of a *short-term annuity*; or

...

...

- 6.4.1 R *COB 6.4 applies to a firm in accordance with COB 6.1.1R, in respect of occupational pension schemes, self invested personal pension schemes, income withdrawals and short-term annuities, cash deposit ISAs, cash deposit CTFs, Revenue allocated CTFs, traded life policies, stakeholder pension schemes, packaged products, other deposits and long-term care insurance contracts.*
- ...
- 6.4.8 R *Income withdrawals and short-term annuities*
- When a firm personally recommends, arranges or effects income withdrawals or purchase of short-term annuities to or for a private customer, the customer must be provided with key features or with a simplified prospectus in good time before he signs any form of application or authority electing to make those withdrawals or purchases, whether that election or purchase is made with advice on investments or on an execution-only basis, unless COB 6.4.10R to COB 6.4.12R or COB 6.4.27R to COB 6.4.31R (telephone sales and other exemptions) applies.*
- 6.4.9 R *In relation to an election to make income withdrawals, or short-term annuities, the requirement for the provision of key features or a simplified prospectus in:*
- (1) *COB 6.2.7R also applies when an existing life policy is to be endorsed;*
  - (2) *COB 6.2.22R or, for simplified prospectus schemes, COB 6.2.33R also applies when an existing scheme holding is to be used.*
- 6.4.10 R *In relation to an election to make income withdrawals, or purchase of short-term annuities, the requirements of COB 6.4.11R and COB 6.4.12R override the relevant requirement in COB 6.2 (Provision of key features or simplified prospectus), where there is conflict, but only where this would not contravene a requirement of the UCITS Directive.*
- 6.4.11 R *When a private customer makes a series of elections within a period of 12 months to make income withdrawals, or purchase of short-term annuities, the firm that is personally recommending, arranging or effecting the elections may provide one combined set of key features or simplified prospectuses for those elections, or may provide separate sets of key features for elections which relate to life policies and key features schemes or separate simplified prospectuses for simplified prospectus schemes.*
- 6.4.12 R *~~At intervals no longer than 12 months from the date of an election by a private customer to make income withdrawals , the relevant product provider must:~~ Where income is being taken, no less than six weeks before the end of the annuity period for a short-term annuity or at intervals no longer than 12 months from the date of an election by a private customer to make income withdrawals the product provider of the unvested pension*

scheme must:

- (1) provide the *private customer* with such information required by COB 6.6.13R as will enable the *private customer* to review the ~~election~~ options available; and
- (2) inform the *private customer* how to obtain *advice on investments* in respect of his ~~income withdrawals~~ unsecured or alternatively secured pension, and that it would be in his best interests to do so.

...

6.5.15 R A *firm* must include a *projection*, illustrating how the principal terms of the proposed transaction apply to the *private customer*:

...

- (2) where the proposed transaction does not relate to a *CTF* or a *stakeholder product* sold through *basic advice* and is for a *key features scheme* or a *linked life stakeholder product*:
  - (a) and relates to an election to make *income withdrawals* or purchase of a short-term annuity; or
  - (b) ...

...

6.5.19 R ...

- (3) A *scheme projection* in *key features* must be based on either:
  - (a) the actual amount which the *private customer* is proposing to invest; or
  - (b) an amount which typically represents the type of business which the *firm* conducts (or proposes to conduct) in relation to the *scheme* in question;

unless it is for *income withdrawals* or purchase of a short-term annuity, when it must be on the basis of (a).

...

6.5.25 R When completing COB 6.5.24R, a *firm* must:

...

- (2) under the heading 'the later years' include figures ... except in the following cases:

...

(d) ~~for a *personal pension policy with income withdrawals*, there is an option to quote figures for the sixth year and at three-yearly intervals thereafter~~

for an *alternatively secured pension*, figures must be included for each year for a term of ten years, but figures for a longer term can be shown in addition; and

(e) ...

...

(6) where the *life policy* is a personal pension, replace 'What you might get back' with 'What the transfer value might be' and make suitable amendments to the explanatory text; for a *personal pension policy with income withdrawals* or *short-term annuity* it must be replaced with 'Open market value';

(7) where the *private customer* is entitled to exercise and has chosen, or expressed the intention, to exercise the right to make partial surrenders, include a column headed 'Withdrawals' or, in the case of a personal pension with *income withdrawals* or *short-term annuity*, 'Total income taken'; the sum of withdrawals must be shown;

(8) for a personal pension with *income withdrawals* or *short-term annuity*, include a table headed 'What effect will the deductions have?' instead of 'The early years' and 'The later years'; where there is any charge or penalty in calculating the open market value, all the years to which this applies should be given; and

...

...

6.5.32 R When including the contents of *COB 6.5.31R*, a *firm* must replace the wording in brackets as directed by the instructions in those brackets and:

...

(6) where the contract is a personal pension, replace 'What you might get back' with 'What the transfer value might be', and make suitable amendments to the explanatory text; for a *personal pension contract with income withdrawals* or *short-term annuity* the replacement must be 'Open market value';

(7) ...

(a) where the *private customer* is entitled to exercise and has chosen, or expressed the intention, to exercise the right to make partial withdrawals, an extra column must be included headed 'Withdrawals' or, in the case of a *personal pension contract with income withdrawals* or *short-term annuity*,

'Total income taken'; 'withdrawals' must include distributions of income

...

- (8) for a *personal pension contract* with *income withdrawals* or *short-term annuity*, include in a table under the heading 'What effect will deductions have?' figures for ~~every third year~~ or every fifth year; where there is any charge or penalty in calculating the open market value, all the years to which this applies must be given;

...

...

6.6.13 R A *projection for an unsecured or alternatively secured pension income withdrawals* from a personal pension or *stakeholder pension scheme*:

(1) must include:

- (a) a statement of the initial amounts of ~~minimum and~~ maximum income as specified in the current tables published by the Government Actuary for an unsecured or alternatively secured pension income withdrawals;
- (b) a statement of the assumed initial level of income and the assumed basis for future years and in particular where there is a short-term annuity, if subsequent short-term annuities are assumed;
- (c) a schedule showing under the heading 'WHAT THE BENEFITS MIGHT BE' the amount of income and the fund at each, or every ~~third~~, fifth, anniversary for each of the rates of return specified in *COB* 6.6.49R;
- (d) a statement of the projected open market values and the amounts of annuity at age 75 or the date at which it is reasonably assumed an annuity will be purchased; and which for an alternatively secured pension will be after ten years; and
- (e) ...

...

...

6.6.25 R The contract period of a *life policy, key features scheme, simplified prospectus scheme* or *stakeholder pension scheme* is the period beginning with the commencement of the contract and ending as follows:

...

- (6) in the case of a *pension contract* other than an immediate annuity, on the maturity date or, if the contract provides for annuities at various dates, the latest date at which an annuity may be purchased, except for an alternatively secured pension, where this is at the tenth anniversary of the contract;

...

## **INTEGRATED REGULATORY REPORTING (AMENDMENT) INSTRUMENT 2005**

### **Powers exercised**

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

### **Commencement**

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

### **Revocation of previous amendments**

- D. The provisions set out in Annex A to this instrument, as made or amended by the Supervision Manual (Reporting and Audit Requirements) Instrument 2004 (FSA 2004/29), commencement of which was suspended by the Integrated Regulatory Reporting Instrument 2004 (FSA 2004/79), are hereby revoked.

### **Amendments to the Supervision manual**

- E. The Supervision manual is amended in accordance with Annex B to this instrument.

### **Citation**

- F. This instrument may be cited as the Integrated Regulatory Reporting (Amendment) Instrument 2005.

By order of the Board  
17 November 2005

## Annex A

### Revoked amendments to the Supervision manual

The following provisions were made or amended in Part 3 of Annex A to the Supervision Manual (Reporting and Audit Requirements) Instrument 2004 (FSA 2004/29), commencement of which was suspended by the Integrated Regulatory Reporting Instrument 2004 (FSA 2004/79). These amendments are now revoked.

1. *SUP* 16.1.3 R: insertion into the table of:

...		
<i>SUP</i> 16.7 ....	...	
	<i>Insurer</i> <i>Friendly society</i>	<i>SUP</i> 16.7.73R to <i>SUP</i> 16.7.75R
	...	

...

2. *SUP* 16.7.2G: amendments made to this guidance

3. *SUP* 16.7.5G: insertion into the table of:

...	
<i>Insurer</i> <i>Friendly society</i>	<i>SUP</i> 16.7.73R to <i>SUP</i> 16.7.75R
...	

4. Amendments made to:

- a. *SUP* 16.7.8R
- b. *SUP* 16.7.10R
- c. *SUP* 16.7.12R
- d. *SUP* 16.7.17R
- e. *SUP* 16.7.21R
- f. *SUP* 16.7.25R
- g. *SUP* 16.7.27R
- h. *SUP* 16.7.29R
- i. *SUP* 16.7.33R
- j. *SUP* 16.7.36R
- k. *SUP* 16.7.58R
- l. *SUP* 16.7.63R
- m. *SUP* 16.7.63AG
- n. *SUP* 16.7.66R

5. Insertion of the following new provisions:

a. *SUP* 16.7.73R

b. *SUP* 16.7.74R

c. *SUP* 16.7.75R

## Annex B

### Amendments to the Supervision manual

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

#### Part 1: Amendments to the transitional provisions

SUP TP1 Transitional provisions

(1)	(2) Material to which the transitional applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Hand-book provision: coming into force																				
12 G	<u>SUP 16.7.7R;</u> <u>SUP 16.7.9R;</u> <u>SUP 16.7.11R;</u> <u>SUP 16.7.16R;</u> <u>SUP 16.7.20R;</u> <u>SUP 16.7.24R;</u>	R	<p>(1) Where a <i>rule</i> in SUP 16.7 requires a <i>firm</i> to submit information using the <i>RMAR</i> on a half yearly basis the relevant <i>rule</i> must be read as requiring the first return to be provided in accordance with SUP TR 12HR.</p> <p>(2) Where a <i>firm</i> is carrying on <i>regulated activities</i> on or before 1 January 2007 and is required under a <i>rule</i> in SUP 16.7 to submit information using the <i>MLAR</i>, the first return must cover the <i>firm's</i> first full financial quarter which starts on or after this date and be submitted 20 <i>business days</i> after period end.</p>	From <u>1 January 2007</u> – <u>31 December 2007</u>	<u>1 January 2007</u>																				
12 H	<u>SUP 16.7.26R;</u> <u>SUP 16.7.28R;</u> <u>SUP 16.7.35R;</u> <u>SUP 16.7.57R;</u> <u>SUP 16.7.62R;</u> <u>SUP 16.7.65R;</u> <u>SUP 16.7.73R;</u>	R	<p>If SUP TR 12G R (1) applies, the <i>firm's</i> first return must be provided as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><u>Accounting reference date</u> (dates inclusive)</th> <th style="text-align: center;"><u>Reporting period starts</u></th> <th style="text-align: center;"><u>Reporting period ends</u></th> <th style="text-align: center;"><u>Return to be provided</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Between <u>1 January</u> and <u>31 March</u></td> <td style="text-align: center;">The day after the <u>accounting reference date</u> within <u>2007</u></td> <td style="text-align: center;"><u>6 months</u> after the <u>accounting reference date</u> within <u>2007</u></td> <td style="text-align: center;"><u>30 business days</u> after period end.</td> </tr> <tr> <td style="text-align: center;">Between <u>1 April</u> and <u>30 June</u></td> <td style="text-align: center;"><u>1 January 2007</u></td> <td style="text-align: center;"><u>Accounting reference date</u> within <u>2007</u></td> <td style="text-align: center;"><u>30 business days</u> after period end.</td> </tr> <tr> <td style="text-align: center;">Between <u>1 July</u> and <u>30 September</u></td> <td style="text-align: center;">The day after <u>6 months</u> preceding the <u>accounting reference date</u> within <u>2007</u></td> <td style="text-align: center;"><u>Accounting reference date</u> within <u>2007</u></td> <td style="text-align: center;"><u>30 business days</u> after period end.</td> </tr> <tr> <td style="text-align: center;">Between <u>1 October</u> and <u>31 December</u></td> <td style="text-align: center;"><u>1 January 2007</u></td> <td style="text-align: center;"><u>6 months</u> before the <u>accounting reference date</u> within <u>2007</u></td> <td style="text-align: center;"><u>30 business days</u> after period end</td> </tr> </tbody> </table>	<u>Accounting reference date</u> (dates inclusive)	<u>Reporting period starts</u>	<u>Reporting period ends</u>	<u>Return to be provided</u>	Between <u>1 January</u> and <u>31 March</u>	The day after the <u>accounting reference date</u> within <u>2007</u>	<u>6 months</u> after the <u>accounting reference date</u> within <u>2007</u>	<u>30 business days</u> after period end.	Between <u>1 April</u> and <u>30 June</u>	<u>1 January 2007</u>	<u>Accounting reference date</u> within <u>2007</u>	<u>30 business days</u> after period end.	Between <u>1 July</u> and <u>30 September</u>	The day after <u>6 months</u> preceding the <u>accounting reference date</u> within <u>2007</u>	<u>Accounting reference date</u> within <u>2007</u>	<u>30 business days</u> after period end.	Between <u>1 October</u> and <u>31 December</u>	<u>1 January 2007</u>	<u>6 months</u> before the <u>accounting reference date</u> within <u>2007</u>	<u>30 business days</u> after period end		
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**Part 2: Amendments to SUP 16**

16.1.3 R

	...	
16.7	<u>Insurer</u> <u>Friendly society</u>	<u>SUP 16.7.73R to SUP 16.7.75R</u>
...	A firm not subject to other reporting requirements...	

...

- 16.7.2G (1) Financial reporting requirements for *insurers*, excluding *friendly societies* are set out in *IPRU(INS)*. For their other reporting requirements, see SUP 16.7.73R -16.7.75R.
- (2) Financial reporting requirements for *friendly societies* are set out in *IPRU(FSOC)*. For their other reporting requirements, see SUP 16.7.73R -16.7.75R.

16.7.5G

Table Applicable rules and guidance on ~~financial~~ reports (see SUP 16.7.1G)

...	
<u>Insurer</u> <u>Friendly society</u>	<u>SUP 16.7.73R – SUP 16.7.75R</u>
A firm not subject to other reporting requirements...	...

...

16.7.8R

Table ~~Financial r~~Reports from a UK bank (see SUP 16.7.7R)

Content of report	Form or Return (Note 1)	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u>	<u>RMAR</u> (excluding	<u>Half yearly</u>	<u>30 business days after period end</u>

<u>(1) insurance mediation activity;</u>	<u>sections A, B, C, D, E)</u>		
<u>(2) mortgage mediation activity;</u>			
<u>(3) retail investment activity.</u>			
<u>Adequate information relating to mortgage lending and mortgage administration.</u>	<u>MLAR (excluding A1, A2, B1 and C)</u>	<u>Quarterly</u>	<u>20 business days after quarter end</u>

Note 1= When giving the report required, a *bank* must use the form or return indicated, if any. The content of the form has the status of *guidance* on the type of information that should be provided to meet the reporting obligation. A copy of the form is located in *SUP 16 Ann 1R*. The *RMAR* and *MLAR* are located at *SUP 16 Ann 18AR* and *Ann 19AR* respectively and have the status of *rules*.

...

16.7.10R

Table ~~Financial r~~Reports from an EEA Bank (see *SUP 16.7.9R*)

Content of report	Form <u>or</u> <u>Return</u> (Note <u>1</u> )	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u> <u>(1) insurance mediation activity;</u> <u>(2) mortgage mediation activity;</u> <u>(3) retail investment activity.</u>	<u>RMAR (excluding A, B C, D, E)</u>	<u>Half yearly</u>	<u>30 business days after period end</u>
<u>Adequate information relating to mortgage lending and mortgage administration</u>	<u>MLAR (excluding A1, A2, B1, C)</u>	<u>Quarterly</u>	<u>20 business days after quarter end</u>

Note 1= When giving the report required, a *bank* must use the form or return indicated, if any. The content of the form has the status of *guidance* on the type of information that should be provided to meet the reporting obligation. A copy of the form is located in *SUP 16 Ann 1R*. The *RMAR* and *MLAR* are located at *SUP 16 Ann 18AR* and *Ann 19AR* respectively and have the status of *rules*.

...

## 16.7.12R

Table ~~Financial r~~Reports from a bank established outside the EEA (see SUP16.7.11R)

Content of report	Form or Return (Note 1)	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u>  (1) <i>insurance mediation activity;</i>  (2) <i>mortgage mediation activity;</i>  (3) <i>retail investment activity.</i>	<u>RMAR</u> (excluding A, B, C, D, E)	<u>Half yearly</u>	<u>For half yearly report: 30 business days after period end.</u>
<u>Adequate information relating to mortgage lending and mortgage administration</u>	<u>MLAR</u>	<u>Quarterly</u>	<u>20 business days after quarter end</u>

Note 1 = When giving the report required, a bank must use the form or return indicated, if any. The content of the form has the status of *guidance* on the type of information that should be provided to meet the reporting obligation. A copy of the form is located in SUP 16 Ann 1R. The RMAR and MLAR are located at SUP 16 Ann 18AR and Ann 19AR respectively and have the status of *rules*.

...

## 16.7.17R

Table ~~Financial r~~Reports from a building society (see SUP 16.7.16R)

Content of report	Form or Return (Note 1)	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u>  (1) <i>insurance mediation activity;</i>  (2) <i>mortgage mediation activity;</i>  (3) <i>retail investment activity.</i>	<u>RMAR</u> (excluding sections A, B, C, D, E)	<u>Half yearly</u>	<u>30 business days after period end.</u>
<u>Adequate information relating to mortgage lending and mortgage administration.</u>	<u>MLAR</u> (excluding A1, A2, B1 and C)	<u>Quarterly</u>	<u>20 business days after quarter end</u>

Note 1 = When giving the report required, a *building society* must use the form or return indicated, if any. The content of the form has the status of *guidance* on the type of information that should be provided to meet the reporting obligation. A copy of the form is located at *SUP 16 Ann 3R* for all reports (except the “Analysis of interest rate gap” for which no form is provided). The *RMAR* and *MLAR* are located at *SUP 16 Ann 18AR* and *Ann 19AR* respectively and have the status of *rules*.

...

#### 16.7.21R

Table ~~Financial~~ Reports required from service companies (see *SUP 16.7.20R*)

Report	Frequency	Due date
Annual audited financial statements	Annually	6 months after the <i>firm's accounting reference date</i>

...

#### 16.7.25R

Table ~~Financial~~ Reports required from a securities and futures firm which is a category A or B firm or a broad scope firm (see *SUP 16.7.24R*)

Report	<u>Return</u>	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u>  (1) <i>insurance mediation activity</i> ;  (2) <i>mortgage mediation activity</i> ;  (3) <i>retail investment activity</i> .	<u><i>RMAR</i></u> (excluding sections A, B, C, D, E) (Note 5)	<u>Half yearly</u>	<u>For half yearly report: 30 <i>business days</i> after period end</u>
<u>Adequate information relating to <i>mortgage lending</i> and <i>mortgage administration</i></u>	<u><i>MLAR</i></u> (excluding A1, A2 and B1) (Note 6)	<u>Quarterly</u>	<u>20 <i>business days</i> after quarter end</u>

...

Note 6 = When giving the report required, a *firm* must use the return indicated. The *RMAR* and *MLAR* are located at *SUP 16 Ann 18AR* and *Ann 19AR* respectively and have the status of *rules*.

...

16.7.27R

Table ~~Financial~~ ~~Reports~~ required from a securities and futures firm which is a category C or D firm or an arranger or venture capital firm (see SUP16.7.26R)

Report	<u>Return</u>	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u>  (1) <u>insurance mediation activity;</u>  (2) <u>mortgage mediation activity;</u>  (3) <u>retail investment activity.</u>	<u>RMAR</u> (excluding sections A, B, C, D, E) (Note 5)	<u>Half yearly</u>	<u>For half yearly report: 30 business days after period end</u>
<u>Adequate information relating to mortgage lending and mortgage administration.</u>	<u>MLAR</u> (excluding A1, A2 and B1) (Note 6)	<u>Quarterly</u>	<u>20 business days after quarter end</u>

...  
Note 6 = When giving the report required, a firm must use the return indicated. The RMAR and MLAR are located at SUP 16 Ann 18AR and Ann 19AR respectively and have the status of rules.

...

16.7.29R

~~Financial~~ ~~Reports~~ from a securities or futures firm which is an adviser, local or a traded options market maker (see SUP 16.7.28R)

Report	<u>Return</u>	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u>  (1) <u>insurance mediation activity;</u>  (2) <u>mortgage mediation activity;</u>  (3) <u>retail investment activity.</u>	<u>RMAR</u> (excluding sections A, B, C, D E) (Note 1)	<u>Half yearly</u>	<u>For half yearly report: 30 business days after period end</u>
<u>Adequate information relating to mortgage lending and mortgage administration.</u>	<u>MLAR</u> (excluding A1, A2 and	<u>Quarterly</u>	<u>20 business days after quarter end</u>

	<u>B1</u> (Note 1)		
--	-----------------------	--	--

Note 1 = When giving the report required, a firm must use the return indicated. The RMAR and MLAR are located at SUP 16 Ann 18AR and Ann 19AR respectively and have the status of rules.

- 16.7.33R (1) Any report in SUP 16.7.23R to SUP 16.7.30R submitted to the FSA by a securities and futures firm must be signed by two authorised signatories satisfying the requirements of SUP 16.7.33R(2), except for:
- (a) the audited accounts of a subsidiary of the firm and the firm's audited annual financial statements; ~~and~~
  - (aa) reports in accordance with SUP 16 Ann 18AR or SUP 16 Ann 19AR; and
  - (b) other reports where the firm is a sole trader, when only one authorised signatory is required; and

...

...

16.7.36R

Table Financial Reports from an investment management firm (see SUP 16.7.35R)

Report	Return	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u>  (1) <u>insurance mediation activity;</u>  (2) <u>mortgage mediation activity;</u>  (3) <u>retail investment activity.</u>	<u>RMAR</u> (excluding sections A, B, C, D, E) (Note 6)	<u>Half yearly</u>	<u>For half yearly report: 30 business days after period end</u>
<u>Adequate information relating to mortgage lending and mortgage administration.</u>	<u>MLAR</u> (excluding A1, A2 and B1) (Note 7)	<u>Quarterly</u>	<u>20 business days after quarter end</u>

...

Note 7 = When giving the report required, a firm must use the return indicated. The RMAR and MLAR are located at SUP 16 Ann 18AR and Ann 19AR respectively and have the status of rules.

...

16.7.58R

Table ~~Financial r~~Reports from a members' adviser (see SUP16.7.57R)

Report	<u>Return</u> ( <u>Note 1</u> )	Frequency	Due date
...			
Quarterly reporting statement		Quarterly	15 <i>business days</i> after quarter end
<u>Adequate information relating to the following activities:</u>  (1) <i>insurance mediation activity;</i>  (2) <i>mortgage mediation activity;</i>  (3) <i>retail investment activity.</i>	<u>RMAR</u> (excluding A, B C, D, E)	<u>Half yearly</u>	<u>For half yearly report: 30 <i>business days</i> after period end</u>
<u>Adequate information relating to mortgage lending and mortgage administration.</u>	<u>MLAR</u>	<u>Quarterly</u>	<u>20 <i>business days</i> after quarter end</u>

Note 1 = When giving the report required, a *firm* must use the return indicated. The *RMAR* and *MLAR* are located at SUP 16 Ann 18AR and Ann 19AR respectively and have the status of *rules*.

...

16.7.63R

Table ~~Financial r~~Reports required from a credit union (see SUP16.7.62R)

Content of report	<u>Form or</u> <u>Return</u>	Frequency	Due date
Key financial data	CQ	Quarterly	One <i>month</i> after quarter end
Extended financial data	CY	Annually	Seven <i>months</i> after the financial year end
<u>Adequate information relating to the following activities:</u>  (1) <i>insurance mediation activity;</i>  (2) <i>mortgage mediation activity;</i>	<u>RMAR</u> (excluding sections A, B, C, D E)  ( <u>Note 1</u> )	<u>Half yearly</u>	<u>For half yearly report: 30 <i>business days</i> after period end</u>

<u>(3) retail investment activity.</u>			
<u>Adequate information relating to mortgage lending and mortgage administration.</u>	<u>MLAR</u> (excluding A1, A2, B1 and C) (Note 1)	<u>Quarterly</u>	<u>20 business days</u> <u>after quarter end</u>

Note 1 = When giving the report required, a *firm* must use the return indicated. The RMAR and MLAR are located at SUP 16 Ann 18AR and Ann 19AR respectively and have the status of rules.

16.7.63A G ~~Guidance~~ Notes for the completion of the reports are contained in SUP 16 Ann 15 G, SUP 16 Ann 18BG and SUP 16 Ann 19BG.

...

16.7.66R

Table ~~Financial~~ Reports from an ELMI (see SUP16.7.65R)

Content of report	Form or Return (Note 1)	Frequency	Due date
...			
<u>Adequate information relating to the following activities:</u>  <u>(1) insurance mediation activity;</u>  <u>(2) mortgage mediation activity;</u>  <u>(3) retail investment activity.</u>	<u>RMAR</u> (excluding sections A, B, C, D, E)	<u>Half yearly</u>	<u>30 business days</u> <u>after period end</u>
<u>Adequate information relating to mortgage lending and mortgage administration</u>	<u>MLAR</u> (excluding A1, A2, B1 and C)	<u>Quarterly</u>	<u>20 business days</u> <u>after quarter end</u>

Note 1=When giving the report required, an *ELMI* must use the form or return indicated (if any).

A copy of forms BSD 3 and ELM-CA/LE are set out in SUP 16 Annex 1R. The RMAR and MLAR are located at SUP 16 Ann 18AR and Ann 19AR respectively and have the status of rules.

...

Insurers and friendly societies

16.7.73R If an *insurer* or a *friendly society* is carrying on any of the activities set out in SUP 16.7.74R, it must submit a report to the *FSA* in accordance with SUP 16.7.75R.

16.7.74R The activities referred to in SUP 16.7.73R are:

- (1) *insurance mediation activity*;
- (2) *mortgage mediation activity*;
- (3) *retail investment activity*;
- (4) *mortgage lending*; and
- (5) *mortgage administration*.

16.7.75R

Table Reports from an insurer or friendly society (see SUP 16.7.73R)

<u>Report</u>	<u>Return (Note 1)</u>	<u>Frequency</u>	<u>Due date</u>
<u>Adequate information relating to the following activities:</u>  <u>(1) <i>insurance mediation activity</i></u> ;  <u>(2) <i>mortgage mediation activity</i></u> ;  <u>(3) <i>retail investment activity</i></u> .	<u>RMAR</u> (excluding sections <u>A, B, C, D, E</u> )	<u>Half yearly</u>	<u>30 business days after period end</u>
<u>Adequate information relating to <i>mortgage lending</i> and <i>mortgage administration</i>.</u>	<u>MLAR</u> (excluding <u>A1, A2, B1 and C</u> )	<u>Quarterly</u>	<u>20 business days after quarter end</u>

Note 1 = When giving the report required, a *firm* must use the return indicated. The *RMAR* and *MLAR* are located at SUP 16 Ann 18AR and Ann 19AR respectively and have the status of *rules*.

**SUPERVISION MANUAL (PERMITTED REPORTING SYSTEMS)  
INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance); and
  - (4) paragraph 17 of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 17 November 2005.

**Amendments to the Supervision manual**

- D. The Supervision manual is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Supervision Manual (Permitted Reporting Systems) Instrument 2005.

By order of the Board  
17 November 2005

## Annex

### Amendments to the Supervision manual

Permitted reporting systems

17.7.8 R The reporting systems referred to in *SUP* 17.7.1R are:

- (1) CEDCOM system operated by Clearstream Banking AG, Frankfurt;
- (2) ~~CGO Central Gilts Office~~ [deleted];
- (3) CRESTCo Limited;
- (4) EUCLID operated by Euroclear SA (input directly into EUCLID or through SWIFT);
- (5) the *FSA's* Direct Reporting System;
- (6) SEQUAL 2000 system of Thomson Financial Services;
- (7) ~~Tradepoint Financial Networks Plc~~ [deleted];
- (8) Trade Registration System of the London International Financial Futures and Options Exchange (LIFFE);
- (9) TRAX system of the International Securities Market Association; ~~and~~
- (10) ~~Jiway Limited.~~ [deleted];
- (11) Virt-x; and
- (12) the *FSA's* Transaction Reporting System.

...

20.5 Transaction reporting fees

20.5.1 G *Firms* which are required to report transactions under *SUP* 17 (Transaction reporting) may, in certain circumstances, use the *FSA's* Direct Reporting System or the *FSA's* Transaction Reporting System (see *SUP* 17).

...

20.5.3 R A *firm* which reports its reportable transactions to the *FSA* using the *FSA's* Direct Reporting System or the *FSA's* Transaction Reporting System (see *SUP* 17) must pay the fees specified in Part 1 of *SUP* 20 Annex 3R.

...

SUP 20 Annex 3R Transaction reporting fees and Article 54 RAO certificate fees for the period from 1 April 2005 to 31 March 2006

...

(1)	Firms using the Direct Reporting System software <u>or the Transaction Reporting System</u> will be additionally invoiced for:	
	(a)	an initial software licence fee of £587.50 (including VAT) <u>for users of the Direct Reporting System; and</u>
	(b)	an annual enrolment fee of £235 (including VAT) per licence held on 1 April each year <u>for users of the Direct Reporting System and the Transaction Reporting System; and</u>
	(c)	an annual enrolment fee of £235 (including VAT) per registration held on 1 April each year <u>for users of the Transaction Reporting System.</u>
(2)	...	

...

**SUPERVISION MANUAL (MYSTERY SHOPPING) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 1 December 2005.

**Amendments to the Supervision manual**

- C. The Supervision manual is amended in accordance with Annex A to this instrument.

**Amendments to the Credit Unions sourcebook**

- D. The Credit Unions sourcebook is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Supervision Manual (Mystery Shopping) Instrument 2005.

By order of the Board  
17 November 2005

## Annex A

### Amendments to the Supervision manual

In this Annex, underlining indicates new text.

...

2.4.5      G      The FSA may use the information it obtains from mystery shopping in support of both its supervisory functions and its enforcement functions. This includes sharing any information so obtained with *firms* and *approved persons*.

## Annex B

### Amendments to the Credit Unions sourcebook

In this Annex, underlining indicates new text.

...

- 14.2.13 G Representatives or appointees of the *FSA* (which may include individuals engaged by a market research firm) may approach a *credit union* in the role of potential members. This is known as "mystery shopping". The *FSA* expects that any "mystery shopping" it arranges will be conducted in accordance with the Market Research Society Code of Practice. The *FSA* may use the information it obtains from mystery shopping in support of both its supervisory functions and its enforcement functions. This includes sharing any information so obtained with *firms* and *approved persons*. (See *SUP 2.4.1G - SUP 2.4.45G*).

**COMPENSATION SOURCEBOOK (INSURANCE MEDIATION AND PROTECTED CONTRACTS OF INSURANCE) (SCOPE AMENDMENT NO 2) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 213 (The compensation scheme); and
  - (5) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 18 November 2005.

**Amendments to 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 (Insurance Mediation and Protected Contracts of Insurance) (Scope Amendment No 2) Instrument 2005.

By order of the Board  
17 November 2005

## Annex

### Amendments to the Compensation sourcebook

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

- 5.7.1 R *Protected non-investment insurance mediation* is an *insurance mediation activity* where the *investment* concerned is a *relevant general insurance contract* or a *pure protection contract* but which is not a *long-term care insurance contract* or a *reinsurance contract*, provided that the conditions in COMP 5.7.2R ~~is~~ are satisfied.
- 5.7.2 R *COMP 5.7.1R* only applies if the conditions in (1) and (2) are satisfied:
- (1) the *protected non-investment insurance mediation* was carried on from:
    - (a) an establishment of the *relevant person* in the *United Kingdom*; or
    - (b) a *branch* of a ~~UK firm~~ UK firm established in another *EEA State* in the exercise of an *EEA right* derived from the *IMD*; and
  - (2) ~~the customer making the claim (or where COMP 3.2.4R applies, the customer on behalf of whom a firm makes a claim) was in contact with the claimant making the claim (or where COMP 3.2.4R applies, the customer on behalf of whom a firm makes a claim) dealt initially, with a view to entering into a relevant general insurance contract or a pure protection contract but not a long-term care insurance contract or a reinsurance contract, with an intermediary that was:~~
    - (a) ~~a firm carrying on an insurance mediation activity in the United Kingdom; or~~ established in the United Kingdom; or
    - (b) ~~a branch of a UK firm established in another EEA State which is carrying on an insurance mediation activity in the exercise of an EEA right derived from the IMD~~ a branch of a UK firm established in another EEA State in the exercise of an EEA right derived from the IMD.
- 5.7.3 G The FSCS will not cover a claim against an intermediary that meets the criteria of either COMP 5.7.2R(2)(a) or COMP 5.7.2R(2)(b) where the claimant was introduced to that intermediary by an intermediary that does not meet the criteria of either COMP 5.7.2R(2)(a) or COMP 5.7.2R(2)(b).
- 5.7.4 G The FSCS will not cover a claim in respect of an intermediary that is not a relevant person, for example a retailer selling extended warranties that are connected contracts. However, COMP 5.7.2R has the effect that a claim in respect of a relevant person further up the chain carrying on protected non-investment insurance mediation in accordance with COMP 5.7.2R(1)(a) may be covered by the FSCS if the claimant dealt initially with a UK intermediary that is not a relevant person.

**CREDIT UNIONS SOURCEBOOK (COMMON GROUND PROVISIONS)  
INSTRUMENT 2005**

**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 Market Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 January 2006.

**Amendments to the Glossary**

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

**Amendments to the Supervision manual**

- E. The Supervision manual is amended in accordance with Annex B to this instrument.

**Amendments to the Credit Unions sourcebook**

- F. The Credit Unions sourcebook is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Credit Unions Sourcebook (Common Ground Provisions) Instrument 2005.

By order of the Board  
17 November 2005

## Annex A

### Amendments to the Glossary

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

*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~~ £15,000, or such lesser amount as may be specified, in excess of a member's shareholding;

in this definition a "member's shareholding" means any shares held by a member of the *credit union* ~~within limits set by~~ in accordance with sections 5 and 7 of the Credit Unions Act 1979.

## Annex B

### Amendments to the Supervision manual

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

SUP 16 Annex 15G

Reporting requirements

16 Ann 15(2) G Notes on completing the Annual Return (CY) for credit unions

#### FIXED ASSETS

17A	Opening <del>net book value</del> <u>cost</u>	The <del>value</del> <u>cost</u> of fixed assets the <i>credit union</i> had at the end of the previous financial year.
17B	Additions <del>during the year</del> at cost	The <del>value</del> <u>cost</u> of fixed assets purchased during the financial year.
17C	<del>Value</del> <u>Original cost</u> of disposals <del>during the year</del>	The <del>value</del> <u>original cost</u> of fixed assets sold during the financial year, included within 17A. It is shown as a negative, as it reduces the total amount of fixed assets held by the <i>credit union</i> .
...		
17F	Depreciation eliminated on disposals	Total value of depreciation associated with <del>assets disposed of during the</del> <u>disposals this year,</u> <u>included in 17D.</u>
17G	Closing net book value	The value of fixed assets held by the <i>credit union</i> at the end of the financial year. This figure is the sum total of boxes <b>17A+17B-17C-17D-17E-+17F</b> and <u>matches</u> that shown in the balance sheet at <b>1A</b> .

...

## Annex C

### Amendments to the Credit Unions sourcebook

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

- 4.3.65 G The business plan should cover a period of three years from the current financial year, that is to say, the remainder of the current financial year and the two following financial years.

...

#### Land holding Section 12 of the Credit Unions Act 1979

- 7.2.8 G ~~A credit union may only hold land (and buildings) for the purpose of conducting its business on that land, and where it needs to do so as security for loans to members (section 12 of the Credit Unions Act 1979). This means that a credit union must not acquire as an investment land (and buildings) greatly in excess of its operating requirements, with the real purpose of letting out the excess.~~

Section 12 of the Credit Unions Act 1979 permits a credit union to hold, purchase or take on lease any land for the purpose of conducting its business, but for no other purpose, except where it holds an interest in land as security for loans to members.

- 7.2.9 G (1) A credit union may buy or hold property as premises from which to conduct its business, but not as an investment.
- (2) A credit union may acquire premises that reasonably anticipate its future accommodation needs, or a unit (for example, the whole building, or a floor of a building) of which it requires most, but not all, and lease out the surplus area. But it may not acquire as an investment property greatly in excess of its operating requirements, with the real purpose of letting out the excess.
- (3) A credit union may purchase premises out of surplus funds, or by borrowing, or by a combination of the two, whichever is most prudent.
- (4) A credit union's premises will not count as liquid for the purposes of CRED 9.3.7R.

#### 7.2A Joint ventures

##### Section 26 of the Credit Unions Act 1979

- 7.2A.1 G Section 26 of the Credit Unions Act 1979 prohibits a credit union from having a subsidiary within the meaning of section 15 of the Friendly and

Industrial and Provident Societies Act 1968. To have a subsidiary in that sense, a *credit union* has to be a member of the company and control the composition of its board of directors, or hold more than half in nominal value of the company's equity share capital.

7.2A.2 G *Credit unions* may set up (and hold shares or other membership rights in) associated *bodies corporate* to establish shared service facilities and other joint ventures, so long as they demonstrably further the *credit union's* statutory objects and do not breach section 26 of the Credit Unions Act 1979.

...

7.3.2A G Although section 10 of the Credit Unions Act 1979 now permits a credit union to borrow money without restriction, *CRED 7.3.1AR* imposes a limitation. A *credit union* may borrow from a *body corporate*, even though it may not admit a *body corporate* to membership or issue it with shares. Such loans can either be subordinated loans (providing regulatory capital within *CRED 8.2.1R(1)(c)*) or senior loans (providing ordinary funding, but not constituting regulatory capital). Further explanation is given at *CRED 7A.1A.1G* and *CRED 7A.3.2G*.

...

7A Shareholding Shares and deposits

...

7A.1A Members and juvenile depositors

Sections 1 and 5 of the Credit Unions Act 1979

7A.1A.1 G In relation to membership of *credit unions*, the Credit Unions Act 1979 provides that:

(1) a common bond has to exist among the members (section 1(2)(b) – see *CRED 13 Ann 1AG*, *CRED 13 Ann 1BD*, *CRED 13 Ann 1CD* and *CRED 13 Ann 2G*);

(2) only individuals may be members (section 5(1)); and

(3) a member has to hold at least one share (section 5(2)).

7A.1A.2 G Membership of a *credit union* is open only to individuals acting in a private capacity and in their own right. It is not open to:

(1) a *body corporate*; or

(2) an individual acting as a representative of a *body corporate* or unincorporated association.

Section 9(1) of the Credit Unions Act 1979

7A.1A.3 G Section 9(1) of the Credit Unions Act 1979 provides that a *credit union* may take deposits from a person who is under the age at which he may become a member.

7A.1A.4 G (1) An explanation of section 9(1) of the Credit Unions Act 1979 is given at paragraph 3 of *CRED 13 Ann 2G*.

(2) The deposits referred to in *CRED 7A.1A.2G(1)* are not shares and the persons who make those deposits are not members.

7A.2 ~~Members' shares~~Shares

Maximum shareholdings

7A.2.1 R 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~~ £10,000 ~~and or~~ 1.5 per cent of the total shareholdings in the *credit union*.

...

7A.3.1 R (1) A *credit union* must not accept *deposits* except:...

(2) A *credit union* must not accept *deposits* exceeding the greater of ~~£5,000 and~~ £10,000 ~~or~~ 1.5 per cent of the total shareholdings in the *credit union* 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* unless the *deposits* are held in a *CTF*, in which case the *credit union* may accept a larger *deposit*.

...

7A.4.4 G (1) The "aggregate value" in *CRED 7A Ann 1R* comprises the shares and *deposits* (including those held in a *CTF*) referred to in *CRED 7A.3.1R(1)(a)* and (b).

(2) The tables in *CRED 7A Ann 1R* set out the minimum levels of insurance cover required by a *credit union*. It is prudent for a *credit union* to consider whether additional cover:

(a) is needed for its own particular circumstances; and

(b) should be obtained to cater for actual or projected growth in the "aggregate value" (see paragraph 1 of *CRED 7A Ann 1R*) between "relevant dates" (see paragraph 3 of *CRED 7A Ann 1R*).

...

8 Capital requirements

...

8.2.1 R (1) The following ...

- (d) initial capital; and
- (e) revaluation reserves, arising from the differences between book values and the current market values of property fixed assets:
  - (i) meeting the requirements in CRED 8.2.1R(6) to (7); and
  - (ii) subject to the limit in CRED 8.2.1R(8).

...

(6) To be included in the calculation of capital, revaluation reserves must meet the following conditions:

- (a) the credit union must apply the revaluation method to all of its property fixed assets and not selectively;
- (b) the values must result from regular professional valuations of each property;
- (c) if professional valuations are not carried out annually, there must be:
  - (i) a rolling programme such that no professional valuation of a property is more than five years old;
  - (ii) in the intervening year(s) in which a property is not professionally valued, an interpolation of value by the Board which takes into account any decline in property values disclosed by valuations of other properties in that year;
- (d) any increase of revaluation reserve must be supported by a professional valuation.

(7) Subject to the conditions in CRED 8.2.1R(6), and the limit in CRED 8.2.1R(8), the amount of revaluation reserve used for the calculation of capital must be:

- (a) the amount standing to the credit of any such reserve in the balance sheet in the most recent annual return to have been sent to the FSA under SUP 16.7.62R (see CRED 14.10.7.G);  
or

(b) the amount of any such reserve in the accounting records of the credit union, for the time being;

whichever is the lesser amount.

(8) The amount of revaluation reserve included in the calculation of capital must not represent more than 25 per cent of the total of capital resources in CRED 8.2.1R(1)(a) to (e).

8.2.1B    G    Subordinated debt is due and payable only in accordance with CRED 8.2.1R(4). However, this rule does not prevent the debt from being issued on terms which permit the credit union, in accordance with a board resolution, to repay the debt. The decision to repay the debt should be genuinely at the instance of the credit union's board. The credit union should satisfy itself that the remaining capital would be adequate for the credit union's present, and future foreseeable needs. The credit union should notify the FSA at least one month in advance of its intention to repay the debt (as indicated in CRED 14.9.5G(3)), thereby giving the FSA the opportunity to raise objections to the proposed repayment. If repayment is proposed within the first five years, the FSA is likely to consider exercising its own-initiative powers to ensure that the credit union continues to satisfy the threshold conditions.

8.2.1C    G    The effect of CRED 8.2.1R(8) is that no more than 25 per cent of a credit union's regulatory capital may consist of amounts deriving from the revaluation of property, however large the amount standing to the credit of the credit union's revaluation reserve.

...

8.3.12    R    (1)    A version 1 credit union must not make a loan of an amount greater than ~~£5,000~~ £7,500 in excess of the borrowing member's shareholding unless it has a capital to total assets ratio of at least 5%.

(2)    A credit union which is owed by a member a total amount greater than ~~£5,000~~ £7,500 in excess of that member's shareholding must maintain at all times, while such an amount is outstanding, a capital to total assets ratio of at least 5%.

8.3.12A    G    CRED 8.3.12R(2) does not have the effect of invalidating existing loans if the capital to assets ratio falls below 5%.

...

9.1.5    R    "Unattached shareholding" means ~~the amount by which the member's savings with the credit union exceeds the amount which, under the terms of section 7 of the Credit Unions Act 1979, he cannot withdraw at all or he cannot withdraw without first of all obtaining the permission of the committee of management of the credit union.~~ any shares in the credit union that are treated as freely withdrawable. This includes shares held by members in a class of share account, intended for use as a current account,

or otherwise in connection with ancillary services (as defined in section 9 of the Credit Unions Act 1979), even if (through the existence of a related loan) the free withdrawability of the shares may be terminated by the committee at any time in accordance with section 7 of the Credit Unions Act 1979.

- 9.1.6 G (1) Under section 7 of the Credit Unions Act 1979 ...
- (2) ~~'Unattached shareholding' is intended to refer to that portion of a member's savings the withdrawal of which is not restricted by section 7.~~
- (a) The most reliable interpretation of section 7 is that the committee may exercise this discretion on a case-by-case basis, but may not treat all such shares as freely withdrawable. This does not mean that every individual case has to be put before the committee. A case can be decided by an official of the credit union, applying a comprehensive policy laid down by the committee. This policy should be fully documented and set out all the factors that might lead to permitting the withdrawal. (Permitting the withdrawal should be the exception, not the norm.) If a decision is not clearly dictated by the committee's policy, then it should be referred to the committee itself.
- (b) The policy may extend to designating as freely withdrawable for the time being the shares in a class of share account, intended for use as a current account, or otherwise in connection with ancillary services (as defined in section 9 of the Credit Unions Act 1979). Where such shares are subject to the committee's discretion in section 7 (through the existence of a related loan) the *credit union* should not purport to give a contractual commitment to the free withdrawability of the shares, because that section means that the committee is capable of terminating the designation at any time.

...

- 10.2.6A R (1) A *credit union* must not make a loan to:
- (a) ~~an officer, or other approved person; and one of its officers or approved persons on terms more favourable than those available to other members of the *credit union* unless:~~
- (i) that person is a paid employee (other than a *director*) of the *credit union*; and
- (ii) the registered rules of the *credit union* provide explicitly for the making of loans to paid employees

on such terms;

- (b) ~~a relative of, or any person otherwise connected with, anyone included in (1) above; a relative of, or any person otherwise connected with, an officer, *approved person* or paid employee of the *credit union* on terms more favourable than those available to other members of the *credit union*.~~

~~on terms more favourable than those available to other members of the *credit union*.~~

...

- 10.3.1 R Subject to *CRED* 10.3.6R, a *version 1 credit union* must not lend for a period of more than ~~three~~ five years where unsecured and ~~seven~~ ten years where secured.
- 10.3.2 R A *version 1 credit union* must not lend more than ~~£10,000~~ £15,000 in excess of the borrowing member's shareholding, ~~but this rule is subject to the additional requirement in *CRED* 8.3.12R(1).—A *credit union* must maintain a capital to total assets ratio of at least 5% when making a loan to any member of an amount greater than £5,000 in excess of that member's shareholding.~~
- 10.3.2A G The effect of *CRED* 8.3.12R(1) is to prevent a *version 1 credit union* from lending more than £7,500 in excess of the borrowing member's shareholding unless it has a capital to total assets ratio of at least 5%.
- 10.3.3 R Subject to *CRED* 10.3.6R, a *version 2 credit union* must not lend for a period of more than ~~five~~ ten years where unsecured and ~~fifteen~~ 25 years where secured.
- 10.3.3A G A *credit union* should not attempt to evade the limits in *CRED* 10.3.1R and *CRED* 10.3.3R by making loans in the expectation that they will not be fully repaid by the end of the period, but will be automatically extended or rescheduled.
- 10.3.4 R The maximum amount that a *version 2 credit union* may lend is ~~£10,000~~ £15,000 in excess of the borrowing member's shareholding or 1.5% of total shares in the *credit union* in excess of the borrowing member's shareholding, whichever is the greater.
- 10.3.4A G For the purpose of calculating the maximum loan in *CRED* 10.3.4R, the *credit union* may use the amount of total shares 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) if that is the latest reliable figure available.
- ...
- 10.5.5A G Where a delinquent loan is rescheduled and the arrears capitalised, the loan should be regarded as remaining impaired until there is sufficient evidence that it is performing on the rescheduled terms. In the meantime, any

provision made in relation to that loan should be maintained, not released.

...

CRED 13 Annex 2G

...

3A Section 9 of the Credit Unions Act 1979 does not require a juvenile depositor to cease to hold an account in a *credit union* if his parents become non-qualifying members.

...

...

CRED Schedule 2

Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
... <u>CRED</u> <u>8.2.1BG</u>	<u>General</u> <u>notification</u>	<u>Any proposed</u> <u>repayment of</u> <u>subordinated debt</u>	<u>As soon as</u> <u><i>credit union</i></u> <u>aware</u>	<u>At an early</u> <u>stage</u>
...				

**PERIMETER GUIDANCE MANUAL (APPLICATION OF E-MONEY PROVISIONS) INSTRUMENT 2005**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of its power under section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 31 December 2005.

**Amendments to the Perimeter Guidance manual**

- C. General guidance on FSA regulatory perimeter issues, amending the Perimeter Guidance manual, is set out in the Annex to this instrument. This general guidance does not form part of the FSA Handbook.

**Citation**

- D. This instrument may be cited as the Perimeter Guidance Manual (Application of E-money Provisions) Instrument 2005.

By order of the Board  
17 November 2005

## Annex

### Amendments to the Perimeter Guidance manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

- 3.2.7 G The definition of e-money in the Regulated Activities Order is based on copies ~~out~~ the definition of *electronic money* in the *E-Money Directive* ~~with one~~ exception. The definition in the E-Money Directive is that e-money is "monetary value as represented by a claim on the issuer which is:
- (1) stored on an electronic device;
  - (2) issued on receipt of funds of an amount not less in value than the monetary value issued; and
  - (3) accepted as means of payment by undertakings other than the issuer".
- 3.2.8 G The ~~main difference~~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*.
- ...
- 3.2.18 G ... ~~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 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. The delay referred to in PERG 3.2.18G 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.
- ...
- 3.3.13 G ... This is so even if in practice most of the e-money is spent with the issuer and only a small portion is ever spent with third parties.
- ...

After PERG 3.3.21G insert the following new provisions:

Substance of the scheme

- 3.3.22 G When deciding whether a particular scheme involves *issuing e-money* or not, it is necessary to take into account the substance of the scheme. In particular it is necessary to consider whether:
- (1) the scheme involves the issue of prepaid electronic monetary value that the holder can spend with third parties; or
  - (2) the provision by the issuer of some other sort of service.
- 3.3.23 G In considering the question in *PERG 3.3.22G*, relevant factors include:
- (1) the risks incurred by the holder of the value;
  - (2) the nature of the rights and obligations of the holder of the prepaid value, the issuer of the value and third parties involved in the scheme; and
  - (3) what the scheme allows the holder of the value to do.
- 3.3.24 G Therefore artificial features of a scheme that disguise, or try to disguise, the payment function as the supply of another sort of service are not likely to prevent the scheme from involving *issuing e-money*.
- 3.3.25 G The European Commission Services published a separate guidance note in January 2005 on the application of the *E-money Directive* to mobile network operators. The full text of this guidance is available at the following link: [http://europa.eu.int/comm/internal\\_market/bank/docs/e-money/2004-05-consultation\\_en.pdf](http://europa.eu.int/comm/internal_market/bank/docs/e-money/2004-05-consultation_en.pdf). The *FSA* will have regard to such guidance when considering whether the issue of prepaid airtime to a mobile phone user, which can be used to pay for third party goods and services, whether delivered through or outside the telephone operator's network, constitutes the *regulated activity of issuing e-money*.

...

After *PERG 3.4* insert the following new section:

3.5 The application of the e-money definition to various products

3.5.1 G This section of *PERG 3* contains *guidance* on whether certain products involve *issuing e-money*.

Electronic travellers cheques

3.5.2 G An electronic travellers cheque is a product, based on a plastic card, designed to replace paper travellers cheques. There are two types of electronic travellers cheques:

- (1) ones whose only function is to allow the holder to withdraw cash in a foreign currency from automated teller machines ("ATMs") when abroad; and

- (2) ones that can also be used to buy goods and services from third parties.
- 3.5.3 G The card referred to in *PERG 3.5.2G* is loaded with value. The holder pays for the value on issue. The value therefore complies with the part of the definition of *e-money* that says that the value must be issued on receipt of funds (see *PERG 3.3.5G - PERG 3.3.9G*). The card is likely to be an electronic device for the purpose of paragraph (a) of the definition of *e-money* (which is explained in *PERG 3.3.2G - PERG 3.3.4G*).
- 3.5.4 G The remaining condition that value must meet if it is to be *e-money* is that the value must be accepted as a means of payment by *persons* other than the issuer. This part of the definition is explained in *PERG 3.3.10G – PERG 3.3.13G*.
- 3.5.5 G An electronic travellers cheque falling into *PERG 3.5.2G(2)* meets the part of the definition of *e-money* referred to in *PERG 3.5.4G*.
- 3.5.6 G An electronic travellers cheque falling into *PERG 3.5.2G(1)* does not meet the part of the definition of *e-money* referred to in *PERG 3.5.4G* if the scheme is set up in such a way that:
- (1) it can only be used to withdraw foreign currency from ATMs owned by the issuer of the value; or
  - (2) (if (1) does not apply) the withdrawal of foreign currency by a cardholder will never involve the purchase of the currency from the owner of the ATM but instead the repayment of the prepaid value by the issuer of the prepaid value.

#### Trust accounts

- 3.5.7 G A prepaid electronic value payment system may involve the "float" being paid into a trust account. The float is the running balance of money held by the issuer of the electronic value representing payments for the issue of electronic value less the amount of electronic value that has been redeemed.
- 3.5.8 G Holding the float on trust:
- (1) does not prevent the electronic value from being monetary value as represented by a claim on the issuer (this part of the definition of *e-money* is described in *PERG 3.3.1G*);
  - (2) is not relevant to the other elements of the definition of *e-money*; and
  - (3) does not mean that the *person* who accepts the payment for the electronic value is not the issuer of that value.
- 3.5.9 G The result of *PERG 3.5.8G* is that putting the float into a trust account does not prevent the *person* who accepts the payment for the electronic value from *issuing e-money*.



## FEES MANUAL INSTRUMENT 2005

### Powers exercised

- A. The Financial Services Authority ("FSA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 72 (The competent authority);
  - (2) section 74(4) (The official list);
  - (3) section 99(1) (Fees);
  - (4) section 101 (Listing rules: general provisions);
  - (5) section 138 (General rule-making power);
  - (6) section 156 (General supplementary powers);
  - (7) section 157(1) and (4) (Guidance);
  - (8) section 213 (The compensation scheme);
  - (9) section 214 (General);
  - (10) section 223 (Management expenses);
  - (11) section 234 (Industry funding);
  - (12) paragraph 17(1) of Schedule 1 (Fees) and
  - (13) paragraph 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI)
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 1 January 2006.

### Amendments to the Handbook

- D. Annex C to this instrument inserts into the Handbook the new consolidated Fees manual (FEES).
- E. Subject to F, the modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended or introduced in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Fees manual (FEES)	Annex C
Market Conduct sourcebook (MAR)	Annex D
Authorisation manual (AUTH)	Annex E
Supervision manual (SUP)	Annex F

Dispute Resolution: Complaints sourcebook (DISP)	Annex G
Compensation sourcebook (COMP)	Annex H
Collective Investment Schemes sourcebook (CIS)	Annex I
New Collective Investment Schemes sourcebook (COLL)	Annex J
Credit Unions sourcebook (CRED)	Annex K
Professional Firms sourcebook (PROF)	Annex L
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex M
Listing Rules (LR)	Annex N
Prospectus Rules (PR)	Annex O
Disclosure Rules (DR)	Annex P

- F. The amendments set out in Annex Q are not made by the FSA. They are made exclusively by the Financial Ombudsman Service Limited (“FOS”) subject to the approval and consent of the FSA. These provisions (or part provisions to the extent that they relate solely to rule-making powers exercisable by FOS under parts III and IV of schedule 17 of the Act) are set out in Annex Q for clarity.

### **Citation**

- G. This instrument may be cited as the Fees Manual Instrument 2005. Further, Annex C to this instrument may be cited as the Fees manual (or FEES).

By order of the Board  
15 December 2005

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Insert in the following new definition in the appropriate alphabetical position:

FEES

the Fees manual

Amend the following definitions:

<i>annual eligible income</i>	(in <i>COMP</i> ) the annual income (as described in Part 2 of <del><i>SUP 20 Annex 1</i></del> <u><i>FEES 4 Annex 1R</i></u> ) for the <i>firm's</i> last financial year preceding the date for submission of the information under <del><i>COMP 13.6.11R</i></del> <u><i>FEES 6.5.13R</i></u> attributable...
<i>base costs levy</i>	a levy, forming part of the <i>management expenses levy</i> , to meet the <i>base costs</i> in the financial year of the <i>compensation scheme</i> to which the levy relates, each <i>participant firm's</i> share being calculated in accordance with <del><i>COMP 13.5.5 R</i></del> <u><i>FEES 6.4.5R</i></u> .
<i>class 1 transaction</i>	(in <i>LR</i> and <i>FEES</i> ) ...
<i>compensation costs levy</i>	a levy imposed by the <i>FSCS</i> on <i>participant firms</i> to meet <i>compensation costs</i> , each <i>participant firm's</i> share being calculated in accordance with <del><i>COMP 13.6</i></del> <u><i>FEES 6.5</i></u> .
<i>contribution group</i>	one of the groups of <i>participant firms</i> within a sub-scheme set out in <del><i>COMP 13.6.7R</i></del> <u><i>FEES 6.5.7R</i></u> being groups that carry on business of a similar nature, to which <i>compensation costs</i> and <i>specific costs</i> are allocated in accordance with <del><i>COMP 13.5</i></del> and <del><i>COMP 13.6</i></del> <u><i>FEES 6.4</i></u> and <u><i>FEES 6.5</i></u> .
<i>establishment costs</i>	(1) (in <del><i>COMP</i></del> <u><i>FEES 6</i></u> ) the costs of establishing the <i>compensation scheme</i> .  (2) <del>(in <i>DISP</i>)</del> (in <u><i>FEES 5</i></u> ) the costs of establishing the <i>Financial Ombudsman Service</i> .
<i>establishment costs levy</i>	a levy, forming part of the <i>management expenses levy</i> , to meet the <i>establishment costs</i> , each <i>participant firm's</i> share being calculated in accordance with <del><i>COMP 13.5.10G</i></del> <u><i>FEES 6.4.11R</i></u> .
<i>general levy</i>	(in <del><i>DISP</i></del> <u><i>FEES</i></u> ) the annual fee raised from a <i>firm</i> ...

<i>industry block</i>	(in <del>DISP</del> <u>FEES</u> ) a grouping of <i>firms</i> by common business activity for the purposes of calculating the <i>general levy</i> .
<i>issuer</i>	... (2) (in <i>DR</i> and <u>FEES in relation to DR</u> ) ...  (3) (in <i>LR</i> and <u>FEES in relation to LR</u> ) ...  (4) (in <i>PR</i> and <u>FEES in relation to PR</u> ) ...
<i>management expenses levy</i>	... each <i>participant firm's</i> share being calculated in accordance with <del>COMP 13.5</del> <u>FEES 6.4</u> .
<i>minimum levy</i>	(in <del>DISP</del> <u>FEES</u> ) the fixed minimum <i>general levy</i> payable by a <i>firm</i> .
<i>offeror</i>	... (3) (in <i>LR</i> , and in <i>PR</i> , <u>FEES provisions in relation to PR and ENF 21</u> ) ...
<i>participant firm</i>	(1) (except in <del>COMP 13</del> <u>FEES 6</u> ) a <i>firm</i> or a <i>member</i> . . . (2) (in <del>COMP 13</del> <u>FEES 6</u> ) a <i>firm</i> specified in paragraph (1) above that is not a <i>member</i> .
<i>prospectus</i>	(in <i>LR</i> and <i>PR</i> and <u>FEES</u> )...
<i>regulatory costs</i>	the periodic fees payable to the <i>FSA</i> by a <i>participant firm</i> in accordance with <del>SUP 20 (Fees rules)</del> <u>FEES 4 (Periodic fees)</u> .
<i>relevant net premium income</i>	...in the year preceding that in which the date for submission of the information under <del>COMP 13.6.11R</del> <u>FEES 6.5.13R</u> falls, net of any relevant rebates or refunds.
<i>share</i>	...  (3) (in <i>DR</i> and <i>LR</i> , and in <u>FEES where relevant to DR or LR</u> ) ...
<i>specific costs levy</i>	a levy, forming part of the <i>management expenses levy</i> , to meet the <i>specific costs</i> in the financial year of the <i>compensation scheme</i> to which the levy relates, each <i>participant firm's</i> share being calculated in accordance with <del>COMP 13.5.7R</del> <u>FEES 6.4.7R</u>
<i>specialist securities</i>	(in <i>LR</i> and <u>FEES</u> ) ...
<i>sub-scheme</i>	one of the sub-schemes to which the <i>FSCS</i> allocates liabilities for <i>compensation costs</i> , as described in <del>COMP 13.6.7R</del> <u>FEES 6.5.7R</u> .
<i>supplementary levy</i>	(in <del>DISP</del> <u>FEES</u> ) a levy, additional to the <i>general levy</i> , for the purposes of recovering the <i>establishment costs</i> .

## Annex B

### Amendments to the General Provisions

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

2.1.9 G The effect of *GEN 2.1.8R* is that this chapter applies with respect to those provisions in *DISP 2* (Jurisdiction of the Financial Ombudsman Service), *DISP 3* (Complaint handling procedures of the Financial Ombudsman Service), *DISP 4* (Standard terms) and ~~*DISP 5*~~ *FEES 5* (Financial Ombudsman Service Funding ~~Rules~~) made by *FOS Ltd*.

...

2.2.20 G ...Further information on *designated investment exchanges*, including *guidance* on the addition of an investment exchange to the list, is set out in *GEN 2 Annex 1* and the obligation to pay the application fee is set out in ~~*GEN 2 Annex 2*~~ *FEES 3.2*.

GEN 2 Annex 1G

	Introduction
...	
8.	An application will not be considered by the <i>FSA</i> until the application fee has been paid. See <del><i>GEN 2 Annex 2</i></del> <u><i>FEES 3.2</i></u>

...

GEN 2 Annex 2 Designated investment exchanges: fees

Delete the whole of the annex including the heading above.

GEN 2 Annex 2 [~~deleted~~]

GEN 3 FSA Fees: General Provisions (GEN 3)

Delete entire chapter, excluding the heading above.

GEN 3 [deleted: the general provisions in relation to fees are set out in *FEES 2* (General Provisions)]

...

GEN TP 1.3

GEN TP 1.3(3) Transitional Provisions applying to GEN only

(1)	(2)Material to which transitional provision applies	(3)	(4) Transitional Provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8	<del>GEN 2 Annex 2</del> <u>FEES 3.2</u>	R	<del>GEN 2 Annex 2</del> <u>FEES 3.2</u> applies to any application received after 1 October 2004 but not determined until after 1 February 2005.	...	

...

GEN Sch 3 Fees and other required payments G

	There are no requirements for fees or other payments in <i>GEN</i> . <del>GEN 3 (FSA fees: general provisions</del> <u>FEES 2 (General Provisions)</u> contains general provisions relating to the payment of fees.
--	---

...

## Annex C

### Fees manual

In this Annex all of the text is new and is not underlined. Where text is to be removed from the existing Handbook and re-located in an annex to a chapter of the Fees manual, this text is not copied out, but the existing location of the text is given and any amendments made (as a result of the consolidation) are described.

Insert the Fees manual (FEES) in Block 1 (High Level Standards) after General Provisions as follows:

#### Fees Manual

##### 1.1 Application and Purpose

1.1.1 G *FEES* applies to all *persons* required to pay a fee or levy under a provision of the *Handbook*. The purpose of this chapter is to set out to whom the *rules* and *guidance* in *FEES* apply. *FEES* 2 (General Provisions) contains general provisions which may apply to any type of fee payer. *FEES* 3 (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example various application fees (including those in relation to authorisation, variation of *Part IV permission*, *listing* and guidance in relation to the Basel Capital Accord) and fees relating to certain notifications and document vetting requests. *FEES* 4 (Periodic fees) covers all periodic fees and transaction reporting fees. *FEES* 5 (Financial Ombudsman Service Funding) relates to *FOS* levies and case fees and *FEES* 6 (Financial Services Compensation Scheme Funding) relates to the *FSCS* levy.

##### 1.1.2 R Application

This manual applies in the following way:

(1) *FEES* 1, 2 and 3 apply to:

- (a) every applicant for *Part IV permission* (including an *incoming firm* applying for *top-up permission*);
- (b) every *Treaty firm* that wishes to exercise a *Treaty right* to qualify for *authorisation* under Schedule 4 to the *Act* (Treaty rights) in respect of *regulated activities* for which it does not have an *EEA right*;
- (c) every applicant for a certificate under article 54 of the *Regulated Activities Order*;
- (d) every applicant for an *authorisation order* for, or for recognition of, a *collective investment scheme*;
- (e) every operator of a scheme making a notification under section 264 or section 270 of the *Act*;
- (f) every *person* seeking to become a *designated professional body*;

- (g) every applicant for recognition as a *recognised body* under Part XVIII of the *Act* (Recognised investment exchanges and clearing houses);
  - (h) every applicant for *listing* (under the *listing rules*);
  - (i) every applicant for approval as a *sponsor* (under the *listing rules*);
  - (j) every *issuer* (under the *listing rules*) of tranches from debt issuance programmes and *securitised derivative* tranches;
  - (k) every *issuer* (under the *listing rules*) involved in specific events or transactions during the year where documentation is subject to transaction vetting by the *FSA*;
  - (l) under the *prospectus rules* every *issuer*, *offeror* or *person* requesting approval or vetting of the documents arising in relation to specific events or transactions that it might be involved in during the year;
  - (m) every applicant to be listed as a *designated investment exchange*;
  - (n) every *firm* applying for variation of its *Part IV permission*; and
  - (o) every *firm* applying for *guidance* on the availability of a *waiver* or concession in connection with future *rules* implementing the revised Basel Capital Accord (including any amendments).
- (2) *FEES* 1, 2 and 4 apply to:
- (a) every *firm* (except an *ICVC* or *UCITS qualifier*);
  - (b) every *manager* of an *authorised* unit trust;
  - (c) every *ACD* of an *ICVC*;
  - (d) 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*;
  - (e) every *designated professional body*;
  - (f) every *recognised body*;
  - (g) under the Listing Rules every *issuer* of *shares*, depositary receipts and *securitised derivatives*;
  - (h) under the Listing Rules every *sponsor*; and

- (i) under the Disclosure Rules every *issuer* of *shares*, depositary receipts and securitised derivatives.
- (3) *FEES* 1, 2 and 5 apply to:
  - (a) every *firm* which is subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*; and
  - (b) every other *person* who is subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*.
- (4) *FEES* 1,2 and 6 apply to:
  - (a) every *participant firm*;
  - (b) the *FSCS*; and
  - (c) the *Society*.
- 1.1.3 G The relevant provisions of *FEES* 5 and *FEES* 2 are applied to *VJ participants* by the *standard terms* (see *DISP* 4).
- 1.1.4 G Purpose

The purpose of this manual is to set out the fees applying to the *persons* set out in *FEES* 1.

## FEES 2 (General Provisions)

### 2.1 Introduction

#### Application

- 2.1.1 R This chapter applies to every *person* who is required to pay a fee or share of a levy to the *FSA*, *FOS Ltd* or *FSCS*, as the case may be, by a provision of the *Handbook*.
- 2.1.2 R *FEES* 2.2.1R does not apply in respect of any fee payable under *FEES* 3 (Application, notification and vetting fees).
- 2.1.3 G The provisions for late payments in *FEES* 2.2.1R do not apply to fees payable under *FEES* 3 as applications, notifications and requests for vetting are generally regarded as incomplete until the relevant fee is paid.

#### Purpose

- 2.1.4 G The purpose of this chapter is to set out the general provisions applicable to

those who are required to pay fees or levies to *FSA*, case fees to *FOS Ltd* or a share of the *FSCS* levy.

- 2.1.5 G Paragraph 17 of Schedule 1 and section 99 to the *Act* enable the *FSA* to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the *FSCS* levy and *FOS* levies and case fees are set out in *FEES* 6.1 and *FEES* 5.2 respectively.
- 2.1.6 G The *FSA* 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 *FEES* 2.1.7G. 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.
- 2.1.7 G The key components of the *FSA* fee mechanism (excluding the *FSCS* levy and *FOS* levy and case fees, which are dealt with in *FEES* 5 and 6) are:
- (1) a funding requirement derived from:
    - (a) the *FSA's* financial management and reporting framework;
    - (b) the *FSA's* budget; and
    - (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.
- 2.1.8 G The amount payable by each fee payer will depend upon the category (or categories) of regulated activity or exemption, or other relevant activity 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).
- 2.1.9 G 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 *FEES* provisions relating to the type of fees concerned.

2.1.10 G Paragraph 17(2) of Schedule 1 and section 99(3) to the *Act* prohibit 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 or will be notified to the fee payer at the relevant time.

## 2.2 Late Payments and Recovery of Unpaid Fees

### Late Payments

2.2.1 R If a *person* does not pay the total amount of a periodic fee, *FOS* levy or case fee, or share of the *FSCS* levy, on the date on which it is due, under the relevant provision in *FEES* 4, 5 or 6, that *person* must pay an additional amount as follows:

- (1) if the fee was not paid in full before the end of the due date, an administrative fee of £250; plus
- (2) if the fee was not paid in full before the end of 15 *days* after the due date, interest on any unpaid part of the fee at the rate of 5% per annum above the Bank of England's repo rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

2.2.2 G The *FSA*, (for periodic fees, *FOS* and *FSCS* levies), and *FOS Ltd* (for *FOS* case fees), expect to issue invoices at least 30 *days* before the date on which the relevant amounts fall due. *FOS* case fees are invoiced on a monthly basis. Accordingly it will generally be the case that a *person* will have at least 30 *days* from the issue of the invoice before an administrative fee becomes payable, and at least 45 *days* before any interest becomes payable.

### Recovery of Fees

2.2.3 G Paragraph 17(4) of Schedule 1 and section 99(5) to the *Act* permit the *FSA* to recover fees (and, where relevant, *FOS* levies), and section 213(6) permits the *FSCS* to recover shares of the *FSCS* levy payable, as a debt owed to the *FSA* and *FSCS* respectively, and the *FSA* and *FSCS*, as relevant, will consider taking action for recovery (including interest) through the civil courts. Also, *FOS Ltd* (in respect of case fees) may take steps to recover any money owed to it (including interest).

2.2.4 G In addition, the *FSA* may be entitled to take regulatory action in relation to the non-payment of fees and *FOS* levies. *FSA* may also take regulatory action in relation to the non-payment of *FOS* case fees or share of the *FSCS* levy, after reference of the matter to *FSA* by *FOS Ltd* or *FSCS* respectively. What action (if any) that is taken by the *FSA* will be decided upon in the

light of the particular circumstances of the case.

## 2.3 Relieving Provisions

### Remission of Fees

- 2.3.1 R If it appears to the *FSA*, or *FOS Ltd* (in relation to any *FOS* case fee only), that in the exceptional circumstances of a particular case, the payment of any fee or *FOS* levy would be inequitable, the *FSA* or *FOS Ltd*, as relevant, may reduce or remit all or part of the fee or levy in question which would otherwise be payable.
- 2.3.2 R If it appears to the *FSA*, or *FOS Ltd* (in relation to any *FOS* case fee only), that in the exceptional circumstances of a particular case to which *FEES* 2.3.1R does not apply, the retention by the *FSA*, or *FOS Ltd*, as relevant, of a fee or *FOS* levy which has been paid would be inequitable, the *FSA*, or *FOS Ltd*, may refund all or part of that fee or levy.
- 2.3.3 G *FEES* 2.3.1R and *FEES* 2.3.2R do not apply to the payment of shares of the *FSCS* levy.

## FEES 3 (Application, Notification and Vetting Fees)

### 3.1 Introduction

#### Application

- 3.1.1 R This chapter applies to every person set out in *FEES* 1.1.2R(1).
- 3.1.2 G This chapter does not apply to an *EEA firm* that wishes to exercise an *EEA right*.

#### Purpose

- 3.1.3 G The purpose of this chapter is to set out the *FSA* fee paying requirements on the persons set out in *FEES* 1.1.2R(1). The *FSA's* power to charge in respect of *guidance* regarding the Basel Capital Accord is derived from section 157(4)(c) of the *Act*.
- 3.1.4 G Most of the detail of what fees are payable by the persons referred to in *FEES* 3.1.3G is set out in *FEES* 3 Annexes 1-6.
- 3.1.5 G (1) The rates set for authorisation fees represent an appropriate proportion of the costs of the *FSA* in processing the application or exercise of *Treaty rights*.

- (2) The fees for *collective investment schemes* reflect the estimated costs to the FSA of assessing applications and notifications. 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*.
- (3) Application fees for *recognised bodies* are calculated from a tariff structure intended to reflect the estimated cost of processing an application of that type and complexity.
- 3.1.6 G Applications for *Part IV permission* (and exercises of *Treaty rights*) are categorised by the *FSA* for the purpose of fee raising as complex, moderately complex and straightforward as identified in *FEES 3 Annex 1R*. This differentiation is based on the *permitted activities* sought and does not reflect the *FSA's* risk assessment of the applicant (or *Treaty firm*).
- 3.1.7 G A potential applicant for *Part IV permission* (or *Treaty firm*) has the opportunity to discuss its proposed application (or exercise of *Treaty rights*) with the *FSA* before submitting it formally (see *AUTH 3.9.1G*). If an applicant for *Part IV permission* (or *Treaty firm*) does so, the *FSA* will be able to use that dialogue to make an initial assessment of the fee categorisation and therefore indicate the authorisation fee that should be paid.
- 3.1.8 G See *AUTH 3.9* in relation to the procedures for making applications for *Part IV permission* and *AUTH 5* for procedures for the exercise of *Treaty rights* by *Treaty firms*.
- 3.2 Obligation to Pay Fees
- 3.2.1 R General
- A person* in column (1) of the table in *FEES 3.2.7R* as the relevant fee payer for a particular activity must pay to the *FSA* a fee for each application or request for vetting or admission approval made, or notification or notice of exercise of a *Treaty right* given, as is applicable to it, as set out or calculated in accordance with the provisions referred to in column (2) of that table
- (1) in full and without deduction; and
- (2) on or before the date given in column (3) of that table.
- 3.2.2 G If an application for a *Part IV permission* (or exercise of a *Treaty right*) falls within more than one category set out in *FEES 3 Annex 1R*, only one fee is payable. That fee is the one for the category to which the highest fee tariff applies.
- 3.2.3 R Method of payment

(1) Unless (2) applies, the sum payable under *FEES* 3.2.1R must be paid by bankers draft, cheque or other payable order.

(2) *FSA* does not specify a method of payment for a *person* seeking to become a *recognised body* or a *designated professional body* or to be added to the list of *designated investment exchanges*.

3.2.4 G The *FSA* expects that a *person* seeking to become a *recognised body* or a *designated professional body* or to be added to the list of *designated investment exchanges* will generally pay their respective fees by electronic credit transfer.

3.2.5 G (1) The appropriate authorisation fee is an integral part of an application for, or an application for a variation of, a *Part IV permission*. Any application received by the *FSA* without the accompanying appropriate fee, in full and without deduction (see *FEES* 3.2.1R), will not be treated as an application made, incomplete or otherwise, in accordance with section 51(3)(a), or section 44, of the *Act*. Where this is the case, the *FSA* will contact the applicant to point out that the application cannot be progressed until the appropriate fee has been received. In the event that the appropriate authorisation fee, in full and without deduction, is not forthcoming, the application will be returned to the applicant and no application will have been made.

(2) With the exception of *persons* seeking to become a *designated professional body*, all applications, notifications, requests for vetting or admission approval will be treated as incomplete until the relevant fee is fully paid and *FSA* will not consider an application, notification, request for vetting or admission approval until the relevant fee is fully paid. *Persons* seeking to become a *designated professional body* have 30 days after the designation order is made to pay the relevant fee.

3.2.6 G Fees paid under this chapter are not refundable.

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
(a) Any applicant for <i>Part IV permission</i> (including an <i>incoming firm</i> applying for <i>top-up permission</i> )	In respect of a particular application, the highest of the tariffs set out in <i>FEES</i> 3 Annex 1R which apply to that application	On or before the application is made
(b) Any <i>Treaty firm</i> that wishes to exercise a <i>Treaty right</i> to qualify for <i>authorisation</i> under Schedule 4 to the <i>Act</i> (Treaty rights) in respect of <i>regulated activities</i> for which it does not have an	(1) Where no certificate has been issued under paragraph 3(4) of Schedule 4 to the <i>Act</i> the fee payable is, in respect of a particular exercise, set out in <i>FEES</i> 3 Annex 1R, part 4  (2) Where a certificate in (i)	On or before the notice of exercise is given

<i>EEA right</i>	has been issued no fee is payable	
(c) Any applicant for a certificate under article 54 of the Regulated Activities Order	£2,000	On or before the application is made
(d) Applicants for an <i>authorisation order</i> for, or recognition of, a <i>collective investment scheme</i>	<i>FEES</i> 3 Annex 2R, part 1	On or before the application is made
(e) The <i>operator</i> of a scheme making a notification under section 264 or section 270 of the <i>Act</i>	<i>FEES</i> 3 Annex 2R, part 2	On or before the date the application is made
(f) Any <i>person</i> seeking an order under section 326(1) of the <i>Act</i> to become a <i>designated professional body</i> .	£10,000	30 days after the order is granted
(g) Any applicant for recognition as a <i>UK recognised body</i> under section 287 or section 288 of the <i>Act</i>	<i>FEES</i> 3 Annex 3R, part 1	On or before the date the application is made
(h) Any applicant for recognition as an <i>overseas recognised body</i> under section 287 or section 288 and section 292 of the <i>Act</i>	<i>FEES</i> 3 Annex 3R, part 2	On or before the date the application is made
(i) An applicant for <i>listing</i> (under the <i>listing rules</i> ).	<i>FEES</i> 3 Annex 4R, part 1	On or before the date the application is made
(j) Applicant for approval as <i>sponsor</i> (under the <i>listing rules</i> )	<i>FEES</i> 3 Annex 4R, part 2	On or before the date the application is made
(k) Issuers of tranches from debt issuance programmes and <i>securitised derivative</i> tranches	<i>FEES</i> 3, Annex 4R, part 1	An upfront fee is required per tranche for draw downs in the following 12 <i>months</i>
(l) Under the <i>listing rules</i> , an <i>issuer</i> involved in specific events or transactions during	<i>FEES</i> 3, Annex 5R, part 1	On or before the date that relevant documentation is

the year where documentation is subject to a transaction vetting		first submitted to the <i>FSA</i>
(m) Under the <i>prospectus rules</i> , an <i>issuer</i> or <i>person</i> requesting approval or vetting of the documents arising in relation to specific events or transactions that it might be involved in during the year	<i>FEES</i> 3 Annex 5R, part 2	On or before the date that relevant documentation is first submitted to the <i>FSA</i>
(n) Applicants to be added to the list of <i>designated investment exchanges</i>	£50,000	On or before the date the application is made
(o) A <i>firm</i> applying for <i>guidance</i> on the availability of a <i>waiver</i> or concession in connection with future <i>rules</i> implementing the revised Basel Capital Accord (including any amendments)	(1) Unless (2) applies, <i>FEES</i> 3 Annex 6R  (2) A <i>firm</i> submitting a second application for <i>guidance</i> described in column (1) within 12 months of the first application (where the fee was paid in accordance with (1)) must pay 50% of the fee applicable to it under <i>FEES</i> 3 Annex 6R, but only in respect of that second application	On or before the date the application is made
(p) A <i>firm</i> applying for a variation of its <i>Part IV permission</i>	(1) Unless (2) applies, if the business of the <i>firm</i> will fall within one or more activity groups specified in Part 1 of <i>FEES</i> 4 Annex 1R not applicable before the grant of the variation (if the variation is granted), the fee is 50% of the highest of the tariffs set out in <i>FEES</i> 3 Annex 1R which apply to that application  (2) If the A.12 activity group tariff applied to the <i>firm's</i> business before the variation and the A.13 activity group will apply after variation, no fee is payable	On or before the date the application is made

FEES 3 ANNEXES

FEES 3 Annex 1R

Authorisation fees payable

[Insert the text in the existing AUTH 4, Annex 1R as amended in accordance with Annex E to this instrument.]

FEES 3 Annex 2R

Application and notification fees payable in relation to collective investment schemes

[Insert CIS 18 Annex 2R as amended in accordance with Annex I to this instrument]

FEES 3 Annex 3R

Application fees payable in connection with Recognised Investment Exchanges and Recognised Clearing Houses

[Insert REC 7, Annex 2R as amended in accordance with Annex M to this instrument]

FEES 3 Annex 4R

Application and tranche fees in relation to listing rules

[Insert LR App 2.1.1R, Annex 3 as amended in accordance with Annex N to this instrument]

FEES 3 Annex 5R

Document vetting and approval fees in relation to listing and prospectus rules

Part 1

[Insert LR App 2.1.1R, Annex 2, as amended in accordance with Annex N to this instrument]

Part 2

[Insert PR App 2.1.1R as amended in accordance with Annex O to this instrument]

FEES 3 Annex 6R

Fees payable for guidance on the availability of a waiver in connection with rules implementing Basel Capital Accord

[Insert SUP 20 Annex 4R as amended in accordance with Annex F to this instrument]

## FEES 4 (Periodic fees)

### 4.1 Introduction

#### Application

4.1.1 R This chapter applies to every *person* set out in *FEES* 1.1.2R(2).

#### Purpose

4.1.2 G The purpose of this chapter is to set out the requirements on *firms* and others to pay periodic fees and transaction reporting fees in certain circumstances.

#### Background

4.1.3 G Most of the detail of the periodic fees that are payable by *firms* is set out in *FEES* 4 Annexes 1-8. Most of the provisions of the Annexes will vary from one financial year to another. Accordingly fresh *FEES* 4 Annexes will come into force, following consultation, for each financial year.

4.1.4 G (1) The periodic fees for *collective investment schemes* reflect the estimated costs to the *FSA* of considering proposals to change *regulated collective investment schemes*, maintaining up to date records about them, and related policy work.

(2) The provision of the Direct Reporting System and Transaction Reporting System facilities for *firms* reporting transactions under *SUP* 17 incurs costs to the *FSA*. These costs depend upon the amount the facility is used. Accordingly the income which the *FSA* receives from these transactions reporting fees will be set and accounted for separately from the fee-block tariffs, and are set out in *FEES* 4 Annex 3R.

4.1.5 G 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.

4.1.6 G The *FSA* will allocate penalties received for the benefit of relevant fee payers by way of a permitted deduction specified in *FEES* Annex 2R, or in the case of listed issuers, as notified to issuers annually, for the relevant year.

4.1.7 G In the case of periodic fees for *firms*, fees are calculated individually for each *firm*, but they may be paid on a *group* basis, if the *group* so wishes.

### 4.2 Obligation to pay periodic fees

#### General

4.2.1 R A *person* shown in column (1) of the table in *FEES* 4.2.11R as the relevant fee payer must pay each periodic fee applicable to it, calculated in

accordance with the provisions referred to in column (2) of that table, as adjusted by any relevant provision in this chapter

- (1) in full and without deduction (unless permitted or required by a provision in *FEES*); and
- (2) on or before the date given in column (3) of that table, unless *FEES* 4.2.10R applies.

- 4.2.2 G (1) A relevant fee payer will be required to pay a periodic fee for every year during which they have the status in column 1 of the table in *FEES* 4.2.11R (or in relation to collective investment schemes, for every year during which it is a regulated collective investment scheme) subject to any reductions or exemptions applicable under this chapter. If a *person* is the relevant fee payer for more than one status listed in column 1 of the table in *FEES* 4.2.11R (or in relation to collective investment schemes, the relevant fee payer for more than one regulated collective investment scheme) he will be required to pay a fee in relation to each.
- (2) A *recognised body* may also have obligations to pay fees to the *FSA* under other *rules* 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 (SI 1995/3272).

- 4.2.3 G The *FSA* will issue invoices to *firms* and other fee payers and expects to do so at least 30 *days* before the dates on which payments fall due under *FEES* 4.2.1R.

Method of payment

- 4.2.4 R (1) Unless (2) applies, a periodic fee must be paid using one of the payment methods specified in the table below and must include the additional amounts or apply the discounts set out in that table.

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/Mastercard only)	Additional 2% of sum paid

(2) The *FSA* does not specify a method of payment for a *recognised body* or a *designated professional body*.

- 4.2.5 G The *FSA* expects a *recognised body* or a *designated professional body* will

generally pay their respective fees by electronic credit transfer.

Modifications for persons becoming subject to periodic fees during the course of a financial year

- 4.2.6 R (1) Unless (2) applies, if the event, as described in column 4 of the table in *FEES* 4.2.11R, giving rise to, or giving rise to an increase in, the fee payable in *FEES* 4.2.1R, occurs on or after 1 July of the relevant financial year, the periodic fee required under *FEES* 4.2.1R is modified for:
- (a) *firms* (other than *ICVCs* and *UCITS qualifiers*) in accordance with *FEES* 4.2.7R and *FEES* 4.2.8R;
  - (b) for all other fee payers in column (1) of the table in *FEES* 4.2.11R, in accordance with the table below.

Table

Period in which event (in column 4 of the table in <i>FEES</i> 4.2.11R) occurs	Proportion of periodic fee 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%

- (2) For *recognised bodies*, if the recognition order is made during the course of the relevant financial year, the periodic fee required is set out in Column (4) of the table in *FEES* 4.2.11R.

- 4.2.7 R A *firm* (other than and *ICVC* or *UCITS qualifier*) which becomes authorised, or whose *permission* is extended, during the course of the financial year must pay a fee which is calculated by:

- (1) identifying each of the tariffs set out in Part 1 of *FEES* 4 Annex 2R for the relevant financial year that apply to the *firm* only after the *permission* is received or extended, but ignoring:
  - (a) the A.13 activity group if, before the variation, the A.12 activity group applied to the *firm's* business; or
  - (b) the A.12 activity group if, before the variation, the A.13 activity group applied to the *firm's* business;
- (2) calculating the amount for each of those tariffs which is the higher of:
  - (a) the minimum fee specified for the tariff; and

(b) the result of applying the tariff to the projected valuation, for its first year (as provided to the *FSA* in the course of the *firm's* application), of the business to which the tariff relates (or, where relevant, the number of *approved persons* immediately after the *permission* is given);

(3) adding together the amounts calculated under (2); and

(4) modifying the result as indicated by the table in *FEES* 4.2.6R.

4.2.8 R In relation to an *incoming EEA firm* or an *incoming Treaty firm* the modification provisions of *FEES* 4.2.7R 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*.

Fee payers ceasing to hold relevant status or reducing the scope of their permission after start of relevant period

4.2.9 G The *FSA* will not refund periodic fees if, after the start of the period to which they relate:

(1) a fee payer ceases to have the status set out in column (1) of the table in *FEES* 4.2.11R; or

(2) a *firm* reduces its *permission* so that it then falls out of the fee-block previously applied to it,

(but see *FEES* 2.3 (Relieving Provisions) and *FEES* 4.3.13R (Firms Applying to Cancel or Vary Permission Before Start of Period)).

Extension of Time

4.2.10 R A *person* need not pay a periodic fee on the date on which it is due under the relevant provision in *FEES* 4.2.1R, if:

(1) that date falls during a period during which circumstances of the sort set out in *GEN* 1.3.2R (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 it on or before the fifth *business day* after the end of that period; or

(2) unless *FEES* 4.3.6R(3) or *FEES* 4.3.6R(4) (Time and method for payment) applies, 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.

4.2.11 R Table of periodic fees

1	2	3	4
Fee payer	Fee payable	Due date	Events occurring

			during the period leading to modified periodic fee
Any <i>firm</i> (except an <i>ICVC</i> or a <i>UCITS</i> <i>qualifier</i> )	As specified in <i>FEES</i> 4.3.1R	(1) Unless (2) applies, on or before the relevant dates specified in <i>FEES</i> 4.3.6R  (2) If an event specified in column 4 occurs during the course of a financial year, 30 <i>days</i> after the occurrence of that event, or if later the dates specified in <i>FEES</i> 4.3.6R.	<i>Firm</i> receives <i>permission</i> ; or  <i>Firm</i> extends <i>permission</i>
Any <i>firm</i> which reports its <i>reportable transactions</i> to the <i>FSA</i> using the <i>FSA's</i> Direct Reporting System or <i>FSA's</i> Transaction Reporting System (see <i>SUP</i> 17)	<i>FEES</i> 4 Annex 3R	(1) For transaction charges, the first working day of each <i>month</i>  (2) For licence fees and enrolment charges, by the date set out on the relevant invoice	Not applicable
<i>Persons</i> who hold a certificate issued by the <i>FSA</i> under article 54 of the <i>Regulated Activities Order</i> (Advice given in newspapers etc.)	£1,000	(1) Unless (2) applies, on or before 30 April  (2) If an event in column 4 occurs during the course of a financial year, 30 <i>days</i> after the occurrence of that event	Certificate issued to <i>person</i> by <i>FSA</i> under Article 54 RAO
Any <i>manager</i> of an <i>authorised</i> unit trust;	In relation to each unit trust the amount specified in <i>FEES</i> 4 Annex 4R		<i>Authorisation order</i> is made in relation to the relevant <i>scheme</i>
Any <i>ACD</i> of an <i>ICVC</i> ; and	In relation to each <i>ICVC</i> the amount specified in <i>FEES</i> 4 Annex 4R		

<i>Persons 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;</i>	In relation to each <i>recognised scheme</i> the amount specified in <i>FEES 4 Annex 4R</i>		The relevant <i>scheme</i> becomes a recognised collective investment scheme
<i>Designated professional body</i>	<i>FEES 4 Annex 5R</i>	1 July or if payment is by instalments, by the due dates set out in <i>FEES 4 Annex 5R</i>	Not applicable
<i>UK recognised body</i>	<i>FEES 4 Annex 6R, part 1</i>	(1) Unless (2) applies, by the due dates set out in <i>FEES 4 Annex 6R, part 1</i>  (2) If the event in column 4 occurs during the course of a financial year, 30 days after the occurrence of that event	<i>Recognition order</i> is made. Modified periodic fee: (1) for a <i>UK recognised investment exchange</i> , £150,000; (2) for a <i>UK recognised clearing house</i> , £250,000.
<i>Overseas recognised body</i>	<i>FEES 4 Annex 6R, part 2</i>	(1), unless (2) applies, 1 July.  (2) If the event in column 4 occurs during the course of a financial year, 30 days after the occurrence of that event.	<i>Recognition order</i> is made. Modified periodic fee: (1) for an <i>overseas investment exchange</i> , £10,000; (2) for a <i>overseas clearing house</i> , £35,000.
<i>Listed issuers (in LR) of shares, depositary receipts and securitised derivatives (in LR).</i>	<i>FEES 4 Annex 7R</i>	Within 30 days of the date of the invoice	<i>Issuer (in LR)</i> becomes subject to <i>listing rules</i>

<i>Sponsors</i>	£10,000	Within 30 <i>days</i> of the date of the invoice	Approval of <i>sponsor</i>
All non-listed <i>issuers</i> (in <i>DR</i> ) of <i>shares</i> , depository receipts and securitised derivatives.	<i>FEES</i> 4 Annex 8R	Within 30 <i>days</i> of the date of the invoice	Non-listed <i>issuer</i> (in <i>DR</i> ) becomes subject to <i>disclosure rules</i>

#### 4.3 Periodic fee payable by *firms* (other than *ICVCs* and *UCITS qualifiers*)

##### 4.3.1 R The periodic fee payable by a *firm* (except an *ICVC* or a *UCITS qualifier*) is:

- (1) each periodic fee applicable to it calculated in accordance with *FEES* 4.3.3R, using information obtained in accordance with *FEES* 4.4; less
- (2) any deductions from the periodic fee specified in Part 2 of *FEES* 4 Annex 2R.

##### 4.3.2 G (1) 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). The fee-blocks and tariffs are identified in *FEES* 4 Annex 1R, while *FEES* 4 Annex 2R sets out the tariff rates for the relevant financial year.

- (2) *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 *FEES* 4.3.11G and *FEES* 4.3.12R).

##### 4.3.3 R Calculation of periodic fee

The periodic fee referred to in *FEES* 4.3.1R is (except in relation to the *Society*) calculated as follows:

- (1) identify each of the tariffs set out in Part 1 of *FEES* 4 Annex 2R 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, applying any minimum fee discount as may be applicable (see *FEES* 4.3.16R);
- (3) add together the amounts calculated under (2); and

- (4) apply any applicable payment charge or discount specified in *FEES* 4.2.4R, provided that:
  - (a) for payment by direct debit, successful collection of the amount due is made at the first attempt by the *FSA*; or
  - (b) for payment by credit transfer, the amount due is received by the *FSA* on or before the due date.

Modification for firms with new or extended permissions

- 4.3.4 G
- (1) 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* - see *FEES* 4.2.5R and *FEES* 4.2.6R
  - (2) 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 - see *FEES* 4.2.6R and *FEES* 4.2.7R.
  - (3) These provisions apply (with some changes) to *incoming EEA firms* and *incoming Treaty firms*.

Amount payable by the Society of Lloyd's

- 4.3.5 R
- The periodic fee referred to in *FEES* 4.3.1R in relation to the *Society* is specified against its name in *FEES* 4 Annex 2R.

Time of payment

- 4.3.6 R
- (1) If the *firm's* periodic fee for the previous financial year was at least £50,000, the *firm* must pay:
    - (a) an amount equal to 50% of the periodic fee payable for the previous year, by 30 April in the financial year to which the sum due under *FEES* 4.2.1R relates; and
    - (b) the balance of the periodic fee due for the current financial year by 1 September in the financial year to which that sum relates.
  - (2) If the *firm's* periodic fee for the previous financial year was less than £50,000, the *firm* must pay the periodic fee due in full by 1 July in the financial year to which that sum relates.
  - (3) If a *firm* has applied to cancel its *Part IV permission* in the way set out in SUP 6.4.5R (Cancellation of permission), then (1) and (2) do not apply but it must pay the total amount due when the application

is made.

- (4) If the *FSA* has exercised its *own-initiative powers* to cancel a *firm's Part IV permission* in the way set out in *ENF 5* (Cancellation of Part IV permission on the *FSA's* own initiative), then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.

#### Groups of firms

4.3.7 R A *firm* which is a member of a *group* may pay all of the amounts due from other *firms* in the same *group* under *FEES 4.2.1R*, if:

- (1) it notifies the *FSA* in writing of 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 from the *firm* under *FEES 4.2.1R*.

4.3.8 G A notification under *FEES 4.3.7R* (1) should be made in accordance with *SUP 15.7* (Form and method of notification).

4.3.9 G 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 *FEES 4.3.7R*, the *FSA* will apply the sum received among the *firms* which have been identified in the notification given under *FEES 4.3.7R* (1) in proportion to the amounts due from them. Each *firm* will remain responsible for the payment of the outstanding balance attributable to it.

4.3.10 G If a *firm* pays its fees through an agent outside the scope of *FEES 4.3.7R*, the *firm* is responsible for ensuring that the *FSA* is informed that the sum being paid is for that *firm's* periodic fees.

#### Incoming EEA firms and incoming Treaty firms

4.3.11 G 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.

4.3.12 R For an *incoming EEA firm* or an *incoming Treaty firm*, the calculation required by *FEES 4.3.3R* is modified as follows:

- (1) the tariffs set out in Part 1 of *FEES 4 Annex 2R* 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 3 of *FEES 4 Annex 2R*.

#### Firms Applying to Cancel or Vary Permission Before Start of Period

- 4.3.13 R (1) If:
- (a) a *firm* makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in *SUP* 6.3.15D(3) (Variation of permission) and 6.4.5D (Cancellation of permission); and
  - (b) the *firm* makes the application referred to in (a) before the start of the period to which the fee relates;

*FEES* 4.2.1R applies to the *firm* as if the relevant variation or cancellation of the *firm's permission* took effect immediately before the start of the period to which the fee relates.

- (2) But (1) does not apply if, due to the continuing nature of the business, the variation or cancellation is not to take effect within three *months* of the start of the period to which the fee relates.

- 4.3.14 G Where a *firm* has applied to cancel its *Part IV permission*, or the *FSA* has exercised its *own-initiative powers* to cancel a *firm's Part IV permission*, the due dates for payment of periodic fees are modified by *FEES* 4.3.6R(3) and *FEES* 4.3.6R(4) respectively.

#### Firms acquiring businesses from other firms

- 4.3.15 R (1) This *rule* applies if a *firm* (A) acquires all or a part of the business of another *firm* (B), whether by merger, acquisition of goodwill or otherwise, in relation to which a periodic fee would have been payable by B.
- (2) If, before the date on which A acquires the business, B had paid any periodic fee payable for the period in which the acquisition occurred, *FEES* 4.2.6R to *FEES* 4.2.7R do not apply to A in relation to the business acquired from B.
  - (3) If the acquisition occurs after the valuation date applicable to the business (as set out in *FEES* 4 Annex 1R) which A acquired from B, for the period following that in which the acquisition occurred, *FEES* 4.2.1R applies to A, in relation to that following period, as if the acquisition had occurred immediately before the relevant valuation date.

#### Minimum fee discount

- 4.3.16 R (1) A *firm* (other than a *firm* in (2) or a *credit union*) in more than one fee block must pay at least 50% of the total minimum fee payable in any fee block in which it is a minimum fee payer.
- (2) A *firm* (other than a *credit union*) liable to pay only minimum fees in

each fee block it is in must pay 100% of the highest total minimum fee payable within any one fee block and must pay at least 50% of the total minimum fee payable in any other fee blocks in which it is a minimum fee payer.

- (3) A *credit union* in more than one fee block must pay at least 50% of the total minimum fee payable in any fee block, other than fee block A.1, in which they are a minimum fee payer.

#### 4.4 Information on which Fees are calculated

- 4.4.1 R A *firm* (other than the *Society*) must notify to the *FSA* the value (as at the valuation date specified in Part 3 of *FEES* 4 Annex 1R) of each element of business on which the periodic fee payable by the *firm* is to be calculated.
- 4.4.2 R A *firm* (other than the *Society*) must send to the *FSA* in writing the information required under *FEES* 4.4.1R as soon as reasonably practicable, and in any event within two *months*, after the date specified as the valuation date in Part 3 of *FEES* 4 Annex 1R.
- 4.4.3 R 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.
- 4.4.4 G In most cases a *firm* will provide the information required by this section as part of its compliance with the 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)).
- 4.4.5 R For an *incoming EEA firm* or an *incoming Treaty firm*, the information required under *FEES* 4.4 is limited to the *regulated activities* of the *firm* which are carried on in the *United Kingdom*.

### FEES 4 ANNEXES

#### FEES 4 Annex 1R

Activity groups, tariff bases and valuation dates applicable

[Insert SUP 20 Ann 1R as amended in accordance with Annex F to this instrument]

#### FEES 4 Annex 2R

Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2005 to 31 March 2006

[Insert SUP 20 Ann 2R as amended in accordance with Annex F to this instrument]

#### FEES 4 Annex 3R

Transaction reporting fees

[Insert SUP 20 Ann 3R as amended in accordance with Annex F to this instrument]

#### FEES 4 Annex 4R

Periodic fees in relation to collective investment schemes payable for the period 1 April 2005 to 31 March 2006

[Insert CIS 18 Annex 1R as amended in accordance with Annex I to this instrument]

#### FEES 4 Annex 5R

Periodic fees for designated professional bodies payable in relation to the period 1 April 2005 to 31 March 2006

[Insert PROF Annex 1R as amended in accordance with Annex L to this instrument]

#### FEES 4 Annex 6R

Periodic fees for recognised investment exchanges and recognised clearing houses payable in relation to the period 1 April 2005 to 31 March 2006

[Insert REC Annex 1R as amended in accordance with Annex M to this instrument]

#### FEES 4 Annex 7R

Periodic fees in relation to the Listing Rules for the period 1 April 2005 to 31 March 2006

[Insert LR App 2.1.1R as amended in accordance with Annex N to this instrument]

#### FEES 4 Annex 8R

Periodic fees in relation to the disclosure rules for the period 1 April 2005 to 31 March 2006

[Insert DR 1 as amended in accordance with Annex P to this instrument]

#### FEES 5 (Financial Ombudsman Service Funding)

##### 5.1 Application and Purpose

###### Application

##### 5.1.1 R 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 G The relevant provisions of *FEES 5* are applied to *VJ participants* by the *standard terms* (see *DISP 4*).

References in this chapter to "*firms*" are to be construed, where relevant, as including:

- 5.1.3 G (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 of *DISP*); 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

- 5.1.4 R A *firm* which is exempt under *DISP 1.1.7R* is also exempt from *FEES 5.1* to *FEES 5.7*.
- 5.1.5 R A *firm* which ceases to be exempt under *FEES 5.1.4R* is to be treated, for the purposes of its contribution to the *general levy*, as a *firm* to which *FEES 5.8* applies.
- 5.1.6 R A *firm* which becomes exempt under *FEES 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 *FEES 5.9* applies.

#### Purpose

- 5.1.7 G The purpose of this chapter is to set out the requirements on *firms* to pay annual fees (through a *general levy* and *supplementary levy* invoiced and collected by the *FSA* on behalf of *FOS Ltd*) and case fees (invoiced and collected directly by *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.

## 5.2 Introduction

- 5.2.1 G 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*.

- 5.2.2 G 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) the *Financial Ombudsman Service*; and
  - (2) its operation in relation to the *Compulsory Jurisdiction*.
- 5.2.3 G 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*.
- 5.2.4 G 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.
- 5.2.5 G 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*.
- 5.2.6 G The relevant provisions of the rules in *FEES 5* and *FEES 2* 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*).
- 5.2.7 G 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 (*FEES 5 Annex 1R*). A new annex will be prepared and consulted on for each *financial year*.
- 5.3 The general levy
- 5.3.1 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*.
- 5.3.2 G For the purposes of the *general levy*, a *firm* will fall into one or more of the *industry blocks* set out in *FEES 5 Annex 1R* depending on the business activities which it conducts.
- 5.3.3 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 *FEES 5.5.3R* to *FEES 5.5.5G*).

- 5.3.4 G Part 2 of *FEES 5 Annex 1R* sets out the fee tariffs for each *industry block*.
- 5.3.5 G The *FSA* will specify a *minimum levy* for *firms* in each *industry block*.
- 5.3.6 R A *firm* must pay to the *FSA* a *general levy* towards the costs of operating the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*.
- 5.3.7 G Under the *standard terms*, *VJ participants* will be required to pay to *FOS Ltd* an amount calculated on a similar basis towards the costs of operating the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. *FOS Ltd* will be responsible for invoicing and collecting this amount.
- 5.3.8 R A *firm's general levy* is calculated as follows:
- (1) identify each of the tariff bases set out in Part 2 of *FEES 5 Annex 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).
- 5.3.9 R For the purpose of *FEES 5.3.6R* and *FEES 5.3.8R*, 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*.
- 5.3.10 R For the purpose of *FEES 5.3*, references to *relevant business* for a *firm* which falls in *industry block 16* or *17* and which so elects under Part 2 of *FEES 5 Annex 1R*, are references to the *firm's* total amount of annual income reported in accordance with Part 2 of *FEES 4*.

#### 5.4 Information requirement

- 5.4.1 R (1) A *firm* must provide the *FSA* by the end of February each year (or, if the *firm* has become subject to the *Financial Ombudsman Service* part way through the *financial year*, by the date requested by the *FSA*) 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 *FEES 5 Annex 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 *FEES 5.4.1R*, it must provide the best estimate of the amount of *relevant business* that it conducted.

- (4) For the purpose of *FEES* 5.4.1R, references to *relevant business* for a *firm* which falls in *industry block* 16 or 17 and which so elects under part 2 of *FEES* 5 Annex 1R, are references to the *firm's* total amount of annual income reported in accordance with Part 2 of *FEES* 4 Annex 1R.
- (5) If a *firm* does not submit a complete statement by the date on which it is due in accordance with this *rule* and any prescribed submission procedures:
- (a) the *firm* must pay an administrative fee of £250 (but not if it is already subject to an administrative fee under *FEES* 4 Annex 2R, Part 1 or *FEES* 6.5.16R for the same *financial year*); and
  - (b) the *general levy* and any supplemental levy will be calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10 (or, if a *firm* has become subject to the *Financial Ombudsman Service* part way through the *financial year*, on the basis of the information provided to *FSA* for the purposes of *FEES* 4.4.2R) or on any other reasonable basis, making such adjustments as seem appropriate in subsequent levies once the true figures are known.
- 5.4.2 G Failure to submit a statement in accordance with the *rules* in this chapter may also lead to the imposition of a financial penalty and other disciplinary sanctions (see *ENF* 13.5).
- 5.4.3 G *SUP* 16.3 (General provisions on reporting) contains further *rules* on the method of submission of reports under *FEES* 5.4.1R.
- 5.4.4 G A *firm* should not provide a statement of *relevant business* if it deals only with *eligible complainants* who are not private individuals. *Relevant business* is defined in the *Glossary* as business done with private individuals only. So *FEES* 5.4.1R does not apply in relation to business done with other types of *eligible complainant* described in *DISP* 2.4.3R(1)(b), (c) and (d); the funding of *FOS Ltd* in relation to that business is by special case fee only (see *FEES* 5.5.6R).
- 5.5 Case fees
- Standard case fee
- 5.5.1 R A *firm* must pay to *FOS Ltd* the standard case fee specified in part 3 of *FEES* 5 Annex 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 *FEES* 5.5.6R to

*FEES 5.5.12R.*

- 5.5.2 G 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*.
- 5.5.3 R 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*.
- 5.5.4 R Any *firm* falling into either *industry block 13* or *industry block 15* in part 2 of *FEES 5 Annex 1R* is not required to pay the standard case fee in respect of *chargeable cases* relating to those *industry blocks*.
- 5.5.5 G 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 *FEES 5.5.3R* in respect of small *credit unions*.

Special case fees: complaints from small businesses

- 5.5.6 R A *firm* must pay to *FOS Ltd* a special case fee, as specified in part 3 of *FEES 5 Annex 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

- 5.5.7 R A *firm* which ceases to be *authorised* must pay to *FOS Ltd* a special case fee, as specified in part 3 of *FEES 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

- 5.5.8 R 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 *FEES 5 Annex 1R* in respect of each *chargeable case* relating to that *unauthorised person* closed by the *Financial Ombudsman Service*.
- 5.5.9 G 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

- 5.5.10 R A *firm* which was a *member* of *PIA* before *commencement* must pay to *FOS Ltd* a special case fee, as specified in *FEES 5 Annex 1R*, in respect of each *chargeable case* relating to that firm received by the *Financial Ombudsman Service* after *commencement* and before 31 March 2002.
- 5.5.11 R *FEES 5.5.10R* 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.
- 5.5.12 R 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 *FEES 5 Annex 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.
- 5.5.13 G The relevant provisions of *FEES 5.5* will be applied to *VJ participants* through the *standard terms*.
- 5.5.14 G 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 *FEES 5.5.11R*, be required to pay the special case fee specified by *FEES 5.5.10R* 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.

#### Case fee exemption

- 5.5.15 R Notwithstanding the above, a *firm* will only be liable for, and *FOS* will only invoice for, the standard case fee or, as the case may be, the special case fee, in respect of the third and subsequent *chargeable cases* in any *financial year*.

#### 5.6 The supplementary levy

- 5.6.1 G 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 *FEES 5 Annex 1R*).
- 5.6.2 G The *establishment costs* will be recovered via the *supplementary levy* over the first three full *financial years* of the *Financial Ombudsman Service's* operation.

- 5.6.3 G The amount of *establishment costs* to be raised each year through the *supplementary levy* will be specified in part 2 of *FEES 5 Annex 1R*.
- 5.6.4 G The *supplementary levy* will be identified separately from the *general levy* for the purposes of invoicing *firms* and *VJ participants*.
- 5.6.5 R A *firm* must pay to the *FSA* a *supplementary levy* towards the costs of establishing the *Financial Ombudsman Service*.
- 5.6.6 R A *firm's supplementary levy* is a sum payable in accordance with the fee tariffs set out in part 2 of *FEES 5 Ann 1R* and will be calculated by following the steps set out in *FEES 5.3.8R*.
- 5.6.7 G 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*.

## 5.7 Payment

- 5.7.1 R A *firm* must pay annually to the *FSA* the *general levy* and any *supplementary levy* to which it is subject, on or before the later of 1 April and 30 calendar *days* after the date when the invoice is issued by the *FSA*.
- 5.7.2 R A *firm* must pay to *FOS Ltd* any standard case fee or special case fee which it is liable to pay under *FEES 5.5.1R*, *FEES 5.5.6R*, *FEES 5.5.7R*, *FEES 5.5.8R*, *FEES 5.5.10R*, or *FEES 5.5.12R*, 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*.
- 5.7.3 R 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*.
- 5.7.4 R A *firm* liable to pay fees under *FEES 5.7.1R* must do so using one of the methods set out in *FEES 4.2.4R* save that no additional amount or discount is applicable.

## 5.8 Joining the Financial Ombudsman Service

- 5.8.1 R 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 *FEES 4.2.6R*, as if that table applied to the quarter in which a *firm* becomes subject to the *Financial Ombudsman Service*.

## 5.9 Leaving the Financial Ombudsman Service

- 5.9.1 R 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 *FEES 5.5.7R* in respect of any other *chargeable cases* against it closed by the *Financial Ombudsman Service*.
- 5.9.2 G *Firms* which cease to be *authorised* and therefore subject to the *Compulsory Jurisdiction* part way through the year will not receive a refund of their *general levy* (or *supplementary levy*) except in exceptional circumstances. *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*.

## FEES 5 Ann 1R: Annual Fees Payable in Relation to 2005/06

[Insert DISP 5 Ann 1R as amended in accordance with Annex F to this instrument]

## FEES 6 (Financial Services Compensation Scheme Funding)

### Application

- 6.1.1 R This chapter applies to:
- (1) every *participant firm*;
  - (2) the *FSCS*; and
  - (3) the *Society*.
- 6.1.2 G (1) *Firms* which are not *participant firms* (such as certain types of *incoming EEA firms*, service companies and *ICVCs*) are not required to contribute towards the funding of the *compensation scheme*.

- G (2) Although a *member* is a *participant firm* for the purposes of most provisions of *COMP*, a *member* is excluded from the definition of *participant firm* for the purposes of FEES 6 (see definition of *participant firm* in *Glossary*). This is because the fees levied in relation to the carrying on of *insurance market activities* by *members* will be imposed on *Society* rather than individually on each *member* (see *FEES* 6.3.24R).

#### Purpose

- 6.1.3 G The purpose of this chapter is to set out the requirements on *participant firms* to pay levies imposed by the *FSCS* to provide funding for its functions.

#### General structure

- 6.1.4 G Section 213(3)(b) of the *Act* requires the *FSA* to make *rules* to enable the *FSCS* to impose levies on *authorised persons* in order to meet its expenses. These expenses include in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks.
- 6.1.5 G The *FSCS* may impose two types of levy: a *management expenses levy*, and a *compensation costs levy*. In the first three full years of the operation of the *compensation scheme*, the *FSCS* may impose an *establishment costs levy* as part of a *management expenses levy*. The *FSCS* has discretion as to the timing of the levies imposed.
- 6.1.6 G In calculating a *compensation costs levy*, the *FSCS* may include anticipated *compensation costs* for defaults expected to be determined in the 12-month period following the date of the levy. The total of all *management expenses levies* attributable to a financial year will be restricted to the amount set out on an annual basis in *FEES* 6 Ann 1R.
- 6.1.7 G In order to allocate a share of the amount to be funded by an individual *participant firm*, the funding arrangements are split into five *sub-schemes*: the accepting deposits *sub-scheme*; the insurance business *sub-scheme*; the designated investment business *sub-scheme*; the mortgage advice and arranging *sub-scheme* and the general insurance mediation *sub-scheme*. The business carried on by a *participant firm* determines into which *sub-scheme*, or *sub-schemes*, it falls.
- 6.1.8 G Within each *sub-scheme* there are one or more *contribution groups*. These relate to different types of activity carried on by *participant firms* within each *sub-scheme*. Within a *sub-scheme*, individual *participant firms* are allocated for funding purposes to one or more *contribution groups*, depending on their business activities. This meets a requirement of section 213(5) of the *Act* that the *FSA*, in making rules to enable the *FSCS* to impose levies, must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of *authorised person* reflects, so far as practicable, the amount of claims made, or likely to be made, in respect of that class of person.

## The management expenses levy

- 6.1.9 G Section 223 of the *Act* (Management expenses) prevents the *FSCS* from recovering, through a levy, any *management expenses* attributable to a particular period in excess of the limit set in *COMP* as applicable to that period. 'Management expenses' are defined in section 223(3) to mean expenses incurred or expected to be incurred by the *FSCS* in connection with its functions under the *Act*, except:
- (1) expenses incurred in paying compensation; and
  - (2) expenses incurred as a result of the *FSCS* making the arrangements to secure continuity of insurance set out in *COMP* 3.3.1R and *COMP* 3.3.2R or taking the measures set out in *COMP* 3.3.3R and *COMP* 3.3.4R when a *relevant person* is an *insurer* in financial difficulties.
- 6.1.10 G A *management expenses levy* under *COMP* may consist of three elements. The first is a *base costs levy*, for the base costs of running the *compensation scheme* in a financial year, that is, costs which are not dependent upon the level of activity of the *compensation scheme* and which therefore are not referable to any specific default. Included in this category are items such as the salary of the members of the board of the *FSCS*, the costs of the premises which the *FSCS* occupies, and its audit fees. The amount that each *participant firm* pays towards a *base costs levy* is calculated by reference to the *regulatory costs* paid by the *firm*. All *participant firms* are liable to contribute towards a *base costs levy*.
- 6.1.11 G The second element of a *management expenses levy* is a *specific costs levy* for the "specific costs" of running the *compensation scheme* in a financial year. These costs depend on the number of claims and types of default, and include the salaries of the staff of the *FSCS* and legal and other professional fees paid in respect of particular defaults. The specific costs are allocated to the *contribution group* or groups of which the *relevant person in default* was a member, or which is responsible for those costs under *COMP*, on the basis of the *protected claims* against that *person*. The *FSCS* may include in a *specific costs levy* the specific costs that the *FSCS* expects to incur (including in respect of defaults not yet declared at the date of the levy) during the financial year of the *compensation scheme* to which the levy relates. The amount that each *participant firm* pays towards the *specific costs levy* is calculated by reference to the amount of business conducted by the *firm* in each of the *contribution groups* to which the *FSCS* has allocated specific costs. Each *contribution group* has a separate "tariff base" for this purpose, set out in *FEES* 6.5.8R to *FEES* 6.5.11R. *Participant firms* may be exempt from contributing to the *specific costs levy*.
- 6.1.12 G The third element of a *management expenses levy* is the costs of establishing the *FSCS*. The *FSCS* may impose an *establishment costs levy* only until the end of the third full financial year of operation of the *compensation scheme*. The amount that each *participant firm* pays towards the *establishment costs levy* is calculated on the same basis as the *base costs levy*, and all *participant firms* are liable to contribute.

- 6.1.13 G The *FSA* intends to consult in January each year on the amount which it will set as the limit on the *management expenses* attributable to the forthcoming financial year of the *FSCS*.

#### The compensation costs levy

- 6.1.14 G The *compensation costs levy* is made up of the *compensation costs* which the *FSCS* has incurred and has not yet recovered from *participant firms* (less any recoveries it has made using the rights that have been assigned to it), together with those *compensation costs* it expects to incur (including in respect of defaults yet to be declared) over the 12 *months* following the date of the levy.
- 6.1.15 G *Compensation costs* are principally the costs incurred in paying compensation. Costs incurred in securing continuity of long-term insurance in safeguarding *eligible claimants* when insurers are in financial difficulties, and in making payments or giving indemnities under *COMP* 11.2.3R are also treated as *compensation costs*. For funding purposes, these costs are allocated by the *FSCS*, and met by *participant firms*, in the same way as *specific costs*: see *FEES* 6.5.6R
- 6.1.16 G If a *participant firm* is a member of more than one *contribution group*, the total *compensation costs levy* and *specific costs levy* for that *firm* will be the aggregate of the individual levies calculated for the firm in respect of each of the *contribution groups*.

#### Incoming EEA firms

- 6.1.17 G *Incoming EEA firms* which obtain cover or 'top up' under the provisions of *COMP* 14 are *firms* whose *Home State* scheme provides no or limited compensation cover in the event that they are determined to be in default. Under *FEES* 6.6, the *FSCS* is required to consider whether *incoming EEA firms* should receive a discount on the amount that they would otherwise pay as their share of the levy, to take account of the availability of their *Home State* cover. The amount of any discount is recoverable from the other members of the *incoming EEA firm's contribution group*.

#### 6.2 Exemption

- 6.2.1 R (1) A *participant firm* which does not conduct business that could give rise to a *protected claim* by an *eligible claimant* and has no reasonable likelihood of doing so is exempt from a *specific costs levy*, or a *compensation costs levy*, or both, provided that:
- (a) it has notified the *FSCS* in writing that those conditions apply; and
  - (b) the conditions in fact continue to apply.
- (2) The exemption takes effect from the date on which the notice was received by the *FSCS*, subject to *FEES* 6.2.6R.

- 6.2.2 R *FEES* 6.2.1R does not apply to a *participant firm* that may be subject to a claim under *COMP* 3.2.4R.
- 6.2.3 G A *participant firm* to which *FEES* 6.2.2R applies must report *annual eligible income* in accordance with *FEES* 6.5.13R. Such a *participant firm* may take advantage of the option to report its annual income attributable to business conducted with or on behalf of eligible claimants.
- 6.2.4 R A *participant firm* which is exempt under *FEES* 6.2.1R must notify the *FSCS* in writing as soon as reasonably practicable if the conditions in *FEES* 6.2.1R no longer apply.
- 6.2.5 G A *participant firm* to which the conditions in *FEES* 6.2.1R no longer apply will then become subject to *FEES* 6.3.
- 6.2.6 R If a *participant firm* ceases to conduct business that could give rise to a *protected claim* by an *eligible claimant* and notifies the *FSCS* of this under *FEES* 6.2.1R (1), it will be treated as a *participant firm* to which *FEES* 6.7.6R applies until the end of the financial year of the compensation scheme in which the notice was given.
- 6.2.7 G The financial year of the *compensation scheme* is the twelve months ending on 31 March.

### 6.3 The *FSCS*'s power to impose levies

#### General limits on levies

- 6.3.1 R The *FSCS* may at any time impose a *management expenses levy* or a *compensation costs levy*, provided that the *FSCS* has reasonable grounds for believing that the funds available to it to meet relevant expenses are, or will be, insufficient, taking into account:
- (1) in the case of a *management expenses levy*, the level of the *FSCS*'s anticipated expenditure in respect of those expenses in the financial year of the *compensation scheme* in relation to which the levy is imposed; and
  - (2) in the case of a *compensation costs levy*, the level of the *FSCS*'s anticipated expenditure in respect of *compensation costs* in the 12 *months* following the levy.
- 6.3.2 G The calculation of levies will also take into account previous levies, where funds raised in anticipation of meeting liabilities prove either more or less than the amount actually required.
- 6.3.3 G The *FSCS* may impose one or more levies in a financial year to meet either its *management expenses* or its *compensation costs*. The *FSCS* may also impose interim levies, as part of its overall levy commitment. This flexibility allows the *FSCS* to phase its financing over the course of a financial year and thus avoid collecting levies from firms before the money is actually needed. The *FSCS* has committed itself in the Memorandum of

Understanding with the *FSA* (the text of which can be found on the *FSA* website [www.fsa.gov.uk](http://www.fsa.gov.uk)) to publish regularly an indicative timetable for its levy procedures

- 6.3.4 G The discretion over levying in *COMP* also gives the *FSCS*, if it thinks this appropriate, the ability to use third parties as its agents in raising and collecting the levies.

Limits on compensation costs levies on sub-schemes

- 6.3.5 R The *FSCS* must not require a *participant firm* in the accepting deposits *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* to the extent that:
- (1) the share in question; plus
  - (2) all previous amounts paid by the *firm* either as its share of levies allocated to that *sub-scheme*, or under the Deposit Protection Scheme (deducting from those amounts any amount refunded under *FEES* 6.3.20R to *FEES* 6.3.21R or by the Deposit Protection Scheme);

amounts to more than 0.3% of the firm's *protected deposits*.

- 6.3.6 R The *FSCS* must not require a *participant firm* in the insurance business *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* in any financial year of the *compensation scheme*, to the extent that the share in question, together with all previous amounts paid by the *firm* as its share of *compensation costs levies* allocated to that *sub-scheme* in that financial year, amounts to more than 0.8% of the *participant firm's* relevant net premium income.

- 6.3.7 R The maximum amount of *compensation costs* for which the *FSCS* can levy the designated investment business *sub-scheme* in any one financial year of the *compensation scheme* is limited to £400 million.

- 6.3.8 R The *FSCS* must not require a *participant firm* in the mortgage advice and arranging *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* in any financial year of the *compensation scheme*, to the extent that:

- (1) the share in question; plus
- (2) all previous amounts paid by the *firm* as its share of compensation costs levies allocated to that *sub-scheme* in that financial year;

amounts to more than 0.8% of the *participant firm's* annual eligible income.

- 6.3.9 R The *FSCS* must not require a *participant firm* in the general insurance mediation *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* in any financial year of the *compensation scheme*, to the extent that:

- (1) the share in question; plus
- (2) all previous amounts paid by the *firm* as its share of the *compensation costs levy* allocated to that *sub-scheme* in that financial year;

amounts to more than 0.8% of the *participant firm's annual eligible income*.

#### Levy for compensation costs paid in error

- 6.3.10 R The *FSCS* may include in a *compensation costs levy* the costs of compensation paid by the *FSCS* in error, provided that the payment was made in good faith.

#### Management of funds

- 6.3.11 R The *FSCS* must hold any amount collected from a *specific costs levy* or *compensation costs levy* to the credit of the *sub-schemes* and relevant *contribution groups*, in accordance with the allocation established under *FEES* 6.4.6R and *FEES* 6.5.2R.
- 6.3.12 R Any funds received by the *FSCS* by way of levy or otherwise for the purposes of the *compensation scheme* are to be managed as the *FSCS* considers appropriate, and in doing this the *FSCS* must act prudently.
- 6.3.13 R Interest earned by the *FSCS* in the management of funds held to the credit of a *contribution group* must be credited to that *contribution group*, and must be set off against the *management expenses* allocated to that *contribution group*.
- 6.3.14 R The *FSCS* must keep accounts which show:
- (1) the funds held to the credit of each *sub-scheme* and relevant *contribution group*; and
  - (2) the liabilities of that *sub-scheme* and relevant *contribution group*.
- 6.3.15 R The *FSCS* may use the money collected from *firms* within one *sub-scheme* to pay *compensation costs* in respect of any *contribution group* within that *sub-scheme*, so long as it ensures that this is done without prejudice to the *participant firms* from whom the money has been collected.
- 6.3.16 G *FEES* 6.3.15R means that, for example:
- (1) when crediting interest under *FEES* 6.3.13R, the *FSCS* should regard any money collected from one *contribution group* which has been used to pay the *compensation costs* of another *contribution group* within the same *sub-scheme* as standing to the credit of the first *contribution group*; and
  - (2) the *FSCS* should not raise a levy under *FEES* 6.3.1R on a *contribution group* solely because, as a result of the *FSCS's* action under *FEES* 6.3.15R, there appear to be insufficient funds available

- to the credit of the *contribution group* to meet its expenses.
- 6.3.17 R (1) The *FSCS* may use any money held to the credit of one *sub-scheme* (the creditor *sub-scheme*) to pay compensation costs in respect of another *sub-scheme* (the debtor *sub-scheme*) if the *FSCS* has reasonable grounds to believe that this would be more economical than borrowing funds from a third party or raising a levy.
- (2) Where the *FSCS* acts in accordance with (1), it must ensure that:
- (a) the creditor *sub-scheme* is reimbursed by the debtor *sub-scheme* as soon as possible;
  - (b) the debtor *sub-scheme* pays interest at a rate equivalent to the Bank of England's repo rate from time to time in force; and
  - (c) the amount lent by the creditor *sub-scheme* to the debtor *sub-scheme* is taken into account by the *FSCS* when considering whether to impose a compensation costs levy on the creditor sub-scheme under *FEES* 6.3.1R.
- 6.3.18 R (1) The *FSCS* may use any money held to the credit of any *sub-scheme* to repay borrowing from a third party incurred to pay *establishment costs*, if in the opinion of the *FSCS* this would be to the benefit of *participant firms*.
- (2) Where the *FSCS* acts in accordance with (1), it must ensure that:
- (a) future *establishment costs levies* are used first to repay all amounts borrowed from the appropriate *sub-schemes*;
  - (b) interest is paid to the appropriate *sub-schemes* at a rate equivalent to the Bank of England's repo rate from time to time in force; and
  - (c) the amount lent by any *sub-scheme* is taken into account by the *FSCS* when considering whether to impose a levy under *FEES* 6.3.1R.
- 6.3.19 R Unless *FEES* 6.3.20R applies, any recoveries made by the *FSCS* in relation to *protected claims* must be credited to the *contribution groups* to which the related *compensation costs* were allocated.
- 6.3.20 R If the *FSCS* makes recoveries in relation to *protected claims* where the related *compensation costs* were allocated to the accepting deposits *sub-scheme*, or in relation to compensation paid out of a special contribution under the Deposit Protection Scheme, and if the *FSCS* refunds the recoveries under *FEES* 6.3.21R, it must ensure that, as far as possible, the recoveries are refunded to the *firms* that contributed to the relevant *compensation costs levy* or special contribution (whether or not the *firms* are *participant firms* at the time that the recoveries are made).

- 6.3.21 R If the *FSCS* has more funds to the credit of a *contribution group* than the *FSCS* believes will be required to meet levies on that *contribution group* for the next 12 months, it may refund the surplus to members or former members of the *contribution group* on any reasonable basis.

Adjustments to calculation of levy shares

- 6.3.22 R The *FSCS* may adjust the calculation of a *participant firm's* share of any levy to take proper account of:
- (1) any excess, not already taken into account, between previous levies of that type imposed in relation to previous periods and the relevant costs actually incurred in that period; or
  - (2) *participant firms* that are exempt from the levy under *FEES* 6.2; or
  - (3) amounts that the *FSCS* has not been able to recover from *participant firms* as a result of *FEES* 6.3.5R, *FEES* 6.3.6R, *FEES* 6.3.8R or *FEES* 6.3.9R; or
  - (4) amounts that the *FSCS* has not been able to recover from *participant firms* after having taken reasonable steps; or
  - (5) *FEES* 6.4.8R (New *participant firms*), *FEES* 6.3.23R (Remission of levy or additional administrative fee) or *FEES* 6.6 (Incoming EEA firms); or
  - (6) anything else that the *FSCS* believes on reasonable grounds should be taken into account.

Remission of levy or additional administrative fee

- 6.3.23 R If a *participant firm's* share of a levy or an additional administrative fee under *FEES* 6.7.4R would be so small that, in the opinion of the *FSCS*, the costs of collection would be disproportionate to the amount payable, the *FSCS* may treat the *participant firm* as if its share of the levy or additional administrative fee amounted to zero.

Levies on the Society of Lloyd's

- 6.3.24 R The *FSCS* may impose a levy on the *Society* to be calculated as the aggregate of the levies that would be imposed on each *member* if this chapter applied to *members*, as follows:
- (1) a share of any unexpired portion of an *establishment costs levy*;
  - (2) a proportionate share of a *base costs levy* in respect of the *compensation scheme's* costs for the period from 1 January 2004 to the end of the *compensation scheme's* financial year and a share of such levies for all subsequent financial years; and

- (3) a *specific costs levy* and a *compensation costs levy* in respect of costs arising out of a *relevant person being in default*, arrangements made under *COMP 3.3.1R* or measures taken under *COMP 3.3.3R* where:
  - (a) the default occurs or the circumstances giving rise to the arrangements being made or the measures being taken, as the case may be, occur; and
  - (b) the *protected contracts of insurance* in connection with which the costs arise were entered into;

on or after 1 January 2004.

#### 6.4 Management expenses

##### Obligation on participant firm to pay

- 6.4.1 R A *participant firm* must pay to the *FSCS* a share of each *management expenses levy*.

##### Limit on management expenses

- 6.4.2 R The total of all *management expenses levies* attributable to a particular period of the *compensation scheme* may not exceed the limit applicable to that period set out in *FEES 6 Ann 1R*.

##### Participant firm's share

- 6.4.3 R A *participant firm's* share of a *management expenses levy* consists of one or more of: (1) a share of a *base costs levy*; and (2) a share of a *specific costs levy*; and (3) a share of an *establishment costs levy*.
- 6.4.4 R The *FSCS* must ensure that each *participant firm's* share of a *management expenses levy* separately identifies the *firm's* share of the *base costs levy*, *specific costs levy* and *establishment costs levy*.

##### Base costs levy

- 6.4.5 R Unless *FEES 6.3.22R* applies, the *FSCS* must calculate a *participant firm's* share of a *base costs levy* by:
  - (1) identifying the *base costs* which the *FSCS* has incurred, or expects to incur, in the relevant financial year of the *compensation scheme*, but has not yet levied;
  - (2) calculating the amount of the *participant firm's* regulatory costs as a proportion of the total *regulatory costs* relating to all *participant firms* for the relevant financial year; and
  - (3) applying the proportion calculated in (2) to the figure in (1).

##### Specific costs levy

- 6.4.6 R (1) The *FSCS* must (subject to (2)) allocate any *specific costs levy* amongst the *sub-schemes* and relevant *contribution groups* 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 *FEES* 6.5.17R (*IFA pensions review compensation levies*).
- 6.4.7 R The *FSCS* must calculate a *participant firm's* share of a *specific costs levy* (subject to *FEES* 6.3.22R (*Adjustments to calculation of levy shares*) and *FEES* 6.5.17R (*IFA pensions review compensation levies*)) by:
- (1) identifying each of the *sub-schemes* and relevant *contribution groups* within those *sub-schemes* to which the *participant firm* belongs, using the statement of business most recently supplied under *FEES* 6.5.13R;
- (2) identifying the *management expenses* other than *base costs* or *establishment costs* which the *FSCS* has incurred, or expects to incur, in the relevant financial year of the *compensation scheme*, allocated to the *contribution groups* identified in (1), but not yet levied;
- (3) calculating, in relation to each relevant *contribution group*, the *participant firm's* tariff base as a proportion of the total tariff base of all *participant firms* in the *contribution group*, using the statement of business most recently supplied under *FEES* 6.5.13R;
- (4) applying the proportion calculated in (3) to the figure in (2); and
- (5) if more than one *sub-scheme* or *contribution group* is relevant, adding together the figure in (4) for each *contribution group*.

#### New participant firms

- 6.4.8 R A *firm* which becomes a *participant firm* part way through a financial year of the *compensation scheme* will not be liable to pay a share of a *specific costs levy* made in that year.
- 6.4.9 G New *participant firms* will normally have relevant tariff bases of nil as at 31 December in the financial year preceding that in which they join, so that they will not be required to pay a share of a *specific costs levy* (or a *compensation costs levy* because of *FEES* 6.5.6R). *FEES* 6.4.8R means that the *FSCS* does not have to estimate the tariff base of a new *participant firm*.
- 6.4.10 G Since a *firm* that becomes a *participant firm* in the course of a financial year of the *compensation scheme* will already be obtaining a discount in relation to the *base costs levy* and the *establishment costs levy* through the modified fee provisions of *FEES* 4.2.6R, no *rule* is necessary in *COMP* for discounts on the *base costs levy* or the *establishment costs levy*.

## Establishment costs levy

6.4.11 R The *FSCS* must calculate a *participant firm's* share of an *establishment costs levy* on the same basis as a *base costs levy* under *FEES* 6.4.5R.

6.4.12 R The *FSCS* may not impose an *establishment costs levy* after the end of the third full financial year of operation of the *compensation scheme*.

## 6.5 Compensation costs

6.5.1 R The *compensation costs levy* is made up of *compensation costs* incurred by the *FSCS*, together with any *compensation costs* which can reasonably be anticipated as arising in the 12 *months* following the levy date, and which in each case have not already been subject to a levy.

6.5.2 R (1) The *FSCS* must (subject to (2)) allocate any *compensation costs levy* to the individual *sub-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 *FEES* 6.5.17R (*IFA pensions review compensation levies*).

6.5.3 R If a *participant firm* which is *in default* has carried on a *regulated activity* other than in accordance with a *permission*, the *FSCS* must allocate any *compensation costs* or *specific costs* arising out of that activity to the relevant *contribution group* which covers that activity.

6.5.4 R If the relevant *person* in default is an *appointed representative*, the *FSCS* must allocate any *compensation costs* or *specific costs* arising out of a *regulated activity* for which his *principal* has not accepted responsibility to the relevant *contribution group* for that activity.

6.5.5 R A *participant firm* must pay to the *FSCS* a share of each *compensation costs levy* unless either the *firm* is exempt under *FEES* 6.2 (*Exemption*) or the *FSCS* has chosen to exercise its discretion under *FEES* 6.3.23R in respect of that *firm*.

6.5.6 R The *FSCS* must calculate a *participant firm's* share of a *compensation costs levy* (subject to *FEES* 6.5.17R (*IFA pensions review compensation levies*)) on the same basis as a *specific costs levy* under *FEES* 6.4.6R, *FEES* 6.4.7R and *FEES* 6.4.8R.

6.5.7 R 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 *FEES* 6.5.8R;

- (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 and tariff bases set out in part 1 and part 2 of *FEES* 4 Ann 1 which are identified in *FEES* 6.5.9R;
- (3) the investment business *sub-scheme*, where any part of the levy relates to *IFA pensions review claims*, the *FSCS* must comply with *FEES* 6.5.17R (*IFA pensions review compensation levies*);
- (4) the mortgage advice and arranging *sub-scheme*, the *FSCS* must use the *contribution group* and tariff base set out in the table in *FEES* 6.5.10R;
- (5) the general insurance mediation *sub-scheme*, the *FSCS* must use the *contribution group* and tariff base set out in the table in *FEES* 6.5.11R.

6.5.8 R Table: Contribution Groups for the Accepting Deposits Sub-scheme and the Insurance Business Sub-scheme for the Financial Services Compensation Scheme (see *FEES* 6.5.7R (1))

SUB-SCHEME	CONTRIBUTION GROUP (references to A1, A2 etc are to the FSA fee Blocks)	LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i> )	TARIFF BASE
Accepting deposits	A1 - deposit takers	<i>Accepting deposits</i> (article 5)	<i>Protected deposits</i> (see <i>FEES</i> 6.5.15R)
Insurance business	A3 - Insurance activities - General insurance	<i>Effecting contracts of insurance</i> and/or <i>carrying out contracts of insurance</i> (article 9) that are <i>general insurance contracts</i>	<i>Relevant net premium income</i>
Insurance business	A4 - insurance activities - Life Insurance	<i>Effecting contracts of insurance</i> and/or <i>carrying out contracts of insurance</i> (article 9) that are long-term insurance contracts	<i>Relevant net premium income</i>

6.5.9 R Table: The contribution groups and tariff bases for the investment business sub-scheme (see *FEES* 6.5.7R(2)). (The contribution groups, legal bases for

activity and tariff bases are the same as the correspondingly numbered activity groups and tariff bases set out in part 1 and part 2 of *FEES 4 Ann 1R*).

SUB-SCHEME	CONTRIBUTION GROUP (references to A7 etc are to the activity groups in part 1 of <i>FEES 4 Ann 1R</i> )	LEGAL BASIS FOR ACTIVITY (this is merely a summary of the basis in part 1 of <i>FEES 4 Ann 1R</i> ; references to articles are to articles of the <i>Regulated Activities Order</i> )	TARIFF BASE (this is merely a summary of the base in part 2 of <i>FEES 4 Ann 1R</i> )
Designated investment business	A7 - fund managers	<i>Managing investments</i> (article 33)	Funds under management
Designated investment business	A9 - managers of an <i>AUT</i> , <i>ACDs</i> and depositaries	Any of the following: (a) establishing, operating or winding up a collective investment scheme; (b) acting as a trustee of an authorised unit trust scheme; (c) acting as a depositary, or sole director of an open-ended investment company (article 48)	Gross income
Designated investment business	A10 - dealing as principal	<i>Dealing in investments as principal</i> (article 12).	Number of traders
Designated investment business	A12 - advisory brokers (excluding corporate finance advisers) - holding either <i>client money</i> or assets	Any of the following: (a) <i>dealing in investments as agent</i> (article 19); (b) arranging (bringing about) deals in investments (article 21(1)); (c) <i>making arrangements with a view to transactions in investments</i> (article 22(2)); with	Number of approved persons

		<i>permission to: (i) advise on investments (article 49); (ii) hold client money; and (iii) safeguarding and administering investments (article 36)</i>	
Designated investment business	A13 - advisory brokers (excluding corporate finance adviser) - not holding either <i>client money</i> or assets	Any of the following: (a) <i>dealing in investments as agent</i> (article 19); (b) arranging (bringing about) deals in investments (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); but not to (i) hold <i>client money</i> ; and (ii) safeguard and administer investments (article 36).	Number of <i>approved persons</i>
Designated investment business	A14 - corporate finance advisory firms	<i>Permission includes a requirement that the firm must not conduct designated investment business other than corporate finance business</i>	Number of <i>approved persons</i>

6.5.10 R Table: the contribution groups and tariff bases for the mortgage advisers and arrangers (see *FEES 6.5.7R* (4))

SUB-SCHEME	CONTRIBUTION GROUP (REFERENCES TO A1, A2 ETC ARE TO THE FSA FEE BLOCKS)	LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i> )	TARIFF BASE

Mortgage advice and arranging	A18 - Mortgage lenders, advisers and arrangers	Any of the following: (a) arranging (bringing about) regulated mortgage contracts; (b) <i>making arrangements with a view to regulated mortgage contracts</i> ; (c) <i>advising on regulated mortgage contracts</i> ; (d) <i>agreeing to carry on a regulated activity</i> which is within any of the above; and (e) the activities of a <i>mortgage lender</i> which would be <i>arranging</i> but for article 28A of the <i>Regulated Activities Order</i> (Arranging contracts to which the arranger is a party).	<i>annual eligible income</i>
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6.5.11 R Table: the contribution groups and tariff bases for the general insurance intermediaries (see *FEES* 6.5.7R (5))

SUB-SCHEME	CONTRIBUTION GROUP (REFERENCES TO A1, A2 ETC ARE TO THE FSA FEE BLOCKS)	LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i> )	TARIFF BASE
General insurance mediation	A.19 General insurance mediation	Any of the following in relation to a <i>non-investment insurance contract</i> : (a) <i>dealing in investments as agent</i> ; (b) arranging (bringing about) deals in investments; (c) <i>making arrangements with a view to transactions in investments</i> ; (d) <i>assisting in the administration and performance of a contract of insurance</i> ; (e) <i>advising on investments</i> ; and (f)	<i>annual eligible income</i>

		agreeing to carry on a regulated activity which is within any of the above	
--	--	--	--

- 6.5.12 G A *participant firm* may belong to more than one *sub-scheme*, and more than one *contribution group* within the same *sub-scheme*.
- 6.5.13 R Unless exempt under *FEES* 6.2.1R, a *participant firm* must provide the *FSCS* by the end of February each year (or, if it has become a *participant firm* part way through the financial year, by the date requested by the *FSA*) with a statement of:
- (1) the *contribution groups* to which it belongs; and
  - (2) the total amount of business (measured in accordance with the appropriate tariff base or bases) which it conducted, as at 31 December of the previous year, in relation to each of those *contribution groups*.
- 6.5.14 R If the information in *FEES* 6.5.13R has been provided to the *FSA* under other *rule* obligations, a *participant firm* will be deemed to have complied with *FEES* 6.5.13R.
- 6.5.15 R Where a *participant firm* can identify that a *protected deposit* was made by a *person* who is not an *eligible claimant*, it may exclude the amount of that deposit from the tariff base, provided that it notifies the *FSCS* of the amount of the deposit so excluded and provides the *FSCS* with such information about the deposit as the *FSCS* may reasonably require.
- 6.5.16 R If a *participant firm* does not submit a complete statement by the date on which it is due in accordance with *FEES* 6.5.13R and any prescribed submission procedures:
- (1) the *firm* must pay an administrative fee of £250 (but not if it is already subject to an administrative fee under *FEES* 4 Annex 2 Part 1 or *FEES* 5.4.1R for the same financial year); and
  - (2) the *compensation costs levy* and any *specific costs levy* will be calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10 (or, if it has become a *participant firm* part way through a financial year, on the basis of the information provided to the *FSA* for the purposes of *FEES* 4.4.2R) or on any other reasonable basis, making such adjustments as seem appropriate in subsequent levies once the true figures are known.

IFA pensions review compensation levies

- 6.5.17 R The *FSCS* must allocate any part of a *specific costs levy* or *compensation costs levy* that relates to *IFA pensions review claims*:
- (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).
- 6.6 Incoming EEA firms
- 6.6.1 R If an *incoming EEA firm*, which is a *BCD credit institution*, an *IMD insurance intermediary* or *ISD investment firm*, is a *participant firm*, the *FSCS* must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the *firm's Home State* scheme.
- 6.7 Payment of levies
- 6.7.1 R A *participant firm* must pay its share of any levy made by the *FSCS*:
- (1) in one payment; or
  - (2) where the *FSCS* agrees, quarterly, at the beginning of each quarter, by direct debit agreement.
- 6.7.2 G The amount paid under a direct debit arrangement will be adjusted on a continuous basis to take account of interim levies and other adjustments made during the course of the financial year.
- 6.7.3 R A *participant firm's* share of a levy to which *FEES* 6.7.1R(1) applies is due on, and payable within 30 *days* of, the date when the invoice is issued.
- 6.7.4 R If a *participant firm* does not pay its share of a levy subject to a direct debit agreement as required by *FEES* 6.7.1R(2), the entire amount of the levy becomes due and payable to the *FSCS*, and additional administrative fees are payable at the rate set out in *FEES* 2.2.1R.
- 6.7.5 R A *participant firm* liable to pay its share of the levy under *FEES* 6.7.1R must do so using one of the methods set out in *FEES* 4.2.4R save that no additional amount or discount is applicable.
- 6.7.6 R If a *firm* ceases to be a *participant firm* part way through a *financial year* of the *compensation scheme*:
- (1) It will remain liable for any unpaid levies which the *FSCS* has already made on the *firm*; and

- (2) The *FSCS* may make a levy upon it (which may be before or after the firm has ceased to be a *participant firm*, but must be before it ceases to be an *authorised person*) for the costs which it would have been liable to pay had the *FSCS* made a levy on all *participant firms* at the time of the levy on the *firm*.

*FEES* 6 Ann 1R: Management Expenses Levy Limit

R This table belongs to *FEES* 6.4.2R

Period	Limit on total of all management expenses levies attributable to that period (£)
1 December 2001 to 1 April 2002	£4,209,000
1 April 2002 to 31 March 2003	£13,228,000
1 April 2003 to 31 March 2004	£13,319,000
1 April 2004 to 31 March 2005	£17,590,000
1 April 2005 to 31 March 2006	£27,030,000

## Annex D

### Amendments to the Market Conduct sourcebook

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

MAR 5.5

5.5.3	G			
...				
Redress	Dispute resolution: ...			...and from the Financial Ombudsman Funding <i>rules</i> ( <del>DISP 5.2 to DISP 5.8</del> <u>FEES 5</u> )

## Annex E

### Amendments to the Authorisation manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

AUTH 1

...

1.1.3 G ...  
(2) ...

... see *AUTH 3* (Applications for Part IV permission), ~~*AUTH 4 FEES 3*~~ (~~Authorisation Fees Application, Notification and Vetting Fees~~) and *AUTH 5* (Qualifying for authorisation under the Act).

Authorisation Fees (AUTH 4)

Delete entire chapter, excluding the heading above, and insert the following wording:

The provisions regarding authorisation fees are set out in *FEES 3* (Application, Notification and Vetting Fees)

AUTH 4 Annex 1R:-

The provisions of AUTH Annex 1R are moved to *FEES 3* Annex 1R and amended as set out below:

<del>AUTH 4</del> <u>FEES 3</u>	R	Annex 1 Authorisation fees payable
		...
		<del>The fee payable under <i>SUP 6.3.22R</i> is 50% of that payable under <i>AUTH 4.2.2R</i>. There are no circumstances specified for the purposes of <i>SUP 6.3.22R(2)</i>.</del>
		If the <i>Treaty firm</i> wishes to undertake the permitted activities in question through its branch in the <i>United Kingdom</i> , the fee is 50% of the fee that would be payable under <del><i>AUTH 4.2.2R</i></del> . <u><i>FEES 3.2.7R</i></u> for an applicant for <u><i>Part IV permission</i></u> .  If the <i>Treaty firm</i> wishes to undertake the permitted activities in question by providing services in the <i>United Kingdom</i> , the fee is 25% of the fee which

	would be payable under <del>AUTH 4.2.2R</del> . <u>FEES 3.2.7R</u> for an applicant for <u>Part IV permission</u> .
--	---

AUTH 5 Annex 3 Application of the Handbook to Incoming EEA Firms G

2 Table G

(1) ...	(2) ...	(3) ...
...		
<i>GEN</i>	<i>GEN</i> applies ( <i>GEN</i> 1.1, <i>GEN</i> 2.1, <del><i>GEN</i> 3.1</del> , <i>GEN</i> 4.1, <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However... European Community instrument.	...
<u><i>FEES</i></u>	<u><i>FEES</i> applies (<i>FEES</i> 1.1) but <i>FEES</i> 3 only applies to the extent that the <i>firm</i> applies for <i>top-up permission</i> and <i>FEES</i> 4 is modified (<i>FEES</i> 4.2.8R, <i>FEES</i> 4.3.11G, <i>FEES</i> 4.3.12R and <i>FEES</i> 4.4.5R).</u>	<u>As column (2)</u>
<i>SUP</i>	... <del><i>SUP</i> 20 (Fees) Applies (<i>SUP</i> 20.1.1 R) but modified (<i>SUP</i> 20.4.7 G – <i>SUP</i> 20.4.10 R)</del>	... <del><i>SUP</i> 20 (Fees) As column (2).</del>

AUTH

...

Schedule 3

...

		Amount / rate	Handbook reference
Certification fee	...	<del>AUTH 4 Annex 1</del> <u><i>FEES</i> 3.2.7R para (c)</u>	<del>AUTH 4.3</del> <u><i>FEES</i> 3.2</u>

AUTH

...

Schedule 6

There are no rules in AUTH that cannot be waived

~~1 G~~ Table

	<del>The rules in AUTH 4 cannot be waived by the FSA.</del>
--	---

## Annex F

### Amendments to the Supervision manual

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

Delete the following sections and insert the following wording:-

SUP 6.3.22R to 6.3.22CG

Delete entire section and insert the following:

<u>6.3.22</u>	<u>R</u>	The fees payable for a <i>firm</i> applying for a variation of its <i>part IV permission</i> are set out in <u>FEES 3</u> .
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SUP 16.3 General provisions on reporting

...				
16.3.14A	G	... the <i>FSA</i> may reduce or remit all or part of the fee in question which would otherwise be payable (see <del>GEN 3.3.3 R</del> <u>FEES 2.3</u> ).		

SUP 16 Ann 18AR Retail Mediation Activities Return ('RMAR')

Section J: data required for calculation of fees

...		FSA		FOS	FSCS
Mortgage Mediation		[see <del>SUP 20 Ann 1R</del> <u>FEES 4 Annex 1R</u> Part 2 fee block A18]		[See <del>DISP 5 Ann 1R</del> <u>FEES 5 Annex 1R</u> industry block 16]	[-see <del>COMP 13.6.9AR</del> <u>FEES 6.5.10R</u>
Non-investment insurance mediation		[see <del>SUP 20 Ann 1R</del> <u>FEES 4 Annex 1R</u> Part 2 fee block A19]		[See <del>DISP 5 Ann 1R</del> <u>FEES 5 Annex 1R</u> industry block 17]	[-see <del>COMP 13.6.9BR</del> <u>FEES 6.5.11R</u>
Investment mediation		[see <del>SUP Ann 1R</del> <u>FEES 4 Annex 1R</u> Part 2 fee blocks A12/13]		[See <del>DISP 5 Ann 1R</del> <u>FEES 5 Annex 1R</u> industry block 8/9]	[see <del>COMP 13.6.9R</del> <u>FEES 6.5.9R</u> contribution groups A12/13]

SUP 16 Ann 18BG

Section J: data required for calculation of fees

...				
FSA				The relevant information required is the tariff data set out in <del>SUP 20 Annex 1R</del> <u>FEES 4 Annex 1R</u> Part 2 under fee blocks A 12/13, 18 and 19....
FOS				The relevant information required is the tariff data set out in <del>DISP 5 Annex 1R</del> <u>FEES 5 Annex 1R</u> industry blocks 8/9, 16 and 17...
FSCS				The relevant information required is the tariff data set out in <u>COMP 13.6.9R</u> contribution groups A12/13, <del>COMP 13.6.9AR</del> <u>FEES 6.5.10R</u> and <del>COMP 13.6.9BR</del> <u>FEES 6.5.11R</u> . Note that <i>firms</i> are required to report tariff data information relating to all business falling within <del>COMP 13.6.9BR</del> <u>FEES 6.5.11R</u> and not simply that relating to retail investments.

SUP 16 Ann 19BG

Section J: FEE TARIFF MEASURES

J1 Introduction

				<p>* Refer to <del>SUP 20 Annex 1R</del> <u>FEES 4 Annex 1R</u> of the <i>FSA Handbook</i> for the <i>FSA</i> fee tariff*</p> <p>*Refer to <del>DISP 5 Annex 1R</del> <u>FEES 5 Annex 1R</u> of the <i>FSA Handbook</i> for the <i>FOS</i> fee tariff*</p>
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SUP 20

Delete sections 20.1 to 20.7 inclusive and insert wording as follows.

Chapter 20 Fees Rules
<u>The periodic fees rules are set out in FEES 4 (Periodic fees).</u>

Move SUP 20 Annex 1R to FEES 4 Annex 1R with the following amendments:

<del>SUP20</del> <u>FEES 4</u>		Annex 1R
		Activity groups, tariff bases and valuation dates applicable
		Note for <i>authorised professional firms</i> : ... This does not prevent a fee being payable by an <i>authorised professional firm</i> under <del>SUP 6.3.22 R</del> <u>FEES 3.2.7R (p)</u> where it applies to vary its <i>Part IV permission</i> such that it would normally be allocated to fee-block(s) other than A.13 if the variation was granted.
		Part 2 This table indicates the tariff base for each fee-block. ...In these circumstances, the <i>firm</i> will be required to pay a minimum fee only (see <del>SUP 20 Annex 2</del> <u>FEES 4 Annex 2R</u> Part 1).

Move SUP 20 Annex 2R to FEES 4 Annex 2R amended as follows:

~~SUP 20 FEES 4~~ Annex 2R - Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2005 to 31 March 2006

Part 1

...

...		
(2)	(a)	...non-UK business in the way described in Part 2 of <del>SUP 20 Annex 1</del> <u>FEES 4 Annex 1R</u> are disproportionate...
	(b)	...the information concerned under <del>SUP 20.3</del> <u>FEES 4.4</u> (Information on...
(3)		For a <i>firm</i> which has not complied with <del>SUP 20.3.2 R</del> <u>FEES 4.4.2R</u> (Information...

Move SUP 20 Annex 3 to FEES 4 Annex 3R amended as follows:

~~SUP 20 FEES 4~~ Annex 3R Transaction reporting fees and ~~Article 54 RAO~~ certificate fees for the period from 1 April 2005 to 31 March 2006

Part 1

...

...	...	Date payable
...	...	First working day of each month

1. Firms using...

2. applicable methods of payment of these fees are listed at SUP 20.2.7A R.

Part 2

The periodic fee payable under SUP 20.6.1R for a certificate issued under Article 54 of the *Regulated Activities Order* is £1,000.

Move Sup 20 Annex 4 to FEES 3 Annex 6R amended as follows:

~~SUP 20 Ann 4~~ ~~Application fees for guidance on the Capital Requirements Directive for the~~  
~~FEES 3 Ann~~ ~~period 1 April 2005 to 31 March 2006~~ Fees payable for guidance on the  
~~6R~~ availability of a waiver in connection with rules implementing Basel Capital  
Accord

...

Schedule 6

Rules that can be waived

1 G Table

			...
	(£)		<del>the rules in SUP 20 (Fees).</del>

## Annex G

### Amendments to the Dispute Resolution: Complaints sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

- 1.7.10 G *Members* will ... and the obligation to pay fees under ~~DISP-5 FEES 5~~ must be complied with by the *Society* on behalf of *members* ...
- ...
- 2.3.4 G Under ~~DISP 5.6.1R FEES 5.5.1R~~ a *firm* or *VJ participant* is liable to pay a case fee in respect of *chargeable cases*...
- ...
- 2.5.2 G *Firms* may, however, be exempt from the requirements of *DISP 1* (Complaint handling procedures for firms) and ~~DISP-5 FEES 5~~ (*Financial Ombudsman Service funding rules*)...
- ...
- 4.2.12 R The following rules in ~~DISP FEES 5~~ apply (subject to *DISP 4.2.13R*) to *VJ participants* as part of their agreement to be subject to the *Voluntary Jurisdiction* as if they were authorised firms, but subject to the variations stated in each case.
- (1) ~~DISP 5.4.6 FEES 5.3.6R~~ (*general levy*) subject to substituting the words '*Voluntary Jurisdiction*' for '*Compulsory Jurisdiction*' and substituting the words '*FOS Ltd*' for '*the FSA*';
- (2) ~~DISP 5.4.8 FEES 5.3.8R~~ (calculation of *general levy*);
- (3) ~~DISP 5.5.1 FEES 5.4.1R~~ (information) subject to substituting the words '*FOS Ltd*' for '*FSA*';
- (4) ~~DISP 5.6.1 FEES 5.5.1R~~ (standard case fee);
- (5) ~~DISP 5.6.6 FEES 5.5.6R~~ (special case fee);
- (6) ~~DISP 5.7.5 FEES 5.6.5R~~ subject to substituting '*to FOS Ltd*' for '*to the FSA*' and ~~DISP 5.7.6 FEES 5.6.6R~~ (*supplementary levy* for establishment costs) subject to substituting '*Part 4*' for '*Part 2*';
- (7) ~~DISP 5.8.1 FEES 5.7.1R~~ subject to substituting '*to FOS Ltd*' for '*to the FSA*' and '*by FOS Ltd*' for '*by the FSA*', ~~DISP 5.8.2 FEES 5.7.2R~~ to ~~DISP 5.8.4 FEES 5.7.3R~~, ~~DISP 5.8.5 FEES 2.2.2G~~ subject to substituting '*FOS Ltd will*' for '*FSA will*', ~~DISP 5.8.6 FEES 2.2.1R~~, ~~DISP 5.8.8 FEES 2.3.1R~~ and ~~DISP 5.8.9 FEES 2.3.2R~~ (payment).
- (8) ~~DISP 5.9.1 FEES 5.8.1R~~ and ~~DISP 5.9.2R~~ (joining the *Financial Ombudsman Service*) and ~~FEES 4.2.6R(1)(b)~~;
- (9) ~~DISP FEES 5~~ Annex 1 (fees payable).
- 4.2.13 R A *VJ participant* which joins the *Voluntary Jurisdiction* before the end of the *financial year* in which the *commencement day* falls must pay to *FOS Ltd* the special case fee specified in ~~DISP FEES 5~~ Annex 1 for ~~DISP 5.6.10R FEES 5.5.10R~~ in respect of each *chargeable case* falling within the *Voluntary Jurisdiction* ...

In the next section, move DISP 5 Annex 1R to FEES 5 Annex 1R and insert the following wording:

DISP 5 (Funding Rules)

Delete DISP 5.1 to DISP 5.10 inclusive and insert the following:

[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding).]

Move DISP 5 Ann 1R to FEES 5 Ann 1R amended as follows:

~~DISP 5 Ann 1R~~ FEES 5 Ann 1R: Annual Fees Payable in Relation to 2005/06

Table

...

...	
5.	The <i>industry blocks</i> in the table are based on the equivalent activity groups set out in Part 1 of <del>SUP 20 Ann 1R</del> <u>FEES 4 Annex 1R</u> .
6.	Where the tariff base in the table is defined in similar terms as that for the equivalent activity group in Part 2 of <del>SUP 20 Ann 1R</del> <u>FEES 4 Annex 1R</u> , it must be calculated in the same way as that tariff base - taking into account only the <i>firm's relevant business</i> .

Table: Standard case fees and special case fees in relation to 2005/2006

Governing provisions	Case Fee	...
<del>DISP 5.6.1 R</del> <u>FEES 5.5.1R</u>	...	
<del>DISP 5.6.6 R</del> <u>FEES 5.5.6R</u>	...	
<del>DISP 5.6.7 R</del> <u>FEES 5.5.7R</u>	...	
<del>DISP 5.6.8 R</del> <u>FEES 5.5.8R</u>		
...		
Part 4: Fee Tariffs and case fees for VJ participants		
	...	
9.	The <i>industry blocks</i> in the table are based on the equivalent activity groups for	

	authorised firms, as set out in part 1 of <del>SUP 20 Ann 1R</del> <u>FEES 4 Annex 1R</u> .
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 2 of <del>SUP 20 Ann 1R</del> <u>FEES 4 Annex 1R</u> , it must be calculated in the same way as that tariff base except that it takes into account only the <i>VJ participant's</i> relevant business.

## Appendix 1: Relevant Existing Complaints

### 1.1 Application and Purpose

...

1.1.3 R *DISP 2 to DISP 4 and ~~DISP 5~~ FEES 5 apply to firms ...*

...

1.1.6 G ... subject to *DISP 1 to DISP 14 and FEES 5 ~~DISP 5~~*. Apart from these exceptions, the rules in *DISP 2 to DISP 4 and ~~DISP 5~~ FEES 5* and the statutory provisions in sections 225-234 of the *Act* apply as they do to other complaints.

...

1.12.1 G Under ~~*DISP 5*~~ *FEES 5*, firms will be subject to case fees in respect of *relevant complaints*. If *FOS Ltd* deals with a *relevant existing complaint* against a person who is not *authorised* by the *FSA*, a special case fee will be charged (see ~~*DISP 5*~~ *FEES 5* (*Financial Ombudsman Service Funding Rules*)) and this will be recoverable as a debt to *FOS Ltd* in the same way as case fees relating to complaints about *firms*.

## Transitional provisions

### 1. Table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
...					
6	... <del>DISP 5-FEES</del> <u>5</u> ...	R	... <del>DISP 5-FEES 5</del> ... In references to a "firm"...	From commencement	Commencement
7	... <del>DISP 5-FEES</del> <u>5</u> ...	G	Under the <i>Ombudsman</i> ... but references to "firm" in <i>DISP 2, DISP 3, <del>DISP</del></i> <i><del>5-FEES 5</del></i> and ...	From commencement	Commencement
...					
8	... <del>DISP 5-FEES</del> <u>5</u> ...	R	In relation to <i>relevant</i> <i>complaints</i> , references in <i>DISP 1,</i> <i>DISP 2, DISP 3, DISP</i> <i>4, <del>DISP 5-FEES 5</del></i> and <i>DISP App 1</i> ...	From commencement	Commencement
15	<del>DISP 5.5.1R</del> <u>FEES 5.4.1R</u>		...	...	
16	<del>DISP 5.5.1R</del> <u>FEES 5.4.1R</u>		...		

### DISP TP 1.3

...		The industry blocks in Table 2 are the same as the equivalent activity group set out in part 7 of <del>SUP 20 Annex 1</del> <u>FEES 4 Annex 1R</u> .
		...equivalent activity group set out in part 7 of <del>SUP 20 Annex 1</del> <u>FEES 4 Annex 1R</u> , it must ....

...

## Schedule 2 Notification requirements

### 2. Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<del>DISP 5.5.1R</del> <del>FEES 5.4.1R</del>	...	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 <i>relevant industry blocks</i> set out in <del>DISP 5 Ann 1R</del> <del>FEES 5 Annex 1R</del>	...	...

## Schedule 3 Fees and other required payment

### 2. Table

Type of fee	Trigger event	Date/Time for payment	Amount/rate	Handbook reference
<i>General levy</i>	...	...	...	<del>DISP 5.4</del> <del>FEES 5.3</del> <del>DISP 5.8</del> <del>FEES 5.7</del> Part 2 of <del>DISP 5 Ann 1R</del> <del>FEES 5 Annex 1R</del>
<i>Supplementary levy</i>	...	...	...	<del>DISP 5.7</del> <del>FEES 5.6</del>

				<del>DISP 5.8</del> <u>FEES 5.7</u> Part 2 of <del>DISP 5</del> <u>FEES 5</u> Annex 1R-
Case fees	...	...	...	<del>DISP 5.6</del> <u>FEES 5.5</u> <del>DISP 5.8</del> <u>FEES 5.7</u> Part 3 of <del>DISP 5</del> <u>Ann 1R</u> <u>FEES 5</u> Annex 1R

Schedule 4 Powers exercised

2. Table

...

<del>DISP 5</del> <u>FEES 5</u>	5.1.6R <del>5.6</del> (all rules) <u>5.5</u> <del>5.8.2R</del> <u>5.7.2R</u> <del>5.8.4R</del> <u>5.7.3R</u> <del>5.10.1R</del> <u>5.9.1R</u>
<del>DISP 5</del> <u>Ann 1R</u> <u>FEES 5</u>	part 3
	part 4

## Annex H

### Amendments to the Compensation sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

COMP 1.1 Application, Introduction, and Purpose

COMP 1.1.1.G Application

...

1.1.2 G ... *FSCS* can impose levies to meet the costs of paying compensation (see in particular *COMP* 3, 4, and ~~13~~ *FEES* 6). ...

...

1.1.4 G *Firms* will be particularly interested in ~~COMP 13~~ *FEES* 6, which deals with levies.

COMP 2.2 Duties of the FSCS

COMP 2.2.1R Administering the compensation scheme

...

2.2.2 G The *FSCS* may: ...

(2) make levies on *participant firms*, in accordance with ~~COMP 13 (Funding)~~, *FEES* 6 (Financial Services Compensation Scheme Funding) to enable it to pay compensation, ...

COMP 13 (Funding)

Delete text of entire chapter and insert the following:

[deleted: the provisions in relation to the funding of the Financial Services Compensation Scheme are set out in *FEES* 6 (Financial Services Compensation Scheme Funding)]

COMP TP 1  
 COMP TP 1.1 Transitional Provisions Table

	Material to which the transitional provision applies		Transitional provision
11	<del>COMP 13.4.1R,</del> <del>FEES 6.3.1R,</del> <del>COMP 13.4.19R,</del> <del>FEES 6.3.22R,</del> <del>COMP 13.5.8R,</del> <del>FEES 6.4.8R,</del> <del>COMP 13.5.6R,</del> <del>FEES 6.4.6R</del> <del>COMP 13.6.1R</del> <del>FEES 6.5.1R and</del> <del>COMP 13.6.6R</del> <del>FEES 6.5.6R</del>	R	...
12	<del>COMP 13.4.1R,</del> <del>FEES 6.5.7R(4),</del> <del>COMP 13.4.19R,</del> <del>FEES 6.3.22R,</del> <del>COMP 13.5.6R,</del> <del>FEES 6.4.6R,</del> <del>COMP 13.5.8R,</del> <del>FEES 6.4.8R,</del> <del>COMP 13.6.1R</del> <del>FEES 6.5.1R and</del> <del>COMP 13.6.6R</del> <del>FEES 6.5.6R</del>	R	...
13	<del>COMP 13.6.7R(4)</del> <del>FEES 6.5.7(4)R</del> <del>COMP 13.6.9AR</del> <del>FEES 6.5.10R and</del> <del>COMP 13.6.11R</del> <del>(2) FEES</del> <del>6.5.13R(2)</del>	R	...
14	<del>COMP 13.6.7R(5)</del> <del>FEES 6.5.7R(5),</del> <del>COMP 13.6.9BR</del> <del>FEES 6.5.11R and</del> <del>COMP 13.6.11R</del> <del>(2) FEES 6.5.13R</del> <del>(2)</del>	...	...

COMP Schedule 1 Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
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<del>COMP 13.4.12R</del> <del>FEES 6.3.14R</del>	FSCS funding	...	...	...
---	--------------	-----	-----	-----

COMP Schedule 2 Notification requirements

...

COMP Sched 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time Allowed
...				
<del>COMP 13.3.1R</del> <del>FEES 6.2.1R</del>	...	...	...	...
<del>COMP 13.3.4R</del> <del>FEES 6.2.4R</del>	...	...	....	...
<del>COMP 13.6.11R</del> <del>FEES 6.5.13R</del>	...	...	...	...
<del>COMP 13.8-<u>FEES</u> 6.7</del>	...	...	...	...

COMP Schedule 3 Fees and other required payments

Sch 3.1	G	The <i>rules</i> in <del>COMP 13</del> <u>FEES 6</u> give <i>FSCS</i> (the scheme manager) the power to raise levies on participant <i>firms</i> in order to meet its expenses. The <i>rules</i> in <del>COMP 13</del> <u>FEES 6</u> do not specify the amount of any levy but do specify how a participant <i>firm's</i> share of a levy is to be calculated and any limit on the amount leviable by the <i>FSCS</i> is a particular period.
---------	---	---

COMP Sch 6 Rules that can be waived

COMP Sch 6.1

Sch 6.1	G	The <i>rules</i> in <i>COMP</i> cannot be waived by the <i>FSA</i> , except: (1) <del>COMP 13.6.11 R</del> <u>FEES 6.5.13R</u> ;
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## Annex I

### Amendments to the Collective Investment Schemes manual

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

CIS 1.2 Arrangement of this sourcebook and definitions

...

1.2.18 G ~~CIS 18 (Fees)~~ FEES 1, 2, 3 and 4 sets out the application and periodic fees payable for the authorisation or recognition of *regulated schemes*.

CIS 18 (Fees)

Delete CIS 18.1 to CIS 18.3 inclusive and insert the following:

The provisions relating to collective investment scheme fees are set out in FEES 1, 2, 3 and 4.

Move CIS 18 Annex 1 to FEES 4 Annex 4R amended as follows:

~~CIS 18 Annex 1 Fees payable in relation to the period from 1 April 2005 to 31 March 2006~~

...

Move CIS 18 Annex 2 to FEES 3 Annex 2R part 1 and amend as follows:

~~CIS 18 Annex 2 Application and notification fees payable~~

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee	Umbrella scheme factor (see note 1)
<u>Part 1 Application fees payable for firms to be subject to CIS</u>				
Regulation 12...	...	An applicant ( <del>note 2</del> )	...	...
Section 242 of the <i>Act</i>	...	An applicant ( <del>note 2</del> )	...	...
<u>Section 272 of the <i>Act</i></u>	<u>On application for an order declaring a</u>	<u>An applicant</u>	<u>£14,000</u>	<u>2</u>

	<u>scheme to be an individually recognised overseas scheme</u>			
<u>Part 2 Application fees payable for firms to be subject to COLL</u>				
<u>Regulation 12 of the Act</u>	<u>On application for an order declaring a scheme to be an ICVC, where the scheme is:</u>	<u>An applicant</u>		<u>2</u>
	<u>UCITS scheme</u>		<u>£1,200</u>	
	<u>Non-UCITS retail scheme</u>		<u>£1,500</u>	
	<u>Qualified investor scheme</u>		<u>£2,400</u>	
<u>Section 242 of the Act</u>	<u>On application for an order declaring a scheme to be an AUT, where the scheme is:</u>	<u>An applicant</u>		<u>2</u>
	<u>UCITS scheme</u>		<u>£1,200</u>	
	<u>Non-UCITS retail scheme</u>		<u>£1,500</u>	
	<u>Qualified investor scheme</u>		<u>£2,400</u>	
<u>Section 272 of the Act</u>	<u>On application for an order declaring a scheme to be an individually recognised overseas scheme</u>	<u>An applicant</u>	<u>£14,000</u>	<u>2</u>
<u>Part 3 (notifications)</u>				
Section 264	...	The operator (note 3)		
Section 270...	...	The operator		

		(note 3)		
Section 272 of the Act	On application for an order declaring a scheme to be an individually recognised overseas scheme	An applicant (note 2)	£14,000	2

Notes:

...

~~2. The fee must accompany the application.~~

~~3. The fee must accompany the notice.~~

In the next section, delete entire section and insert the following wording:

CIS Sch 3 Fees and other required payments

Delete Sched 3.1 and 3.2 and insert the following:

[deleted: the provisions in relation to collective investment scheme fees are set out in FEES 1,2, 3 and 4]

CIS Sch 6 Rules that can be waived

Sched 6.1	G	...	
		4.	<del>No rules in CIS 18 can be waived by FSA.</del>

## Annex J

### Amendments to the New Collective Investment Schemes sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

#### FEES (COLL 10)

Delete COLL 10.1 to 10.3 inclusive and insert the following:

The provisions in relation to fees for collective investments schemes are set out in FEES 1,2, 3 and 4.

COLL 10 Annex 1 Periodic fees payable...

Delete whole annex.

COLL 10 Annex 2 Application and notification fees payable ...

Delete whole annex.

#### COLL TP 1 Transitional Provisions

...	<b>Material to which the transitional provision applies</b>		<b>Transitional provision</b>	...	...
10	<del>COLL 10.3.1R</del> <u>FEES 3.2.1R</u>	R	(1) ...	...	...
...					
12	<del>COLL 10.2.1R</del>	R	<del>COLL 10.2.1R</del> does not apply if the <del>scheme</del> has paid a periodic fee under <del>CIS 18.2</del>	From 1 April 2004 until 12 February 2007 <u>Expired</u>	1 April 2004

COLL Sched 3 Fees and other required payments

Delete COLL sched 3.1 and 3.2 and insert the following:

[deleted: The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4]

COLL Schedule 6 Rules that can be waived

<del>COLL Sch 6.3-</del>	G	<del>No rules in COLL 10 (Fees) and COLL Transitional Provision 10 can be waived by the FSA.</del>
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## Annex K

### Amendments to the Credit Unions sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

#### CRED 13

...				
13.2.5	G	Applications should be accompanied by the relevant application fees set by the FSA for registration and <i>authorisation</i> (see <del>CRED Sch 3</del> <u>FEES</u> ).		

...				
13.5.4	G	<p>...in relation to <i>authorisation</i>. <u>FEES 3 (Application, Notification and Vetting Fees)</u> sets out the <u>authorisation fees that are payable. ...</u></p> <p>(1) ...; <u>and</u></p> <p>(2) <del>AUTH 4: Authorisation fees</del> <u>AUTH 6 Approved Persons</u>; <del>and</del></p> <p>(3) <del>[deleted]AUTH 6 Approved Persons. .</del></p>		

#### CRED Schedule 3 Fees and other required payments

...

#### CRED Sch 3.2 G

Description of fee	Reference
FSA fees...	<del>SUP 20</del> <u>FEES 4</u>
Schedule...	<del>SUP 20 Annex 2R Part 1</del> <u>FEES 4 Annex 2R Part 1</u>
<i>FSA rules</i> ...	<del>AUTH 4</del> <u>FEES 3</u>
Schedule...	<del>AUTH 4 Annex 1</del> <u>FEES 3 Annex 1R</u>
<i>FSCS funding</i> ...	<del>COMP 13</del> <u>FEES 6</u>
<i>Financial Ombudsman Service</i> <u>FOS</u> funding	<del>DISP 5</del> <u>FEES 5</u>

## Annex L

### Amendments to the Professional Firms Sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

#### PROF 1 (Application and Purpose)

##### 1.1.1 R Application

...

(2) ... ; 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~~ [deleted]

(4) ...

#### Fees (PROF 6)

Delete PROF 6.1 to 6.3 inclusive and insert the following:

[deleted:the provisions in relation to *designated professional bodies* are set out in FEES 1,2, 3 and 4]

Move PROF 6 Annex 1 to FEES 4 Annex 5R amended as follows:

~~PROF 6 Annex 1 Fees payable in relation to the period from 1 April 2005 to 31 March 2006~~

...

Delete the whole of PROF 6 Annex 2

PROF 6 Annex 2 [deleted]

## Annex M

### Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

REC 1 (Application)

...

1.1.3 G ...

- (6) The fees *rules* for *recognised bodies* and applicants are set out in ~~REC 7~~ FEES 1,2,3 and 4.

Fees (REC 7)

Delete REC 7.1 to 7.3 inclusive and insert the following:

[deleted: the provisions in relation to *Recognised Investment Exchanges* and *Recognised Clearing Houses* are set out in *FEES 1,2, 3 and 4*]

Move REC 7 Annex 1R to FEES 4 Annex 6R amended as follows:

~~REC 7 Annex 1 Fees payable in relation to the period from 1 April 2005 to 31 March 2006~~

...

Move REC 7 Annex 2R to FEES 3 Annex 3R amended as follows:

~~REC 7 Annex 2 Application fees payable~~

<del>REC 7</del> <del>FEES 3</del>				
	R	Description of applicant	Amount payable	Due date
		–		
		<u>Part 1 (UK recognised bodies)</u>		
		Applicant for recognition as a <i>UK RIE</i>	...	
		...		
		<u>Part 2 (overseas recognised bodies)</u>		

		Description of applicant	Amount payable	Due date
		Applicant for recognition as a recognised overseas investment exchange	...	
		...		



LR APP 2.1 Fees and financial penalty income

Insert the following:

The provisions outlined in LR App 2.1 in relation to fees are set out in FEES 3 and 4

Move LR App 2.1.1R Annex 1 to FEES 4 Annex 7R, amended as follows

LR App 2.1.1 R Fees and financial penalty income	
Fee type	Fee amount
...	
Annual Sponsor Fees	£10,000
Annual fees are charged in annual cycles beginning on 1 April of a year and ending on 31 March of the following year. <del>An issuer or sponsor which becomes subject to the listing rules during the course of the financial year must pay a proportion of the annual fee which is calculated in accordance with the following Table 3.</del>	

...

Table 3

<del>Quarter in which the issuer/sponsor becomes subject to the Listing Rules</del>	Proportion payable
<del>1 July to 30 September inclusive</del>	75%
<del>1 October to 31 December inclusive</del>	50%
<del>1 January to 31 March inclusive</del>	25%

Move LR App 2.1.1 Annex 2 to FEES 3 Annex 5R Part 1 amended as follows:

~~Annex 2~~

Document vetting and approval fees in relation to listing rules.

Fee type	Fee amount
Transaction vetting fees for the period 1 July 2005 to 31 March 2006 Transaction vetting fees relate to specific events or transactions that an <i>issuer</i> might be involved in during the year <del>and fall due when documentation is first submitted to the FSA</del>	
...	

Move LR App 2.1.1 Annex 3 to FEES 3 Annex 4R amended as follows:

~~Annex 3~~

Part 1

...	
Application for <i>listing</i> An application fee becomes payable when an <i>issuer</i> makes an application for <i>listing</i> .	...
...	
An upfront fee is required per tranche for draw downs in the following 12 months....	...

Part 2

...	
Application for approval as <i>sponsor</i> An application fee becomes payable when a <i>person</i> applies for approval as a <i>sponsor</i> .	...

Financial penalty income

G	<p>Section 100 of the <i>Act</i> (Penalties) provides that the <i>FSA</i> must prepare and operate a scheme for ensuring that the amounts paid to it as penalties are applied for the benefit of <i>issuers</i>.</p> <p>The <i>FSA</i> will allow a permitted deduction from the annual fees of an amount equal to that <i>issuer's</i> share of the amounts paid to the <i>FSA</i> by way of penalties.</p> <p>The <i>FSA</i> will notify <i>issuers</i> annually of the amount of the permitted deduction for each relevant year.</p>
---	---

## Annex O

### Amendments to the Prospectus Rules

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

#### PR 3.1: Approval of prospectus

...

3.1.2 ~~R~~ G ~~The *applicant* must also pay to the *FSA* the relevant application fee calculated in accordance with the scale of fees in *PR App 2*. *FEES 3* sets out the relevant application fee payable to the *FSA*.~~

...

3.1.16 ~~R~~ G ~~A *person* must pay to the *FSA* any relevant fee specified in *PR App 2* *FEES 3* sets out the relevant fee payable in relation to the vetting of an equivalent document or a summary document.~~

#### PR 5.4: Qualified investors register

...

5.4.9 R The application must be in writing in form C and must include the relevant fee specified in ~~*PR App 2*~~ *FEES 3*.

#### PR App 2.1

Move PR App 2.1 to *FEES 3* Annex 5R Part 2 amended as follows:

#### ~~PR App 2.1~~

Document vetting and approval fees in relation to prospectus rules.

~~PR App 2.1.1~~ R Fees for the period...during the year ~~and fall due when documentation is first submitted to the *FSA*.~~

...

## Annex P

### Amendments to the Disclosure Rules

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

Where an entire section is being deleted, the place where the change will be made is indicated and the text will not be struck through.

DR 1.5 Fees, market abuse safe harbours and sanctions

1.5.1 ~~R~~ An issuer must pay the fees set out in DR 1 Annex 2 FEES 4 sets out the  
~~G~~ fees payable by an issuer to the FSA when they are due

DR 1 Annex 2

Move DR 1 Annex 2 to FEES 4 Annex 8R amended as follows:

~~DR 1 Annex 2 Annex 2R Fees payable in relation to the period 1 April 2005 to 31 March 2006~~

~~This annex belongs to DR 1.5.1R~~

Annual fees for the period 1 April 2005 to 31 March 2006	
All non-listed <i>issuers</i> of <i>shares</i> , depositary receipts and securitised derivatives. Annual fees for listed <i>issuers</i> in respect of Disclosure Rules obligations are incorporated in the annual fee for listed <i>issuers</i> under the Listing Rules. <del>A non-listed issuer which becomes subject to the disclosure rules during the course of the financial year must pay a proportion of the annual fee which is calculated in accordance with the following Table 3.</del>	...
	...
	...
	...
Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.	

Table 3

	Quarter in which the non-listed issuer becomes subject to the Disclosure Rules	Proportion payable
	1 July to 30 September inclusive	75%
	1 October to 31 December inclusive	50%
	1 January to 31 March inclusive	25%

## Annex Q

### Amendments made by the Financial Ombudsman Service Limited

The amendments in this instrument relating to the provisions set out below are made exclusively by the FOS, subject to the approval and consent of the FSA, and not by the FSA:

<b>FEES reference</b>	<b>DISP reference</b>
N/A	4.2.12R
N/A	4.2.13R
5.5.1R	5.6.1R
5.5.3R	5.6.3R
5.5.4R	5.6.4R
5.5.6R	5.6.6R
5.5.7R	5.6.7R
5.5.8R	5.6.8R
5.5.10R	5.6.10R
5.5.11R	5.6.11R
5.5.12R	5.6.12R
5.5.15R	5.6.15R
5.7.2R	5.8.2R
5.7.3R	5.8.4R
5.9.1R	5.10.1R

The amendments in this instrument relating to the parts of the provisions set out below, to the extent that they relate solely to rule making powers exercisable by FOS under parts III and IV of schedule 17 of FSMA, are made exclusively by FOS, subject to the approval and consent of the FSA, and not by the FSA:

<b>FEES reference</b>	<b>DISP reference</b>
2.1.1R	N/A
2.2.1R	5.8.6R
2.3.1R	5.8.8R
2.3.2R	5.8.9R
5.1.1R and 1.1.2R	5.1.1R
5.1.4R	5.1.4R
5.1.5R	5.1.5R
5.1.6R	5.1.6R

## PASSPORTING INSTRUMENT 2005

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance); and
  - (4) paragraph 5(4) of Schedule 4 (Treaty Rights: Notice to Authority) (and sections 51(1), (3) and (6) (Applications under this Part)).

### Commencement

- B. This instrument comes into force on 1 February 2006.

### Amendments to the Handbook

- C. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Integrated Prudential sourcebook (PRU)	Annex C
Authorisation manual (AUTH)	Annex D
Supervision manual (SUP)	Annex E
Decision Making manual (DEC)	Annex F
Collective Investment Schemes sourcebook (CIS)	Annex G
Electronic Commerce Directive sourcebook (ECO)	Annex H
Perimeter Guidance manual (PERG)	Annex I

### Citation

- D. This instrument may be cited as the Passporting Instrument 2005.

By order of the Board  
15 December 2005

## Annex A

### Amendments to the Glossary of definitions

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

- permitted activity*
- (1) (except in ~~AUTH 5~~ SUP 13A and SUP 14) a *regulated activity* which a *firm* has *permission* to carry on.
  - (2) (in ~~AUTH 5~~ SUP 13A and SUP 14) an activity identified in a consent notice, a regulator's notice or, where none is required, a notice of intention.

## Annex B

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook

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

Appendix 1 Matters reserved to a Home State regulator (see SYSC 1.1.1R(1)(b) and SYSC 1.1.1R(1)(c))

...

1.1.7 G ~~AUTH 5 SUP 13A~~ Annex 1G summarises the application of the *Handbook* to an *incoming EEA firm*. That annex indicates in broad terms, and in relation to such *firms*, those categories of matter which are reserved to a *Home State regulator* and those which the *FSA*, as *Host State regulator*, is entitled to regulate when carried on within the *United Kingdom*.

## Annex C

### Amendments to the Integrated Prudential sourcebook

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

- 9.3.2 G ...An *incoming EEA firm* includes a *firm* which is passporting into the *United Kingdom* under the *IMD* (see ~~*AUTH 5.4.2G*~~ *SUP 13A.4.2G*, in relation to *branches*, and ~~*AUTH 5.5.3G*~~ *SUP 13A.5.3G*, in relation to *cross border services*).

## Annex D

### Amendments to the Authorisation manual

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

1.1.3 G The purpose of this manual is to give *guidance* about:

...

- (2) the procedures by which a *person* can apply for, or obtain, *permission* under the *Act* to carry on these *regulated activities* and become an *authorised person* and any fees payable; see *AUTH 3* (Applications for Part IV permission); and *FEES 3* (Application, Notification and Vetting Fees) ~~and *AUTH 5* (Qualifying for authorisation under the Act).~~

...

...

1.2.5 G ...

- (1) *A person* from another *EEA State* which is authorised in its *Home State* may be entitled to establish a *branch* in, or provide *cross border services* into, the *United Kingdom* under the *Single Market Directives*, the *Treaty* or the *UCITS Directive* (this is often known as *passporting*). The process by which that *person* can qualify for *authorisation* under Schedules 3, 4 and 5 to the *Act* is described in ~~*AUTH 5 SUP 13A*~~.

...

...

Summary of AUTH and parts of PERG

1.3.9 G This table belongs to *AUTH 1.3.7G*.

Chapter:	Applicable to:	On:
...		
<i>AUTH 5: Qualifying for authorisation under the Act</i>	<del>1. an <i>EEA firm</i> wishing to exercise its <i>EEA right</i> and establish a <i>branch</i> in, or provide <i>cross border services</i> into, the <i>United Kingdom</i>;</del> <u>2. a <i>Treaty firm</i></u>	<i>How an <del>EEA firm</del>, a <i>Treaty firm</i> or a <i>UCITS qualifier</i> can qualify for <i>authorisation</i> under the <i>Act</i>.</i>

	wishing to exercise its <i>Treaty rights</i> ; 3. a prospective <i>UCITS</i> <i>qualifier</i> .	
...		

...

4.1.9 G See *AUTH* 3.9 in relation to the procedures for making applications for *Part IV permission* and ~~*AUTH* 5 *SUP* 13A~~ for procedures for the exercise of *Treaty rights* by *Treaty firms*.

...

*AUTH* Chapter 5 is deleted in its entirety.

*AUTH* 5 Qualifying for authorisation under the Act  
[deleted: material moved to *SUP*13A]

...

Schedule G  
2

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>AUTH</i> 5.3.9D	Intention of <i>incoming Treaty firm</i> to carry on a <i>regulated activity</i> in the <i>United Kingdom</i> .	Matters relevant to the notice as indicated in the application pack.	Intention to carry on a <i>regulated activity</i> .	At least seven days in advance.
...				

Schedule G  
4

...

Paragraph 5(4) of Schedule 4 (*Treaty Rights: Notice to Authority*).

...

## Annex E

### Amendments to the Supervision manual

In Parts 1 and 3 of this Annex, underlining indicates new text and striking through indicates deleted text. Part 2 of this Annex is new text and is not underlined. Part 2 is closely based on the text which previously appeared as AUTH Chapter 5; it is to be inserted as Chapter 13A of the Supervision manual.

#### Part 1

13.1.3 G This chapter does not apply to:

- (1) a *firm* established in an *EEA State* other than the *United Kingdom*; passporting by such a *firm* in or into the *United Kingdom* is a matter for its *Home State regulator* although *guidance* is given in ~~AUTH 5~~ SUP 13A (Qualifying for authorisation under the Act);

...

...

#### Part 2

13A Qualifying for authorisation under the Act

13A.1 Application and purpose

Application

13A.1.1 G (1) This chapter applies to an *EEA firm* that wishes to exercise an entitlement to establish a *branch* in, or provide *cross border services* into, the *United Kingdom* under a *Single Market Directive*. (The *Act* refers to such an entitlement as an *EEA right* and its exercise is referred to in the *Handbook* as "passporting".) (See *SUP* App 3 (Guidance on passporting issues) for further *guidance* on passporting.)

(2) This chapter also applies to:

(a) a *Treaty firm* that wishes to exercise rights under the *Treaty* in respect of *regulated activities* not covered by the *Single Market Directives* and qualify for *authorisation* under Schedule 4 to the *Act* (Treaty Rights); and

(b) a *UCITS qualifier*, that is, an *operator*, *trustee* or

*depository* of a recognised *collective investment scheme*, constituted in another *EEA State*, and which qualifies for *authorisation* under Schedule 5 to the *Act* (Persons concerned in collective investment schemes).

- (3) The provisions implementing the *Single Market Directives* are within the coordinated field (see *PERG 2.9.18G(1)*). So, where an *incoming ECA provider* intends to provide *electronic commerce activity* that consists of activities that fall within one of the *Single Market Directives*, the passporting requirements on exercising an *EEA right* in this chapter will apply.

13A.1.2 G This chapter does not apply to:

- (1) an *EEA firm* that wishes to carry on in the *United Kingdom* activities which are outside the scope of its *EEA right* and the scope of a *permission* granted under Schedule 4 to the *Act*; in this case the *EEA firm* requires a "*top-up permission*" under Part IV of the *Act* and should refer to *AUTH 3* (Applications for Part IV permission); or
- (2) an *EEA firm* that carries on any insurance activity:
  - (a) by the provision of services; and
  - (b) pursuant to a *community co-insurance operation* in which the *firm* is participating otherwise than as *leading insurer* (see Article 11 of the *Regulated Activities Order*); or
- (3) a *Treaty firm* that wishes to provide *electronic commerce activities* into the *United Kingdom*.

13A.1.3 G (1) Under the Gibraltar Order made under section 409 of the *Act* (Gibraltar Order), a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

- (a) authorised in Gibraltar under the *Insurance Directives*; or
  - (b) authorised in Gibraltar under the *Banking Consolidation Directives*.
- (2) A Gibraltar insurance company is allowed to passport its services into the *United Kingdom* if it complies with the relevant notification procedures. Similarly, a Gibraltar *credit institution* is allowed to passport into the *United Kingdom* to provide banking services provided those services fall within items 1 to 6 in Annex 1 to the *Banking Consolidation Directive*. So, any references in this chapter to *EEA State* or *EEA right* include references to Gibraltar and the entitlement

under the Gibraltar Order where appropriate.

- (3) The entitlement in the Gibraltar Order does not, however, extend to *investment services* as Gibraltar investment firms have not been granted the right to passport into the *United Kingdom*.

#### Purpose

- 13A.1.4 G (1) This chapter explains how an *EEA firm* and a *Treaty firm* can qualify for *authorisation* under Schedules 3 and 4 to the *Act* and how a *UCITS qualifier* is *authorised* under Schedule 5 to the *Act*.
- (2) This chapter also provides *guidance* on Schedule 3 to the *Act* for an *incoming EEA firm* that wishes to establish a *branch* in the *United Kingdom* instead of, or in addition to, providing *cross border services* into the *United Kingdom* or vice versa.
- 13A.1.5 G (1) *EEA firms* should note that this chapter only addresses the procedures which the *FSA* will follow under the *Act* after it has received a consent notice or been notified of an *EEA firm's* intentions by its *Home State regulator*. So, an *EEA firm* should consider this *guidance* in conjunction with the requirements with which it will have to comply in its *Home State*.
- (2) The *guidance* in this chapter represents the *FSA's* interpretation of the *Single Market Directives*, the *Act* and the secondary legislation made under the *Act*. The *guidance* is not exhaustive and should not be seen as a substitute for a *person* consulting the legislation or taking legal advice.

#### 13A.2 EEA firms and Treaty firms

- 13A.2.1 G A *person* will only be an *EEA firm* or a *Treaty firm* if it has its head office in an *EEA State* other than the *United Kingdom*. *EEA firms* and *Treaty firms* are entitled to exercise both the right of establishment and the freedom to provide services under the *Treaty*. The difference, however, is that an *EEA firm* has a right to passport under a *Single Market Directive*, whereas a *Treaty firm* carries on activities which do not fall within the scope of a *Single Market Directive*. An *EEA firm* may also be a *Treaty firm* if it carries on such activities. A *person* may be a *Treaty firm*, where, for example, it carries on business that:
- (1) comprises *regulated activities*, such as reinsurance, which are not covered by any *Single Market Directive*; or
  - (2) includes *regulated activities* which do not fall within the scope of the *Single Market Directive* under which it is

entitled to exercise an *EEA right*.

13A.2.2 G An *EEA firm* may passport those activities which fall within the scope of the relevant *Single Market Directive* as long as they are included in its *Home State authorisation*.

13A.3 Qualification for authorisation under the Act

EEA firms

13A.3.1 G Section 31 of the *Act* (Authorised persons) states that an *EEA firm* is *authorised* for the purposes of the *Act* if it qualifies for *authorisation* under Schedule 3 to the *Act* (EEA Passport Rights). Under paragraph 12 of Part II of that Schedule, an *EEA firm* qualifies for *authorisation* if:

- (1) it is seeking to establish a *branch in the United Kingdom* in exercise of an *EEA right* and satisfies the *establishment conditions* (see *SUP 13A.4.1G* and *SUP 13A.4.2G*); or
- (2) it is seeking to provide *cross border services* into the *United Kingdom* in exercise of an *EEA right* and satisfies the *service conditions* (see *SUP 13A.5.3G*).

13A.3.2 G (1) On qualifying for *authorisation*, subject to *SUP 13A.3.2G* (2), an *EEA firm* will have *permission* to carry on each *permitted activity* (see (3) below) which is a *regulated activity*.

- (2) (a) Paragraph (1) does not apply to the activity of *dealing in units* in a *collective investment scheme* in the *United Kingdom* where:
  - (i) the *firm* is an *EEA UCITS management company*;
  - (ii) the *firm* satisfies the *establishment conditions* in *SUP 13A.4.1G*; and
  - (iii) the *FSA* notifies the *EEA firm* and the *EEA firm's Home State regulator* that the way in which it intends to market a *relevant scheme* in the *United Kingdom* does not comply with the law in force in the *United Kingdom*.
- (b) The *FSA's* notice under (2)(a)(iii) has to be given to the *EEA firm* within two *months* of receiving the consent notice (see paragraph 13(1) of Part II of Schedule 3 to the *Act*) and will be similar to a *warning notice*.

- (c) For details of the *FSA's* procedures for the giving of *warning notices* and references to the *Tribunal*, see *DEC 2.2* (Statutory notice procedure: Warning notice and decision notice procedure) and *DEC 5* (References to the *Tribunal*, publication and services of notices).
  - (3) The *permitted activities* of an *EEA firm* are those activities identified in the consent notice, regulator's notice or notice of intention. *Permitted activities* may include activities that are within the scope of a *Single Market Directive* but which are *unregulated activities* in the *United Kingdom*.
  - (4) The *permission* will be treated as being on terms equivalent to those appearing in the consent notice, regulator's notice or notice of intention. For example, it will reflect any limitations or requirements which are included in the *firm's Home State* authorisation.
- 13A.3.3 G An *EEA firm* which has qualified for *authorisation* is referred to in the *Handbook* as an *incoming EEA firm*.

#### Treaty firms

- 13A.3.4 G Under section 31 of the *Act*, a *Treaty firm* is *authorised* for the purposes of the *Act* if it qualifies for *authorisation* under Schedule 4 (Treaty Rights), that is:
- (1) the *Treaty firm* is seeking to carry on a *regulated activity*; and
  - (2) the conditions set out in paragraph 3(1) of Schedule 4 to the *Act* are satisfied.
- 13A.3.5 G On qualifying for *authorisation* a *Treaty firm* will have *permission* to carry on each *permitted activity* which is a *regulated activity*. This *permission* will be treated on the same terms as those which apply to the *Treaty firm's Home State* authorisation. For example, it will reflect any limitations or requirements which are included in the *firm's Home State* authorisation.
- 13A.3.6 G The effect of paragraph 5(1) and 5(2) of Schedule 4 to the *Act* is that a *Treaty firm* which qualifies for *authorisation* under that Schedule must, at least seven *days* before it carries on any of the *regulated activities* covered by its *permission*, give the *FSA* written notice of its intention to do so. Failure to do so is a criminal offence under paragraph 6(1) of that Schedule.
- 13A.3.7 D (1) A written notice from a *Treaty firm* under paragraph 5(2) of Schedule 4 to the *Act* must be:

- (a) given to a member of, or addressed for the attention of, the Authorisation Department; and
  - (b) delivered to the *FSA* by one of the methods in (2).
- (2) The written notice may be delivered by:
- (a) *post* to the address in *SUP* 13A.3.9G below; or
  - (b) leaving the application at the address in *SUP* 13A.3.9G below and obtaining a time-stamped receipt; or
  - (c) hand delivery to a member of the Authorisation Department.
- 13A.3.8 G The written notice required by paragraph 5(2) of Schedule 4 to the *Act* should be accompanied by confirmation of the *Treaty firm's* authorisation from the *Home State regulator*, as referred to in paragraph 3(2) of Schedule 4 to the *Act*.
- 13A.3.9 G (1) For further information, a *Treaty firm* may contact the Authorisation Department:
- (a) telephone on +4420 7066 3954; or
  - (b) write to: Authorisation Department, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS; or
  - (c) email corporate.authorisation@fsa.gov.uk.
- 13A.3.10 G (1) The *guidance* in *PERG* 2 is relevant to *Treaty firms* to help them determine if they require *authorisation* under the *Act*.
- (2) A *Treaty firm* which qualifies for *authorisation* is referred to in the *Handbook* as an *incoming Treaty firm*.
- 13A.3.11 G (1) An *EEA firm* that is carrying on both direct insurance and reinsurance business will be entitled to passport under Schedule 3 to the *Act* in relation to the direct *insurance business*. It will also have a *Treaty right* under Schedule 4 to the *Act*. Such *EEA firms* are advised to discuss their particular circumstances with the Authorisation Department before sending in their notification under paragraph 5(2) of Schedule 4 to the *Act* (see *SUP* 13A.3.6G).
- (2) An insurance company with its head office in an *EEA State* other than the *United Kingdom* that is carrying on pure reinsurance business in that State, and which wishes to carry on such business in the *United Kingdom*, is advised to discuss its particular requirements with the Authorisation

Department. It may be entitled to exercise a *Treaty right* provided it satisfies the conditions in paragraph 3(1) of Schedule 4 to the *Act* (see *SUP* 13A.3.4G). Otherwise, it will have to seek a *Part IV permission* (see *AUTH* 3 (Applications for Part IV Permission)).

#### UCITS qualifiers

- 13A.3.12 G Under Schedule 5 to the *Act* (Persons concerned in collective investment schemes), a *person* who for the time being is an *operator, trustee or depository* of a *scheme* which is a *recognised scheme* under section 264 of the *Act* is an *authorised person*. Such a *person* is referred to in the *Handbook* as a *UCITS qualifier*.
- 13A.3.13 G A *UCITS qualifier* has *permission* under paragraph 2 of Schedule 5 to the *Act*, to carry on, as far as is appropriate to the capacity in which it acts in relation to the scheme:
- (1) the *regulated activity* of *establishing, operating or winding up a collective investment scheme*; and
  - (2) any activity in connection with, or for the purposes of, the scheme.
- 13A.3.14 G A *UCITS qualifier* should refer to *COLLG* or to the following sections of *COLL* and *CIS* for requirements for recognised schemes:
- (1) *COLL* 9.2.1G and *CIS* 16.1.8G for *guidance* on notifications;
  - (2) *COLL* 9.2.1G and *CIS* 17.2 for *guidance* on information and documentation requirements; and
  - (3) *COLL* 9.4 and *CIS* 17.4 which includes *guidance* on what facilities need to be maintained.

#### 13A.4 EEA firms establishing a branch in the United Kingdom

##### The conditions for establishing a branch

- 13A.4.1 G (1) Before an *EEA firm* exercises an *EEA right* to establish a *branch* in the *United Kingdom* other than under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1) of Part II of Schedule 3 to the *Act*.
- (2) For the purposes of paragraph 13(1)(b)(iii) of Part II of Schedule 3 to the *Act*, the information to be included in the consent notice has been prescribed under regulation 2 of the *EEA Passport Rights Regulations*.

- 13A.4.2 G Where an *EEA firm* exercises its *EEA right* to establish a *branch* in the *United Kingdom* under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1A) of Part II of Schedule 3 to the *Act*.
- 13A.4.3 G For the purposes of paragraph 13(2)(b) of Part II of Schedule 3 to the *Act*, the *applicable provisions* may include *FSA rules*. The *EEA firm* is required to comply with relevant *rules* when carrying on a *passported activity* through a *branch* in the *United Kingdom* as well as with relevant *UK* legislation.

The notification procedure

- 13A.4.4 G (1) When the *FSA* receives a consent notice from the *EEA firm's Home State regulator*, it will, under paragraphs 13(2)(b), (c) and 13(3) of Part II of Schedule 3 to the *Act*, notify the *applicable provisions* (if any) to:
- (a) the *EEA firm*; and
  - (b) in the case of an *EEA firm* passporting under the *Insurance Directives*, the *Home State regulator*;
- within two *months* of the date on which the *FSA* received the consent notice.
- (2) Although the *FSA* is not required to notify the *applicable provisions* to an *EEA firm* passporting under the *Insurance Mediation Directive*, these provisions are set out in *SUP* 13A Annex 1G (Application of the Handbook to Incoming *EEA Firms*).

13A.5 EEA firms providing cross border services into the United Kingdom

Is the service provided within the United Kingdom?

- 13A.5.1 G There is *guidance* for *UK firms* in *SUP* Appendix 3.6 on when a service is provided cross border. *EEA firms* may find this of interest although they should follow the guidance of their *Home State regulators*.
- 13A.5.2 G An *EEA firm* should note that the requirement under the *Single Market Directives* to give a notice of intention to provide *cross border services* applies whether or not:
- (1) it has established a *branch* in the *United Kingdom*; or
  - (2) those *cross border services* are *regulated activities*.

The conditions for providing cross border services into the United Kingdom

- 13A.5.3 G (1) Before an *EEA firm* exercises an *EEA right* to provide *cross border services* into the *United Kingdom*, the *Act* requires it to satisfy the *service conditions*, as set out in paragraph 14 of Part II of Schedule 3 to the *Act*.
- (2) For the purposes of paragraph 14(1)(b) of Part II of Schedule 3 to the *Act*, the information to be contained in the regulator's notice has been prescribed under regulation 3 of the *EEA Passport Rights Regulations*.

The notification procedure

- 13A.5.4 G (1) Unless the *EEA firm* is passporting under the *Insurance Mediation Directive*, if the *FSA* receives a regulator's notice or, where no notice is required (in the case of an *EEA firm* passporting under the *Banking Consolidation Directive*), is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the *FSA* will, under paragraphs 14(2)(b) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the *FSA* received the regulator's notice or was informed of the *EEA firm's* intention.
- (2) Although the *FSA* is not required to notify the *applicable provisions* to an *EEA Firm* passporting under the *Insurance Mediation Directive*, these provisions are set out in *SUP 13A Annex 1G* (Application of the Handbook to Incoming EEA Firms).
- 13A.5.5 G An *EEA firm* that has satisfied the *service conditions* in paragraph 14 of Part II of Schedule 3 to the *Act* is entitled to start providing *cross border services* into the *United Kingdom*. However, an *EEA firm* that wishes to start providing *cross border services* but has not yet received notification of the *applicable provisions* may wish to contact the *FSA's* Passport Notifications Unit (see *SUP 13A.8.1G(2)*).

13A.6 Which rules will an incoming EEA firm be subject to?

- 13A.6.1 G *SUP 13A Annex 1G* summarises how the *Handbook* applies to *incoming EEA firms*.
- 13A.6.2 G An *incoming EEA firm* or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see *SUP 13A.4.4G* and *SUP 13A.5.4G*) and other relevant *UK* legislation. For example where the business includes:

- (1) business covered by the Consumer Credit Act 1974, then an *incoming EEA firm* or *incoming Treaty firm* must comply with the provisions of that Act, as modified by paragraph 15(3) of Schedule 3 to the *Act*; or
  - (2) effecting or carrying out contracts covering motor vehicle third party liability risks as part of direct *insurance business*, then an *incoming EEA firm* or *incoming Treaty firm* is required to become a member of the Motor Insurers' Bureau.
- 13A.6.3 G In particular, an *EEA firm* or *Treaty firm* must comply with the *applicable provisions* in SUP 10 (Approved persons). An *EEA firm* or *Treaty firm* should read AUTH 6 (Approved persons) but also refer to SUP 10.1 (Application) which sets out the territorial provisions of the *approved persons* regime.
- 13A.6.4 G Under the *EEA Passport Rights Regulations*, references in section 60 of the *Act* (applications for approval for persons to perform controlled functions) to "the authorised person concerned" include an *EEA firm* with respect to which the *FSA* has received a consent notice or regulator's notice under paragraph 13 of Schedule 3 to the *Act* (see SUP 13A.4.1G(1)) and SUP 13A.4.2G) or a regulator's notice under paragraph 14 of that Schedule (see SUP 13A.5.3G (1)), and which will be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule.
- 13A.6.5 G SUP 13A Annex 1G does not apply to *incoming ECA providers*. Such *persons* should refer to *ECO* for information on how the *Handbook* applies to them.
- 13A.7 Top-up permission
- 13A.7.1 G If a *person* established in the *EEA*:
- (1) does not have an *EEA right*;
  - (2) does not have *permission* as a *UCITS qualifier*; and
  - (3) does not have, or does not wish to exercise, a *Treaty right* (see SUP 13A.3.4G to SUP 13A.3.11G);

to carry on a particular *regulated activity* in the *United Kingdom*, it must seek *Part IV permission* from the *FSA* to do so (see AUTH 3). This might arise if the activity itself is outside the scope of the *Single Market Directives*, or where the activity is included in the scope of a *Single Market Directive* but is not covered by the *EEA firm's Home State authorisation*. If a *person* also qualifies for *authorisation* under Schedules 3, 4 or 5 of the *Act* as a result of its other activities, the *Part IV permission* is referred to in the *Handbook* as a *top-up permission*.

- 13A.7.2 G Where the *FSA* grants a *top-up permission* to an *incoming EEA firm* to carry on *regulated activities* for which it has neither an *EEA right* nor a *Treaty right*, the *FSA* is responsible for the prudential supervision of the *incoming EEA firm*, to the extent that the responsibility is not reserved to the *incoming EEA firm's Home State regulator*.
- 13A.7.3 G *Top-up permission* will be required, for example, for *designated investment business* activities carried on in relation to commodity derivatives.
- 13A.7.4 G For *guidance* on how to apply for *Part IV permission* under the *Act*, see *AUTH 3* (Applications for Part IV permission). If an *EEA firm* or *Treaty firm* wishes to make any subsequent changes to its *top-up permission*, it can make an application for variation of that *permission* (see *SUP 6* (Applications to vary and cancel Part IV permission)).
- 13A.8 Sources of further information
- 13A.8.1 G For further information on *UK* regulation, an *EEA firm*, a *Treaty firm* or a *UCITS qualifier* should contact the Perimeter Guidance team at the *FSA*. Questions about the passporting notification procedures can be addressed to the Passport Notifications Unit.
- (1) To contact the Perimeter Guidance team:
- (a) telephone on +44 20 7066 0082 or fax on +44 20 7066 9719;
- (b) write to: Perimeter Guidance team, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
- (2) To contact the Passport Notifications Unit:
- (a) telephone on +44 20 7066 1000 or fax on +44 20 7066 9798;
- (b) write to: Passport Notifications Unit, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS;
- (c) email: [passport.notifications@fsa.gov.uk](mailto:passport.notifications@fsa.gov.uk).

Annex G Application of the Handbook to Incoming EEA Firms G

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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.
2. In some cases, the application of the *Handbook* depends on whether responsibility for a matter is reserved under a European Community instrument to the *incoming EEA firm's Home State regulator*. *Guidance* on the reservation of responsibility is contained in *SYSC App 1* (Matters reserved to a Home State regulator).
3. For an *incoming EEA firm* which has *permission* for *cross-border services* only, many parts of the *Handbook* apply only if the *firm* carries on *regulated activities* in the *United Kingdom*. Those parts of the *Handbook* will therefore not apply if the *firm* confines its activities to those within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*, or which would not be regarded as carried on in the *United Kingdom*. Further *guidance* may be found in *PERG 2.4* (Link between activities and the *United Kingdom*) and *PERG 2.9.15G* to *PERG 2.9.17G* (*Overseas persons*).

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<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
<i>PRIN</i>	<p>The <i>Principles</i> apply only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the <i>firm's Home State regulator</i> (<i>PRIN 3.1.1R(1)</i>).</p> <p>For an <i>incoming EEA firm</i> which is a <i>BCD credit institution</i> without a <i>top-up permission</i>,</p>	<p>The <i>Principles</i> do 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> (<i>PRIN 3.1.1R(2)</i>).</p> <p>The <i>Principles</i> have limited application for activities which are not carried on from a <i>UK</i></p>

<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
	<i>Principle 4</i> applies only in relation to the liquidity of a <i>branch</i> established in the <i>United Kingdom</i> ( <i>PRIN 3.1.1R(2)</i> ).	establishment (see <i>PRIN 3.3.1R</i> ). Otherwise, see column (2).
SYSC	<p>SYSC 1 contains application provisions only. SYSC 2 and SYSC 3 apply 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 is 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 is 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 SYSC 1 to SYSC 3 for an <i>incoming EEA firm</i>. Further <i>guidance</i> is contained in SYSC 2.1.6G, Question 12.</p> <p>SYSC 4 applies to the extent that the Public Interest Disclosure Act 1998 applies to the <i>firm</i>.</p>	<p>SYSC 1 to SYSC 3 do 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>SYSC 1 to SYSC 3 have 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>
COND	COND does not apply if the <i>firm</i> does not have, or apply for, a <i>top-up permission</i> .	As column (2).

<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
	<p>Otherwise, only <i>threshold conditions</i> 1, 3, 4 and 5 apply and only in so far as relevant to:</p> <p>(1) an application for a <i>top-up permission</i> under Part IV of the <i>Act</i> (that is, a <i>permission</i> to carry on <i>regulated activities</i> in addition to those permitted through its <i>authorisation</i> under Schedule 3 to the <i>Act</i> (EEA Passport Rights)); and</p> <p>(2) the exercise of the <i>FSA's own-initiative power</i> in relation to the <i>top-up permission</i>.</p> <p>(COND 1.1.1G.)</p>	
<i>APER</i>	<i>APER</i> applies to <i>approved persons</i> ( <i>APER</i> 1.1.1G). See below under <i>SUP</i> 10 as to whether <i>controlled functions</i> are performed, and approval therefore required.	Not relevant because <i>SUP</i> 10 does not apply.
<i>FIT</i>	<i>FIT</i> applies to a <i>firm</i> wishing to establish a <i>branch</i> in the <i>United Kingdom</i> or to apply for a <i>top-up permission</i> in respect of any application that it makes for the approval of a <i>person</i> to perform a <i>controlled function</i> ( <i>FIT</i> 1.1). See under <i>SUP</i> 10 below as to whether such approval is required.	Does not apply.
<i>GEN</i>	<i>GEN</i> applies ( <i>GEN</i> 1.1, <i>GEN</i> 2.1, <i>GEN</i> 3.1, <i>GEN</i> 4.1, <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However, (a) <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent	<i>GEN</i> 4 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> .

<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
	<p><i>rules</i> imposed by its <i>Home State</i> (<i>GEN</i> 4.1.1R(3)), and (b) <i>GEN</i> 6 only applies to business that can be regulated under section 138 of the <i>Act</i> (General rule-making power). It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by a European Community instrument.</p>	<p>Otherwise, as column (2).</p>
<p><i>PRU</i></p>	<p><i>PRU</i> 9.1 (Responsibility for insurance mediation activity) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p><i>PRU</i> 9.2 (Professional indemnity insurance requirements for insurance and mortgage mediation activity and mortgage lending and administration) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p><i>PRU</i> 9.3 (Capital resources for insurance and mortgage mediation activity and mortgage lending and administration) does not apply unless the <i>firm</i> has a <i>top-up permission</i>. See <i>PRU</i> 9.3.2G for more detailed <i>guidance</i>.</p> <p><i>PRU</i> 9.4 (Insurance undertakings and mortgage lenders using insurance or mortgage mediation services) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p> <p>Otherwise, <i>PRU</i> does not apply unless the firm is an <i>insurer</i> to which <i>PRU</i> 7.6.33R applies.</p>	<p>As column (2)</p>

<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
<i>IPRU(BANK)</i>	<p>Only the following apply, and only if the <i>firm</i> is a <i>credit institution</i> other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive</i> (<i>IPRU(BANK)</i> 3.2.1R):</p> <p>(1) <i>IPRU(BANK)</i> 3.3.15R, <i>IPRU(BANK)</i> 3.3.16G and <i>IPRU(BANK)</i> 3.5.1R; and</p> <p>(2) chapter CO (which provides an overview of the underlying policy) and the more detailed <i>guidance</i> in chapters CB, CA, BC, BO, FX, CM, DU, TI, TE, TC, TL, TU, TS and TV.</p>	<p>Does not apply. But if the <i>firm</i> is a <i>credit institution</i> whose notification to the <i>FSA</i> of its intention to provide services in the <i>United Kingdom</i> covers services provided through a <i>branch</i>, see column (2).</p>
<i>IPRU(BSOC)</i>	<p>Does not apply because an <i>incoming EEA firm</i> cannot be a <i>building society</i> (<i>IPRU(BSOC)</i> X.2.1R).</p>	<p>Does not apply because an <i>incoming EEA firm</i> cannot be a <i>building society</i> (<i>IPRU(BSOC)</i> X.2.1R).</p>
<i>IPRU(FSOC)</i>	<p>Does not apply because an <i>incoming EEA firm</i> cannot be a <i>friendly society</i> (<i>IPRU(FSOC)</i> 1.1).</p>	<p>Does not apply because an <i>incoming EEA firm</i> cannot be a <i>friendly society</i> (<i>IPRU(FSOC)</i> 1.1).</p>
<i>IPRU(INS)</i>	<p>Only <i>IPRU(INS)</i> 3.6 and 3.7 (Linked long-term contracts) apply, and only if the <i>firm</i> is an <i>insurer</i> (<i>IPRU(INS)</i> 1.1(b)).</p>	<p>As column (2).</p>
<i>IPRU(INV)</i>	<p><i>IPRU(INV)</i> does not apply unless the <i>firm</i>:</p> <p>(1) has a <i>top-up permission</i>;</p> <p>(2) is an <i>authorised</i></p>	<p>As column (2).</p>

<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
	<p><i>professional firm, investment management firm, members' adviser, personal investment firm, securities and futures firm, service company or underwriting agent; and</i></p> <p>(3) is not a <i>lead regulated firm</i> or a <i>media firm</i>.</p> <p>(IPRU(INV) 1.1.1R and 1.2R)</p>	
COB	COB applies.	<p>Where the activity:</p> <p>(1)(a) would fall within the <i>overseas persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i>; or</p> <p>(b) would not be regarded as carried on in the <i>United Kingdom</i>; or</p> <p>(c) is not carried on with or for a <i>client</i> in the <i>United Kingdom</i>;</p> <p>then only the following apply:</p> <p>(d) COB 3 (Financial promotion), but see the territorial scope in COB 3.3 (Where?);</p> <p>(e) COB 5.5.7R and COB 5.5.8R (Overseas business);</p> <p>(f) certain parts of COB 6 (Product disclosure and the customer's right to cancel or withdraw) but only in relation to <i>long-term insurance business</i> carried on with a <i>customer</i> habitually resident in the <i>United Kingdom</i> or if the <i>State of the risk</i> is the <i>United Kingdom</i> (see COB 1.4.7R and COB 1.4.8R); and</p> <p>(g) (i) COB 4.3.19R to COB</p>

<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
		<p>4.3.25R save that the <i>firm</i> must also comply with those <i>rules</i> as if they also applied to a <i>firm</i> carrying out the activities in COB 4.3.19R(1) with or on behalf of all <i>private customers</i>;</p> <p>(ii) COB 5.2.12R to COB 5.2.14R; and</p> <p>(iii) COB 5.3.18R(1) and COB 5.3.18AR to COB 5.3.18CR; but only in relation to activities passported under the <i>IMD</i> (see COB 1.4.12R (3));</p> <p>(2) concerns a <i>distance contract</i> and is carried on with <i>retail customers</i> in the <i>United Kingdom</i> from an establishment maintained by the <i>firm</i> in an <i>EEA State</i> which:</p> <p>(a) has implemented the <i>DMD</i>; or</p> <p>(b) has obligations in its domestic law corresponding to those provided for by the <i>DMD</i>;</p> <p>COB 4.2, COB 5, and COB 6 do not apply.</p> <p>Otherwise, as column (2), (COB 1.4.3R).</p>
ICOB	ICOB applies.	<p>Only the following provisions of <i>ICOB</i> apply:</p> <p>(a) <i>ICOB</i> 3 (Financial promotion), but see the territorial scope in <i>ICOB</i> 3.4 (Application: where?);</p> <p>(b) <i>ICOB</i> 5.5.20R(1) to (3), but only in relation to <i>general insurance contracts</i> if the <i>state of</i></p>

<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
		<p><i>the risk is the United Kingdom;</i></p> <p>(c) <i>ICOB 5.5.20R(4) to (15) and (22), but only in respect of non-investment insurance contracts which are pure protection contracts where the habitual residence of the customer, other than an EEA ECA recipient, is in the United Kingdom;</i></p> <p>(d) <i>ICOB 6 (Cancellation), but only in respect of non-investment insurance contracts which are pure protection contracts where the habitual residence of the customer, other than an EEA ECA recipient, is in the United Kingdom.</i></p>
<i>MCOB</i>	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> or another <i>EEA State</i> at the time that the activity is carried on, but see the territorial scope in <i>MCOB 3.3</i> (Application: where?).	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> at the time that the activity is carried on but see <i>MCOB 1.3.4R</i> (Distance contracts entered into from an establishment in another EEA State) and <i>MCOB 3.3</i> (Application: where?).
<i>CASS</i>	<i>CASS</i> does not apply with respect to the <i>firm's passported activities</i> unless the <i>firm</i> is an <i>insurer</i> ( <i>CASS 1.2.3R (2)</i> ).	As column (2).

<p><b>MAR</b></p>	<p><b>MAR 1 (Code of market conduct)</b></p> <p>Applies if the <i>firm</i> is seeking <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i> (MAR 1.1.1G).</p> <p><b>MAR 2 (Price stabilising rules)</b></p> <p>Applies if the <i>firm</i> undertakes <i>stabilising action</i> and wishes to show that it has acted in conformity with <i>price stabilising rules</i>, or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118A(5)(a) of the <i>Act</i> (Market abuse) (MAR 2.1 Application).</p> <p><b>MAR 3 (Inter-professional conduct)</b></p> <p>Applies (MAR 3.1.4R).</p> <p><b>MAR 4 (Endorsement of the Take-over Code)</b></p> <p>Applies to <i>firms</i> whose <i>permission</i> includes, or ought to include, any <i>designated investment business</i>, except as set out in MAR 4.4.1R.</p> <p><b>MAR 5 (Alternative Trading Systems)</b></p> <p>Does not apply (MAR 5.1.1G).</p>	<p><b>MAR 1 (Code of market conduct)</b></p> <p>As column (2).</p> <p><b>MAR 2 (Price stabilising rules)</b></p> <p>Only applies in so far as the <i>firm</i> undertakes <i>stabilising action</i> and wishes to rely on a defence that it has acted in conformity with <i>price stabilising rules</i>, or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118A(5)(a) of the <i>Act</i> (Market abuse) (MAR 2.1 and in particular MAR 2.1.3R).</p> <p><b>MAR 3 (Inter-professional conduct)</b></p> <p>Does not apply (MAR 3.1.4R).</p> <p><b>MAR 4 (Endorsement of the Take-over Code)</b></p> <p>Does not apply (MAR 4.4.1R(4)(b)).</p> <p><b>MAR 5 (Alternative Trading Systems)</b></p> <p>Does not apply (MAR 5.1.1G).</p>
<p><b>TC</b></p>	<p>TC applies, but only in so far as responsibility for any matter it covers is not reserved by a European Community instrument to the <i>firm's Home State regulator</i>.</p>	<p>TC 1 (Commitments):</p> <p>(1) contains <i>guidance</i> relevant to compliance with <i>Principle 3</i>, satisfaction of <i>threshold condition 5</i> and the fit and proper test for <i>approved persons</i>; it is therefore relevant only if they apply to the <i>firm</i> (see the <i>guidance</i> on application of <i>PRIN</i>, <i>COND</i> and <i>FIT</i> above);</p>

		(2) in particular, does not therefore 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> .  <i>TC 2</i> (Rules and guidance) does not apply ( <i>TC 2.1.2R (2)</i> ).
<i>ML</i>	Applies ( <i>ML 1.1.2R</i> ).	Does not apply ( <i>ML 1.1.2R</i> ).
<i>SUP</i>	<p><b><i>SUP 1 (The FSA's approach to supervision)</i></b> Applies, but contains only <i>guidance</i>.</p> <p><b><i>SUP 2 (Information gathering by the FSA on its own initiative)</i></b> The application of this chapter is the same as for <i>Principle 11</i> (see under <i>PRIN</i> above).</p> <p><b><i>SUP 3 (Auditors)</i></b> Applies to the <i>firm</i> (and its auditor) only if the <i>firm</i> has a <i>top-up permission</i>.</p> <p><b><i>SUP 4 (Actuaries)</i></b> Does not apply.</p> <p><b><i>SUP 5 (Skilled persons)</i></b> Applies only if the <i>firm</i> is required by the <i>FSA</i> to provide a report under section 166 of the <i>Act</i> (Reports by skilled persons).</p> <p><b><i>SUP 6 (Applications to vary and cancel Part IV permission)</i></b> Applies only if the <i>firm</i> has a <i>top-up permission</i>.</p> <p><b><i>SUP 7 (Individual requirements)</i></b> Applies only if the <i>firm</i> has a <i>top-up permission</i>. It contains only <i>guidance</i> on the exercise of the <i>FSA's own initiative power</i> to</p>	<p><b><i>SUP 1 (The FSA's approach to supervision)</i></b> As column (2).</p> <p><b><i>SUP 2 (Information gathering by the FSA on its own initiative)</i></b> As column (2).</p> <p><b><i>SUP 3 (Auditors)</i></b> As column (2).</p> <p><b><i>SUP 4 (Actuaries)</i></b> Does not apply</p> <p><b><i>SUP 5 (Skilled persons)</i></b> As column (2).</p> <p><b><i>SUP 6 (Applications to vary and cancel Part IV permission)</i></b> As column (2).</p> <p><b><i>SUP 7 (Individual requirements)</i></b> As column (2).</p>

vary that *permission*. The *FSA* has similar, but more limited, powers of intervention under Part XIII of the *Act* in relation to the *permission* of the *firm* under Schedule 3 to the *Act* (see *ENF* 4).

**SUP 8 (Waiver and modification of rules)**

Applies only if the *firm* wishes to apply for, or consent to, or has been given, a *waiver* of the *FSA's* rules (*SUP* 8.1.1R).

**SUP 9 (Individual guidance)**

Applies only if the *firm* wishes to obtain individual *guidance* from the *FSA* or if the *FSA* gives the *firm* individual *guidance* on its own initiative (*SUP* 9.1.1G).

**SUP 10 (Approved persons)**

Applies, but the applicable *controlled functions* are limited. See *SUP* 10.1 (Application) for more detailed *guidance*.

**SUP 11 (Controllers and close links)**

Does not apply (*SUP* 11.1.1R (2)).

**SUP 12 (Appointed representatives)**

Applies only if the *firm* has *permission* to carry on *designated investment business, insurance mediation activity or mortgage mediation activity* and wishes to appoint, or has appointed, an *appointed representative* (*SUP* 12.1.1R (1)).

**SUP 13 (Exercise of passport rights by UK firms)**

Does not apply.

**SUP 8 (Waiver and modification of rules)**

As column (2).

**SUP 9 (Individual guidance)**

As column (2).

**SUP 10 (Approved persons)**

Does not apply (*SUP* 10.1.6R).

**SUP 11 (Controllers and close links)**

Does not apply (*SUP* 11.1.1R (2)).

**SUP 12 (Appointed representatives)**

As column (2).

**SUP 13 (Exercise of passport rights by UK firms)**

Does not apply.

**SUP 13A (Qualifying for authorisation under the Act)**

SUP 13A applies to the *firm* if it:

- (1) is considering carrying on activities in the *United Kingdom* which may fall within the scope of the *Act* and is seeking *guidance* on whether it needs a *top-up permission*; or
- (2) is, or is considering, applying to the *FSA* to carry on *regulated activities* in the *United Kingdom* under a *top-up permission*; or
- (3) is, or is considering, establishing a *branch* or providing *cross-border services* into the *United Kingdom* using *EEA rights*.

**SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)**

Applies.

**SUP 15 (Notifications to the FSA)**

Applies in full if the *firm* has a *top-up permission*. Otherwise, the application is modified as set out in SUP 15 Ann 1R.

**SUP 16 (Reporting requirements)**

Parts of this chapter may apply if the *firm* has a *top-up permission* or if the *firm* is:

- (a) a *bank*; or
- (b) a *depository* of an *ICVC*; or
- (c) an *OPS firm*; or
- (d) a *trustee* of an *AUT*; or

**SUP 13A (Qualifying for authorisation under the Act)**

As column (2).

**SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)**

Applies.

**SUP 15 (Notifications to the FSA)**

Does not apply if the *firm* has *permission* only for *cross border services* and does not carry on *regulated activities* in the *United Kingdom* (SUP 15 Ann 1R).

Otherwise, as column (2).

**SUP 16 (Reporting requirements)**

Parts of this chapter may apply if the *firm* has a *top-up permission* or if the *firm* is:

- (a) a *depository* of an *ICVC*; or
- (b) an *OPS firm*; or
- (c) a *trustee* of an *AUT*; or
- (d) an *insurer* with *permission* to

(e) an *insurer* with *permission* to effect or carry out *life policies*; or

(f) a *firm* with *permission* to *establish, operate or wind up a stakeholder pension scheme*; or

(g) a *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*.

(SUP 16.1)

**SUP 17 (Transaction reporting)**

Does not apply in relation to the *firm's passported activities*. Otherwise, this chapter applies only if the *firm* is a *securities and futures firm, a personal investment firm* or an *ISD investment firm* (SUP 17.1.1R).

**SUP 18 (Transfers of business)**

SUP 18.4 does not apply. SUP 18.1, SUP 18.2 and SUP 18.3 may be relevant if the *firm* proposes to transfer the whole or part of its business by an *insurance business transfer scheme* or to accept such a transfer or proposes to accept certain transfers of *insurance business* taking place outside the *United Kingdom*.

**SUP 20 (Fees Rules)**

Applies (SUP 20.1.1R) but modified (SUP 20.4.7G to SUP 20.4.10R).

**SUP App 1 (Prudential categories)**

Applies and provides *guidance* on the prudential categories used

effect or carry out *life policies*; or

(e) a *firm* with *permission* to *establish, operate or wind up a stakeholder pension scheme*; or

(g) a *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*

(SUP 16.1)

**SUP 17 (Transaction reporting)**

Does not apply (SUP 17.1.1R (2)(a)).

**SUP 18 (Transfers of business)**

As column (2).

**SUP 20 (Fees Rules)**

As column (2).

**SUP App 1 (Prudential categories)**

As column (2).

	<p>in the <i>Handbook</i>.</p> <p><b>SUP App 2 (Insurers: Scheme of operations)</b></p> <p>Does not apply (<i>SUP App 2.1.1R</i>).</p>	<p><b>SUP App 2 (Insurers: Scheme of operations)</b></p> <p>Does not apply (<i>SUP App 2.1.1R</i>).</p>
<i>ENF</i>	<i>ENF</i> applies and contains <i>guidance</i> on the use of the <i>FSA's</i> enforcement powers ( <i>ENF 1</i> ).	<i>ENF</i> applies and contains <i>guidance</i> on the use of the <i>FSA's</i> enforcement powers ( <i>ENF 1</i> ).
<i>DEC</i>	<i>DEC</i> applies and contains <i>guidance</i> on the <i>FSA's</i> decision making procedures ( <i>DEC 1</i> ).	<i>DEC</i> applies and contains <i>guidance</i> on the <i>FSA's</i> decision making procedures ( <i>DEC 1</i> ).
<i>DISP</i>	Applies ( <i>DISP 1.1.1R</i> ).	Does not apply ( <i>DISP 1.1.1R</i> ).
<i>COMP</i>	Applies, except in relation to the <i>passported activities</i> of an <i>ISD investment firm</i> or a <i>BCD credit institution</i> (see the definition of " <i>participant firm</i> ") other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive</i> . However, an <i>ISD investment firm</i> or <i>BCD credit institution</i> may be able to apply for <i>top-up cover</i> in relation to its <i>passported activities</i> (see <i>COMP 14</i> (Participation by EEA Firms)).	Does not apply in relation to the <i>passported activities</i> of an <i>ISD investment firm</i> or a <i>BCD credit institution</i> (see the definition of " <i>participant firm</i> "). Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see <i>COMP 5</i> ).
<i>COAF</i>	Applies if the <i>firm</i> wishes to bring a <i>complaint</i> under the <i>complaints scheme</i> , provided the <i>complaint</i> meets the requirements of the <i>complaints scheme</i> ( <i>COAF 1.2</i> ).	As column (2).
<i>COLL</i> and <i>CIS</i>	<i>COLL</i> and <i>CIS</i> apply if the <i>firm</i> : (a) is the <i>operator</i> or <i>depository</i> of an <i>AUT</i> or <i>ICVC</i> ; or (b) wishes to apply for an <i>authorisation order</i> to establish an <i>AUT</i> or <i>ICVC</i> ; or	As column (2).

	(c) is the <i>operator</i> of a <i>recognised scheme</i> ; or (d) wishes to apply for recognition of a <i>recognised scheme</i> .	
<i>CRED</i>	Does not apply.	Does not apply.
<i>ECO</i>	<i>ECO 2</i> applies if the <i>firm</i> is an <i>outgoing ECA provider</i> . <i>ECO 3</i> applies if the <i>firm</i> is a <i>domestic ECA provider</i> . <i>ECO 1</i> does not apply.	<i>ECO 1</i> applies if the <i>firm</i> is an <i>incoming ECA provider</i> except for <i>ECO 1.2.1R</i> which does not apply if: (a) the <i>electronic commerce activity</i> is not <i>insurance business</i> which: (i) satisfies the conditions in <i>ECO 1.2.3R</i> ; and (ii) is carried on by an <i>insurer</i> ; and (b) the <i>EEA State</i> from which the activity is provided has implemented the <i>DMD</i> with the result that the obligations provided for by the <i>DMD</i> are applied when the <i>incoming ECA provider</i> is carrying on the activity from an <i>establishment</i> in that State with a <i>UK ECA recipient</i> in the <i>United Kingdom</i> . <i>ECO 2</i> and <i>ECO 3</i> do not apply.
<i>ELM</i>	<i>ELM 6</i> applies.-	Does not apply.
<i>LLD</i>	Does not apply.	Does not apply.
<i>PROF</i>	<i>PROF</i> applies only if the <i>firm</i> is an <i>authorised professional firm</i> .	As column (2).
<i>REC</i>	Does not apply.	Does not apply.
<i>LR</i>	<i>LR</i> (Listing Rules) May apply if the <i>firm</i> is applying for <i>listing</i> in the <i>United Kingdom</i> , is a <i>listed issuer</i> in the <i>United Kingdom</i> , is a <i>sponsor</i> or is applying for approval as a	<i>LR</i> (Listing Rules) As column (2).

	<i>sponsor.</i>	
<i>PR</i>	<p><i>PR</i> (Prospectus Rules)</p> <p>May apply if the <i>firm</i> makes an <i>offer of transferable securities to the public</i> in the <i>United Kingdom</i> or is seeking the <i>admission to trading of transferable securities</i> on a <i>regulated market</i> situated or operating in the <i>United Kingdom</i>.</p>	<p><i>PR</i> (Prospectus Rules)</p> <p>As column (2).</p>
<i>DR</i>	<p><i>DR</i> (Disclosure Rules)</p> <p>May apply if the <i>firm</i> is an <i>issuer</i>, any class of whose <i>financial instruments</i> have been <i>admitted to trading</i> on a <i>regulated market</i>, or are the subject of an application for <i>admission to trading</i> on a <i>regulated market</i>, other than <i>issuers</i> who have not requested or approved admission of their <i>financial instruments</i> to trading on a <i>regulated market</i>.</p>	<p><i>DR</i> (Disclosure Rules)</p> <p>As column (2).</p>

### Part 3

...

14.1.6 G ...So, an *incoming EEA firm* that wishes to change or supplement the nature of its operations in the *United Kingdom* from the providing of *cross border services* to the establishment of a *branch* (or vice versa) should refer to *AUTH 5 SUP 13A* (Qualifying for authorisation under the Act).

14.1.7 G ...*Incoming EEA firms* seeking a *top-up permission* should refer to ~~*AUTH 5 SUP 13A*~~.

...

14.2.2 G (1) Where an *incoming EEA firm*,<sup>7</sup> passporting under the *Investment Services Directive*, *Banking Consolidation Directive* or the *UCITS Directive*,<sup>7</sup> has established a *branch* in the *United Kingdom*, regulation 4 states that it must not make a change in the *requisite details* of the *branch* (~~see *AUTH 5 Annex 1G*~~) unless it has complied with the relevant requirements.

...

...

14.2.5 G (1) Where an *incoming EEA firm* passporting under the *Insurance Directives* has established a *branch* in the *United Kingdom*, regulation 6 states that it must not make a change to the information referred to in regulation 2(5)(a) to (c) (~~see AUTH 5 Annex 1G~~) unless it has complied with the relevant requirements.

...

...

14.3.2 G Where an *incoming EEA firm* passporting under the *Investment Services Directive* or *UCITS Directive* is providing *cross border services* into the *United Kingdom*, it must not make a change in the details referred to in regulation 5(1) (~~see AUTH 5 Annex 2G~~) unless it has complied with the relevant requirements in regulation 5(3).

...

14.3.5 G If an *incoming EEA firm* passporting under the *Insurance Directives* is providing *cross border services* ~~into~~ into the *United Kingdom*, it must not make a change to the details referred to in regulation 7(1) (~~see AUTH 5 Annex 2G~~) unless it has complied with the relevant provisions.

...

Appendix 1.5 Determining the prudential categories of a firm

...

1.5.3 G For a *firm* with automatic *authorisation* by passporting under the *Single Market Directives*, exercising rights under the *Treaty* or as a *UCITS qualifier*, the *FSA* will have notified the ~~firm~~ firm of its prudential category at the same time as the *FSA* notified it of the *applicable provisions* to which it is subject (see ~~AUTH 5 SUP 13A~~ for further details on inward passporting). If it has a *top-up permission*, then *SUP App 1.5.2G* may also apply.

...

Appendix 3.10 Mapping of Insurance Directives to the Regulated Activities Order

...

3.10.10 G ...Where this is the case, the *insurer* will be subject to conduct of business requirements in the *United Kingdom* (see ~~AUTH 5.6 SUP 13A.6~~ (Which rules will an incoming EEA firm be subject to?)).

...

3.10.13 G ...The *insurance undertaking* will, therefore, generally be able to qualify for ~~'permission'~~ permission as a ~~Treaty firm~~ Treaty firm for its reinsurance business if it follows the procedure provided for by Schedule 4 (see *AUTH*

~~5.3.4G SUP 13A.3.4G~~ to ~~AUTH 5.3.13G SUP 13A.3.11G~~ (Treaty Firms) and also ~~AUTH 3.21~~ (Treaty firms applying for Part IV Permission))...

...

Schedule G  
2.2

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP 13.7.4G</i>	...	...	...	...
<u><i>SUP 13A.3.6G- SUP 13A.3.8G</i></u>	<u><i>Intention of incoming Treaty firm to carry on a regulated activity in the United Kingdom.</i></u>	<u><i>Matters relevant to the notice as indicated in SUP 13A.3.6G.</i></u>	<u><i>Intention to carry on a regulated activity.</i></u>	<u><i>At least seven days in advance.</i></u>
<i>SUP 14.2.3G</i>	...	...	...	...

Schedule G  
4.3

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> in <i>SUP</i> to direct or require:	
...	
(8)	<u>Paragraph 5(4) of Schedule 4 (Treaty Rights: Notice to Authority).</u>

## Annex F

### Amendments to the Decision Making manual

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

2

Annex 1 G Statutory notice procedure: Warning notice and decision notice procedure

...			
Paragraph <u>15A(5)(e)</u> of Schedule 3 (Note 3)	...	<del>AUTH 5</del> <u>SUP 13A</u>	<i>Executive procedures</i>
...			

## Annex G

### Amendments to the Collective Investment Schemes sourcebook

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

- 17.1.3 G ...If the manager of such a *scheme* wishes to undertake the passportable activities of *managing ~~investment~~ investments* (other than of a *collective investment schemes*), *investment* advice or safekeeping and administration of investments, as provided by article 5(3) of the *UCITS Directive*, as well as *scheme* management, it will need to do so in accordance with an authorisation conferred by Schedule 3 to the *Act* and should refer to the procedures in ~~*AUTH-5*~~ *SUP 13A* and *SUP 14* accordingly.

## Annex H

### Amendments to the Electronic Commerce Directive sourcebook

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

1.1.10 R

Provision	Description
...	
<i>AUTH 1.2.6 G, AUTH 2.4.3 G, AUTH 2.4.7 G, AUTH 2.8.2 G - 2.8.15 G, AUTH 2.9.1 G, AUTH 2.9.18 G, <del>AUTH 5.1.1 G - 5.1.2 G, AUTH 5.6.5 G, AUTH 5 Annex 3G</del></i>	Authorisation guidance
...	
<u><i>SUP 13A.1.1G – 13A.1.2G, SUP 13A.6.5G, SUP 13A Annex 1G</i></u>	<u>Authorisation guidance</u>
...	

...

## Annex I

### Amendments to the Perimeter Guidance manual

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

2.9.18 G ...  
(3) *Incoming ECA providers* should note that notification requirements under the *Single Market Directives* still apply (see ~~AUTH-5~~ SUP 13A).

...

4.2.1 G ...  
(2) qualify for *authorisation* (see ~~AUTH-5~~ SUP 13A (Qualifying for authorisation under the Act)), for example if the *person* is an *EEA firm* or a *Treaty firm*.

...

5.2.2 G ...  
(2) qualify for *authorisation* (see ~~AUTH-5~~ SUP 13A (Qualifying for Authorisation under the Act)); for example, if the *person* is an *EEA firm* or a *Treaty firm*.

...

5.12.13 G ...  
... ~~AUTH-5~~ SUP 13A (Qualifying for authorisation under the Act) has general *guidance* on the exercise of passporting rights by *EEA firms*.

...

**SUPERVISION MANUAL (AMENDMENT NO 13) INSTRUMENT 2005**

**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 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force as follows:
- (1) part 3 of the Annex to this instrument comes into force on 1 March 2006;
  - (2) the remainder of this instrument comes into force on 1 January 2006.

**Amendments to the Supervision manual**

- D. The Supervision manual is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Supervision Manual (Amendment No 13) Instrument 2005.

By order of the Board  
15 December 2005

## Annex

### Amendments to the Supervision manual

In this Annex, which is in three parts, underlining indicates new text and striking through indicates deleted text.

#### Part 1: Amendments to SUP 3: Auditors

##### 3.9.5R Auditor's report

...

...

(6) Except in the case of a *small personal investment firm*, the relevant ...

...

(b) ~~*a personal investment firm: the annual financial statement* (see ~~SUP 16.7.45R~~) (except a *small personal investment firm*):~~ sections A, B & D of the *RMAR* as at the *firm's accounting reference date* (see SUP 16.7.77R) (see Note);or

...

(7) ~~...and returns;~~

(8) in the case of:

(a) *a personal investment firm*; or

(b) *a securities and futures firm*;

the balance sheet of the relevant financial reporting statement in (6) has been properly reconciled to, respectively, the *RMAR* submitted under SUP 16.7.77R, or quarterly reporting statement or monthly reporting statement prepared as at, in respect of the same *accounting reference date*;

...

**Note:** The data submitted in section B (Profit & Loss) will be cumulative over the financial year.

##### 3.9.6R ...

#### Part 2: Amendments to SUP 16 Reporting Requirements

16.7.77R	...		
	Reports...		
	Consolidated supervision return ( <del>¶</del> Note 5)	...	...
	<u>Audited consolidated statutory accounts (Note 9)</u>	<u>annually</u>	<u>4 months after the firms accounting reference date</u>
	...		

...

Note 9 = required from all *personal investment firms* if it is a *holding company*, or if one of its *controllers is a company*.

...

Sup 16 Annex 4 G: Guidance Notes on Building Societies: Form QFS1

INTRODUCTION: GENERAL NOTES ON THE RETURN

...

3. Accounting conventions

Unless advice is given to the contrary in these Guidance Notes, the return should be compiled using standard accounting practice and in accordance with accounts regulations made under the 1986 Act.

However, information on lending (e.g. balances, advances, interest rates, arrears etc.) in sections G, H, I, J, K and L of the return should be reported on a contractual basis (i.e. as between the lender and the borrower).

...

Sup 16 Annex 4 G: Guidance Notes on Building Societies: Form AFS1

INTRODUCTION: GENERAL NOTES ON THE RETURN

...

3. Accounting conventions

Unless advice is given to the contrary in these Guidance Notes, the return should be compiled using standard accounting practice and in accordance with accounts regulations made under the 1986 Act.

However, information on selected business volumes in section G of the return should be reported on a contractual basis (i.e. as between the lender and the customer).

...

Part 3: Amendment to SUP 16 Annex 3R: Building Societies: Form MFS1

...

B(7) BALANCE SHEET : ELIGIBLE LIABILITIES : Society	£000's	Society	Month ended .../.....
	<i>Sterling (except where indicated)</i>		
B20.1 Sterling share and deposit liabilities	_____	<i>(B1.1 + B1.2 + B2.0a + B2.0b + B2.10 -B2.5a + B2.13 + B2.14 + B2.15 + B2.16)</i>	
...			
B20.6 <del>Sterling repo liabilities with the Bank of England</del>	<u><u>N/A</u></u>	<i>(Column 5 of item B2.5a)</i>	
...			
B20.10 <del>Sterling balances with the Bank of England (excluding CRD's)</del>	<u><u>N/A</u></u>	<i>(B6.2a minus OW1.1)</i>	

...

**LLOYD'S SOURCEBOOK (AMENDMENT NO 3) INSTRUMENT 2005**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 31 December 2005.

**Amendments to the Glossary of definitions**

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

**Amendments to the Lloyd's sourcebook**

- E. The Lloyd's sourcebook is amended in accordance with Annex B and C to this instrument.

**Amendments to the Supervision manual**

- F. The Supervision manual is amended in accordance with Annex D to this instrument.

**Citation**

- G. This instrument may be cited as the Lloyd's Sourcebook (Amendment No 3) Instrument 2005.

By order of the Board  
15 December 2005

## Annex A

### Amendments to Glossary of definitions

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

<i>actuarial health insurance</i>	<p>(1) <del>(in LLD) the type of insurance defined in LLD 11.4.1R, which is in summary: general insurance business which is sickness insurance and satisfies certain specified conditions.</del></p> <p>(2) (in PRU) (in the context of the rules in PRU 7.2 concerning the calculation of the <i>general insurance capital requirement</i>), health insurance which meets all the conditions set out in PRU 7.2.72R.</p>
<i>admissible asset</i>	<p>(1) (in LLD) an asset that <u>falls into one or more categories in PRU 2 Ann 1R as modified by LLD 19.3.19R</u> <del>may be taken into account for the purposes of the solvency requirements in LLD 11.2.1R in accordance with LLD 13.4.1R.</del></p> <p>(2) (in PRU) an asset that falls into one or more categories in PRU 2 Ann 1R.</p>
<i>approved security</i>	<p>(1) (in COLL and CIS) a <i>transferable security</i> that is admitted to <i>official listing</i> in an <i>EEA State</i> or is traded on or under the rules of an <i>eligible securities</i> market (otherwise than by the specific permission of the market authority).</p> <p>(2) (in <del>LLD and</del> PRU) any of the following: ...</p>
<i>balancing amount</i>	<p><u>(in LLD)</u> in respect of a <i>syndicate</i>, ...</p>
<i>callable contribution</i>	<p><u>(in LLD)</u> amounts that <i>members</i> are liable to pay to the <i>Society</i> (or may by resolution of the <i>Society</i> be liable to pay) as contributions to the <i>Central Fund</i>.</p>
<i>Central Fund</i>	<p><u>(in LLD)</u> the Central Fund established under Lloyd's Central Fund Byelaw (No 4 of 1986) and the New Central Fund established under Lloyd's New Central Fund Byelaw (No 23 of 1996).</p>
<i>closed into</i>	<p><del>(in LLD) (in relation to two <i>syndicate years</i>) closed into another <i>syndicate year</i> by way of a contract of <i>reinsurance to close</i> into that other <i>syndicate year</i>, either directly or through a succession of such contracts.</del></p>
<i>connected company</i>	<p><del>(in LLD) (in relation to a <i>body corporate</i>):</del></p> <p>(a) <del>that <i>body corporate's</i> holding company;</del></p> <p>(b) <del>a subsidiary of that <i>body corporate</i>;</del></p> <p>(c) <del>a subsidiary of the holding company of that <i>body corporate</i>.</del></p>

<i>covered</i>	<del>(in LLD) (in relation to a contract) not requiring a significant provision to be made in respect of it.</del>
<i>credit insurance business</i>	<del>(in LLD) insurance business relating to credit contracts.</del>
<i>discounting</i>	( <del>in LLD</del> and in PRU) discounting or deductions to take account of investment income as set out in paragraph 48 of the <i>insurance accounts rules</i> .
<i>general insurance business assets</i>	<del>(in LLD) assets of a member that are:</del> (a) in a <i>premium trust fund</i> for <i>general insurance business</i> ; or (b) <i>funds at Lloyd's</i> that are not <i>long term insurance business assets</i> .
<i>general insurance business liabilities</i>	<del>liabilities of a member that are not to be left out of account under LLD 12.5.4R, and are not long term insurance business liabilities.</del>
<i>general insurance business syndicate</i>	<del>a syndicate in which members at Lloyd's carry on general insurance business.</del>
<i>global account</i>	the <u>aggregate accounts produced by the Council in accordance with Regulation 8(1) of the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 under LLD 15.10</u> <del>(The Lloyd's global account).</del>
<i>initial margin</i>	(1) (in <i>COLL</i> and <i>CIS</i> ) cash or other property deposited in accordance with the rules of a <i>derivatives</i> market. (2) (in <i>COB</i> ) the amount which under the rules of the relevant exchange or <i>clearing house</i> the <i>firm</i> or an <i>intermediate broker</i> would be required to deposit in cash as a fidelity deposit in respect of all the <i>client's</i> open positions in <i>marginated transactions</i> at that time, irrespective of any unrealised profit or loss on such positions, on the assumption that those transactions were the only transactions undertaken under the rules of that exchange or that <i>clearing house</i> by the <i>firm</i> or the <i>intermediate broker</i> at that time. (3) ( <del>in LLD</del> ) ( <del>in relation to a derivative contract or quasi-derivative contract</del> ) assets which, before or at the time the contract is entered into, are transferred subject to a condition that the assets (or where the assets transferred are <i>securities</i> , equivalent <i>securities</i> ) will be returned on completion of that contract.
<i>intermediary</i>	<del>(in LLD) a person who in the course of any business or profession invites other persons to make offers or proposals or to take other steps with a view to entering into contracts of insurance, but not a person who publishes such invitations only on behalf of, or to the order of, some other person.</del>

<i>IPRU(INS)</i>	<del>(1) (except in <i>LLD</i>) the Interim Prudential Sourcebook for insurers; (2) (in <i>LLD</i>) the version of IPRU(INS) in force immediately prior to the coming in to force of the Interim Prudential Sourcebook (Insurers and Other Amendments) Instrument 2004.</del>
<i>listed</i>	(1) (except in <i>LR</i> , <i>ENF 21</i> and <del><i>LLD</i> and <i>PRU</i></del> ) included in an <i>official list</i> . (2) (in <del><i>LLD</i> and <i>PRU</i></del> ) (a) included in an <i>official list</i> ; or (b) in respect of which facilities for <i>dealing</i> on a <i>regulated market</i> have been granted. (3) (in <i>LR</i> and <i>ENF 21</i> ) admitted to the <i>official list</i> maintained by the <i>FSA</i> in accordance with section 74 of the <i>Act</i> .
<i>Lloyd's member's contribution</i>	(in <i>LLD</i> ) assets: (a) provided to a <i>managing agent</i> in response to a cash call; or (b) held by the <i>Society</i> as <i>funds at Lloyd's</i> .
<i>Lloyd's policy</i>	<del>a contract of insurance written at Lloyd's.</del>
<i>Lloyd's trust deed</i>	(in <i>LLD</i> ) a trust deed in the form prescribed by the <i>Society</i> and notified to the <i>FSA</i> , for execution by a <i>member</i> in respect of his <i>insurance business</i> .
<i>Lloyd's trust fund</i>	(in <i>LLD</i> ) a fund held on the terms of a <i>Lloyd's trust deed</i> .
<del><i>long-term insurance business assets</i></del>	<del>assets of a <i>member</i> that are: (a) in a <i>premium trust fund</i> for <i>long-term insurance business</i>; or (b) <i>funds at Lloyd's</i> that are, for the time being, identified as available to meet <i>long-term insurance business liabilities</i> of the <i>member</i>.</del>
<del><i>long-term insurance business liabilities</i></del>	<del>liabilities of a <i>member</i> that are attributable to his <i>long-term insurance business</i>.</del>
<del><i>lower required amount</i></del>	<del>the lower required amount as defined in <i>LLD 11.2.13R</i> or <i>LLD 11.2.14R</i>.</del>
<i>mathematical reserves</i>	(1) (in <i>LLD</i> ) the provision made for a <i>member</i> to cover liabilities (excluding liabilities which have fallen due and liabilities arising from <i>deposit back arrangements</i> ) arising under or in connection with <i>long-term insurance contracts</i> . (2) (in <i>PRU</i> ) the provision made by an <i>insurer</i> to cover liabilities (excluding liabilities which have fallen due and liabilities arising from <i>deposit back arrangements</i> ) arising under or in connection with <i>long-term insurance contracts</i> .
<i>member's margin</i>	the amount determined in accordance with <i>LLD 11.3.1R</i> (General insurance business) or <i>LLD 11.3.4R</i> (Long term insurance business).

<i>net central assets</i>	<del>central assets less the liabilities of the Society (excluding the liabilities of members) valued in accordance with LLD 9 to 15.</del>
<i>other personal wealth</i>	<del>(in LLD) assets of an individual member that are neither part of his funds at Lloyd's nor in a premium trust fund.</del>
<i>permitted asset exposure limit</i>	a permitted asset exposure limit as defined in LLD 14.5.17R.
<i>permitted counterparty exposure limit</i>	a permitted counterparty exposure limit as defined in LLD 14.6.1R.
<i>premium trust fund</i>	a trust fund into which premiums receivable by members are paid in compliance with a trust deed under LLD 10.3 (Carrying of insurance receivables to trust funds).
<i>required amount</i>	<del>(in LLD) for a member, in relation to general insurance business or long term insurance business, the required amount determined in accordance with LLD 11.2.6R or LLD 11.2.7R.</del>
<i>salvage right</i>	<del>(in LLD) any right of a member under a contract of insurance (and vested in a premium trust fund) to take possession of and to dispose of property because he has made a payment or has become liable to make a payment in respect of a loss to that property.</del>
<i>Society GICR</i>	(in LLD) the general insurance capital requirement calculated by the Society as if it were an insurer under LLD 19.2.13R.
<i>Society guarantee fund</i>	<del>(in LLD) the guarantee fund calculated by the Society under LLD 11.5.2R.</del>
<i>Society margin</i>	<del>(in LLD) the margin calculated by the Society under LLD 11.5.1R.</del>
<i>syndicate assets</i>	(in LLD) assets managed by or at the direction of a managing agent in respect of insurance business carried on through a syndicate and overseas business regulatory deposits funded from those assets.
<i>syndicate ICA</i>	(in LLD) the capital assessment performed by a managing agent under PRU 1.2.26R, LLD 18.2.1R(1), PRU 2.3 and LLD 19.4.1R(1) in respect of each syndicate managed by it.
<i>technical provision</i>	<del>(1) (in LLD) a technical provision as defined in the insurance accounts rules.</del> (2) (in PRU) a technical provision established: (a) for general insurance business, in accordance with PRU 7.2.12R; and (b) for long-term insurance business, in accordance with PRU 7.2.16R.

## Annex B

### Amendments to the Lloyd's sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted, the place where the change will be made is indicated and the text is not struck through.

#### LLD Contents

Lloyd's

...

LLD 15 Reporting

...

15.10 [deleted]

...

Lloyd's

#### Lloyd's sourcebook – Transitional provisions

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

[Insert a new transitional provision 10 as follows]

<u>10</u>	<u>LLD Form 15 Instruction 7</u>		<u>The Society must include in aggregate members' liabilities aggregate net surpluses in open syndicate years (for those members with surpluses) to be shown at line 21.</u>	<u>31.12.2005</u>	<u>Commencement</u>
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...

## Chapter 15

### Reporting

#### 15 Reporting

##### 15.1 Application and purpose

...

##### Purpose

15.1.5 G The *Lloyd's Return* is made annually and contains the statement required from the *Society* that ~~it has maintained capital resources equivalent at least equal to its~~ the capital resources requirements for general insurance business and long-term insurance business under PRU 2 and LLD 19 (Application of PRU 2 to Lloyd's), have been maintained at all times throughout the financial year. ~~This does not absolve the Society from the obligation to maintain capital resources equivalent to its capital resources requirement at all times.~~

15.1.5A G For general insurance business, the capital resources requirement for the Society is the higher of the aggregate of the members' capital resources requirements for general insurance business, calculated in accordance with LLD 19.2.5R, and the Society GICR. For long-term business, the capital resources requirement for the Society is the aggregate of the members' capital resources requirements, calculated in accordance with LLD 19.2.7R. The Society is required to ensure that each member's capital resources requirement is covered by that member's capital resources, or, where there is a shortfall in the member's capital resources, by the Society's own capital resources. For general insurance business, the Society must ensure that the Society GICR is covered by the aggregate capital resources supporting the insurance business of all the members.

...

##### 15.2 Requirement to report to the FSA

...

15.2.5 R The *Society* must provide a printed copy of the *Lloyd's Return* to the *FSA*, with Form 9 1 signed by three signatories ...

...

Delete *LLD* 15.10 in its entirety; the deleted text is not shown struck through.

15.10 ~~The Lloyd's global account [deleted]~~

...

15 Ann 1 R Reporting Forms

[The amendments to the Reporting Forms are shown in Annex C]

15 Ann 2 R Certificate by the Council (see LLD 15.9.1R(1))

R

1 Table R

1 Subject to 5, the certificate required by *LLD* 15.9.1R(1) must state:

- (1) in relation to Forms ~~9~~ 1 to 3, 13 to 17, 20 to 42, the supplementary notes to the forms..., that:
  - (a) the *Lloyd's Return* has been prepared in accordance with *PRU* and *LLD* ~~9 to 15~~ to 24;
  - (b) ...
  - (c) ...
- (2) ~~that reasonable enquiries have been made by the Society for the purpose of determining whether any persons are connected for the purposes of *LLD* 9 to 15; [deleted]-~~
- (3) that, as applicable, the assets held by *members* throughout the *financial year* in question enabled the *Society* to comply with ~~*LLD* 14.3.1R (Currency matching and localisation); *PRU* 7.2.30R (Localisation (UK firms only)) and *PRU* 7.2.34R (Matching of assets and liabilities);~~ and
- (4) ...

2 Subject to 5, the certificate required by *LLD* 15.9.1R(1) must state that ~~the required margin has~~ *capital resources at least equal to the capital resources requirements* under *PRU* 2 and *LLD* 19 (Application of *PRU* 2 to Lloyd's), have been maintained throughout at all times during the *financial year* in question.

3 Subject to 5, the certificate required by *LLD* 15.9.1R(1) must also state in relation to the *long-term insurance business* carried on by *members*:

- (1) that the requirements of ~~*IPRU(INS)* 3.1R to 3.5R~~ *PRU* 7.6.18R to *PRU* 7.6.33R have been fully complied with and in particular that, subject to the provisions of ~~*IPRU(INS)* 3.2R(3)~~ *PRU* 7.6.27R, assets

attributable to *long-term insurance business*, the income arising, the proceeds of any realisation of such assets and any other income or proceeds allocated to the *long-term insurance business fund* ~~fund~~ or ~~funds~~ *funds* have not been applied otherwise than for the purpose of the *long-term insurance business*;

- (2) ~~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 a *member* or by a *person* who, for the purposes of *IPRU(INS) 3.4R*, is connected with it or is a subsidiary undertaking 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 *member* has been made at fair market value; [deleted]~~
- (3) that all guarantees given by a *member* of the performance by a related *insurer* which would fall to be met by any *long-term insurance business fund* ~~fund~~ have been disclosed in the *Lloyd's Return*, and that the fund or funds on which each of those guarantees would fall has been identified in it; and
- (4) that the return in respect of *long-term insurance business* is not distorted by agreements between the *members* concerned or by any arrangements which could affect the apportionment of expenses and income; and
- (5) ~~that *IPRU(INS) 3.5R* has been fully complied with. [deleted]~~

4 ...

...

15 Ann 4 R Certificate by the syndicate actuary (see LLD 15.9.1R(3))

R

1 Table R

1 The certificate required by *LLD 15.9.1R(3)* to be signed by the *syndicate actuary* appointed to a *syndicate* in which *members* carry on *long-term insurance business* must state:

- (1) ...
- (2) whether the sum of the *mathematical reserves* and the deposits received from reinsurers as shown in Form 14 constitute proper provision at the end of the *financial year* for the *long-term insurance business liabilities* where these liabilities:
  - (a) ...;

(b) include all liabilities arising from ~~deposit back arrangements~~  
deposit back arrangements;

(3) whether the liabilities have been valued in accordance with ~~LLD 9 to 15~~  
~~16 to 24~~ in the context of assets valued in accordance with ~~LLD 9~~  
~~to 15~~16 to 24, as shown in Form 14;

(4) ...

...

15 Ann 5 R Auditors' report (see LLD ~~15.9.3R~~15.9.2R)

R

1 Table R

1 The ~~report~~ certificate required by ~~LLD 15.9.3R~~ 15.9.2R must, in addition to any statement required by section 237(2) and (3) of the Companies Act, state:

(1) that in the auditors' opinion, Forms ~~9 1 to 3, 13 to 17, 20 to 42, ...~~  
have been properly prepared in accordance with ~~LLD 9 to 15~~ LLD 15  
to 24;

(2) that ...

(a) in their opinion, the certificate required ... has been properly prepared in accordance with ~~LLD 9 to 15~~ LLD 15 to 24; and

(b) ...

(3) the ...

(a) ...

(b) in respect of *long-term insurance business* carried on by *members*, on the certificates of the *syndicate actuaries* given in accordance with the requirements of ~~LLD 9 to 15~~ LLD 15 to 24 with respect to the amounts in Form 60.

2 ...

3 ...

4 Where the auditors refer in their report or in any note attached to their report to any uncertainty, the report must state whether, in the auditors' opinion, that uncertainty is material to determining whether the *Society* is able to meet the solvency requirements of ~~LLD 9 to 15~~ LLD 15 to 24.

Lloyd's

Schedule 1

Lloyd's sourcebook – Record keeping requirements

G

- 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. In particular, in accordance with the application rules in LLD 16 to LLD 25, the Society and managing agents are subject to prudential requirements in PRU which include record keeping requirements. They should refer to the relevant Schedules to PRU for a view of those requirements.
- 3 Table Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>LLD 1.2.2G(1)</i>	<i>Delegation of responsibility for carrying out the Society's regulatory functions</i>	Not specified	Not specified	Not specified
<i>LLD 1.2.4G(2)</i>	<i>Records of any committee with delegated authority to carry out the Society's regulatory functions</i>	Should include minutes of its meetings	Not specified	Not specified
<i>LLD 1.2.5G(2)</i>	<i>An individual's or other person's exercise of his delegated authority to carry out the Society's regulatory functions</i>	Not specified	Not specified	Not specified
<i>LLD 1.3.10G(1)</i>	<i>Interests of those involved in carrying out the Society's regulatory functions</i>	Register of interests	Not specified	Not specified
<i>LLD 1.3.10G(2)</i>	<i>Conflicts of interest of those involved in carrying out the Society's regulatory functions</i>	Disclosures of conflicts of interest and the steps taken to handle them	Not specified	Not specified

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>LLD 4.2.3G(1)</i>	...			
<i>LLD 5.2.3G</i>	...			
<i>LLD 7.3.1G</i> <i>LLD 7.3.2G</i>	...			
<i>LLD 9.4.5R</i>	<del>Accounting records</del>	<del>Sufficient to demonstrate compliance with <i>LLD 9</i> to <i>15</i></del>	<del>As required in accordance with <i>LLD 9</i> to <i>15</i></del>	<del>Normally not less than 10 years</del>
<i>LLD 10.8.3G(4)</i>	<del><i>Managing agents' records</i></del>	<del>Various records and analyses of underwriting and claims</del>	<del>Not specified</del>	<del>Not specified</del>

Lloyd's

## Schedule 2

Lloyd's sourcebook – Notification requirements

### G

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant requirements for notifications and reporting.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were. In particular, in accordance with the application rules in *LLD 16* to *LLD 25*, the *Society* and *managing agents* are subject to prudential requirements in *PRU* and *SUP* which include notification requirements. They should refer to the relevant Schedules to *PRU* and *SUP* for a view of those requirements.
- 3 Table Notification requirements

Insert new second column with heading: "Notification by" in the following table:

Handbook reference	<u>Notification by</u>	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>LLD 2.3.1D</i>	<u><i>Society</i></u>	Any matter ...	Includes ...	The <i>Society</i> ...	Immediate
<i>LLD 2.4</i>	<u><i>Society</i></u>	Commencement, ...	Commencement, ...	End ...	5 business days
<del><i>LLD</i></del>		<del>Proposed changes</del>	<del>Details of</del>	<del>Not</del>	<del>The <i>FSA</i></del>

Handbook reference	Notification by	Matter to be notified	Contents of notification	Trigger event	Time allowed
2.6.2G  LLD 2.6.3G		in <i>byelaws</i> for supervising and regulating the market at Lloyd's	proposed changes; consultation undertaken and responses to consultation	specified	should be given adequate notice
LLD 2.6.4G		Regulatory and market bulletins; and all amendments to <i>byelaws</i>	Copies of bulletins and amendments	Publication	Immediate
LLD 3.3		Information about the <i>Central Fund</i>	Information on the <i>Central Fund's</i> net market value; payments; investments; changes in any insurance policy and any claims on the latter, or circumstances likely to lead to a claim	End of each calendar quarter	2 weeks
LLD 4.3	<u>Society</u>	Information ...	Capacity ...	End ...	1 month
LLD 7.4	<u>Society</u>	Information ...	Number, ...	End ...	1 month
LLD 10.4		Intention to approve or amend a trust deed	New trust deed and proposed amendment, plus a statement of the purpose of the deed/amendment and an analysis of its impact	The <i>Society</i> intends to approve or amend a trust deed	Sufficient time for the <i>FSA</i> to consider proposals before <i>Society</i> approval
LLD 10.5.2G		Material changes proposed to risk based capital system	Details of proposed changes	The <i>Society</i> intends to make amendments to risk based capital system maintained under <i>LLD</i>	Adequate time for the <i>FSA</i> to review proposals and assess their implication

Handbook reference	Notification by	Matter to be notified	Contents of notification	Trigger event	Time allowed
				10.5.1R	
<del>LLD 10.5.4R</del>		Independent reviews commissioned by the <i>Society</i> of the operation of the RBC model	Results of each review	Completion of the review	Not specified
<del>LLD 10.6</del>		Reviews of aggregations of risk and plans for monitoring aggregations of risk	Discussion	Completion of regular reviews	Not specified
<del>LLD 10.9.5R</del>		A <i>syndicate actuary</i> of a <i>general insurance business syndicate</i> will or may be unable to provide an unqualified opinion under <i>LLD 10.9.4R(3)(b)</i>	Not specified	The <i>Society</i> becomes aware	Prompt notification
<del>LLD 11.2.4R</del>		If the solvency requirements of <i>LLD 11.2.1R</i> are not maintained	A plan for the restoration of a sound financial position	The <i>Society</i> becomes aware	Prompt notification
<del>LLD 11.2.11R</del>		If criterion similar to the <i>guarantee fund</i> requirement for <i>insurers</i> is not maintained	A short term financial scheme similar to that required from <i>insurers</i> under <i>SUP</i> , Appendix 2.1.4	The <i>Society</i> becomes aware	Prompt notification
<del>LLD 15</del>	<del><i>Society</i></del>	<del><i>Lloyd's Return</i> and ...</del>	<del>Detailed reports ...</del>	<del>End ...</del>	<del>6 months</del>
<del>LLD 15.13</del>	<del><i>Managing agents to the Society</i></del>	<del><i>Syndicate-level reporting</i></del>	<del>Return in respect of <i>insurance business</i> carried on through each <i>syndicate</i></del>	<del>End of each <i>financial year</i></del>	<del>In time to enable the <i>Society</i> to report in accordance with <i>LLD 15.2.1R</i></del>

Handbook reference	Notification by	Matter to be notified	Contents of notification	Trigger event	Time allowed
<u>LLD</u> <u>17.6.1R</u>	<u>Managing agents to the Society</u>	<u>Any information the managing agent has concerning material risks to funds at Lloyd's or central assets</u>	<u>All information concerning relevant risk</u>	<u>The managing agent receives the information</u>	<u>As soon as possible</u>
<u>LLD</u> <u>17.8.1R</u>	<u>Society</u>	<u>Intention to approve the form of any new Lloyd's trust deed</u>	<u>Fact of intention</u>	<u>The Society forms intention to approve form of new Lloyd's trust deed</u>	<u>As soon as practical</u>
<u>LLD</u> <u>17.8.2R</u>	<u>Society</u>	<u>Intention to make any amendment which may alter the meaning or effect of any byelaw (including Lloyd's trust deeds, standard form letters of credit and guarantees)</u>	<u>Fact of intention</u>	<u>The Society forms intention to amend</u>	<u>As soon as practical</u>
<u>LLD</u> <u>17.8.3R</u>	<u>Society</u>	<u>Full details of form of new Lloyd's trust deed or amendments to byelaw (including Lloyd's trust deeds, standard form letters of credit and guarantees)</u>	<u>Statement of purpose of amendment or new form; expected impact, if any on policyholders, managing agents, members and potential members; description of consultation undertaken and summary of significant responses to consultation</u>	<u>Not specified</u>	<u>Normally not less than 3 months in advance of proposed change</u>
<u>LLD</u> <u>18.3.13R</u>	<u>Society</u>	<u>Change to the maximum amount of the callable contribution</u>	<u>Fact and details of the change</u>	<u>The Society proposes to change the maximum amount</u>	<u>Adequate advance notice, normally not less than 6 months</u>

Handbook reference	Notification by	Matter to be notified	Contents of notification	Trigger event	Time allowed
<u>LLD</u> 19.4.15R	<u>Managing agents to the Society</u>	<u>Syndicate ICA and balancing amount in respect of each syndicate</u>		<u>Notification should be made periodically to the Society</u>	<u>As part of the annual capital-setting process, in good time for the Society to review and place appropriate reliance on them when determining capital assessments for each member</u>
<u>LLD</u> 19.4.23R	<u>Managing agents to the Society</u>	<u>At any time, any significant doubt about the adequacy of a syndicate ICA or balancing amount with respect to syndicate risks and controls</u>	<u>Revised syndicate ICA and balancing amount</u>	<u>The managing agent considers that syndicate ICA and balancing amount communicate in the setting capital setting process are no longer adequate in the light of the risks to which the syndicate business is exposed</u>	<u>Immediately</u>
<u>LLD</u> 21.3.4R(2)	<u>Managing agents to the Society</u>	<u>Syndicate liabilities not covered by matching syndicate assets as required</u>	<u>Nature and extent of syndicate liabilities not</u>	<u>Syndicate liabilities are no longer</u>	<u>Immediately</u>

Handbook reference	Notification by	Matter to be notified	Contents of notification	Trigger event	Time allowed
		by <u>PRU 4.2.53R</u>	<u>covered by matching syndicate assets as required by PRU 4.2.53R</u>	<u>covered by matching syndicate assets as required by PRU 4.2.53R</u>	

Lloyd's

Schedule 4

Lloyd's sourcebook – Powers exercised

G

1 ...

2 The *rules* in *LLD 3* to *LLD 5* and *LLD 7* to *LLD 45 25* are made under section 138 of ~~the Act~~ (General rule-making power), section 141 (Insurance business rules), section 150(2) (Actions for damages) and section 156 (General supplementary powers) and section 340 (Appointment) of the Act.

3 ...

4 The directions in *LLD 6* ~~is~~ and *LLD 18* are given under section 316 of the *Act* (Direction by Authority).

5 ...

Lloyd's

Schedule 5

Lloyd's sourcebook – Rights of action for damages

G

1 ...

2 ...

3 ...

4 Table Rights of action for damages

Chapter/Appendix		Section/ Annex		Paragraph		Right of action under section 150			
						For private Person?	Removed?	For other Person?	
...	...	...				...	...	...	
9	<del>Rules requiring the Society to have or maintain adequate financial resources</del>					No	No		No
9	All other rules					No	Yes	LLD 9.1.3R	No
10	<del>Rules requiring the Society to have or maintain adequate financial resources</del>					No	No	-	No
10	All other rules					No	Yes	LLD 10.1.2R	No
11	<del>Rules requiring the Society to have or maintain adequate financial resources</del>					No	No	-	No
11	All other rules					No	Yes	LLD 11.1.2R	No
12	<del>Rules requiring the Society to have or maintain adequate financial resources</del>					No	No		No
12	All other rules					No	Yes	LLD 12.1.2R	No
13	<del>Rules requiring the Society to have or maintain adequate financial resources</del>					No	No		No
13	All other rules					No	Yes	LLD 13.1.2R	No
14	<del>Rules requiring the Society to have or maintain adequate financial resources</del>					No	No		No

Chapter/Appendix	Section/ Annex	Paragraph	Right of action under section 150					
			For private Person?	Removed?	For other Person?			
14	<u>All other rules</u>			No	Yes	<u>LLD</u> <del>14.1.2R</del>	No	
15	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>			No	No	-	No	
15	<u>All other rules</u>			No	Yes	<u>LLD</u> 15.2.1R		
16	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>			<u>No</u>	<u>No</u>	=	<u>No</u>	
16	<u>All other rules</u>			<u>No</u>	<u>Yes</u>	<u>LLD</u> 16.1.1R		
17	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>			<u>No</u>	<u>No</u>	=	<u>No</u>	
17	<u>All other rules</u>			<u>No</u>	<u>Yes</u>	<u>LLD</u> 17.1.1R		
18	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>			<u>No</u>	<u>No</u>	=	<u>No</u>	
18	<u>All other rules</u>			<u>No</u>	<u>Yes</u>	<u>LLD</u> 18.1.1R		
19	<u>Rules requiring the Society, managing</u>			<u>No</u>	<u>No</u>	=	<u>No</u>	

Chapter/Appendix	Section/ Annex	Paragraph	Right of action under section 150						
			For private Person?	Removed?	For other Person?				
	<u>agents or members to have or maintain adequate financial resources</u>								
<u>19</u>	<u>All other rules</u>				<u>No</u>	<u>Yes</u>	<u>LLD</u> <u>19.1.1R</u>		
<u>20</u>	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>				<u>No</u>	<u>No</u>	-	<u>No</u>	
<u>20</u>	<u>All other rules</u>				<u>No</u>	<u>Yes</u>	<u>LLD</u> <u>20.1.1R</u>		
<u>21</u>	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>				<u>No</u>	<u>No</u>	-	<u>No</u>	
<u>21</u>	<u>All other rules</u>				<u>No</u>	<u>Yes</u>	<u>LLD</u> <u>21.1.1R</u>	<u>No</u>	
<u>22</u>	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>				<u>No</u>	<u>No</u>	-	<u>No</u>	
<u>22</u>	<u>All other rules</u>				<u>No</u>	<u>Yes</u>	<u>LLD</u> <u>22.1.1R</u>		
<u>23</u>	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>				<u>No</u>	<u>No</u>	-	<u>No</u>	
<u>23</u>	<u>All other rules</u>				<u>No</u>	<u>Yes</u>	<u>LLD</u>		

Chapter/Appendix	Section/ Annex	Paragraph	Right of action under section 150				
			For private Person?	Removed?	For other Person?		
					<u>23.1.1R</u>		
<u>24</u>	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>			<u>No</u>	<u>No</u>	<u>-</u>	<u>No</u>
<u>24</u>	<u>All other rules</u>			<u>No</u>	<u>Yes</u>	<u>LLD 24.1.1R</u>	
<u>25</u>	<u>Rules requiring the Society, managing agents or members to have or maintain adequate financial resources</u>			<u>No</u>	<u>No</u>	<u>=</u>	<u>No</u>
<u>25</u>	<u>All other rules</u>			<u>No</u>	<u>Yes</u>	<u>LLD 25.1.1R</u>	

Lloyd's

Schedule 6

Lloyd's sourcebook – Rules that can be waived

G

- 1 The rules in *LLD 3* to *LLD 5* and *LLD 7* to *LLD 25* can be waived by the *FSA* under section 148 of the *Act* (Modification or waiver of rules).

## **Annex C**

### **Amendments to the Lloyd's Sourcebook (LLD 15 Ann 1R Forms)**

In this Annex, underlining indicates new text and striking through indicates deleted text. Where a body of text is deleted and replaced by new text, this is noted in the Annex and the text is not underlined.

Form

- 1 Statement of solvency - general insurance business
- 2 Statement of solvency - long-term insurance business
- 3 Components of capital resources
- ~~9 Statement of solvency~~
- ~~10 Statement of net assets~~
- 13 Analysis of admissible assets
- 14 Long-term insurance business liabilities
- 15 Liabilities (other than long-term insurance business)
- 16 Profit and loss account
- 17 Analysis of derivative contracts
- 20 Underwriting: Summary of underwriting movements
  - General insurance business (underwriting year accounting): Analysis of premiums, claims and
  - 24 expenses
- 25 General insurance business (underwriting year accounting): Analysis of technical provisions
  - General insurance business (underwriting year accounting): Analysis of premiums, claims and
  - 28 expenses by category for treaty reinsurance
- General insurance business (underwriting year accounting): Analysis of technical provisions by
- 29 category for treaty reinsurance
- General insurance business (underwriting year accounting): Analysis of gross claims and premiums
- 34 by risk group for direct insurance and facultative reinsurance
- General insurance business (underwriting year accounting): Reconciliation of gross claims and
- 35 premiums for direct insurance and facultative reinsurance
- 36 Currency rates
- 37 Credit equalisation provisions
- 40 Long-term insurance business: Revenue account
- 41 Long-term insurance business: Analysis of premiums and expenses
- 42 Long-term insurance business: Analysis of claims
  - Long-term insurance business: Valuation summary of non-linked contracts (other than accumulating
  - 51 with profit policies)
- ~~60 Long-term insurance business: mathematical reserves and capital at risk~~ capital requirement

[All of form 1 is new, and therefore new text is not shown underlined.]

Lloyd's return

Form 1

**Statement of solvency - general insurance business**

The Society of Lloyd's

	L1	Global	Financial year ended			units £000
			day 31	month 12	year 20XX	
			As at the end of this <i>financial</i> year 1	As at the end of the previous <i>financial</i> year 1		
<b>Capital resources</b>						
<i>Capital resources</i> arising outside the long-term insurance fund		11				
<i>Capital resources</i> allocated towards <i>long-term insurance business</i> arising outside the long-term insurance fund		12				
<i>Capital resources</i> available to cover <i>general insurance business capital resources requirement</i> (11-12)		13				
<b>Guarantee fund</b>						
<i>Guarantee fund</i> requirement		21				
Excess (deficiency) of available <i>capital resources</i> to cover <i>guarantee fund</i> requirement		22				
<b>Minimum capital requirement</b>						
<i>Society GICR</i>		31				
Aggregate of <i>members' minimum capital requirements</i>		32				
Overall <i>minimum capital requirement</i> (= <i>capital resources requirement</i> )		33				
Excess (deficiency) of available <i>capital resources</i> to cover 50% of <i>MCR</i>		34				
Excess (deficiency) of available <i>capital resources</i> to cover 75% of <i>MCR</i>		35				
<b>Capital resources requirement</b>						
<i>Capital resources requirement</i>		41				
Amount by which <i>members' capital resources</i> exceed <i>capital resource requirements</i>		42				
Amount by which <i>members' capital resources</i> are less than <i>capital resource requirements</i>		43				
<i>Society's own capital resources</i> available to meet <i>members' shortfalls on capital resource requirements</i>		44				
Other <i>capital resources</i> (particulars to be specified by way of a supplementary note)		45				
Amount by which <i>Society's own capital resources</i> and other <i>capital resources</i> exceed (are less than) <i>members' shortfalls on capital resource requirements</i>		46				
<b>Contingent liabilities</b>						
Quantifiable contingent liabilities in respect of other than <i>long-term insurance business</i> as shown in a supplementary note to Form 15		51				

[All of the instructions for the completion of Form 1 are new, and are therefore not shown underlin

#### Instructions for completion of Form 1

- 1 The *guarantee fund* requirement at line 21 should be completed in accordance with *LLD19.3.4R* and *PRU 2.2.18R*.
- 2 The *Society GICR* at line 31 should be calculated in line with *LLD19.2.13R*.
- 3 The *minimum capital requirement (MCR)* at line 33 is the higher of lines 31 and 32.
- 4 The *capital resources requirement* at line 41 is equal to the *MCR* at line 33.
- 5 The surplus at line 42 is the aggregate of, for all *members*, the extent to which each individual *member's capital resources* are in excess of his own *capital resources requirement*. Where the *Society GICR* (line 31) is greater than the aggregate of the *members' MCRs* (line 32), the *capital resources requirement* applicable to each *member* is his apportioned share of the *Society GICR*.
- 6 The deficiency at line 43 is the aggregate of, for all *members*, the extent to which each individual *member's capital resources* are less than his own *capital resources requirement*. Where the *Society GICR* (line 31) is greater than the aggregate of the *members' MCRs* (line 32), the *capital resources requirement* applicable to each *member* is his apportioned share of the *Society GICR*.

[All of Form 2 is new, and therefore new text is not shown underlined.]

Lloyd's return

Form 2

**Statement of solvency - long-term insurance business**

The Society of Lloyd's

	L2	Global	Financial year ended			units £000
			day 31	month 12	year 20XX	
			As at the end of this <i>financial</i> year	As at the end of the previous <i>financial</i> year		
			1	1		
<b>Capital resources</b>						
<i>Capital resources</i> arising within the long-term insurance fund		11				
<i>Capital resources</i> allocated towards <i>long-term insurance business</i> arising outside the long-term insurance fund		12				
<i>Capital resources</i> available to cover <i>long-term insurance business capital resources requirement</i> (11+12)		13				
<b>Guarantee fund</b>						
<i>Guarantee fund</i> requirement		21				
Excess (deficiency) of available <i>capital resources</i> to cover <i>guarantee fund</i> requirement		22				
<b>Minimum capital requirement</b>						
Aggregate of <i>members' minimum capital requirements</i>		31				
Excess (deficiency) of available <i>capital resources</i> to cover 50% of aggregate of <i>members' MCRs</i>		35				
Excess (deficiency) of available <i>capital resources</i> to cover 75% of aggregate of <i>members' MCRs</i>		36				
<b>Capital resources requirement</b>						
<i>Capital resources requirement</i>		41				
Amount by which <i>members' capital resources</i> exceed <i>capital resource requirements</i>		42				
Amount by which <i>members' capital resources</i> are less than <i>capital resource requirements</i>		43				
<i>Society's own capital resources</i> available to meet <i>members' shortfalls on capital resource requirements</i>		44				
Other <i>capital resources</i> (particulars to be specified by way of a supplementary note)		45				
Amount by which <i>Society's own capital resources</i> and other <i>capital resources</i> exceed (are less than) <i>members' shortfalls on capital resource requirements</i>		46				
<b>Contingent liabilities</b>						
Quantifiable contingent liabilities in respect of <i>long-term insurance business</i> as shown in a supplementary note to Form 14		51				

[All of the instructions for the completion of Form 2 are new, and are therefore not shown underlined.]

#### Instructions for completion of Form 2

- 1 The *guarantee fund* requirement at line 21 should be completed in accordance with *LLD19.3.4R* and *PRU2.2.17R*.
- 2 The *capital resources requirement* at line 41 is equal to the aggregate of the *members' MCRs* at line 31.
- 3 The surplus at line 42 is the aggregate of, for all *members*, the extent to which each individual *member's capital resources* are in excess of his own *capital resources requirement*.
- 4 The deficiency at line 43 is the aggregate of, for all *members*, the extent to which each individual *member's capital resources* are less than his own *capital resources requirement*.

[All of Form 3 is new, and therefore new text is not shown underlined.]

Lloyd's return

Form 3  
(Sheet 1)

**Components of capital resources**

The Society of Lloyd's

	L3	Global	Financial year ended			units £000
			day 31	month 12	year 20XX	
			<i>General insurance business at the end of this financial year</i>	<i>Long term insurance business at the end of this financial year</i>	Total as at the end of this financial year	Total as at the end of the previous financial year
<b>Core tier one capital</b>						
<i>Lloyd's members' contributions</i>		11				
Profit and loss account and other reserves		12				
Positive valuation differences		13				
Fund for future appropriations		14				
<i>Core tier one in related undertakings</i>		15				
<i>Core tier one capital (sum of 11 to 16)</i>		16				
<b>Tier one waivers</b>						
Implicit items		21				
<i>Tier one waivers in related undertakings</i>		22				
Total <i>tier one waivers</i> as restricted (21 + 22)		23				
<b>Other tier one</b>						
<i>Innovative tier one capital as restricted</i>		24				
<i>Innovative tier one capital in related undertakings</i>		25				
<b>Total tier one capital before deductions (16 + 23 + 24 + 25)</b>		31				
Intangible assets		32				
Amounts deducted from <i>technical provisions</i> for discounting		33				
Other negative valuation differences		34				
Deductions in related undertakings		35				
Deductions in tier one (total 32 to 35)		36				
<b>Total tier one capital after deductions (31-36)</b>		37				

**Components of capital resources**

The Society of Lloyd's

			<i>Financial year ended</i>			units
			day	month	year	
L3	Global		31	12	20XX	£000
			<i>General insurance business at the end of this financial year</i>	<i>Long term insurance business at the end of this financial year</i>	<i>Total as at the end of this financial year</i>	<i>Total as at the end of the previous financial year</i>
<b>Tier two capital</b>						
Implicit items ( <i>tier two waivers</i> and amounts excluded from line 21)		41				
<i>Innovative tier one capital</i> excluded from line 24		42				
<i>Tier two waivers</i> and <i>innovative tier one capital</i> treated as tier two (41 + 42)		43				
Perpetual <i>subordinated debt</i> and securities		44				
<i>Upper tier two capital</i> in <i>related undertakings</i>		45				
<b>Upper tier two capital</b> (43 to 45)		46				
Other tier two instruments		51				
<i>Lower tier two capital</i> in <i>related undertakings</i>		52				
<b>Lower tier two capital</b> (47 + 48)		53				
<b>Total tier two capital before restrictions</b> (46 + 53)		61				
Excess <i>tier two capital</i>		62				
Further excess <i>lower tier two capital</i>		63				
<b>Total tier two capital after restrictions, before deductions</b> (61-62-63)		64				

**Components of capital resources**

The Society of Lloyd's

		<i>Financial year ended</i>			units
		day	month	year	
L3	Global	31	12	2005	£000
		<i>General insurance business at the end of this financial year</i>	<i>Long term insurance business at the end of this financial year</i>	Total as at the end of this financial year	Total as at the end of the previous financial year
<b>Total capital resources</b>					
Positive adjustments for <i>non-insurance related undertakings</i>		71			
<b>Total capital resources before deductions (37 + 64 + 71)</b>		72			
<i>Inadmissible assets</i> other than intangibles		73			
Assets in excess of market risk and counterparty limits		74			
Deductions for <i>related ancillary services undertakings</i>		75			
Deductions for regulated <i>non-insurance related undertakings</i>		76			
Total deductions of ineligible surplus		77			
<b>Total capital resources after deductions (72-73-74-75-76-77)</b>		78			
<b>Available capital resources for PRU tests</b>					
Available <i>capital resources</i> for <i>guarantee fund</i> requirement		81			
Available <i>capital resources</i> for 50% MCR requirement		82			
Available <i>capital resources</i> for 75% MCR requirement		83			

[All of the instructions for the completion of Form 2 are new, and are therefore not shown underlined.]

### Instructions for completion of Form 3

- 1 Entries must only appear at lines 21 and 22 if the FSA has granted a *waiver* permitting these amounts to count as *tier one capital* (tier one waivers). These amounts are restricted by PRU2.2.20R(1), so that amounts in line 23 may not be greater than corresponding amounts in line 16.
- 2 Entries at line 24 must be restricted to comply with PRU2.2.20R, so that the total of the amounts in lines 23, 24 and 25 is not greater than the amount in line 16.
- 3 For the purpose of completing line 32, refer to PRU2.2.84R and PRU2.2.85G.
- 4 The amounts in line 33 should be calculated in accordance with PRU2.2.80R and PRU2.2.81R.
- 5 The entry at line 44 for perpetual *subordinated debt* and *securities* must be the total, unrestricted amounts that the *firm* can include in *upper tier two capital* in accordance with PRU2.2.100G to PRU2.2.106G.
- 6 The types of capital instrument that can be included as *lower tier two capital* are set out in PRU2.2.107G to PRU2.2.111G.
- 7 The effect of the restrictions at PRU2.2.23R applying to *tier two capital* are shown at lines 62 and 63. Line 62 relates to *tier two capital* as a whole and equals the excess (if any) of line 61 over line 37. Line 63 relates to *lower tier two capital* and equals the excess (if any) of line 53 over the sum of line 62 and ½ line 37.
- 8 Line 71 must show positive adjustments for *related undertakings* that are *regulated related undertakings* (other than *insurance undertakings*) required by PRU2.2.90R.
- 9 Line 73 must show the deductions for assets that are not *admissible assets* required by PRU2.2.86R.

**Form 9**

[Form 9 is deleted in its entirety, and is therefore not shown struck through.]

**Instructions for completion of form 9**

[The instructions for the completion of form 9 are deleted in their entirety, and are therefore not shown struck through.]

**Form 10**

[Form 10 is deleted in its entirety, and is therefore not shown struck through.]

**Instructions for the completion of form 10**

[The instructions for the completion of form 10 are deleted in their entirety, and are therefore not shown struck through.]

## Analysis of admissible assets

The Society of Lloyd's

Category of assets

		Financial year ended			Units	Code		
		day	month	year				
		<b>L13</b>	Global	31	12	20XX	£000	
<b>Investments</b>							As at the end of this financial year	As at the end of the previous financial year
Land and buildings							11	
Investments in group undertakings and participating interests	UK Insurance dependants	Shares				21		
		Debt securities issued by, and loans to, dependants				22		
	Other insurance dependants	Shares				23		
		Debt securities issued by, and loans to, dependants				24		
	Non-insurance dependants	Shares				25		
		Debt securities issued by, and loans to, dependants				26		
	Other group undertakings and participating interests	Shares				27		
		Debt securities issued by, and loans to, group undertakings				28		
		Participating interests				29		
		Debt securities issued by, and loans to, undertakings in which there is a participating interest.				30		
Total sheet 1 (11 to 30)							39	

## Analysis of admissible assets

The Society of Lloyd's

Category of assets

		Financial year ended			Units	Code			
		day	month	year					
		L13	Global	31	12	20XX	£000		
<b>Investments</b>									
<b>Deposits with ceding undertakings</b>							As at the end of this financial year	As at the end of the previous financial year	
<b>Other financial investments</b>	Equity shares						41		
	Other shares and other variable yield securities						42		
	Holdings in collective investment schemes						43		
	Rights under derivative contracts						44		
	Debt securities and other fixed income securities	Fixed interest	Approved securities				45		
			Other				46		
		Variable interest	Approved securities				47		
			Other				48		
	Participation in investment pools						49		
	Loans secured by mortgages						50		
	Other loans	Loans to public or local authorities and nationalised industries or undertakings				51			
		Loans secured by policies of insurance issued by the insurer				52			
		Other				53			
	Deposits with approved credit institutions and approved financial institutions	Withdrawal subject to a time restriction of one month or less				54			
		Withdrawal subject to a time restriction of more than one month				55			
	Other						56		
	Deposits with ceding undertakings						57		
Reinsurers' share of technical provisions	Provision for unearned premiums				60				
	Claims outstanding				61				
	Provision for unexpired risks				62				
	Other				63				
Total sheet 2 (41 to 63)						69			

## Analysis of admissible assets

The Society of Lloyd's

Category of assets

		Financial year ended			Units	Code		
		day	month	year				
		L13	Global	31	12	20XX	£000	
<b>Debtors</b>								
<b>Other assets</b>								
					As at the end of this financial year		As at the end of the previous financial year	
Debtors arising out of direct insurance operations	<i>Policyholders</i>					71		
	<i>Intermediaries</i>					72		
Salvage and subrogation recoveries						73		
Debtors arising out of reinsurance operations	Due from ceding insurers and <i>intermediaries</i> under reinsurance business					74		
	Due from <i>reinsurers</i> and <i>intermediaries</i> under <i>reinsurance contracts ceded</i>					75		
Other debtors	<i>Members</i>	Due in 12 months or less after the end of the <i>financial year</i>				76		
		Due more than 12 months after the end of the <i>financial year</i>				77		
	Other	Due in 12 months or less after the end of the <i>financial year</i>				78		
		Due more than 12 months after the end of the <i>financial year</i>				79		
Tangible assets						80		
Cash at bank and in hand	Deposits not subject to time restriction on withdrawal, with <i>approved credit institutions</i> and <i>approved financial institutions</i> and local authorities					81		
	Cash in hand					82		
Other assets (particulars to be specified by way of supplementary note)						83		
Prepayments and accrued income	Accrued interest and rent					84		
	<i>Deferred acquisition costs</i>					85		
	Other prepayments and accrued income					86		
Deductions <u>under LLD</u> from the aggregate value of assets						87		
Total sheet 3 (71 to 86 less 87)						88		
Grand total of <i>admissible assets</i> (39 + 69 + 88)						89		
<b>Reconciliation to asset values in <i>global accounts</i></b>								
Total <i>admissible assets</i> (as per line 89 above)						91		
Total assets in excess of the <i>admissibility limits</i>						92		
Other differences in the valuation of assets (other than for assets not valued above)						94		
Assets of a type not valued above						95		
Total						99		

## Instructions for completion of form 13

1 ...

3 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, (as if that schedule applied to Lloyd's and as if the Corporation was a company) must have the same meaning as in that schedule;
- (b) assets must be valued in accordance with the appropriate rules in LLD and PRU LLD13 (~~Assets: valuation and realisability risk~~); and
- (c) assets of any particular description should be shown after deduction of assets of that description which (for any reason) fall to be left out of account under ~~LLD13.4, LLD14.5 and LLD14.6~~ the appropriate provisions in LLD and PRU.

4 Lines 92 to 95 provide a reconciliation of amounts valued in accordance with LLD916 to ~~4524~~ to the amounts that appear in published accounts.

5 The aggregate value of those investments which are:

- (a) unlisted investments falling within any of lines 41, 42, 46 or 48 which have been valued as an interest in a limited liability partnership in accordance with PRU 1.3 LLD13.14; or
- (b) listed investments falling within any of lines 41, 42, 46 or 48 which have been valued as an interest in a limited liability partnership in accordance with PRU 1.3 LLD13.14 and which are not readily realisable; or
- (c) *units* or other beneficial interests in *collective investment schemes* ~~falling within LLD13.12.2R~~; or
- (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 ...

8 In line 95 "Assets of a type not valued above" refers to assets left out of account under ~~LLD13.4.1R~~19.3.7R

9 ...

## Long term insurance business liabilities

The Society of Lloyd's

Category of assets

		Financial year ended			Units	Category of asset			
		day	month	year					
L14		Global	31	12	20XX	£000			
					As at the end of this financial year	As at the end of the previous financial year	Source		
							Form	Line	Column
Technical provisions (net amount)	Reinsurance to close for closing year of account				11				
	Open years of account				12				
	Run off years of account				13				
	Other				14				
	Total (11 to 14)				15				
Claims outstanding which had fallen due for payment before the end of the financial year not included in line 15	Gross amount				16				
	Reinsurers' share				17				
	Net (16 - 17)				18				
Provision for other risks and charges	Taxation				21				
	Other				22				
Deposits received from reinsurers					23				
Creditors and other liabilities	Arising out of insurance operations	Direct business				31			
		Reinsurance accepted				32			
		Reinsurance ceded				33			
	Debenture loans	Secured				34			
		Unsecured				35			
	Amounts owed to credit institutions				36				
	Other creditors	Taxation				37			
		Other				38			
Accruals and deferred income					39				
Total other insurance and non-insurance liabilities (18 to 39)					49				
Total liabilities (15 + 49)					59				

## Liabilities (other than long term insurance business)

The Society of Lloyd's

		Financial year ended			Units	Category of liability							
		day	month	year									
		L15	Global	31	12	20XX	£000	As at the end of this financial year	As at the end of the previous financial year	Form	Line	Column	
Technical provisions (gross amount)		Provision for <i>unearned premiums</i> for closing year of account			11								
		Provision for <i>unearned premiums</i> for open years of account			12								
		Provision for <i>unearned premiums</i> for run off years of account			13								
		Claims outstanding & unexpired risks for closing year of account			114								
		Claims outstanding & unexpired risks for open years of account			115								
		Claims outstanding & unexpired risks for run off years of account			116								
		Provision for <i>unexpired risks</i> for closing year of account			17								
		Provision for <i>unexpired risks</i> for open years of account			18								
		Provision for <i>unexpired risks</i> for run off years of account			19								
		Credit equalisation provisions			1520								
		Other (particulars to be specified by way of supplementary note)			1621								
		Total (11 to 1621)			1922								
		Provisions for other risks and charges		Taxation			2123						
Other				2224									
Deposits received from <i>reinsurers</i>					31								
Creditors	Arising out of insurance operations	Direct business			41								
		Reinsurance accepted			42								
		Reinsurance ceded			43								
	Amounts owed to <i>credit institutions</i>			46									
	Other creditors	Taxation			47								
		Other			49								
Accruals and deferred income					51								
Total liabilities (19 to 51)					69								

## Instructions for the completion of form 15

- 1 Line ~~41~~14 Column 1 corresponds to the sum of 25.11 + 25.13 + 25.15 + ~~25.30~~ for the closing year.
- 2 Line ~~42~~15 Column 1 corresponds to the sum of 25.11 + 25.13 + 25.15 + ~~25.30~~ for naturally open years.
- 3 Line ~~43~~16 Column 1 corresponds to the sum of 25.11 + 25.13 + 25.15 + ~~25.30~~ for run-off years.
- 4 ...
- 6 No entries arise in lines 11 to ~~43~~19, ~~46~~21 to ~~49~~22 or 31 to 43 for the central liabilities of the *Society*.
- 7 Aggregate *members'* liabilities include aggregate net surpluses in *open syndicate years* (for those *members* with surpluses) to be shown at line ~~46~~21 and *credit equalisation provisions* at line ~~45~~20. Nothing arises in lines 11 to ~~43~~19 or 31 to 46.
- 8 Amounts in lines 11 to ~~43~~19 and ~~46~~21 must be stated gross of reinsurers' share.
- 9 The amounts at lines 11, 14 and 17 should include the amount relating to future years of account shown in a footnote as required by instruction 3 to form 20 and exclude any amounts included in lines 12, 15 and 18.
- 10 The amounts at lines 12, 15 and 18 should include amounts relating to *syndicate years* reinsured into the latest two years of account before the year end, but must exclude any *reinsurance to close* as at the end of the year since these amounts are included in lines 11, 14 and 17.

**Profit and loss account**

The Society of Lloyd's

[Summary / run off years / other years]

		<u>Financial year ended</u>			Units	Year of account			
		day	month	year	£000				
<b>L16</b>	Global	31	12	2005	As at the end of this financial year	As at the end of the previous financial year	Source		
							Form	Line	Column
Transfer (to)/from the <i>general insurance business</i> technical account from Form 20 line 59			11					20. 59	See Instruction 2
Transfer to (from) <i>credit equalisation provision</i>			12					See Instruction 3	
Transfer from the <i>long term insurance business</i> revenue account			13					40. 26	
Investment income	Income		14						
	Value re-adjustments on investments		15						
	Gains on the realisation of investments		16						
Investment charges	Investment management charges, including interest		17						
	Value re-adjustments on investments		18						
	Loss on the realisation of investments		19						
Other income and charges (particulars to be specified by way of a supplementary note)			21						
Result on ordinary activities (11 -12 + 13 +14 + 15 + 16 - 17 -18 - 19 +21)			39						
Extraordinary profit or loss (particulars to be specified by way of a supplementary note)			41						
<del>Personal expenses</del> Other charges (particulars to be specified by way of a supplementary note)			42						
Sub-total (39 + 41 - 42)			49						
Other surpluses and deficiencies	Corporation (particulars to be specified by way of a supplementary note)		50						
	<i>Central Fund</i> (particulars to be specified by way of a supplementary note)		51						
Result for the <i>financial year</i> (49 + 50 + 51)			59						

[Addition of new column to following table.]

Lloyd's Return

Form 20

**Underwriting: Summary of underwriting movements**

The Society of Lloyd's

	L20	Global	Financial year ended			Units
			Run-off year of account	31 YY	12 First YY	20XX Latest YY
<b>PART 1</b>						
Accounting class:						
Movement in financial year (see Instruction 2)						
Accident and health	11					
Motor	12					
Aviation	13					
Marine	14					
Transport	15					
Property damage	16					
Third party liability	17					
Miscellaneous and pecuniary loss	18					
Non-proportional treaty reinsurance	19					
Proportional treaty reinsurance	20					
Marine, aviation and transport reinsurance	21					
<i>General insurance business</i> (Lines 11 to 21)	59					
<i>Long term insurance business</i> (Form 40 line 26)	60					
Total business (lines 59 + 60)	61					
<b>PART 2</b>						
Reconciliation of movement in financial year with declared result for financial year						
This financial year (Form 16 line 49)	80					
Preceding financial year	84					
Previous financial year	82					
Add run-off years of account (80.1 + 86.1)	83					
Sub total (80 to 83)	84					
Other surpluses and deficiencies (form 16, lines 50+51)	85					
Other adjustments (particulars to be specified by way of a supplementary note)	86					
Declared result ( 80 + 84 + 85 + 86 )	99					



**General insurance business (underwriting year accounting): Analysis of technical provisions by category for treaty reinsurance**

The Society of Lloyd's

[Summary / run off years / naturally open years]

Accounting class

Category

Underwriting year ended		Prior underwriting years		Financial year ended												Units		Business category		Accounting class		Currency	
				L29		Global		31		12		20XX											
				MM	YY	MM	YY	MM	YY	MM	YY	MM	YY	MM	YY								
		29	29																			99	99
Reported <i>claims</i> outstanding	Gross amount	11																					
	<i>Reinsurers'</i> share	12																					
<i>Claims</i> incurred but not reported	Gross amount	13																					
	<i>Reinsurers'</i> share	14																					
<i>Claims</i> management costs		15																					
<i>Claims outstanding</i> Sub-total ( 11 - 12 + 13 - 14 + 15 )		20																					
<i>Provision for unearned premiums</i>		21																					
<i>Provision for unexpired risks</i>		23																					
<i>Deferred acquisition costs</i>		24																					
Other <i>technical provisions</i> (particulars to be specified by way of supplementary note)		30																					
Total ( 20 + 21 + 22 + 23 - 24 + 30 )		31																					





**General insurance business (underwriting year accounting): Reconciliation of gross claims and premiums for direct insurance and facultative reinsurance**

The Society of Lloyd's

		<i>Financial year ended</i>				Units	
				31	12	20XX	
				day	month	year	
Accounting class	Gross claims paid in this financial year	<del>Unexpired risks and gross claims</del> outstanding carried forward		<del>Unexpired risks and gross claims</del> outstanding brought forward		Balance for this financial year ( 1+2+3-4-5 )	Gross written premiums
		Reported	<del>Unexpired risks and incurred but not reported</del>	Reported	<del>Unexpired risks and incurred but not reported</del>		
	1	2	3	4	5	6	7
Accident and health	<b>11</b>						
Motor	<b>12</b>						
Aviation	<b>13</b>						
Marine	<b>14</b>						
Transport	<b>15</b>						
Property	<b>16</b>						
Third party liability	<b>17</b>						
Miscellaneous and pecuniary loss	<b>18</b>						

## Long term insurance business: Revenue account

The Society of Lloyd's

Summary / year of account

	Financial year ended			Units	No. of fund/ summary	No. of part of fund	
	day	month	year				
<b>L40</b>	Global	31	12	20XX	£000		
<b>Items to be shown net of reinsurance ceded</b>					This <i>financial year</i>	The previous <i>financial year</i>	Source Form Line Column
<u>Earned <i>p</i>-<i>P</i>remiums</u>					11		See Instruction 1
Investment income before deduction of tax					12		See Instruction 2
Increase (decrease) in the value of non-linked assets brought into account					13		See Instruction 2
Other income					15		See Instruction 3
Total income ( 11 to 15 )					19		
<i>Claims</i> incurred					21		See Instructions 1 & 4
Expenses payable					22		See Instructions 1 & 4
Interest payable before deduction of tax					23		
Taxation					24		
Other expenditure including personal expenses					25		See Instruction 3
Transfers to (from) <i>members</i>					26		See Instruction 5
Total expenditure ( 21 to 26 )					29		
Increase (decrease) in fund in financial year ( 19 - 29 )					39		
Fund brought forward					49		
Fund carried forward ( 39 + 49 )					59		

[The previous form 60 is deleted in its entirety and replaced by the version below. Text is not shown struck through or underlined.]

Lloyd's Return

Form 60

**Long term insurance capital requirement**

The Society of Lloyd's

	LTICR factor	Gross reserves / capital at risk	Net reserves / capital at risk	Reinsurance factor	Financial year ended			Units £000
					31	12	20XX	
					day	month	year	
	1	2	3	4	5	6		
<b>Insurance death risk capital component</b>								
Classes I, II and IX	11	0.1%						
Classes I, II and IX	12	0.15%						
Classes I, II and IX	13	0.3%						
Classes III, VII and VIII	14	0.3%						
<b>Total</b>	<b>15</b>							
<b>Insurance health risk capital component</b>								
Class IV and supplementary classes 1 and 2	21							
<b>Insurance expense risk capital component</b>								
Classes I, II and IX	31	1%						
Classes III, VII and VIII (investment risk)	32	1%						
Classes III, VII and VIII (expenses fixed 5 yrs+)	33	1%						
Classes III, VII and VIII (other)	34	25%						
Class IV	35	1%						
Class V	36	1%						
Class VI	37	1%						
<b>Total</b>	<b>38</b>							
<b>Insurance market risk capital component</b>								
Classes I, II and IX	41	3%						
Classes III, VII and VIII (investment risk)	42	3%						
Classes III, VII and VIII (expenses fixed 5 yrs+)	43	0%						
Classes III, VII and VIII (other)	44	0%						
Class IV	45	3%						
Class V	46	0%						
Class VI	47	3%						
<b>Total</b>	<b>48</b>							
<b>Long term insurance capital requirement</b>	<b>51</b>							

[All of the instructions here are new, and are therefore not shown underlined.]

### Instructions for the completion of form 60

- 1 The *insurance death risk capital component* in lines 11-14 column 5 is based on capital at risk for those contracts where it is not negative. Capital at risk is the benefit payable as a result of death less the *mathematical reserves* after distribution of surplus. Business in *classes* I, II and IX must be split between lines 11, 12 and 13 in accordance with *PRU 7.2.82R*. Line 11 is for temporary insurance on death where the original term of the contract is 3 years or less or for a *pure reinsurer*. Line 12 is for temporary insurance where the original term is 5 years or less but more than 3 years. Line 13 is for other *class* I, II or IX business. For a *pure reinsurer* the factor of 0.3% in column 1 of line 14 should be replaced by 0.1%.
- 2 In lines 11-14 columns 2 and 3 are the gross and net capital at risk in accordance with *PRU 7.2.83R*. For lines 11-13 the reinsurance factor is calculated in aggregate, so column 4 is the sum of lines 11-13 column 3 divided by the sum of lines 11-13 column 2, subject to a minimum of 0.5 in accordance with *PRU 7.2.81R*. For line 14 column 4 is column 3 divided by column 2, subject to a minimum of 0.5 in accordance with *PRU 7.2.81R*. Column 5 is column 1 x column 2 x column 4
- 3 For the purpose of calculating the *insurance expense risk capital component* and the *insurance market risk capital component* linked contracts should be allocated to:
  - lines 32 and 42 where the *firm* bears an investment risk,
  - lines 33 and 43 where the *firm* does not bear an investment risk but where the allocation to cover *management expenses* is fixed for a period exceeding 5 years from the commencement of the contract, and
  - lines 34 and 44, otherwise.
- 4 The *insurance expense risk capital component* for linked contracts where the *firm* bears no investment risk and the allocation to cover *management expenses* does not have a fixed upper limit for a period exceeding 5 years from the commencement of the contract in line 34 is 25% of net *administrative expenses* in accordance with *PRU 7.2.88R(1)*.
- 5 The *insurance expense risk capital component* for *class V* in line 36 column 5 is 1% of the assets of the tontine in accordance with *PRU 7.2.88R(2)*.
- 6 The *insurance expense risk capital component* for other business in lines 31, 32, 33, 35 and 37 column 5 is 1% of adjusted *mathematical reserves* after distribution of surplus in accordance with *PRU 7.2.88R(3)*. Column 4 is column 3 divided by column 2, subject to a minimum of 85% (50% for a pure reinsurer) in accordance with *PRU 7.2.90R*. Column 5 is column 1 x column 2 x column 4.
- 7 The *insurance market risk capital component* in lines 43 and 44 column 5 for class III, VII and VIII contracts where the *firm* does not bear any investment risk and in line 45 for *class V* contracts is nil in accordance with *PRU 7.2.89R*.
- 8 The *insurance market risk capital component* in line 41, 42, 45 and 47 column 5 is 3% of adjusted *mathematical reserves* after distribution of surplus in accordance with *PRU 7.2.89R*. Column 4 is column 3 divided by column 2 subject to a minimum of 85% (50% for a *pure reinsurer*) in accordance with *PRU 7.2.90R*. Column 5 is column 1 x column 2 x column 4.
- 9 The *long term insurance capital requirement* in line 51 column 5 is the sum of column 5 in lines 15, 21, 38 and 48.
- 10 For *financial years* starting before 1 January 2005 lines 11 to 48 of column 6 must be blank.

## Annex D

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

### Amendments to Supervision Manual

#### SUP Schedule 2 – Notification requirements

G

- 1 ...
- 2 Table ...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP 4.5.11G</i>	...	...	...	...
<u><i>SUP 4.6.1R</i></u>	<u>Vacancy in the office of <i>Lloyd's</i> <i>actuary</i> will arise or has arisen</u>	<u>Fact of the vacancy and the reason for the vacancy</u>	<u>The <i>Society of Lloyd's</i> becomes aware that a vacancy will arise or has arisen</u>	<u>Without delay</u>
<u><i>SUP 4.6.17R</i></u>	<u><i>Syndicate actuary</i> of a <i>general insurance business syndicate</i> will or may be unable to produce an <i>unqualified opinion</i> under <i>SUP 4.6.16R</i></u>	<u>Fact that the <i>syndicate actuary</i> will or may be unable to produce an <i>unqualified opinion</i> (to be notified by the <i>managing agent</i> to the <i>FSA</i>)</u>	<u>The <i>managing agent</i> becomes aware that the <i>syndicate actuary</i> will or may be unable to produce an <i>unqualified opinion</i></u>	<u>Notification to be made promptly</u>
<i>SUP 5.4.12G</i>	...	...	...	...

#### SUP Schedule 4 – Powers exercised

G

- 1 ...

2 ...

3 Table

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> in <i>SUP</i> to direct or require:	
(1)	...
(2)	...
(3)	...
(4)	...
(5)	...
(6)	<del>Section 318 (Exercise of powers through Council)</del> <u>Section 317 (Direction by Authority)</u>
(7)	...

**HANDBOOK ADMINISTRATION (NO 2) INSTRUMENT 2005****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 138 (General rule-making power);
  - (2) section 149 (Evidential provisions);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. This instrument ratifies that the Electronic Money Sourcebook (Amendment) Instrument 2005 (FSA 2005/18) as amended by addendum was made by the Financial Services Authority in the exercise of its powers under section 138 (General rule-making power) of the Act.
- C. The rule-making powers listed in A. and B. are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- D. This instrument comes into force on as follows:
- (1) Annex G to this instrument comes into force on 1 April 2006;
  - (2) the remainder of this instrument comes into force on 1 January 2006.

**Amendments to the 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 listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Integrated Prudential sourcebook (PRU)	Annex C
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex D
Conduct of Business sourcebook (COB)	Annex E
Insurance: Conduct of Business sourcebook (ICOB)	Annex F
Mortgages: Conduct of Business sourcebook (MCOB)	Annex G
Supervision manual (SUP)	Annex H
Credit Unions sourcebook (CRED)	Annex I

**Citation**

- F. This instrument may be cited as the Handbook Administration (No 2) Instrument 2005.

By order of the Board  
15 December 2005

## Annex A

### Amendments to the Glossary of definitions

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

Amend the following definitions as shown:

- Financial Groups Directive Regulations* ~~{To be included in the Glossary when those Regulations are made}~~ the Financial Conglomerates and Other Financial Groups Regulations 2004 (SI 2004/1862).
- rolling spot forex contract* either of the following:  
(a) ... ; or  
(b) a *contract for differences* where the profit is to be secured or loss avoided by reference to fluctuations in foreign exchange; and  
in either case ...
- Third party processors* (1) A *firm* ("Firm A") which carries on *regulated mortgage activities* or *insurance mediation activities* in relation to *non-investment insurance contracts*, or both, for another *firm* (or an *appointed representative*) ("Firm B") under a properly documented *outsourcing* agreement, the terms of which provide that when Firm A carries on any of these activities ("the outsourced activities") for Firm B:  
(a) Firm A acts only on the instructions of Firm B;  
(b) in any communication with a *customer*, Firm A represents itself as Firm B;  
(c) Firm A undertakes to co-operate fully with Firm B in relation to any complaints arising from Firm A's performance of the outsourced activities, even if the complaint is made after Firm A has ceased to carry on the outsourced activities for Firm B; and  
(d) Firm B accepts full responsibility for the acts and omissions of Firm A when carrying on the outsourced activities and must pay any redress due to the *customer*;  
or an *appointed representative* ("Firm A") which carries on such activities for its *principal* ("Firm B") under such an agreement.
- (2) ...

## Annex B

### Amendments to the General Provisions

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

1.2.3 G GEN ~~1.2.1G~~1.2.2R(2)(f) is confined to written approval because of the need for clarity as to the scope of any approval given by the *FSA*.

...

2.2.5 G Chapter 6 of the Reader's Guide contains an explanation of the significance of the status letters R, ~~D, P, C~~, E, G, D, UK, EU, P and ~~GC~~, and includes further information on Handbook provisions, including evidential provisions.

## Annex C

### Amendments to the Integrated Prudential sourcebook

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

...

Terms to be incorporated in the insurance

- 9.2.10 R In relation to the activities referred to in *PRU* 9.2.1R(2), the contract of professional indemnity insurance must incorporate terms which make provision for:
- (1) ...
  - (2) the minimum *limits of indemnity per year* as set out in *PRU* 9.2.13R (in relation to *insurance mediation activity*) and *PRU* 9.2.15R (in relation to *mortgage mediation activity*);
  - (3) ...

...

## **Annex D**

### **Amendments to the Interim Prudential sourcebook for Friendly Societies**

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is deleted this is indicated but the deleted text is not shown struck through.

Delete IPRU(FSOC) Annex 6 in its entirety.

Annex 6     [deleted]

...

## Annex E

### Amendments to the Conduct of Business sourcebook

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

4.2.11 E (1) ...

(1A) ~~[deleted]~~ In relation to a *service company*, or a *firm* that is undertaking *oil market activity* or other *energy market activity*, that operates an *ATS*, the references in paragraph (1)(a) to *COB 4.2.15 E* and *COB 4.2.16 E* do not apply.

...

...

Amend COB Schedule 1 as shown:

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<del><i>COB 5.3.26 R(2)</i></del> [deleted]	Statistics of pension opt-out or pension transfer transactions  [deleted]	Details of the notification required by <del><i>COB 5.3.26 R(1)</i></del> and <del><i>COB 5.3.26 R(1A)</i></del> [deleted]	On making the notification [deleted]	Indefinitely [deleted]
...				

## Annex F

### Amendments to the Insurance: Conduct of Business sourcebook

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

- 3.8.3 G (6) ...
- it should include, ~~with equal prominence~~, a prominent statement of the basis on which the reduction is to be achieved. ...
- ...
- 4.2.9 R Where contact by the *insurance intermediary* with the *customer* is limited to *introducing* the *customer* to another *insurance intermediary* (or to an *insurer* as *product provider*), the *insurance intermediary* making the introduction must give the *customer* the following information about itself ~~must be given~~ the following information about itself in good time before making the introduction ~~is made~~:
- ...
- ...
- 5.4.8 R When an *insurance intermediary* sells a *group policy* to a *commercial customer* the terms of which provide for *persons*, other than the *commercial customer* who concludes the *non-investment insurance contract*, to become *policyholders*, the *insurance intermediary* must, promptly after the conclusion of the contract:
- (1) ...
- (2) ~~where a *policy summary* is provided~~, inform the *commercial customer* that he should:
- (a) where a *policy summary* is supplied, provide the *policy summary* containing the information in (1) to each *policyholder* who is capable of being a *retail customer*; and
- ...
- (b) inform each *policyholder* that a copy of the *policy document* is available on request; and
- ...
- ...
- 5.5.4 R A *firm* may provide *key features* that meet the requirements of *COB 6* on the content of the *key features*,<sup>2</sup> instead of a *policy summary*. The *key features* must include the information required in *ICOB 5.5.5R*(6), (10) and (13) (cross-references from significant ~~and~~ or unusual exclusions or limitations to related sections of the *policy document*, a telephone number or address for

notification of *claims* and the key facts logo), in addition to that required by COB 6 ...

5.5.5 R Table Policy summary content. This table belongs to ICOB 5.5.1R.

Policy summary content	
(1)	...
...	
(5)	significant <del>and</del> <u>or</u> unusual exclusions or limitations;
...	

...

5.5.10 G Some examples of significant ~~and~~ or unusual exclusions or limitations are as follows:

...

...

## Annex G

### Amendments to the Mortgages: Conduct of Business sourcebook

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

...

#### 4.1.2 R Table

This table belongs to *MCOB 4.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter except <del><i>MCOB 4.5</i></del> and <del><i>MCOB 4.6</i></del> - <u><i>MCOB 4.7</i></u>
...	...

...

#### 9.1.2 R Table

This table belongs to *MCOB 9.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	<del><i>MCOB 9.1 – 9.7</i></del> <u>whole chapter</u>
...	...
<i>mortgage adviser</i>	<u><i>MCOB 9.1 – 9.4</i></u> and <u><i>MCOB 9.8.5R – MCOB 9.8.10R</i></u>
<i>mortgage arranger</i>	<u><i>MCOB 9.1 – 9.4</i></u> and <u><i>MCOB 9.8.5R – MCOB 9.8.10R</i></u>

...

## Annex H

### Amendments to the Supervision manual

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

Insert sub-headings above the following paragraphs:

#### Rights and duties of auditors

3.2.6 G ...

...

6.4.6 G ...

(2) ...

(c) email cancellations.team@fsa.gov.uk

...

16.10.7 G For the purpose of *SUP* 16.10.4R(3), the appropriate form will be determined by the *standing data* to be corrected. Appropriate forms will include (but are not limited to) the form in *SUP* 15 Ann ~~23~~R (standing data form) and the form in *SUP* 15 Ann ~~34~~R (notification form).

## Annex I

### Amendments to the Credit Unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is deleted this is indicated but the deleted text is not shown struck through.

- 17.6.8 R ...
- except that:
- (1) instead of the *credit union's* usual supervisory contact, the report should be given to or addressed for the attention of the Notification, Reporting and Data Maintenance department of the FSA~~;~~ and
- (2) ~~[deleted] in addition to the methods of submission of reports in SUP 16.3.9R, a *credit union* may submit a report under this section through, and in the electronic format specified in, the FSA's Complaints Reporting System.~~
- 17.6.8A R [deleted]
- 17.6.8B R [deleted]
- ...