

SHORT SELLING (NO 5) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (1) section 119 (The code);
 - (2) section 121 (Codes: procedure);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 16 January 2009 and applies in relation to any position held on or after that date.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Market Conduct sourcebook (MAR) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Short Selling (No 5) Instrument 2009.

By order of the Board
14 January 2009

Annex A

Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

net short position ~~a net short position which gives rise to an economic exposure to the issued share capital of a company.~~

~~Any calculation of whether a person has a short position must take account of any form of economic interest in the shares of the company.~~

Annex B

Amendments to the Market Conduct sourcebook (MAR)

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

1.9 Market abuse (misleading behaviour) & market abuse (distortion)

...

Short selling in relation to financial sector companies

- 1.9.2C E (1) ~~A person who enters into a transaction that (whether by itself or in conjunction with other transactions) has the effect of:~~
- (a) ~~creating a net short position in a UK financial sector company; or~~
- (b) ~~increasing any net short position in a UK financial sector company that the person had immediately before 19 September 2008;~~
- ~~is, in the opinion of the FSA, engaging in behaviour that is market abuse (misleading behaviour). [deleted]~~
- (2) ~~Paragraph (1) does not apply to a person acting in the capacity of a market maker. [deleted]~~
- (3) ~~Paragraph (1) does not apply to a transaction entered into or an order placed before 19 September 2008. [deleted]~~
- (4) ~~This provision ceases to have effect on 16 January 2008. [deleted]~~

~~Disclosure of pre-existing positions~~

- 1.9.2D E (1) Failure by a person who has a *disclosable short position* in a *UK financial sector company* to provide adequate ongoing disclosure of their position is *behaviour* which, in the opinion of the *FSA*, is *market abuse (misleading behaviour)*.
- (2) In paragraph (1), “adequate ongoing disclosure” means disclosure made on a *RIS* by no later than 3.30pm on the *business day* following:
- (a) ~~the first day on which the position reaches, exceeds or falls below a disclosable short position is held after 30 October 2008; and of 0.25%, 0.35%, 0.45% and 0.55% of the issued share capital of the company and each 0.1%~~

threshold thereafter.

- (b) ~~each day on which the *disclosable short position* changes.~~

- (2A) The disclosure referred to in (1) must include the name of the person who has the position, the amount of the *disclosable short position* and the name of the company in relation to which it has that position. ~~Where the change in position results in the person no longer holding a *disclosable short position*, there must be disclosure to that effect.~~
- (3) ~~The first disclosure required under this provision is by 3.30pm on 23 September 2008 which should relate to positions held on 19 September and 22 September. For the avoidance of doubt, changes in a *disclosable short position* between the thresholds referred to in (2) do not need to be disclosed under this section. For example, an increase from 0.25% to 0.31% of the issued share capital of the company does not need to be disclosed.~~
- (4) ~~This provision ceases to have effect on 16 January 2009. For the avoidance of doubt, (1) applies during a *rights issue period*.~~
- (5) This provision ceases to have effect on 30 June 2009.

- 1.9.2E G ~~MAR 1.9.2DE refers to a person providing adequate ongoing disclosure of *disclosable short positions*. A person may have such an interest despite MAR 1.9.2CE because they had a *disclosable short position* before 19 September 2008 or because they had a short position before that date which due to other extraneous factors becomes a *disclosable short position*. [deleted]~~

COMPENSATION SOURCEBOOK (BUILDING SOCIETY AND OTHER MUTUAL SOCIETY MERGERS) INSTRUMENT 2009

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 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 21 January 2009.

Amendments to the Handbook

- D. The Compensation sourcebook (COMP) is 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 Compensation Sourcebook (Building Society and other Mutual Society Mergers) Instrument 2009.

By order of the Board
15 January 2009

Annex

Amendments to the Compensation sourcebook (COMP)

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

Building society and other mutual society mergers

- 10.2.10 R (1) This *rule* applies from 1 December 2008 to 30 September 2009.
- (2) In the event of a merger between two *building societies* or a *building society* and the subsidiary of another mutual society (whether or not of the same type), there is a separate and additional £50,000 maximum payment limit for a claimant with respect to *claims* for *protected deposits* held under the name of the dissolved *building society entity* provided the following conditions are satisfied:
- (a) the merger takes effect between 1 December 2008 and 30 September 2009;
 - (b) the successor *building society entity* has notified the FSA before the merger takes effect that it wishes this *rule* to apply;
 - (c) before the merger took effect, the claimant had a *protected deposit* with each of the relevant *building societies merging entities*; and
 - (d) the successor *building society entity* continues to operate the business of the dissolved *building society entity* under the name of the latter.
- [**Note:** The FSA will publish the names of any *building society successor entity* and the relevant name to which a separate £50,000 limit applies.]
- (3) A *building society successor entity* to which this *rule* applies must make and retain a written record of potential claimants for whom the separate limit applies.
- (4) In this *rule* “mutual society” and “subsidiary” have the same meanings as in the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007.

HANDBOOK ADMINISTRATION (NO 12) INSTRUMENT 2009

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of:

(1) the following powers and related provisions in the Act:

- (a) section 138 (General rule-making power);
- (b) section 139 (Miscellaneous ancillary powers);
- (c) section 145 (Financial promotion rules);
- (d) section 156 (General supplementary powers);
- (e) section 157(1) (Guidance);
- (f) section 213 (The compensation scheme);
- (g) section 214 (General); and
- (h) section 395 (The Authority's procedures); and

(2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

Commencement

C. This instrument comes into force on 6 February 2009.

Amendments to the Handbook and related material

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

(1)	(2)
Fit and Proper test for Approved Persons (FIT)	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Client Assets sourcebook (CASS)	Annex D
Market Conduct sourcebook (MAR)	Annex E
Supervision manual (SUP)	Annex F
Decision Procedure and Penalties manual (DEPP)	Annex G
Compensation sourcebook (COMP)	Annex H

Notes

E. In the Annexes to this instrument, the Notes (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Handbook Administration (No 12) Instrument 2009.

By order of the Board
22 January 2009

Annex A

Amendments to the Fit and Proper test for Approved Persons (FIT)

In this Annex, underlining indicates new text.

2.1 Honesty, integrity and reputation

- 2.1.1 G In determining a *person's* honesty, integrity and reputation, the *FSA* will have regard to all relevant matters including, but not limited to, those set out in *FIT* 2.1.3G which may have arisen in the *United Kingdom* or elsewhere.

...

...

2.2 Competence and capability

- 2.2.1 G In determining a *person's* competence and capability, the *FSA* will have regard to all relevant matters including but not limited to:

...

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

16.2 Occasional reporting

Execution of orders other than when managing investments

- 16.2.1 R (1) If a *firm* has carried out an order in the course of its *designated investment business* on behalf of a *client*, it must:
- (a) ...
 - (b) in the case of a *retail client*, send the *client* a notice in a *durable medium* confirming the execution of the order and such of the *trade confirmation information* (COBS 16 Annex 1R) as is applicable:
 - (i) as soon as possible and no later than the first *business day* following that execution; or
 - (ii) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party; and
 - (c) ...
- ...
- (5) If a *firm* carries out an order for a *retail client* relating to *units* or *shares* in a collective investment undertaking that is part of a series of orders that are executed periodically, it must:
- (a) ...
 - (b) provide the *client* at least once every six months with such of the *trade confirmation information* (COBS 16 Annex 1R) as is applicable in relation to each transaction in that series carried out in the relevant reporting period.

[**Note:** article 40 paragraphs (1) to (4) of the *MiFID implementing Directive*]

...

16.3 Periodic reporting

Provision by the firm and contents

16.3.1 R (1) ...

- (2) If the *client* is a *retail client*, the *periodic statement* must include such of the *periodic information* (*COBS 16 Annex 2R*) as is applicable.

[**Note:** article 41(1) and (2) of the *MiFID implementing Directive*]

...

16.6 Communications to clients – life insurance, long term care insurance and income withdrawals

...

16.6.1 R (1) This section applies to a *long-term insurer*, unless, at the time of application, the *client*, other than an *EEA ECA recipient*, was *habitually resident*:

(1a) in an *EEA State* other than the *United Kingdom*; or

(2b) outside the *EEA* and he was not present in the *United Kingdom*.

- (2) In addition, COBS 16.6.8R applies to an operator of a personal pension scheme or stakeholder pension scheme in relation to a retail client who elects to make income withdrawals.

...

16.6.8 R At intervals no longer than 12 *months* from the date of an election by a *retail client* to make *income withdrawals*, the relevant product provider operator of a personal pension scheme or stakeholder pension scheme must:

- (1) provide the *retail client* with such information required by ~~COBS 13 Annex 2.9R as will enable as is necessary for the retail client to review the election, including where relevant the information required by COBS 13 Annex 2.9R~~; and

- (2) ...

16 Annex 1R Trade confirmation and periodic information

This annex forms part of *COBS* 16.2.1R

	The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with SUP 17 Annex 1	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction basis, to be provided for each transaction carried out during the reporting period)
	General		
...			
13.	a total sum of the commissions and expenses charged (<u>for a CIS operator, initial charges may be disclosed in cash or percentage terms</u>) and, where the <i>retail client</i> so requests, an itemised breakdown, including, where relevant, the amount of any <i>mark-up or mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in executing the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ;	Y	Y
...			
...			

Annex C

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

Risk warning

...

- 5.6.65 R The following text must be included at the end of Section 7 ‘Are you comfortable with the risks?’: ‘The FSA’s information sheet “You can afford your mortgage now, but what if...?” will help you consider the risks. You can get a free copy from ~~www.fsa.gov.uk/consumer~~ www.moneymadeclear.fsa.gov.uk, or by calling 0845 456 1555 606 1234.’

...

Risk warning

...

- 5.6.145 R The following text must be included at the end of Section 7 ‘Are you comfortable with the risks?’: ‘The FSA’s information sheet “You can afford your mortgage now, but what if...?” will help you consider the risks. You can get a free copy from ~~www.fsa.gov.uk/consumer~~ www.moneymadeclear.fsa.gov.uk, or by calling 0845 456 1555 606 1234.’

...

- 5 Annex 1R The mortgage illustration: table of contents, prescribed text and prescribed section headings and subheadings.

...

[...]. Where can you get more information about mortgages?

The FSA publishes useful guides on choosing a mortgage. These are available free through its website: ~~www.fsa.gov.uk/consumer~~ www.moneymadeclear.fsa.gov.uk, or by calling 0845 456 1555 606 1234. The website also provides Comparative Tables to help you shop around.

...

9 Annex 1R The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R).

...

1. About this information

...

The FSA provides useful information on lifetime mortgages and of other ways of releasing equity from your home in a booklet called ‘Raising money from your home’. You can get this free through the FSA website www.fsa.gov.uk/consumer www.moneymadeclear.fsa.gov.uk, or by calling 0845 456 1555 606 1234.

...

9 Annex 2R The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R).

...

1. About this information

...

The FSA provides useful information on ways of releasing equity from your home in a booklet called ‘Raising money from your home’. You can get this free through the FSA website www.fsa.gov.uk/consumer www.moneymadeclear.fsa.gov.uk, or by calling 0845 456 1555 606 1234.

...

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
...					
12	<u><i>MCOB 5.6.2R, MCOB 5.6.5R, MCOB 5.6.65R, MCOB 5.6.121R, MCOB 5.6.145R and MCOB 5 Annex 1R</i></u>	R	<u><i>A firm may continue to use an illustration that has been prepared in accordance with the rules in MCOB 5.6 in effect at 5 February 2009.</i></u>	<u><i>From 6 February 2009 to 6 February 2010.</i></u>	<u><i>6 February 2009</i></u>

...

TP 2.1 Transitional Provisions for home purchase plans and home reversion plans

(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
...					
5	<u><i>MCOB 9.4.2R, MCOB 9.4.5R, MCOB 9.4.18R and MCOB 9 Annex 1R</i></u>	R	<u><i>A firm may continue to use an illustration that has been prepared in accordance with the rules in MCOB 9.4 in effect at 5 February 2009.</i></u>	<u><i>From 6 February 2009 to 6 February 2010.</i></u>	<u><i>6 February 2009</i></u>
6	<u><i>MCOB 9.4.2R, MCOB 9.4.5R, MCOB 9.4.133R and MCOB 9 Annex 2R</i></u>	R	<u><i>A firm may continue to use an illustration that has been prepared in accordance with the rules in MCOB 9.4 in effect at 5 February 2009.</i></u>	<u><i>From 6 February 2009 to 6 February 2010.</i></u>	<u><i>6 February 2009</i></u>

Annex D

Amendments to the Client Assets sourcebook (CASS)

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

6.4 Use of safe custody assets

6.4.1 R ...

- (4) A firm which does not undertake MiFID business does not need to comply with (1), (2) and (3) until 1 May 2009.

...

...

~~Exchange Exchanges, clearing house houses, intermediary broker brokers or OTC counterparty counterparties~~

7.8.2 R (1) A firm which undertakes any *contingent liability investment* for clients through an exchange, *clearing house, intermediate broker* or *OTC counterparty* must, before the *client transaction account* is opened with the exchange, *clearing house, intermediate broker* or *OTC counterparty*:

...

- (c) require the person with whom the account is to be opened to acknowledge in writing that the *firm's client transaction account* is not to be combined with any other account, nor is any right of set-off to be exercised by that *person* against *money* credited to the *client transaction account* in respect of any sum owed to that person on any other account.

- (2) If the *exchange, clearing house, intermediate broker* or *OTC counterparty* does not provide the required acknowledgement within 20 *business days* of the dispatch of the notice and instruction, the *firm* must cease using the *client transaction account* with that *broker* or *counterparty* and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any *money*.

Annex E

Amendments to the Market Conduct sourcebook (MAR)

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

4 Endorsement of the Takeover Code Support of the Takeover Panel's Functions

...

6 Systematic Internalisers

...

- 6.10.1 R A *systematic internaliser* must, while complying with the obligation to execute orders on terms most favourable to the *client* set out in *COBS 12.2 11.2*, execute an order up to standard market size received from a *retail client* in relation to shares for which it is a *systematic internaliser*:

...

...

- 6.12.2 R Where a *systematic internaliser* quotes in different sizes and it receives a *client* order between those sizes, the order may be executed:

- (1) at one of the quoted prices in compliance with the client order handling rules set out in *COBS 12.3 11.3*, *COBS 12.4.1R 11.4.1R* and *COBS 12.4.5R 11.4.5R*; or
- (2) if it is a *professional client* order, as permitted under the execution price provisions in *MAR 6.11.1R*.

...

...

- 6.14.2 R A *systematic internaliser* may limit the total number of transactions from different *clients* at the same time that it undertakes to enter at the published quote, provided it does so:

- (1) in a non-discriminatory way within the categories of *retail* and *professional clients*;
- (2) in accordance with the provisions of the *client* order handling rules set out in *COBS 12.3 11.3*, *COBS 12.4.1R 11.4.1R* and *COBS 12.4.5R 11.4.5R*; and

...

Annex F

Amendments to the Supervision manual (SUP)

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

16.12 Integrated Regulatory Reporting

...

16.12.2 G ...

- (3) The requirements in this section differ according to a *firm's regulated activity group (RAG)*, as different information is required to reflect different types of business. Standard formats are used for reporting, to ~~assists~~ assist compatibility between *firms* which carry on similar types of business. Timely submission is important to ensure the *FSA* has up-to-date information.

Annex G

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

...

Section of the Act	Description	Handbook reference	Decision maker
...
87M(2)/(3)	...	...	...
<u>88(4)/(6)</u>	<u>when the FSA is proposing or deciding to (1) refuse a person's application for approval as a sponsor; or (2) on its own initiative, cancel a person's approval as a sponsor</u>	<u>LR 8</u>	<u>RDC</u>
89(2)/(3)	...	...	...
...			

Annex H

Amendments to the Compensation sourcebook (COMP)

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

Sch 1

Record-keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>FEES</i> 6.3.14R	...	...	...	...
<i>COMP</i> <u>10.2.10R(3)</u>	<u>Potential claimants for whom the separate limit under COMP 10.2.10R(2) applies</u>	<u>Sufficient details to enable the identification of claimants for whom the separate limit under COMP 10.2.10R(2) applies</u>	<u>As implicit from the rules in COMP</u>	<u>As implicit from the rules in COMP</u>

**PROFESSIONAL INDEMNITY INSURANCE (LIMITS OF INDEMNITY)
INSTRUMENT 2009**

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 March 2009.

Amendments to the Handbook

- D. The Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) is amended in accordance with Annex A to this instrument.
- E. The Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) is amended in accordance with Annex B to this instrument.

Notes

- F. In this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Professional Indemnity Insurance (Limits of Indemnity) Instrument 2009.

By order of the Board
22 January 2009

Annex A

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

- 3.2.7 R If the *firm* is an *insurance intermediary*, then the minimum *limits of indemnity* are:
- (1) for a single claim, ~~€1,120,200 million~~; and
 - (2) in aggregate, ~~€1.5 1,680,300 million~~ or, if higher, 10% of annual income up to £30 million.

[**Note:** Article 4(3) of the *Insurance Mediation Directive*]

- 3.2.7A G Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.

...

TP 1 Transitional Provisions

TP 1.1

(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
...					
3	<u>MIPRU 3.2.7R</u>	R	<u>The new limits of indemnity apply to a professional indemnity policy or a comparable guarantee agreement commenced, renewed or extended with effect from or after 1 March 2009. Any other existing non-annual arrangements must be</u>	<u>1 March 2009 to 28 February 2010</u>	<u>1 March 2009</u>

			<p><u>aligned with the new</u> <u>limits of indemnity</u> before 1 March 2010.</p>		
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Annex B

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

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

- 9.2.5 R (1) An *exempt CAD firm* that is also an *IMD insurance intermediary* must comply with the professional indemnity insurance requirements at least equal to the limits those set out in 9.2.4R(1)(b) (except that the minimum limits of indemnity are at least €1,120,200 for a single claim and €1,680,300 in aggregate) and in addition has to have...
- 9.2.5A G Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* to be reviewed every five years to take into account movements in European consumer prices. These *limits* will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.
- ...
- 13.1.4(2) R The policy must incorporate terms which are appropriate and must make provision for:
- ...
- (b) if the *firm* is an *IMD insurance intermediary* or an *exempt CAD firm* that maintains professional indemnity insurance under 13.1A.3(1)(b), appropriate minimum *limits of indemnity* per year which are, no lower than:
- (i) €1,000,000 1,120,200 for a single claim against the *firm*; and
- (ii) €1,500,000 1,680,300 in the aggregate;
- [**Note:** Article 67(3) of *MiFID* and Article 7 of *CAD* (see also rule 13.1A.3 4(3) of the *Insurance Mediation Directive*)]
- (ba) if the *firm* is an *exempt CAD firm* that maintains professional indemnity insurance under 13.1A.3(1)(b), appropriate minimum *limits of indemnity* per year which are no lower than:
- (i) €1,000,000 for a single claim against the *firm*; and
- (ii) €1,500,000 in the aggregate;
- [**Note:** Article 67(3) of *MiFID* and Article 7 of *CAD* (see also rule 13.1A.3)]
- ...

13.1.4(2A) G Article 4(7) of the *Insurance Mediation Directive* requires the limits of indemnity to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.

...

Transitional Provisions

1. Table

Transitional provisions applying to IPRU(INV)

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
3	<u>IPRU(INV) 9.2.5R and IPRU(INV) 13.1.4(2)R (b)</u>	R	<u>The new limits of indemnity apply to a professional indemnity policy or a comparable guarantee commenced, renewed or extended with effect from or after 1 March 2009. Any other existing non-annual arrangements must be aligned with the new limits of indemnity before 1 March 2010.</u>	<u>1 March 2009 to 28 February 2010</u>	<u>1 March 2009</u>

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(ELECTRONIC COMMUNICATIONS) INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 247 (Trust scheme rules); and
 - (e) section 248 (Scheme particulars rules);
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Subject to (2), this instrument comes into force on 6 February 2009.
- (2) The amendments in the Annexes to this instrument come into force when and if the applications of section 53(1)(c) of the Law of Property Act 1925, section 1(2)(a) (ii) of the Requirements of Writing (Scotland) Act 1995 and section VI of the Statute of Frauds (Ireland) 1695 are modified and the Open-Ended Investment Companies Regulations 2001 are amended in a manner consistent with those amendments.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex B to this instrument.

Citation

F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Electronic Communications) Instrument 2009.

By order of the Board
22 January 2009

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position.

electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000.

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

4.2.5 R This table belongs to *COLL 4.2.2R (Publishing the prospectus)*

...			
Dealing			
17	The following particulars:		
	...		
	(g)	the circumstances ...; <u>and</u>	
	(h)	in a <i>prospectus</i> available during the period of any <i>initial offer</i> :	
		...	
		(vi)	any other relevant details of the <i>initial offer</i> ; <u>and</u>
	(i)	<u>whether a <i>unitholder</i> may effect transfer of title to <i>units</i> on the authority of an <i>electronic communication</i> and if so the conditions that must be satisfied in order to effect a transfer.</u>	
...			

...

4.4.13 R ...

- (3) (a) In this sourcebook, any requirement that a *document* be signed may be satisfied by an electronic signature or electronic evidence of assent.
- (b) In relation to an *AUT*, where transfer of title to *units* is to be effected on the authority of an *electronic communication*, the *manager* must take reasonable steps to ensure that any *electronic communication* purporting to be made by the *unitholder* or his agent is in fact made by that *person*.

...

8.3.4 R This table belongs to *COLL* 8.3.2R.

...		
13	Dealing	
Details of:		
...	...	
(8)	the circumstances ...; <u>and</u>	
(9)	the circumstances ...; <u>and</u>	
(10)	<u>whether a <i>unitholder</i> may effect transfer of title to <i>units</i> on the authority of an <i>electronic communication</i> and if so the conditions that must be satisfied in order to effect a transfer.</u>	
...		

**LISTING RULES SOURCEBOOK (RIGHTS ISSUE SUBSCRIPTION PERIOD)
INSTRUMENT 2009**

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 96 (Obligations of issuers of listed securities);
 - (3) section 101 (Listing rules: general provisions);
 - (4) Schedule 7 (The Authority as competent authority for Part VI).

Commencement

- B. This instrument comes into force on 10 February 2009.

Amendments to the Handbook

- C. The Listing Rules sourcebook (LR) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Listing Rules Sourcebook (Rights Issue Subscription Period) Instrument 2009.

By order of the Board
9 February 2009

Annex

Amendments to the Listing Rules sourcebook (LR)

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

9.5 Transactions

...

- 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~~ 10 business days.

...

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) ...

(2) states where applicable:

...

- (h) for a *rights issue*, the time, being not less than ~~21 days~~ 10 business days, in which the offer may be accepted, and how *securities* not taken up will be dealt with; and

...

...

14.3 Continuing obligations

...

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) ...

(2) states where applicable:

...

- (g) for a *rights issue*, the time, being not less than ~~21 days~~ 10 business days, in which the offer may be accepted, and

how *equity securities* not taken up will be dealt with; and

...

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(AMENDMENT NO 2) INSTRUMENT 2009**

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 April 2009.

Amendments to the Handbook

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Senior Management Arrangements Systems and Controls (Amendment No 2) Instrument 2009.

By order of the Board
26 February 2009

Annex

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

The text amended by this Annex is the text made by the *Senior Management Arrangements, Systems and Controls (Extension of Common Platform Provisions) Instrument 2008* (FSA 2008/40) which comes into force on 1 April 2009.

1 Annex 1 Detailed application of SYSC

...

Part 3: Tables summarising the application of the common platform requirements to different types of firm.

...

Provision	COLUMN A	COLUMN B
SYSC 4	Application to a common platform firm	Application to all other firms apart from insurers, managing agents and the Society
...		
SYSC 4.4.1R	Not applicable	<p>Rule applies this section only to:</p> <p class="list-item-l1">(1) an <i>authorised professional firm</i> in respect of its <i>non-mainstream regulated activities</i> unless the <i>firm</i> is also conducting other <i>regulated activities</i> and has appointed <i>approved persons</i> to perform the <i>governing functions</i> with equivalent responsibilities for the <i>firm's non-mainstream regulated activities</i> and other <i>regulated activities</i>;</p> <p class="list-item-l1">(2) <u>activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:</u></p> <p class="list-item-l2">(a) an <i>oil market participant</i>;</p> <p class="list-item-l2">(3) (b) a <i>service company</i>;</p>

		<p>(4) <u>(c)</u> an <i>energy market participant</i>;</p> <p>(5) <u>(d)</u> a wholly-owned subsidiary of:</p> <ul style="list-style-type: none"> (i) a local authority (ii) a registered social landlord; <p>(6) <u>(e)</u> a firm with permission to carry on <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i> but no other regulated activity;</p> <p>(7)(3) an <i>incoming Treaty firm</i>, an <i>incoming EEA firm</i> and a <i>UCITS qualifier</i>, (but only SYSC 4.4.5 R(2) applies for these firms); and</p> <p>(8)(4) a <i>sole trader</i>, but only if he <u>employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)</u>.</p>
...		

...

4.4 Apportionment of responsibilities

Application

4.4.1 R This section applies to:

- (1) an *authorised professional firm* in respect of its *non-mainstream regulated activities* unless the *firm* is also conducting other *regulated activities* and has appointed *approved persons* to perform the *governing functions* with equivalent responsibilities for the *firm's non-mainstream regulated activities* and other *regulated activities*;
- (2) an oil market participant; activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:
 - (a) an oil market participant; or

- (b) a service company; or
 - (c) an energy market participant; or
 - (d) a wholly-owned subsidiary of:
 - (i) a local authority; or
 - (ii) a registered social landlord; or
 - (e) a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity;
- (3) a service company; [deleted]
 - (4) an energy market participant; [deleted]
 - (5) a wholly owned subsidiary of:
 - (a) a local authority; or
 - (b) a registered social landlord; [deleted]
 - (6) a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity; [deleted]
 - (7) an *incoming Treaty firm*, an *incoming EEA firm* or a *UCITS qualifier* (but only SYSC 4.4.5R(2) applies for these firms); and
 - (8) a *sole trader*, but only if he employs any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements).

**GENERAL PRUDENTIAL SOURCEBOOK (NOTIFICATION OF REDEMPTION
OR REPAYMENT) INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 March 2009.

Amendments to the Handbook

- D. The General Prudential sourcebook (GENPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the General Prudential Sourcebook (Notification of Redemption or Repayment) Instrument 2009.

By order of the Board
26 February 2009

Annex

Amendments to the General Prudential sourcebook (GENPRU)

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

2.2 Capital resources

...

- 2.2.74 R A *firm* must not redeem any *tier one instrument* that it has included in its *tier one capital resources* unless it has notified the *FSA* of its intention at least one month before it ~~does~~ becomes committed to do so. When giving notice, the firm must provide details of its position after such redemption in order to show how it will:
- (1) meet its *capital resources requirement*; and
 - (2) have sufficient financial resources to meet the *overall financial adequacy rule*.

...

- 2.2.174 R In relation to a *tier two instrument*, a *firm* must notify the *FSA*:
- (1) in the case of an *insurer*, six *Months*; and
 - (2) in the case of a *BIPRU firm*, one *Month*;

before ~~the date of it becomes committed to~~ the proposed repayment (unless that *firm* intends to repay an instrument on its final maturity date). When giving notice, the firm must provide providing details of its position after such repayment in order to show how it will:

- (3) how it will meet its *capital resources requirement after such repayment*; and
- (4) have sufficient financial resources to meet the *overall financial adequacy rule*.

...

Schedule 2 G Notification and reporting requirements

...

Handbook reference	Matter to be notified	Contents of notification	Trigger events	Time allowed
...				
<i>GENPRU</i> 2.2.74R	Intention to redeem <i>tier one instrument</i> included in <i>tier one capital resources</i>	Fact of intention <u>and details of the firm's position after such redemption</u> in order to show how it will meet the <u>capital resources requirement</u> and how it will have sufficient financial resources to meet the <u>overall financial adequacy rule</u>	Intention to redeem	At least one month prior to <u>intended redemption becoming committed to redeem</u>
...				
<i>GENPRU</i> 2.2.174R	Intention to repay (other than on contractual repayment date) <i>tier two instrument</i>	Fact of intention and details of <u>the firm's position after such repayment</u> in order to show how <u>the firm</u> it will meet <u>the capital resources requirement</u>	Intention to repay	Six months <u>Months (in the case of an insurer)</u> or one month <u>Month (in the case of a BIPRU firm)</u> prior to becoming committed to repayment

	<p><u>and how it will have sufficient financial resources to meet the <i>overall financial adequacy rule after such repayment</i></u></p>		
...			

**SUPERVISION MANUAL (PASSPORTING AND REINSURANCE) (AMENDMENT)
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 59 (Approval for particular arrangements);
 - (b) section 138 (General rule-making power);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 to the General Provisions (Powers exercised) of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 March 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Supervision Manual (Passporting and Reinsurance) (Amendment) Instrument 2009.

By order of the Board
26 February 2009

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position.

General Protocol

the “General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union” issued by the Committee of European Insurance and Occupational Pensions Supervisors.

UK pure reinsurer

a *pure reinsurer* whose head office is in the *United Kingdom*.

Amend the following definitions as shown.

EEA pure reinsurer

a *reinsurance undertaking* (other than an *ISPV*) whose head office is in any *EEA State* except the *United Kingdom* and which has received (or is deemed to have received) authorisation under article 3 of the *Reinsurance Directive* from its *Home State Regulator*.

Single Market Directives

- (a) the *Banking Consolidation Directive*;
- (b) the Insurance Directives (within the meaning of paragraph 1 of Schedule 3 to the Act);
- (ba) the *Reinsurance Directive*:
- (c) *MiFID*;
- (d) the *Insurance Mediation Directive*; and
- (e) the *UCITS Directive*.

Annex B

Amendments to the Supervision manual (SUP)

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

- 10.1.11 G But an *incoming EEA firm* (other than an EEA pure reinsurer), or *incoming Treaty firm*, will have had to consider the impact of the *Host State rules* with which it is required to comply when carrying on a *passported activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An *incoming EEA firm* (other than an EEA pure reinsurer) will have been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*.

...

- 10.1.13D R If an incoming EEA firm is an EEA pure reinsurer then SUP 10.1.13R does not apply.

...

- 13.2.3 G In some circumstances, a *UK firm* that is carrying on business which is outside the scope of the *Single Market Directives* has a right under the *Treaty* to carry on that business. For example, for an *insurer* carrying on both direct insurance and reinsurance reinsurance business, the authorisation of reinsurance business is not covered by the *Insurance Directives* ~~in respect~~ of the reinsurance element. The firm may, however, have rights under the *Treaty* in respect of its reinsurance reinsurance business. Such *UK firms* may wish to consult with the *FSA* on their particular circumstances (see SUP 13.12.2G).

...

The conditions for establishing a branch

- 13.3.2 G A *UK firm* other than a UK pure reinsurer cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

...

...

- 13.3.2E G Once authorised in the United Kingdom, a UK pure reinsurer has an automatic EEA right to carry on reinsurance business in another EEA State by establishing a branch in that state or providing cross border services into

that state. There are no additional requirements to be satisfied before the firm can commence business in that state.

...

- 13.3.3A G (1) SUP 13.3.3G does not apply to UK pure reinsurers as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive.
- (2) Under section 3 of Part III of the General Protocol, Home State regulators have agreed to inform Host State regulators if a pure reinsurer for which the Home State is responsible carries on business through a branch in the Host State. Therefore SUP 13.5.1AR requires a UK firm passporting under the Reinsurance Directive to notify the FSA of certain information relating to the branch.

...

- 13.4.2 G A UK firm, other than a UK pure reinsurer, cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraph 20(1) of Part III of Schedule 3 to the Act and, if it derives its EEA right from the Insurance Directives, paragraph 20(4B) of Part III of Schedule 3 to the Act. It is an offence for a UK firm which is not an authorised person to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). The conditions are that:

...

...

- 13.4.2E G SUP 13.4.2G does not apply to UK pure reinsurers as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive. No notification is required from UK pure reinsurers in respect of the provision of cross border services.

...

- 13.5.1 R A UK firm, other than a UK pure reinsurer, wishing to establish a branch in a particular EEA State for the first time under an EEA right must include in its notice of intention given to the FSA:

...

- 13.5.1A R A UK pure reinsurer establishing a branch in a particular EEA state for the first time under the Reinsurance Directive must notify the FSA. Whenever possible, this notification must be made as soon as the information specified in SUP 13 Annex 1R is known by the firm.

- 13.5.1B G SUP 13.5.1R does not apply to UK pure reinsurers as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive.

...

13.5.2A G *SUP 13.5.2R does not apply to UK pure reinsurers as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive.*

13.5.3 R (1) The *notice of intention* under SUP 13.5.1R and SUP 13.5.2R, and the notice required under SUP 13.5.1AR, must be:

...

(2) The *notice of intention* or notice required under SUP 13.5.1AR may be delivered by:

...

(3) The address for notices of intention referred to in (2) is: ...

...

13.5.4A G A UK pure reinsurer giving notice as required under SUP 13.5.1AR may wish to use the passporting notification form available on the FSA website (http://www.fsa.gov.uk/pubs/forms/passporting/branch_eea.doc), adapted as appropriate to reflect the information required by SUP 13 Annex 1R paragraph 4.

...

13.5.6 G (1) A *UK firm* passporting under the *Banking Consolidation Directive*, or the *Insurance Directives* or the *Reinsurance Directive* may have to submit the *requisite details* or relevant details in the language of the *Host State* as well as in English. For a *UK firm* passporting under the *Insurance Directives* this translated document will not include the relevant UK details. Further information is available from the Passport Notifications Unit.

...

13.6.1 G Where a *UK firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive* (see SUP 13.6.9AG) or the *Reinsurance Directive* (see SUP 13.6.9BR), and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*. ...

...

Firms passporting under the Reinsurance Directive

- 13.6.9B R A UK firm exercising its EEA right under the Reinsurance Directive to establish a branch in another EEA State must notify the FSA of any changes in the information specified in SUP 13 Annex 1R. Whenever possible, this notification must be made as soon as the change in information is known by the firm.

...

- 13.6.11 G When the FSA receives a notice from a *UK firm* other than a *MiFID investment firm* (see SUP 13.6.5G(1) and SUP 13.6.7G(1)) or a pure reinsurer (see SUP 13.6.9BR) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one *month* from the day on which it received the notice.

...

Firms passporting under the Reinsurance Directive

- 13.7.12 G A UK firm providing cross border services under the Reinsurance Directive is not required to supply notification of, or a change to the details of, its cross border services.

...

- 13.8.1 R (1) A notice of a change to a *branch* referred to in SUP 13.6.5G(1), SUP 13.6.5BG(1), SUP 13.6.7G(1), SUP 13.6.8G, SUP 13.6.9BR and SUP 13.6.10G(1) and a notice of a change to *cross border services* referred to in SUP 13.7.3G(1), SUP 13.7.3AG(1), SUP 13.7.5G(1) and SUP 13.7.6G must be:

...

...

...

13 Annex 1R Requisite details: branches

	Type of firm	Requisite details (see notes 1 & 2)	
...
4	Pure reinsurer	(a)	<u>the address of the branch;</u>
		(b)	<u>the name of the firm's authorised agent (see note 3);</u>

		(c)	<u>whether the firm will be, or is, carrying on life or non-life reinsurance business, or both;</u>
		(d)	<u>confirmation that the firm fulfils the solvency requirements of the Reinsurance Directive.</u>
Notes			
<p>Note 1: The <i>requisite details</i> or relevant details specified in this annex are those in the <i>EEA Passport Rights Regulations</i>; that is, those in regulation 1 for <i>credit institutions</i> and <i>MiFID investment firms</i>, and those in regulation 14 for <i>insurance undertakings</i>. <u>The relevant details specified for pure reinsurers are those in the General Protocol, under which Home State regulators have agreed to inform Host State regulators if a pure reinsurer carries on business through a branch in the Host State.</u></p> <p>...</p>			

13A.1.1 G (1) ...

(2) This chapter also applies to:

- (a) a *Treaty firm* that wishes to exercise rights under the *Treaty* in respect of *regulated activities*, those rights not being covered by passporting rights provided by the Single Market Directives, and qualify qualifies for *authorisation* under Schedule 4 to the Act (Treaty Rights); and
- ...

...

13A.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the Act, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the Act if it is:

- (a) ...
 - (aa) authorised in Gibraltar under the Reinsurance Directive; or
- ...

...

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*.

...

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 for which the right to carry on those activities does 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: includes regulated activities, the right to carry on which does not fall within the scope of the Single Market Directive under which it is entitled to exercise an EEA right, for example, reinsurance in the case of a direct insurer to which the Insurance Directives apply.

- (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.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* that is an EEA pure reinsurer qualifies for *authorisation without condition*. An *EEA firm* that is not an EEA pure reinsurer qualifies for *authorisation* if:

...

13A.3.1B G A pure reinsurer with its head office in an EEA State that has not fully implemented the Reinsurance Directive may nevertheless be accepted as satisfying the conditions to be an EEA pure reinsurer if the firm provides satisfactory evidence that the prudential requirements of the Reinsurance Directive have been implemented by that EEA State and that they apply to the firm. The firm may then be deemed to be authorised under the Reinsurance Directive in that EEA State.

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* in relation to the *reinsurance* business if the firm has received *Home State authorisation* for the *regulated activity* of effecting and/or carrying out the relevant class of *insurance business* that includes *reinsurance* business for that class and the relevant provisions of the law of the *Home State* satisfy the conditions laid down by the *Insurance Directives* relating to the carrying on of that activity (see *SUP App 3.10.13G*). 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.3.6 G*).

- (1A) 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 has received authorisation (or is deemed to be authorised) under the *Reinsurance Directive* from its *Home State* (an *EEA pure reinsurer*), has an automatic *EEA right* to passport into the *United Kingdom* by establishing a *branch* in the *United Kingdom* or by the provision of *cross border services*. Under the *General Protocol*, *Home State* regulators have agreed to inform *Host State* regulators if a *pure reinsurer* carries on business through a *branch* in the *Host State*.
 - (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* and is authorised by its *Home State* but not yet under the *Reinsurance Directive*, 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 the FSA website: “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>).
- ...

- 13A.4.1 G (1) Before an *EEA firm* other than an *EEA pure reinsurer* 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*.
- ...

- 13A.5.2 G An *EEA firm* other than an *EEA pure reinsurer* 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:

- ...
- 13A.5.3 G (1) Before an *EEA firm other than an EEA pure reinsurer* 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*.

- ...
- ...
- 13A.6.2 G An *incoming EEA firm (other than an EEA pure reinsurer)* 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:

- ...
- 13A.6.3 G In particular, an *EEA firm (other than an EEA pure reinsurer)* or *Treaty firm* must comply with the *applicable provisions* in SUP 10 (Approved persons). An *EEA firm* or *Treaty firm* should also refer to SUP 10.1 (Application) which sets out the territorial provisions of the *approved persons* regime.

...

13A Annex 1G Application of the Handbook to Incoming EEA Firms

1. The table below summarises the application of the <i>Handbook</i> to an <i>incoming EEA firm</i> . Where the table indicates that a particular module of the <i>Handbook</i> 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 <i>incoming ECA providers</i> . These should refer to COBS 1 Annex 1 Part 3 section 7 for guidance on how COBS applies to them. <u>The table does not apply to EEA pure reinsurers as these firms have automatic passport rights on the basis of their Home State authorisation.</u>
...

- ...
- 14.1.1 G This chapter applies to an *incoming EEA firm other than an EEA pure reinsurer* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* under one of the *Single Market Directives* and, therefore, qualifies for *authorisation* under Schedule 3 to the *Act*.

15 Annex 1R Application of SUP 15 to incoming EEA firms and incoming Treaty firms

...	
<u>2A.</u>	<u>SUP 15 does not apply to an EEA pure reinsurer which does not have a top-up permission.</u>
...	

...

SUP App 3 Guidance on passporting issues

...

- 3.3.13 G The *Single Market Directives* require *credit institutions, insurance undertakings (other than reinsurance undertakings)*, ...

...

Position of EEA reinsurers insurers carrying out both direct and reinsurance business

- 3.10.13 G The *Insurance Directives* do not apply to the authorisation to carry on reinsurance. But, the *Insurance Directives* do not prevent *insurance undertakings* authorised under those Directives from carrying out reinsurance as well as direct insurance business. Article 13(2) of the *First Non-Life Directive* and article 10(2) of the *Consolidated Life Directive* state that financial supervision of *insurance undertakings* “shall include verification, with respect to the insurance undertaking's insurance undertaking's entire business, of its state of solvency, of the establishment of technical provisions and of the assets covering them”. On that basis, an *insurance undertaking* authorised in another *EEA State* which carries on a mixed direct insurance and reinsurance business, and is, therefore, subject to the requirements of the Directives, will generally be treated as being subject to “equivalent protection” satisfying the conditions laid down by a Community instrument relating to the carrying on of the regulated activity of effecting or carrying out contracts of insurance. This is for the purpose of paragraph 3 of Schedule 4 to the *Act* (Exercise of treaty rights). The *insurance undertaking* will, therefore, generally be able to qualify for *permission* as a *Treaty firm* for its reinsurance business if it follows the procedure provided for by Schedule 4 (see *SUP 13A.3.4G to SUP 13A.3.11G (Treaty Firms)*). This will be in addition to the *insurance undertaking* being an *EEA firm* under Schedule 3 of the *Act* for its direct insurance business.

...

SUP Sch 2 Notification requirements

...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 13.4.2G(1)	...	...	...	...
<u>SUP 13.5.1AR</u>	<u>UK pure reinsurer establishing a branch in another EEA State</u>	(a) <u>the address of the branch</u> (b) <u>the name of the firm's authorised agent</u> (c) <u>whether the firm will be, or is, carrying on life or non-life reinsurance business, or both</u> (d) <u>confirmation that the firm fulfils the solvency requirements of the Reinsurance Directive</u>	<u>Decision to establish a branch in other EEA State</u>	<u>Whenever possible, as soon as the information specified in SUP 13 Annex 1R is known by the firm</u>
...				

SUPERVISION MANUAL (AMENDMENT NO 15) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157 (Guidance); and
 - (3) section 293 (Notification requirements).
- 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 September 2009.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Supervision Manual (Amendment No 15) Instrument 2008.

By order of the Board
26 February 2009

Annex

Amendments to the Supervision manual (SUP)

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

17.1.4 R ...

17.1.4A R SUP 17.1.4R(2) does not apply to a transaction in any OTC derivative the value of which is derived from, or which is otherwise dependent upon, multiple equity or multiple debt-related financial instruments except where the multiple financial instruments are all issued by the same issuer.

...

17 Annex 1 Minimum content of a transaction report

...

	Field Identifier	Description
...		
EU	5. Trading Capacity	<p>...</p> <p>- ...</p> <p>- ...</p>
G		<u>Where the firm has executed a transaction in an agency cross capacity (that is where the firm has acted as agent for both the selling and the buying counterparties) where and the firm has chosen to submit a single report to the FSA representing both of these transactions this field should be used to indicate that the firm has executed the transaction in such a capacity;:</u>
G		...
EU G		<u>Where the firm has executed a transaction in a principal cross capacity (that is where the firm has acted simultaneously executed a buy and sell transaction for two counterparties as principal in a single product at the same price and</u>

		quantity) <u>where and the firm has chosen to submit a single report to the FSA</u> <u>FSA</u> representing both of these <i>transactions</i> <u>this field should be used to indicate that the firm has executed the transaction in such a capacity.</u>
G		...
EU	6. Instrument Identification	...
...		...
EU R		- or, in the case of an <i>OTC derivative</i> , the characteristics of the <i>OTC derivative</i> .
G		...
...		
EU	11. Maturity Date	...
G		This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification. <u>Where the derivative type is spreadbet on an equity option or contract for difference on an equity option, this field must be used to indicate the expiry of the option.</u>
EU	12. Derivative Type	...
G		This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification, and must indicate the derivative type, e.g. option, future, contract for difference <u>(other than a contract for difference on an equity option)</u> , <u>contract for difference on an equity option</u> , <u>complex derivative</u> , warrant, spreadbet <u>(other than a spreadbet on</u>

		<u>an equity option), spreadbet on an equity option, credit default swap or other swap.</u>
EU	13. Put / Call	...
G		This field is only mandatory when (i) the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification; and (ii) the <i>derivative</i> type is option or , warrant, <u>spreadbet on an equity option or contract for difference on an equity option</u> . <u>Where the financial instrument is a spreadbet on an equity option or a contract for difference on an equity option this field should be used to indicate the put/call status of the equity option.</u>
EU	14. Strike Price	...
G		This field is only mandatory when (i) the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification; and (ii) the <i>derivative</i> type is option or , warrant, <u>spreadbet on an equity option or contract for difference on an equity option</u> . <u>Where the financial instrument is a spreadbet on an equity option or a contract for difference on an equity option this field should be used to indicate the strike price of the equity option.</u>

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (AMENDMENT NO 4)
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139(4) (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance); and
 - (e) section 247 (Trust scheme rules); and
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 March 2009.

Amendments to the Handbook

- D. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Notes

- E. In this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 4) Instrument 2009.

By order of the Board
26 February 2009

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Rights of unit classes

3.3.5 R ...

- (4) Paragraphs (2) and (3) do not prohibit a difference between the rights attached to one *class* of *units* and to another *class* of *units* that relates solely to:

...

- (d) the use of *derivatives* and forward transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a *currency class of unit units* and either the *base currency* of the *scheme* or any currency in which all or part of the *scheme property* is denominated or valued (in this section referred to as a “*currency class hedging transaction*”).

Hedging of ~~currency class units~~ unit classes

3.3.5A R A *currency class hedging transaction* must:

...

- (2) (for the purposes of valuing *scheme property* and calculating the *price of units* in accordance with *COLL 6.3 (Valuation and pricing)*) be attributed only to the *currency class of units* for which it is undertaken.

Guidance on hedging of ~~currency unit~~ unit classes

3.3.5B G (1) Before undertaking a *currency class hedging transaction* for a *class of units*, the *authorised fund manager* should:

- (a) ensure that the relevant *prospectus* clearly:

- (i) states that such a transaction may be undertaken for the relevant *class of currency class units*; and

...

- (b) consult the *depositary* about the adequacy of the systems and controls it uses to ensure compliance with *COLL 3.3.5AR (Hedging of currency class units unit classes)*; and

- (c) consult the *scheme auditor* ... (in each case) without prejudice to *unitholders of classes other than the relevant currency hedged class*.
 - (2) ~~Currency class Class~~ hedging transactions should be entered into for the purpose of reducing risk by limiting the effect of movements in exchange rates on the value of a *currency class unit*. Such transactions are not limited to currency class units. The *authorised fund manager* should ensure that the total value of the hedged position does not exceed the value of the relevant *currency class of units* unless there is adequate cover and it is reasonable for it to do so on a temporary basis for reasons of efficiency (for example, to avoid the need to make small and frequent adjusting transactions). In such cases, the difference between the value of the hedged position and the value of the *currency class of units* should not be so large as to be speculative or to constitute an investment strategy.
- ...

Investment in collective investment schemes

- 5.2.13 R A *UCITS scheme* must not invest in *units* in a *collective investment scheme* (“*second scheme*”) unless the *second scheme* satisfies all of the following conditions, and provided that no more than 30% of the value of the *UCITS scheme* is invested in *second schemes* within (1)(b) to (d) (e):
- (1) the *second scheme* must:
- ...
- (d) be authorised in another *EEA State* (provided the requirements of article 19(1)(e) of the *UCITS Directive* are met); or
 - (e) be authorised by the competent authority of an *OECD member country* (other than another *EEA State*) which has:
 - (i) signed the *IOSCO Multilateral Memorandum of Understanding*; and
 - (ii) approved the *scheme's management company, rules and depositary/custody arrangements*;
(provided the requirements of article 19(1)(e) of the *UCITS Directive* are met);
- ...

Qualifying non-UCITS collective investment schemes

- 5.2.14 G ...

- (3) In determining whether a *scheme* meets the requirements of article 19(1)(e) of the *UCITS Directive* for the purposes of *COLL 5.2.13R* (1)(d) or (e), the *authorised fund manager* should consider the following factors before deciding that the *scheme* provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a *UCITS scheme*:
- (a) the rules guaranteeing the autonomy of the *scheme* and management in the exclusive interest of the *unitholders*;
 - (b) the existence of an independent *depositary/custodian* with similar duties and responsibilities in relation to both safekeeping and supervision; where an independent *depositary/custodian* is not a requirement of local law as regards *collective investment schemes*, robust governance structures may provide a suitable alternative;
 - (c) the availability of pricing information and reporting requirements;
 - (d) redemption facilities and frequency;
 - (e) restrictions in relation to dealings by related parties;
 - (f) the extent of asset segregation; and
 - (g) the local requirements for borrowing, lending and uncovered sales of *transferable securities* and money market instruments regarding the portfolio of the *scheme*.
- [Note: article 26 of CESR's UCITS eligible assets guidelines with respect to article 19(1)(e) of the UCITS Directive]
- (4) The requirement for supervisory equivalence, as described in article 19(1)(e) (first indent) of the *UCITS Directive*, also applies to *schemes* (that are not *UCITS schemes*) established in other *EEA States*. In considering whether the second *scheme* satisfies this requirement, the *authorised fund manager* should have regard to the first section of article 26 of CESR's UCITS eligible assets guidelines.

TRADING PLAN INSTRUMENT 2009

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 96 (Obligations of issuers of listed securities);
 - (3) section 96A (Disclosure of information requirements);
 - (4) section 101 (Listing rules: general provisions); and
 - (5) Schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. This instrument comes into force on 6 March 2009.

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
Listing Rules sourcebook (LR)	Annex B
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex C

Citation

- D. This instrument may be cited as the Trading Plan Instrument 2009

By order of the Board
26 February 2009

Annex A

Amendment to the Glossary of definitions

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

Insert the following definition in the appropriate alphabetical position.

- trading plan* (in *LR*) a written plan between a restricted person and an independent third party which sets out a strategy for the acquisition and/or disposal of *securities* by a specified person and:
- (a) specifies the amount of *securities* to be dealt in and the price at which and the date on which the *securities* are to be dealt in; or
 - (b) gives discretion to that independent third party to make trading decisions about the amount of *securities* to be dealt in and the price at which and the date on which the *securities* are to be dealt in; or
 - (c) includes a written formula or algorithm, or computer program, for determining the amount of *securities* to be dealt in and the price at which and the date on which the *securities* are to be dealt in.

Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text.

9 Annex 1R The Model Code (R)

...

...	
	<u>Dealing under a trading plan</u>
23	<u>A restricted person may deal in securities of a company pursuant to a trading plan if clearance has first been given in accordance with paragraph 4 of this Code to the person entering into the plan and to any amendment to the plan. A restricted person must not cancel a trading plan unless clearance has first been given in accordance with paragraph 4 of this Code for its cancellation.</u>
24	<u>A restricted person must not enter into a trading plan or amend a trading plan during a prohibited period and clearance under paragraph 4 of this Code must not be given during a prohibited period to the entering into, or amendment of, a trading plan. Clearance under paragraph 4 of this Code may be given during a prohibited period to the cancellation of a trading plan but only in the exceptional circumstances referred to in paragraphs 9 and 10 of this Code.</u>
25	<u>A restricted person may deal in securities of a company during a prohibited period pursuant to a trading plan if:</u>
	(a) <u>the trading plan was entered into before the prohibited period;</u>
	(b) <u>clearance under paragraph 4 of this Code has been given to the person entering into the trading plan and to any amendment to the trading plan before the prohibited period; and</u>
	(c) <u>the trading plan does not permit the restricted person to exercise any influence or discretion over how, when, or whether to effect dealings.</u>
26	<u>Where a transaction occurs in accordance with a trading plan, the restricted person must notify the issuer at the same time as he makes the notification required by DTR 3.1.2R of:</u>
	(a) <u>the fact that the transaction occurred in accordance with a trading plan; and</u>
	(b) <u>the date on which the relevant trading plan was entered into.</u>

Annex C**Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)**

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

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) ...
 - (b) [deleted] ~~and~~
 - (c) section 793 of the Companies Act 2006 (Notice requiring information about interests in shares) to the extent that it relates to the interests of a *director* or, as far as the issuer is aware, any *connected person*; and
 - (d) paragraph 26 of the *Model Code*.

...

DISCLOSURE AND TRANSPARENCY RULES (DISCLOSURE OF CONTRACTS FOR DIFFERENCES) INSTRUMENT 2009

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 89A to 89G (Transparency obligations); 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 2009.

Amendments to the Handbook

- D. The Disclosure Rules and Transparency Rules sourcebook (DTR) is amended in accordance with the Annex to this instrument.

Notes

- E. 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

- F. This instrument may be cited as the Disclosure and Transparency Rules (Disclosure of Contracts for Differences) Instrument 2009.

By order of the Board
26 February 2009

Annex

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

- 5.1.2 R Subject to the exemption for certain third country *issuers* (*DTR 5.11.6R*), a *person* must notify the *issuer* of the percentage of its voting rights he holds as *shareholder* or holds or is deemed to hold through his direct or indirect holding of *financial instruments* falling within *DTR 5.3.1R(1)*, subject to the exemption in *DTR 5.3.1R(2)*, (or a combination of such holdings) if the percentage of those voting rights:

...

Certain voting rights to be disregarded

- 5.1.3 R Voting rights attaching to the following *shares* are to be disregarded for the purposes of determining whether a person has a notification obligation in accordance with the thresholds in *DTR 5.1.2R*:

...

- (4) (a) *shares held; or*

- (b) *shares underlying financial instruments within DTR 5.3.1R to the extent that such financial instruments are held;*

by a *credit institution* or *investment firm* provided that:

- (ai) the *shares, or financial instruments,* are held within the *trading book* of the *credit institution* or *investment firm*;

- (bii) the voting rights attached to such *shares* do not exceed 5%; and

- (eiii) the *credit institution*, or as the case may be *investment firm*, ensures that the voting rights attached to *shares* in, or related to *financial instruments* in, the *trading book* are not exercised or otherwise used to intervene in the management of the *issuer*.

...

- 5.3.1 R (1) A *person* must make a notification in accordance with the applicable thresholds in *DTR 5.1.2R* in respect of any *qualifying financial instruments* which they hold, directly or indirectly, which:

- (a) *result in an entitlement to acquire, on such holder's own initiative*

~~alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer. are qualifying financial instruments within DTR 5.3.2R; or~~

[Note: article 13(1) of the TD]

(b) unless (2) applies:

- (i) are referenced to the shares of an issuer, other than a non-UK issuer; and
- (ii) have similar economic effects to (but which are not) qualifying financial instruments within DTR 5.3.2R.

(2) Paragraph (1)(b) does not apply to financial instruments held by a client-serving intermediary:

- (a) acting in a client-serving capacity; and
- (b) satisfying the conditions in (3) and the continuing obligations in (4).

(3) For the purposes of (2) a client-serving intermediary is a person satisfying the following conditions:

- (a) (i) it is authorised by its Home State under MiFID or the BCD, or, subject to (iii), as a third country investment firm, to deal as principal, in a client-serving capacity, in financial instruments falling within (1)(b), and to carry on any relevant business connected to such dealing; or
- (ii) (A) it is a person which would be an investment firm or credit institution if it carried on relevant business, and had its head office, in the EEA;
 (B) it is in the same group as a person in (a)(i); and
 (C) it has equivalent authorisation from its home state regulator to that set out in (a)(i); and
- (iii) references to a third country investment firm in (i) are limited to relevant business carried on by such firms which is subject to regulatory supervision under the laws of a Member State;
- (b) it has appropriate systems and controls in order to identify, distinguish between and monitor its client-serving dealings and interests and its proprietary trading dealing and interests;
- (c) when acting in a client-serving capacity it does not:
 - (i) intervene, nor does it attempt to intervene, in:

- (ii) exert, nor purport to exert, influence on;
the management of the *issuer* concerned;
 - (d) (i) it has certified in writing to the FSA that it considers itself to qualify for client-serving intermediary status and that it satisfies the conditions in (a) to (c);
 - (ii) for a *person* falling into (a)(ii)(A) a further certification in writing to the FSA of the matters in (d)(i) must have been made in relation to that *person* by the *person* in its *group* falling into (a)(i), and
 - (iii) the certificates in (i) and (ii) must have been:
 - (A) signed by a relevant *person* of at least *director* level; and
 - (B) made and sent to the FSA in the preceding 12 month period.
 - (4) A client-serving intermediary must:
 - (a) inform the FSA as soon as it becomes aware that it no longer satisfies the conditions in (3); and
 - (b) provide the FSA, on request, with information relevant to its status or operation as a client-serving intermediary.
 - (5) For the purposes of (2) and (3), acting in a client-serving capacity means:
 - (a) fulfilling orders received from *clients* otherwise than on a proprietary basis;
 - (b) responding to a *client's* requests to trade otherwise than on a proprietary basis; or
 - (c) hedging positions arising out of dealings in (a) or (b).
- 5.3.2 R For the purposes of DTR 5.3.1R(1)(a):
- (1) Transferable transferable securities and options, ... ;
 - (2) The the ... ;
 - (3) A a ...
- [**Note:** Article 13(1) of the TD and Article 11(1) of the TD implementing Directive]
- 5.3.3 G (1) For the purposes of DTR 5.3.1R(1)(a) and to give effect to Directive 2004/109/EC (TD), qualifying financial instruments financial instruments should be taken into account ... Consequently, qualifying financial

instruments financial instruments ...

[**Note:** Recital 13 of the *TD implementing Directive*]

(2) For the purposes of DTR 5.3.1R(1)(b), in the FSA's view:

- (a) a financial instrument has a similar economic effect to a qualifying financial instrument in DTR 5.3.1R(1)(a), if its terms are referenced, in whole or in part, to an issuer's shares and, generally, the holder of the financial instrument has, in effect, a long position on the economic performance of the shares, whether the instrument is settled physically in shares or in cash. This is because such an instrument may give the holder the potential to gain an economic advantage in acquiring, or gaining access to, the underlying shares. For example, that result may occur because of the likelihood that the counterparty will have hedged with the underlying shares or with an instrument which may provide access to such shares. The holder may then be in a more advantageous position, compared to other market users (i.e. other potential purchasers of the shares), to gain access to those shares, either directly from the counterparty, or indirectly, for example in the market following sale by the counterparty;
- (b) 'long' derivative financial instruments not having a linear, symmetric pay-off profile in line with the underlying share (that is, instruments not having a 'delta 1' profile, for example cash-settled options) should be considered to have an economic effect, in relation to the underlying shares represented, similar to that of a qualifying financial instrument, only in the proportion which is equal to the delta of the instrument at any particular point in time. So, for an instrument with a delta of 0.5 on a particular day, the instrument will provide a 'similar economic effect' in half of the underlying shares represented. This will mean that holders may need to monitor delta changes at the end of each trading day in order to determine whether a disclosure is required;
- (c) a financial instrument referenced to a basket or index of shares will not have similar economic effects to a qualifying financial instrument unless:
 - (i) the shares in the basket represent both 1% or more of the class in issue and 20% or more of the value of the securities in the basket or index; and
 - (ii) use of the financial instrument is connected to the avoidance of notification;
- (d) a financial instrument held by a person within a group, where the following conditions are satisfied, will not be considered to have economic effects similar to a qualifying financial instrument:

- (i) it is held by that person solely for tax or accounting reasons relating to the group and not for reasons connected to the avoidance of notification; and
- (ii) another person in the group has made, or is, and continues to be, exempt from making, a notification under DTR 5.3.1R in respect of the position represented by that financial instrument.

5.3.4 R The holder of qualifying *financial instruments*, and, to the extent relevant, *financial instruments with similar economic effects*, is required to aggregate and, if necessary, notify all such instruments as relate to the same underlying *issuer*.
[Note: article 11(2) of the *TD implementing Directive in respect of qualifying financial instruments*]

...

5.7.1 R A *person* making a notification in accordance with *DTR 5.1.2R* must do so by reference to each of the following:

- (1) the aggregate of all voting rights which the *person* holds as *shareholder* and as the direct or indirect holder of qualifying financial instruments and financial instruments with similar economic effects;
- (2) the aggregate of all voting rights ...; and
- (3) the aggregate of all voting rights held as a result of direct and indirect holdings of qualifying financial instruments; and
- (4) the aggregate of all voting rights deemed to be held as a result of direct and indirect holdings of financial instruments having similar economic effects to (but not including) qualifying financial instruments in (3).

...

5.8.2 R ...

- (4) For financial instruments having similar economic effects to (but which are not) qualifying financial instruments within DTR 5.3.2R, a person making a notification in (1) must do so on a delta adjusted basis, that is, in relation to the underlying shares referenced, only in the proportion which is equal to the delta of the instrument at any particular point in time.

...

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
14	...				
15	<u>DTR 5.1.2R,</u> <u>DTR 5.3.1R,</u> <u>DTR 5.8.2R(1)</u> and (4), <u>DTR 5.8.10R</u>	R	<u>For financial instruments having similar economic effects to (but which are not) qualifying financial instruments within DTR 5.3.2R, but which do not have a linear, symmetric pay-off (that is, a ‘delta 1) profile for the purposes of DTR 5.3.3G(2)(b), a person making a notification under DTR 5.1.2R and DTR 5.8.2R(1) may, at their option, treat each financial instrument in question as having a delta 1 profile, but only if the person also makes a notification to the issuer of the total number voting rights relating to shares referenced by, and the strike, or execution, price of, each such financial instrument.</u>	<u>1 June 2009 to 31 December 2009</u>	<u>1 June 2009</u>
16	<u>TP 15</u>	G	<u>The effect of TP 15 is that persons holding financial instruments falling within DTR 5.3.3G(2)(b) have a choice as to how they notify their deemed holding of voting rights in the underlying shares, either on a delta adjusted or nominal basis. Where notification is made on a nominal basis, extra information is required so that the delta adjusted position is capable of being calculated (when used in conjunction with information about the maturity or expiry date (notifiable under DTR 5.8.2R) and other information derivable from publicly available sources, for example, relating to volatility).</u>	<u>1 June 2009 to 31 December 2009</u>	<u>1 June 2009</u>

17	<u>DTR 5.1.2R,</u> <u>5.3.1R, 5.8, 5.9</u>	R	<u>A notification of the strike, or execution, price of, and the total number of voting rights relating to shares referenced by, each financial instrument for the purposes of TP 15 is to be treated as part of the notification to the issuer and references to 'notification' shall be construed accordingly.</u>	<u>1 June 2009 to 31 December 2009</u>	<u>1 June 2009</u>

PAYMENT SERVICES INSTRUMENT 2009

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes:
- (1) the rules and guidance in Annexes A and E to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
 - (2) the rules, standard terms and guidance in Annexes A and E to this instrument for VJ participants relating to the Voluntary Jurisdiction;
- in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 226A (Consumer Credit Jurisdiction);
 - (b) section 227 (Voluntary Jurisdiction);
 - (c) section 229(4A) (Awards);
 - (d) section 230 (Costs);
 - (e) paragraph 8 (Guidance) of Schedule 17;
 - (f) paragraph 14 (The scheme operator’s rules) of Schedule 17;
 - (g) paragraph 16B (The Consumer Credit Jurisdiction) of Schedule 17; and
 - (h) paragraph 18 (The Voluntary Jurisdiction) of Schedule 17.

- B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

- C. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 69 (Statement of policy) as applied by paragraph 1 of Schedule 5 to the Payment Services Regulations 2008 (SI 2009/209) (“the Regulations”);
 - (b) section 138 (General rule-making power);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 169(9) (Investigations etc. in support of overseas regulator) as applied by paragraph 3 of Schedule 5 to the Regulations;
 - (f) section 210(1) (Statements of policy) as applied by regulation 86(6) of the Regulations;
 - (g) section 226 (Compulsory Jurisdiction);
 - (h) section 229 (Awards);
 - (i) section 395(5) (The Authority’s procedures) as applied by paragraph 7 of Schedule 5 to the Regulations;

- (j) paragraph 13 (Authority's procedural rules) of Schedule 17;
- (2) regulation 93 (Guidance) of the Payment Services Regulations 2009 (SI 2009/209); and
- (3) the other powers referred to in Schedule 4 of the General Provisions of the Handbook.
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the rules, standard terms and guidance made by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force as follows:
- (1) the amendments in Part 1 of Annex A come into force on 1 May 2009; and
- (2) the remainder of the instrument comes into force on 1 November 2009.

Notes

- G. 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.

Amendments to the Handbook

- H. 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
Principles for Businesses (PRIN)	Annex B
General Provisions (GEN)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Decision Procedure and Penalties manual (DEPP)	Annex E
Dispute Resolution: Complaints sourcebook (DISP)	Annex F

Material outside the Handbook

- I. The Enforcement Guide (EG) is amended in accordance with Annex G to this instrument.

Citation

- J. This instrument may be cited as the Payment Services Instrument 2009.

By order of the Board of the Financial Ombudsman Service Limited
13 March 2009

By order of the Board of the Financial Services Authority
26 March 2009

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 1 May 2009

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

<i>agent</i>	(in relation to <i>payment services</i>) a <i>person</i> who acts on behalf of a <i>payment institution</i> in providing <i>payment services</i> .
	[Note: article 4(22) of the <i>Payment Services Directive</i>]
<i>authorised payment institution</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i>) a <i>person</i> included by the <i>FSA</i> in the <i>FSA Register</i> as an authorised payment institution pursuant to regulation 4(1)(a), or a <i>person</i> deemed to have been granted authorisation by the <i>FSA</i> by virtue of regulation 121 of the <i>Payment Services Regulations</i> .
<i>EEA authorised payment institution</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i>) a <i>person</i> authorised in an <i>EEA State</i> other than the <i>United Kingdom</i> to provide <i>payment services</i> in accordance with the <i>Payment Services Directive</i> .
<i>framework contract</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i>) a contract for <i>payment services</i> which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account.
	[Note: article 4(12) of the <i>Payment Services Directive</i>]
<i>money remittance</i>	(in accordance with regulation 2(1) of the <i>Payment Service Regulations</i>) a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or the payee, where:
	(a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another <i>payment service provider</i> acting on behalf of the payee; or
	(b) funds are received on behalf of, and made available to, the payee.
	[Note: article 4(13) of the <i>Payment Services Directive</i>]
<i>payment institution</i>	an <i>authorised payment institution</i> , an <i>EEA authorised payment institution</i> or a <i>small payment institution</i> .

[**Note:** articles 4(4) and 26(3) of the *Payment Services Directive*]

payment service (in accordance with regulation 2(1) of, and Schedule 1 to, the *Payment Services Regulations*):

- (a) Any of the following activities when carried out as a regular occupation or business activity:
 - (i) services enabling cash to be placed on a payment account and all of the operations required for operating a payment account;
 - (ii) services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account;
 - (iii) execution of the following types of payment transaction:
 - (A) direct debits, including one-off direct debits;
 - (B) payment transactions executed through a payment card or a similar device;
 - (C) credit transfers, including standing orders;
 - (iv) execution of the following types of payment transaction where the funds are covered by a credit line for the *payment service user*:
 - (A) direct debits, including one-off direct debits;
 - (B) payment transactions executed through a payment card or a similar device;
 - (C) credit transfers, including standing orders;
 - (v) issuing payment instruments or acquiring payment transactions;
 - (vi) *money remittance*;
 - (vii) execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the *payment service user* and the supplier of the goods or services.
- (b) The following activities do not constitute payment services:
 - (i) payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention;
 - (ii) payment transactions between the payer and the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;

- (iii) the professional physical transport of banknotes and coins, including their collection, processing and delivery;
- (iv) payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity;
- (v) services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction;
- (vi) money exchange business consisting of cash-to-cash operations where the funds are not held on a payment account;
- (vii) payment transactions based on any of the following documents drawn on the *payment service provider* with a view to placing funds at the disposal of the payee:
 - (A) paper cheques of any kind, including traveller's cheques;
 - (B) bankers' drafts;
 - (C) paper-based vouchers;
 - (D) paper postal orders;
- (viii) payment transactions carried out within a payment or securities settlement system between *payment service providers* and settlement agents, central counterparties, clearing houses, central banks or other participants in the system;
- (ix) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by *persons* referred to in (h) or by investment firms, *full credit institutions*, collective investment undertakings, asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;
- (x) services provided by technical service providers, which support the provision of *payment services*, without the provider entering at any time into possession of the funds to be transferred, including:
 - (A) the processing and storage of data;
 - (B) trust and privacy protection services;
 - (C) data and entity authentication;
 - (D) information technology;
 - (E) communication network provision; and

- (F) the provision and maintenance of terminals and devices used for *payment services*;
- (xi) services based on instruments that can be used to acquire goods or services only:
- (A) in or on the issuer's premises; or
 - (B) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services,
- and for these purposes the "issuer" is the person who issues the instrument in question;
- (xii) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the *payment service user* and the supplier of the goods and services;
- (A) payment transactions carried out between *payment service providers*, or their agents or *branches*, for their own account;
 - (B) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a *payment service provider* other than an undertaking belonging to the same group;
 - (C) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not party to the *framework contract* with the customer withdrawing money from a payment account, where no other *payment service* is conducted by the provider.

[**Note:** articles 3 and 4(3) of, and the Annex to, the *Payment Services Directive*]

Payment Services Directive Directive 2007/64/EC of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market.

- payment service provider* (1) (except in *DISP*) (in accordance with regulation 2(1) of the *Payment Service Regulations*) any of the following *persons* when they carry out a *payment service*:
- (a) an *authorised payment institution*;
 - (b) a *small payment institution*;
 - (c) an *EEA authorised payment institution*;

- (d) a *full credit institution*;
- (e) an *e-money issuer*;
- (f) the Post Office Limited;
- (g) the Bank of England, the European Central Bank and the national central banks of *EEA States* other than the *United Kingdom*, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
- (h) government departments and local authorities, other than when carrying out functions of a public nature.

[**Note:** article 1(1) of the *Payment Services Directive*]

- (2) (in *DISP*) as in (1) but excluding a *full credit institution* and an *e-money firm*.

payment service user (in accordance with regulation 2(1) of the *Payment Services Regulations*) a person when making use of a *payment service* in the capacity of either payer or payee, or both.

[**Note:** article 4(10) of the *Payment Services Directive*]

Payment Services Regulations the Payment Services Regulations 2009 (SI 2009/209).

small payment institution (in accordance with regulation 2(1) of the *Payment Services Regulations*) a person included by the FSA in the *FSA Register* pursuant to regulation 4(1)(b) of the *Payment Services Regulations*.

Amend the following definition as shown.

branch ...

- (g) (in accordance with regulation 2(1) of the *Payment Services Regulations*) (in relation to a *payment institution*) a place of business of a *payment institution*, other than its head office, which forms a legally dependent part of the institution and which carries out directly all or some of the transactions inherent in its business. For the purposes of the *Payment Services Regulations*, all places of business set up in the same *EEA State* other than the *United Kingdom* by an *authorised payment institution* are to be regarded as a single branch.

[**Note:** article 4(29) of the *Payment Services Directive*]

Part 2: Comes into force on 1 November 2009

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

micro-enterprise an enterprise which:

- (a) employs fewer than 10 *persons*; and
- (b) has a turnover or annual balance sheet that does not exceed € million.

In this definition, “enterprise” means any *person* engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed *persons* and family businesses engaged in craft or other activities, and *partnerships* or associations regularly engaged in an economic activity.

[**Note:** article 4(26) of the *Payment Services Directive* and the Annex to the *Micro-enterprise Recommendation*]

Micro-enterprise Recommendation Recommendation 2003/361/EC of the Commission of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises.

Amend the following definitions as shown.

Compulsory Jurisdiction the jurisdiction of the *Financial Ombudsman Service* to which *firms* and payment service providers (and certain unauthorised other persons as a result of the *Ombudsman Transitional Order* or section 226(2)(b) and (c) of the *Act*) are compulsorily subject.

consumer (1) (except as specified in this definition) any natural person acting for purposes outside his trade, business or profession.

[**Note:** article 2 of the *Distance Marketing Directive*, article 2 of the Unfair Terms in Consumer Contracts Directive (93/13/EEC), and article 2 of the *E-Commerce Directive*, and article 4(11) of the *Payment Services Directive*]

...

consumer credit activity any one of the following activities carried on by a *licensee* or firm or payment service provider:

(a) ...

...

where at the time of the act or omission complained of:

(g) the *licensee* or firm or payment service provider was:

- (i) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or
 - (ii) authorised to carry on an activity by virtue of section 34A of that Act; and or
 - (iii) in accordance with regulation 26(2) of the *Payment Services Regulations*, was not required to hold a licence for consumer credit business under section 21 of the Consumer Credit Act 1974; and
- (h) the activity was carried on in the course of a business of a type specified in accordance with section 226A(2)(e) of the *Act*;

and expressions used in the Consumer Credit Act 1974 (as amended) have the same meaning in this definition as they have in that Act.

FSA Register

The public record, as required by section 347 of the *Act* (The public record) and regulation 4 of the *Payment Services Regulations* (The register of certain payment service providers), of every:

- (a) ...
- (aa) *authorised payment institution and its EEA branches;*
- (ab) *small payment institution;*
- (ac) *agent of an authorised payment institution or small payment institution;*
- (ad) *credit union, municipal bank and the National Savings Bank where such persons provide a payment service;*

...

respondent

- (1) (in *DISP*) a firm (except a *UCITS qualifier*), *payment service provider, licensee or VJ participant* covered by the *Compulsory Jurisdiction, Consumer Credit Jurisdiction or Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

...

Annex B

Amendments to the Principles for Businesses (PRIN)

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

- 3.1.6 R A *firm* will not be subject to a *Principle* to the extent that it would be contrary to the *UK's obligations under a Single Market Directive European Community instrument*.
- ...
- 3.1.8 G The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with the *Payment Services Directive*. For example, there may be circumstances in which *Principle 6* may be limited by the harmonised conduct of business obligations applied by the *Payment Services Directive* to credit institutions and e-money issuers (see Parts 5 and 6 of the *Payment Services Regulations*).
- ...
- 4.1.1 G PRIN 3.1.6R ensures that the *Principles* do not impose obligations upon firms which are inconsistent with a *Single Market Directive European Community instrument*. ...

Annex C

Amendments to the General Provisions (GEN)

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

5.1.1 G This chapter contains:

- (1) *guidance for firms and authorised payment institutions, and their appointed representatives, agents or tied agents on the circumstances in which the FSA permits firms and their appointed representatives or tied agents them to reproduce the FSA logo;*

...

5.1.3 G *GEN 5 Annex 1G is a general licence, which sets out the circumstances in which the FSA permits firms and their appointed representatives or tied agents a person to whom this chapter applies to reproduce the FSA and keyfacts logos. A firm, appointed representative or tied agent Such a person need not apply for an individual licence if it uses or reproduces the logos in accordance with the general licence.*

5.1.4 G The FSA has no policy to allow use of the logos by a *firm, appointed representative or tied agent person to whom this chapter applies* other than as set out in *GEN 5 Annex 1G*. If, however, a *firm, appointed representative or tied agent such a person* wishes to use or reproduce either of the logos other than in accordance with the general licence, it may apply to the FSA for an individual licence, giving full reasons why it considers the FSA should grant the licence.

...

5 Annex 1G Licence for use of the FSA and keyfacts logos

Application	
1.1	The FSA grants this licence to <i>firms, authorised payment institutions, appointed representatives, agents and tied agents</i> .
...	
Permission to use the FSA logo	
3.1	A UK domestic firm, its appointed representatives and tied agents, and an authorised payment institution and its agents are permitted to use the FSA logo:

	(1)	as part of a statement by that <i>person</i> , in a letter or electronic equivalent, that <u>the firm it or, in relation to an appointed representative, agent or tied agent, its principal,</u> is authorised and regulated by the <i>FSA</i> ; or
	(2)	if required to do so by the <i>FSA</i> .
...		
Further conditions on the use of the FSA and keyfacts logos		
5.1	The permissions in paragraphs 3.1 and 3A.1 are also subject to the conditions that any material, whether produced on paper or electronically, on which the FSA or keyfacts logos are displayed does not:	
	(1)	in any way imply that the <i>FSA</i> is endorsing the <u>firm licensee</u> or its <u>appointed representatives, tied agents</u> or products, services or communications (see also <i>GEN</i> 1.2.2R(1)); or
	(2)	misrepresent the <u>firm's</u> or its <u>appointed representative's</u> or <u>tied agent's</u> <u>licensee's</u> relationship with the <i>FSA</i> or present false information about the <i>FSA</i> ; or
	...	
<u>Use of the FSA logo by appointed representatives</u>		
6.1	[deleted]	
...		

...

Schedule 4

Powers exercised

Sch 4.1G

...	
The following powers in the <i>Act</i> have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :	
	...
	Section 69 (Statement of policy), <u>including as applied by paragraph 1 of Schedule 5 to the Payment Services Regulations</u>
	...
	Section 169(9) (Investigations etc in support of overseas regulator), <u>including as</u>

	<u>applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i></u>
	Section 210 (Statements of policy), <u>including as applied by regulation 86(6) of the <i>Payment Services Regulations</i></u>
	Section 395(5) (The Authority's procedures), <u>including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i>.</u>
...	
The following <u>power in the Act has powers have</u> been exercised by the FSA to give the other guidance in GEN:	
	Section 157(1) (Guidance)-
	<u>Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>.</u>
In this Schedule, references to GEN include the <i>Glossary</i> .	
...	

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

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

Exception: contracts for payment services

- 5.1.13A R Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of *COBS 5 Annex 1R*.

[**Note:** article 4(5) of the *Distance Marketing Directive*]

- 5.1.13B G Where a *distance contract* covers both *payment services* and *non-payment services*, this exception applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to *FSA* material apply to the powers listed in this Annex where indicated by an asterisk * (see DEPP 2.4)

Regulated Activities Order	Description	Handbook reference	Decision maker
...

<u>Payment Services Regulations</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulations 9(7) and 14</u>	<u>when the FSA is proposing to refuse an application for authorisation as an authorised payment institution, or for registration as a small payment institution, or impose a requirement</u>		<u>Executive procedures</u>
<u>Regulations 9(8)(a) and 14</u>	<u>when the FSA is deciding to refuse an application for authorisation as an authorised payment institution, or for registration of a small payment institution, or impose a requirement</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 10(2) and 10(3)(a) and 14</u>	<u>when the FSA is proposing or deciding to either cancel an authorised payment institution's authorisation, or to cancel a small payment institution's registration, otherwise than at that institution's</u>		<u>RDC</u>

	<u>own request*</u>		
<u>Regulations 11(6), 11(9), 11(10)(b) and 14</u>	<u>When the FSA is exercising its powers to vary a person's authorisation on its own initiative</u>		<u>RDC or Executive procedures</u> <u>See also DEPP 3.4</u> <u>(Note 1)</u>
<u>Regulation 24(2)</u>	<u>when the FSA is proposing to refuse to register an EEA branch</u>		<u>Executive procedures</u>
<u>Regulation 24(3)(a)</u>	<u>when the FSA is deciding to refuse to register an EEA branch</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 24(2) and 24(3)(a)</u>	<u>when the FSA is proposing or deciding to cancel the registration of an EEA branch*</u>		<u>RDC</u>
<u>Regulation 29(9)</u>	<u>when the FSA is proposing to refuse an application for registration as an agent</u>		<u>Executive procedures</u>
<u>Regulation 29(10)(a)</u>	<u>when the FSA is deciding to refuse an application for registration as an agent</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 30(2) and 30(3)(a)</u>	<u>when the FSA is proposing or deciding to remove an agent from the FSA Register otherwise than at the request of a payment institution*</u>		<u>RDC</u>
<u>Regulations 86(1) and 86(3)</u>	<u>when the FSA is proposing, or deciding, to impose a financial</u>		<u>RDC</u>

	<u>penalty*</u>		
<u>Regulations 86(1) and 86(3)</u>	<u>when the FSA is proposing, or deciding, to publish a statement that a payment service provider has contravened the Payment Services Regulations*</u>		<u>RDC</u>
<u>Regulations 89(1) and 89(3)</u>	<u>when the FSA is proposing or deciding to exercise its powers to require restitution*</u>		<u>RDC</u>
<u>Regulation 121(7)</u>	<u>when the FSA is proposing to decide that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</u>		<u>Executive Procedures</u>
<u>Regulation 121(8)</u>	<u>when the FSA is deciding that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Schedule 5 paragraph 1</u>	<u>when the FSA is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the Payment Services Regulations (Note 2)</u>		<u>RDC</u>
<u>Schedule 5 paragraph 1</u>	<u>when the FSA is proposing or deciding to impose a financial penalty against a relevant person (Note 3)</u>		<u>RDC</u>
<u>Notes:</u>			
(1) The <u>RDC</u> will take the decision to give a notice exercising the FSA's own initiative power if the action involves:			
<ul style="list-style-type: none"> (a) removing a type of activity from an authorisation or registration; or (b) refusing an application to include a type of activity in an authorisation or registration; or (c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or (d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement. 			

For all other types of action the decision to give a notice will be taken by FSA staff under *executive procedures*.

(2) The *Payment Services Regulations* do not require third party rights and access to FSA material when the FSA exercises this power. However, the FSA generally intends to allow for third party rights and access to material when exercising this power.

(3) The *Payment Services Regulations* do not require third party rights and access to FSA material when the FSA exercises this power. However, the FSA generally intends to allow for third party rights and access to material when exercising this power.

Annex F

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Introduction

This part of the *Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms*, *payment service providers*, *licensees* and *VJ participants*) and the *Financial Ombudsman Service*.

...

The powers to make rules (or set *standard terms*) relating to *firms*, *payment service providers*, *licensees*, and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

Background

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

(1) *persons carrying on regulated activities (firms) or providing payment services (payment service providers) and which are covered by the Compulsory Jurisdiction (firms);*

...

...

Application to payment service providers

1.1.10A R *This chapter (except the *complaints record rule* and the *complaints reporting rules*) applies to *payment service providers* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.*

1.1.10B G (1) *In this sourcebook, the term *payment service provider* does not include *full credit institutions* or *e-money firms* (which are covered by this sourcebook as *firms*), but it does include *small e-money issuers*.*

(2) *Although *payment service providers* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial**

Ombudsman Service should this be necessary.

...

Exemptions for firms and payment service providers

- 1.1.12 R (1) A firm or payment service provider falling within the Compulsory Jurisdiction which does not conduct business with eligible complainants and has no reasonable likelihood of doing so, can, by written notification to the FSA, claim exemption from the rules relating to the funding of the Financial Ombudsman Service, and from the remainder of this chapter.

...

...

1.2 Consumer awareness rules

Publishing and providing summary details

- 1.2.1 R To aid consumer awareness of the protections offered by the provisions in this chapter, respondents must:
- (1) publish appropriate summary details of their internal process for dealing with complaints promptly and fairly;
 - (2) refer eligible complainants in writing to the availability of these summary details at, or immediately after, the point of sale; and
 - (a) in relation to a payment service, in the information on out-of-court complaint and redress procedures required to be provided or made available under regulations 36(2)(e) (Information required prior to the conclusion of a single payment service contract) or 40 (Prior general information for framework contracts) of the Payment Services Regulations; or
 - (b) otherwise, in writing at, or immediately after, the point of sale; and
 - (3) ...

- 1.2.2 R Where the activity does not involve a sale, the obligation in DISP 1.2.1R(2)(b) shall apply at, or immediately after, the point when contact is first made with an eligible complainant.

Content of summary details

- 1.2.3 G ...

...

Financial Ombudsman Service logo

1.2.5 G ...

DISP 1 Annex 2G

...

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules
...
<u>payment service provider in relation to complaints concerning payment services</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>EEA branch of a UK payment service provider in relation to complaints concerning payment services</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>incoming branch of an EEA authorised payment institution in relation to complaints concerning payment services</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>incoming EEA</u>	<u>Does not</u>	<u>Does not</u>	<u>Does not</u>	<u>Does not</u>	<u>Does not</u>

<u>authorised payment institution providing cross-border payment services from outside the UK</u>	<u>apply</u>	<u>apply</u>	<u>apply</u>	<u>apply</u>	<u>apply</u>
<i>licensee</i>	...	...	...	...	...
...

...

2.1 Purpose, interpretation and application

Purpose

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* three jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities* and *payment services*, and covers:

...

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) *regulated activities*;
- (1A) *payment services*;

...

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

Activities by firms and unauthorised persons subject to a former scheme

2.3.2 G ...

Activities by payment service providers

- 2.3.2A R The Ombudsman can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *payment service provider* in carrying on:
- (1) *payment services;* or
- (2) *consumer credit activities;*
- or any ancillary activities, including advice, carried on by the *payment service provider* in connection with them.

General

- 2.3.3 G Complaints about acts or omissions by a *firm* include *complaints about acts or omissions* those in respect of activities for which the *firm or payment service provider* is responsible (including business of any *appointed representative or agent* for which the *firm or payment institution* has accepted responsibility).
- ...
- 2.3.5 G The *Compulsory Jurisdiction* includes *complaints* about the *UK end* of ‘one leg’ *payment services* transactions, i.e. *services provided from UK establishments* that also involve a *payment service provider* located outside the *EEA*. The *Compulsory Jurisdiction* also includes *complaints about payment services* irrespective of the currency of the transaction.
- ...

2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:
- (1) it is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*; and
- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
- ...
- (1) activities which (at 1 November 2009) were *payment services* or would be *payment services* if they were carried on from an establishment in the *United Kingdom*;
- or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

...

- 2.5.4A G *DISP 2.5.1R(2)(l) includes complaints about the EEA end of ‘one leg’ payment services transactions, i.e. services provided from EEA establishments that are subject to the territorial jurisdiction of the Voluntary Jurisdiction (see DISP 2.6.4R(2)) that also involve a payment service provider located outside the EEA. It also includes complaints about payment services irrespective of the currency of the transaction.*

...

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

- 2.6.1 R The *Compulsory Jurisdiction* covers only *complaints* about the activities of a firm (including its *appointed representatives*) or of a *payment service provider* (including *agents of a payment institution*) carried on from an establishment in the *United Kingdom*.
- 2.6.2 G This:
- (1) includes incoming *EEA firms*, incoming *EEA authorised payment institutions* and *incoming Treaty firms*; but
 - (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom*.

...

Eligible complainants

- 2.7.3 R An *eligible complainant* must be a *person* that is:
- (1) a *private individual consumer*;
 - (2) a ~~business, which has a group annual turnover of less than £1 million micro-enterprise~~;
 - (a) *in relation to a complaint relating wholly or partly to payment services, either at the time of the conclusion of the payment service contract or at the time the complainant refers the complaint to the respondent; or*
 - (b) *otherwise, at the time the complainant refers the complaint to the respondent;*
 - (3) a charity which has an annual income of less than £1 million at the time the complainant refers the *complaint* to the *respondent*; or

- (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the *complaint* to the *respondent*.
- 2.7.4 G A business includes a *sole trader*, a *company*, an *unincorporated body* and a *partnership* carrying on any trade or profession. A subsidiary of a corporate group will be eligible only where the corporate group as a whole meets the turnover test. In determining whether an enterprise meets the tests for being a *micro-enterprise*, account should be taken of the enterprise's 'partner enterprises' or 'linked enterprises' (as those terms are defined in the *Micro-enterprise Recommendation*). For example, where a parent company holds a majority shareholding in a *complainant*, if the parent company does not meet the tests for being a *micro-enterprise* then neither will the *complainant*.
[Note: Articles 1 and 3 to 7 of the Annex to the Micro-enterprise Recommendation]
- ...
- 2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:
- (1) the complainant is (or was) a customer or payment service user of the *respondent*;
- (2) the complainant is (or was) a potential customer or payment service user of the *respondent*;
- ...
- ...
- Exceptions
- 2.7.9 R The following are not *eligible complainants*:
- (1) (in all jurisdictions) a *firm*, payment service provider, *licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:
- (a) the *firm* itself has *permission* to carry on; or
- (ab) the firm or payment service provider itself is entitled to carry on under the Payment Services Regulations; or
- (b) the *licensee* or *VJ participant* itself conducts;
- and which is subject to the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*;
- ...

DISP TP 1

Transitional provisions

1.1 Transitional provisions 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
20	...	...	...	...	...
21	<u>DISP 2.7.3R</u>	R	<p><u>A person is also an eligible complainant if:</u></p> <ul style="list-style-type: none"> (a) <u>it is a business with a group annual turnover of less than £1 million at the time it refers the complaint to the respondent;</u> (b) <u>the complaint relates to a contract or policy entered into by or for the benefit of the complainant before 1 November 2009; and</u> (c) <u>if the complaint had been made immediately before 1 November 2009 the respondent was subject to, or participated in, the Ombudsman's jurisdiction in respect of the activity to which the complaint relates.</u> 	<u>From 1 November 2009</u>	<u>1 November 2009</u>
22	<u>DISP 2.7.3R</u>	G	<p><u>Transitional provision 21R applies together with the other eligibility rules in DISP 2.7. So, for example, a person who is an eligible complainant under the transitional provision, will not be an eligible complainant if the complaint does not arise from</u></p>	<u>From 1 November 2009</u>	<u>1 November 2009</u>

			<p>matters relevant to one of the <u>relationships set out in DISP</u> <u>2.7.6R.</u></p>		
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Annex G

Amendments to the Enforcement Guide (EG)

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

After EG 19.89 insert the following new text.

Payment Services Regulations 2009

- 19.90 The FSA has investigation and sanctioning powers in relation to both criminal and civil breaches of the *Payment Services Regulations*. The *Payment Services Regulations* impose requirements including, amongst other things, obligations on *payment service providers* to provide users with a range of information and various provisions regulating the rights and obligations of payment service users and providers.
- 19.91 The FSA's approach to enforcing the *Payment Services Regulations* will mirror its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the *person* who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
- 19.92 The regulatory powers which the *Payment Services Regulations* provide to the FSA include:
 - the power to require information;
 - powers of entry and inspection;
 - power of public censure;
 - the power to impose financial penalties;
 - the power to prosecute or fine unauthorised providers; and
 - the power to vary an authorisation on its own initiative.

- 19.93 The *Payment Services Regulations*, for the most part, mirror the FSA's investigative, sanctioning and regulatory powers under the *Act*. The FSA has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the *Act*. Key features of the FSA's approach are described below.

The conduct of investigations under the Payment Services Regulations

- 19.94 The *Payment Services Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Payment Services Regulations*.
- 19.95 The FSA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *Payment Services Regulations* and the reasons

for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FSA expects to carry out a scoping visit early on in the enforcement process in most cases. The FSA's policy in civil investigations under the *Payment Services Regulations* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Payment Services Regulations

- 19.96 The *RDC* is the FSA's decision maker for some of the decisions under the *Payment Services Regulations* as set out in *DEPP 2 Annex 1G*. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. *DEPP 3.4* applies for urgent notices under Regulations 11(6), (9), and (10)(b) (including as applied by Regulation 14).
- 19.97 For decisions made by *executive procedures* the procedures to be followed will be those described in *DEPP 4*.
- 19.98 The *Payment Service Regulations* do not require the FSA to have published procedures to launch criminal prosecutions. However, in these situations the FSA expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*.
- 19.99 The *Payment Service Regulations* require the FSA to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act*.
- 19.100 Certain FSA decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the Payment Services Regulations

- 19.101 When imposing or determining the level of a financial penalty the FSA's policy includes having regard to relevant factors in *DEPP 6.2.1G* and *DEPP 6.5*.
- 19.102 As with cases under the *Act*, the FSA may settle or mediate appropriate cases involving civil breaches of the *Payment Services Regulations* to assist it to exercise its functions under the Regulations in the most efficient and economic way. See *DEPP 5*, *DEPP 6.7* and *EG 5* for further information on the settlement process and the settlement discount scheme.

Statement of policy in section 169(7) interviews (as implemented by the Payment Services Regulations)

- 19.103 The *Payment Services Regulations* apply section 169 of the *Act* which requires the FSA to publish a statement of policy on the conduct of certain interviews in response

to requests from overseas regulators. For the purposes of the *Payment Services Regulations* the FSA will follow the procedures described in *DEPP 7*.

FEE PROVISIONS (2009/2010) INSTRUMENT 2009

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 99(1), (1B) and (2) (Fees);
 - (2) section 101 (Listing rules: general provisions);
 - (3) section 156 (General supplementary powers);
 - (4) section 157(1) (Guidance);
 - (5) section 213 (The compensation scheme);
 - (6) section 223 (Management expenses);
 - (7) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (8) 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 purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2009.

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fee Provisions (2009/2010) Instrument 2009.

By order of the Board
26 March 2009

Annex

Amendments to the Fees manual (FEES)

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

3 Annex 4 R Application fees in relation to listing rules

Part 1

...

Part 2

Sponsor Application Fees	
Fee type	Fee amount
Application for approval as <i>sponsor</i>	£4,000 <ins>£15,000</ins>

3 Annex 5 R Document vetting and approval fees in relation to listing and prospectus rules

Part 1

Fee type		Fee amount
Transaction vetting fees		
	Transaction vetting fees relate to specific events or transactions that an <i>issuer</i> might be involved in during the year.	
Eligibility	New applicants	£1,300 <ins>£1,430</ins>
Category 1	<i>Class 1 transactions</i> <i>Listing particulars</i> for Depositary Receipts	£5,700 <ins>£6,270</ins>
Category 2	<i>Listing particulars</i> for issuers of specialist securities	£2,500 <ins>£2,750</ins>
Category 3	All other vetting only transactions	£2,500 <ins>£2,750</ins>

Category 4	<i>Supplementary listing particulars</i>	£500 £550
------------	--	-----------

Part 2

These fees relate to approval or vetting of the documents referred to in the second column of this table arising in relation to specific events or transactions that an *issuer*, *offeror* or *person* requesting admission might be involved in during the year.

Category 1	<i>Equity prospectus</i> Equivalent document referred to in PR 1.2.2R(2) or (3) or PR 1.2.3R(3) or (4) Depositary Receipt <i>prospectus</i>	£5,700 £6,270
Category 2	<i>Equity registration document</i>	£4,000 £4,400
Category 3	<i>Equity securities note and summary</i> Summary document referred to in PR 1.2.3R(8)	£2,500 £2,750
Category 4	<i>Non-equity prospectus or base prospectus</i> (excluding drawdown <i>prospectus</i> or <i>base prospectus</i>) Equivalent document referred to in PR 1.2.2R(2) or (3) or PR 1.2.3R(3) or (4)	£2,500 £2,750
Category 5	<i>Non-equity registration document</i>	£1,750 £1,925
Category 6	<i>Non-equity securities note and summary</i> Summary document referred to in PR 1.2.3R(8)	£600 £660
Category 7	<i>Supplementary prospectus and any details produced in a document in relation to LR 16.3.6.</i>	£500 £550
Category 8	<i>Drawdown prospectus or base prospectus</i>	£600 £660

...

4 Annex 5 R Periodic fees for designated professional bodies payable in relation to the period 1 April 2008 2009 to 31 March 2009 2010

Table. Fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date
The Law Society of England & Wales	£70,515 <u>£50,985</u>	30 April 2008 <u>2009</u>
...
...		

4 Annex 6 R Annex 6 Periodic fees for recognised investment exchanges and recognised clearing houses payable in relation to the period 1 April 2008 2009 to 31 March 2009 2010

...

Part 1 – Periodic fees for UK recognised bodies

Name of UK recognised body	Amount payable	Due date
Euroclear UK & Ireland Limited	£261,000 <u>£244,500</u>	30 April 2008 <u>2009</u>

ICE Futures Europe Ltd	£177,000 <u>£192,500</u>	30 April 2008 <u>2009</u>

LIFFE Administration and Management	£274,500 <u>£300,000</u>	30 April 2008 <u>2009</u>

LCH Clearnet Limited	£285,500 <u>£281,000</u>	30 April 2008 <u>2009</u>

The London Metal Exchange Limited	£173,500 <u>£184,500</u>	30 April 2008 <u>2009</u>

London Stock Exchange plc	£349,000 <u>£269,500</u>	30 April 2008 <u>2009</u>

<u>SWX Exchange Ltd</u> <u>SWX Europe Ltd</u>	£69,500 <u>£77,000</u>	30 April 2008 <u>2009</u>

EDX London Ltd	£52,000	30 April 2008

	<u>£48,000</u>	<u>2009</u>

PLUS Markets Plc	<u>£75,000</u> <u>£77,000</u>	<u>30 April 2008</u> <u>2009</u>

European Central Counterparty Limited	<u>£250,000</u> <u>£125,000</u>	<u>30 April 2008</u> <u>2009</u>

ICE Clear Europe Limited	<u>£250,000</u> <u>£125,000</u>	<u>30 April 2008</u> <u>2009</u>

...		

...

6 Annex 1 R Financial Services Compensation Scheme – Management Expenses Levy Limit

This table belongs to FEES 6.4.2R	
Period	Limit on total of all management expenses levies attributable to that period (£)
...	
1 April 2008 to 31 March 2009	£1,000,000,000 provided that £600,000,000 may be recovered in respect of <i>specific costs</i> relating to the declaration by the FSA on 27 September 2008 that Bradford & Bingley plc is <i>in default</i> only.
<u>1 April 2009 to 31 March 2010</u>	<u>£1,000,000,000</u>

FEES (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2009

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 99(1), (1B) and (2) (Fees);
 - (2) section 101 (Part 6 rules: general provisions);
 - (3) section 156 (General supplementary powers);
 - (4) section 157(1) (Guidance);
 - (5) section 213 (The compensation scheme);
 - (6) section 223 (Management expenses);
 - (7) section 234 (Industry funding);
 - (8) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (9) 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 purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of the Annex comes into force on 30 March 2009;
 - (2) the remainder of this instrument comes into force on 1 April 2009.

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fees (Miscellaneous Amendments) Instrument 2009.

By order of the Board
26 March 2009

Annex

Amendments to the Fees manual (FEES)

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

Part 1: Comes into force on 30 March 2009

...

TP 3 ...

TP 4 Transitional provisions relating to information requirements following changes to FEES 4 or 5

4.1 Effect of changes to FEES 4 or 5 in relation to the supply of information to the FSA

4.1.1 R This rule applies where any rule, or amendment to a rule, in FEES 4 or FEES 5 (“a FEES rule”) has been made but will only come into force in relation to a future financial year of the FSA or Financial Ombudsman Service (“the future year”), as the case may be.

4.1.2 R Unless another rule expressly disappplies this rule, a FEES rule has immediate effect for the supply of information under FEES 4.4 or FEES 5.4 in relation to that future year.

4.1.3 R A reference in this rule to an FSA or Financial Ombudsman Service financial year is a reference to the 12 months ending 31 March.

Part 2: Comes into force on 1 April 2009

...

Application

1.1.2 R This manual applies in the following way:

- (1) *FEES 1, 2 and 3 apply to:*
 - (a) ...
 - (n) every *firm* applying for variation of its *Part IV permission*; **and**
 - (o) every *firm* applying for or being concerned in an application for permission to use an *advanced prudential calculation approach* or *guidance* on the availability of such a *permission* (including any future proposed amendments to those approaches); **and**
 - (p) every *firm* or *person* referred to in category (u) of Column 1 of *FEES 3.2.7R*.

...

2.4 VAT

2.4.1 R All fees payable or any stated hourly rate under *FEES 3 (Application, notification and vetting fees)* and *FEES 4 (Periodic fees)* are stated net of VAT. Where VAT is applicable this must also be included.

...

General

3.2.1 R 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 request for support relating to compatibility of its systems with FSA systems, 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.

...

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...		
(l) Under the <i>listing rules</i> , an <i>issuer</i> involved in specific events or transactions during the year where documentation is subject to a transaction vetting	<i>FEES</i> 3 Annex 5R, part 1, unless the transaction would come within the definition of significant transaction under category <u>(v)</u> or super transaction under category <u>(q)</u> in this table, in which case the fee payable under that category.	...
(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 5 R, part 2 unless the transaction would come within the definition of significant transaction under category <u>(v)</u> or super transaction under category <u>(q)</u> in this table, in which case the fee payable under that category.	...
...		

(q) A significant <u>super</u> transaction, being one where: (i) the <i>issuer</i> has a market capitalisation in excess of £1.5 billion and it is a new applicant for a <i>primary listing</i> under the <i>listing rules</i> , or involved in a reverse or hostile takeover or a significant restructuring; or (ii) the <i>issuer</i> has a market capitalisation in excess of £5 billion and is involved in a <i>class 1 transaction</i> , or a transaction requiring vetting of an equity <i>prospectus</i> or equivalent document or a <u>transaction requiring vetting of a prospectus in relation to a Depository Receipt</u> ; or (iii) the <i>issuer</i> is proposing a Depository Receipt issue intended to raise more than £5 billion.	£50,000	On or before the date that the relevant documentation is first submitted to the FSA.
...		
(u) Any of the following: (i) an operator of an <u>approved reporting mechanism</u> ; (ii) a <u>firm</u> ; (iii) a <u>third party acting on behalf of a firm</u> ; (iv) a <u>market operator</u> ; or	As set out in FEES 3 Annex 7R.	Within 30 days of the date of the invoice.

<p><u>(v) an MTF operator;</u></p> <p><u>that satisfies the following conditions:</u></p> <p><u>(1) it provides transaction reports directly to the FSA; and</u></p> <p><u>(2) having made changes to its reporting systems, it asks the FSA to support the testing of the compatibility of its systems with the FSA's systems.</u></p>		
<p><u>(v) A significant transaction, being one where:</u></p> <p><u>(i) the issuer has a market capitalisation in excess of £500 million and is producing an equity prospectus, a prospectus in relation to a Depository Receipt or a document in relation to a class 1 transaction; or</u></p> <p><u>(ii) the issuer is producing a document for vetting in relation to a reverse takeover, a hostile takeover or a significant restructuring.</u></p> <p><u>A significant transaction does not include a super transaction.</u></p>	<p>£20,000</p>	<p><u>On or before the date that the relevant documentation is first submitted to the FSA.</u></p>

<u>(w) A listed issuer that requests or whose representative requests the FSA to amend the Official List, or any records held by the FSA in relation to the Official List, otherwise than pursuant to an application for listing.</u>	<u>FEES 3 Annex 4R part 3</u>	<u>On or before the date the request is made.</u>
<p><u>(x)</u></p> <p><u>(i) An issuer or person who:</u></p> <p><u>(1) is a fee payer under one or more of the categories set out in (ii); and</u></p> <p><u>(2) requests the FSA's approval or vetting of a document that includes a mineral expert's report.</u></p> <p><u>(ii) The categories are (1), (m) (q), and (v) of this table.</u></p> <p><u>(iii) A fee under this category is payable in addition to any fee payable under the categories set out in (ii).</u></p>	<u>£5,000</u>	<u>On or before the date the relevant documentation is first submitted to the FSA.</u>

...
3 Annex 1R Authorisation fees payable

...
Part 2 – Complexity Groupings Straightforward Cases R

...
Complex Cases R

Complex Cases	
Activity Grouping	Description
...	
A.4	...
B	<u>MTF operators</u>

...

3 Annex 4R Application and administration fees in relation to listing rules

Part 1

...

Part 3

Fee type	Fee amount
<u>Administration fee where the FSA makes amendments to the <i>Official List</i>, or any records held by the FSA in relation to the <i>Official List</i>, as a result of a request made by a listed issuer or its representative.</u>	<u>£225 plus, if the request relates to more than one issue of securities, £100 per each additional issue of securities (with its own International Securities Identification Number).</u>

3 Annex 5R Document vetting and approval fees in relation to listing and prospectus rules

...

Part 2

These fees relate to approval or vetting of the documents referred to in the second column of this table arising in relation to specific events or transactions that an *issuer*, *offeror* or *person* requesting admission might be involved in during the year.

...

...

Certain transactions may come within the category of super or significant transactions and thus attract a higher fee as set out in FEES 3.2.7R(q)R and 3.2.7R(v).

...

3 Annex 7R

Fees where changes are made to firms' transaction reporting systems and the FSA is asked to check that these systems remain compatible with FSA systems

<u>Hourly rate (£)</u>	<u>Method of calculating fee</u>
<u>68.09</u>	<p>The fee is calculated as follows:</p> <p>(1) Determine the number of hours, or part of an hour, taken by the <i>FSA</i> (or any person acting on behalf of the <i>FSA</i>) to test the fee payer's transaction reporting systems for compatibility with the relevant <i>FSA</i> systems.</p> <p>(2) Then multiply the figure in the first column by the number of hours or part hours obtained under (1). The resulting figure is the fee.</p> <p>(3) The number of hours or part hours referred to in (1) shall be the number of hours or part hours as recorded on the <i>FSA</i>'s systems.</p>

...

- 4.2.7 R A firm (other than an *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:

...

- (4) modifying the result as indicated by the table in *FEES 4.2.6R* (except that *FEES 4 Annex 10R (Periodic fees for MTF operators)* deals with a firm that receives permission for operating a multilateral trading facility or has its permission extended to include this activity during the course of the relevant financial year and

FEES 4.2.6R does not apply).

...

- 4.2.7B R (1) This rule deals with the calculation of:
- (a) a firm's fees for the FSA financial year following the FSA financial year in which the firm obtained permission or had its permission extended ("the second financial year"); and
 - (b) the tariff base for the fee block or fee blocks that relate to that permission or extension, as the case may be.
- (2) Unless this rule says otherwise, the tariff base for a firm's second financial year is calculated using projected valuations for its second year (as provided to the FSA in the course of the firm's application), of the business to which the tariff relates.
- (3) This rule does not apply to a firm with a permission for operating a multilateral trading facility.
- (4) A reference to the FSA financial year means the 12 months ending with 31 March.
- (5) The rest of this rule only applies to a firm that becomes authorised, or extends its permission, on or after 1 April 2009.
- (a) If a firm's tariff base is calculated using data from a period that begins on or after the date that the firm receives its permission or extension of permission, as the case may be, the firm must use that data.
 - (b) Unless (a) applies, if a firm:
 - (i) receives its permission or extension of permission, as the case may be, between 1 April and 31 December inclusive; and
 - (ii) is, but for this rule, required to calculate its tariff base by reference to the average of its modified eligible liabilities for October, November and December;

it must calculate that tariff base as at the December before the start of the FSA financial year.
 - (c) If a firm satisfies the following conditions it must calculate its tariff base under (d):
 - (i) the firm receives its permission or extension of permission, as the case may be, between 1 April and 31 December inclusive; and

- (ii) the firm's tariff base, but for this rule, is calculated by reference to the firm's financial year ended in the calendar year ending 31 December prior to the FSA financial year or the twelve months ending 31 December prior to the FSA financial year.
- (d) If a firm satisfies the conditions in (c) it must calculate its tariff base as follows:
- (i) it must use actual data in relation to the business to which the tariff relates rather than projected valuations;
 - (ii) the tariff is calculated by reference to the period beginning on the date it acquired permission, or had its permission extended, and ending on the 31 December before the start of the FSA financial year; and
 - (iii) the figures are annualised by increasing them by the same proportion as the period of 12 months bears to the period starting from when the firm received its permission or extension to the 31 December, as the case may be.
- (e) Where a firm is required to use the method in (d) it must notify the FSA of this by the date specified in FEES 4.4 (Information on which Fees are calculated).
- (f) Where a firm is required to use actual data under this rule FEES 4 Annex 1R Part 3 is modified in relation to the calculation of that firm's valuation date in its second financial year.

Application of FEES 4.2.7BR

- 4.2.7C G The table below sets out the period within which a firm's tariff base is calculated ("the data period") for second year fees calculated under FEES 4.2.7BR. The example is based on a firm that acquires permission on 1 November 2009 and has a financial year ending 31 March. Where valuation dates fall before the firm receives permission it should use projected valuations in calculating its fees.

References in this table to dates or months are references to the latest one occurring before the start of the FSA's financial year unless otherwise stated.

<u>Type of permission acquired on 1</u>	<u>Tariff base</u>	<u>Valuation date but for</u>	<u>Data period under FEES 4.2.7BR</u>
---	--------------------	-------------------------------	---------------------------------------

<u>November</u>		<u>FEES 4.2.7BR</u>	
<u>Accepting deposits (monthly reporting firms)</u>	<u>Modified eligible liabilities (MELs)</u>	<u>Average of the MELs for October, November, December – so projected valuations will be used</u>	<u>MELs for December 2009.</u>
<u>Accepting deposits (quarterly reporting firms)</u>	<u>MELs</u>	<u>December 2009</u>	<u>December 2009.</u>
<u>Entering into a home finance transaction</u>	<u>Number of mortgages, home purchase plans or home reversion plans entered into</u>	<u>12 months ending 31 December 2009 – so projected valuations will be used</u>	<u>1 November to 31 December 2009.</u>
<u>Effecting contracts of insurance</u> <u>(Insurers – general)</u>	<u>Gross premium income and gross technical liabilities</u>	<u>31 March 2009 – so projected valuations will be used</u>	<u>1 November to 31 December 2009.</u>

...

4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fees

<p>Any firm (except an ICVC or a UCITS qualifier)</p>	<p>As specified in FEES 4.3.1R</p>	<p>(1) Unless (2) <u>applies or (3) apply</u>, on or before the relevant dates specified in FEES 4.3.6R</p> <p>(2) If <u>Unless (3) applies, if an event specified in column 4 occurs during the course of a financial year, 30 days after the occurring of that event, or if later the dates specified in FEES 4.3.6R.</u></p> <p>(3) <u>Where the permission is for operating a multilateral trading facility, the date specified in FEES 4 Annex 10R (Periodic fees for MTF operators).</u></p>	<p><i>Firm receives permission; or</i></p> <p><i>Firm extends permission</i></p>
---	------------------------------------	--	--

...

Modifications for firms with new or extended permissions

4.3.4 G ...

- (4) These provisions do not apply to a firm's periodic fees in relation to its permission for operating a multilateral trading facility obtained from the FSA during the course of a financial year.

...

Time of Payment

4.3.6 R ...

(6) Paragraphs (1) and (2) do not apply to any periodic fee in relation to a firm's permission for operating a multilateral trading facility and such a fee is not taken into account for the purposes of the split in (1). Instead any fee for this permission is payable on the date specified in FEES 4 Annex 10R (Periodic fees for MTF operators).

...

4.3.12 For an incoming EEA firm, (excluding MTF operators), or an incoming Treaty firm, the calculation required by FEES 4.3.3R is modified as follows:

...

...

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 (or FEES 4.2.7BR where applicable).

...

4 Annex 1R Activity groups, tariff bases and valuation dates applicable

Part 1

This table shows how regulated activities for which a firm has permission are linked to activity groups ('fee-blocks'). A firm can use the table to identify which fee-blocks it falls into based on its permission.

Activity group	Fee payer falls in the activity group if
...	
B. Service companies	..
<u>B. MTF operators</u>	<u>its permission includes operating a multilateral trading facility.</u>

Part 2

...

Activity Group	Tariff-base
...	

A.3	<p>GROSS PREMIUM INCOME AND GROSS TECHNICAL LIABILITIES</p> <p>For insurers:</p> <p>The amount of <i>premium</i> receivable which must be included in the documents required to be deposited under <i>IPRU(INS)</i> 9.6 in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</p>
	<p>less, <i>premiums</i> relating to pension fund management business where the firm owns the <i>investments</i> and there is no transfer of risk;</p>
	<p>AND the amount of gross technical liabilities (<i>IPRU(INS)</i> Appendix 9.1 - Form 15, line 19) which must be included in the documents required to be deposited under <i>IPRU(INS)</i> 9.6R in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</p> <p>less,</p> <p>the amount of gross technical liabilities relating to pension fund management business where the firm owns the <i>investments</i> and there is no transfer risk.</p>
...	
A.4	<p>ADJUSTED GROSS PREMIUM INCOME AND MATHEMATICAL RESERVES</p>
	<p>Except for <i>UK ISPVs</i>:</p> <p>Amount of new regular <i>premium</i> business (yearly <i>premiums</i> including reassurances ceded but excluding cancellations and reassurances accepted), times ten;</p> <p>Plus</p> <p>amounts of new single <i>premium</i> business (total including reassurances ceded but excluding cancellations and reassurances accepted). Group protection business (life</p>

	<p>and private health insurance) must be included;</p> <p>Less</p> <p><i>premiums relating to pension fund management business where the firm owns the investments and there is no transfer of risk. pension fund management;</i></p> <p>Less</p> <p><i>premiums relating to Trustee Investment Plans.</i></p> <p>For each of the above, business transacted through independent practitioners or tied agents (either single or multi-tie) will be divided by two in calculating the adjusted gross premium income;</p>
	<p>AND</p> <p>the amount of mathematical reserves (<i>IPRU(INS)</i> Appendix 9.1R - Form 14, Line 11) which must be included in the documents required to be deposited under <i>IPRU(INS)</i> 9.6R in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</p> <p>Less</p> <p><i>mathematical reserves relating to pension fund management business where the firm owns the investment and there is no transfer of risk pension fund management;</i></p> <p>Less</p> <p><i>mathematical reserves relating to Trustee Investment Plans.</i></p> <p>Notes:</p> <p>(1) [deleted]</p> <p>(2) Only <i>premiums</i> receivable and mathematical reserves held in respect of United Kingdom business are relevant.</p> <p>(3) For <i>UK ISPVs</i> the tariff base is not relevant and a flat fee set out in <i>FEES</i> 4 Annex 2R is payable.</p> <p>(4) <i>Trustee Investment Plans</i> are the class of <i>contract of insurance specified in Class III of Part II of Schedule 1 to the Regulated Activities Order (Contracts of long-term insurance)</i> and which are invested in pooled funds</p>

	<u>beneficially owned by the <i>insurer</i> and not earmarked to individual beneficiaries by that <i>insurer</i>.</u>
...	
A.10	<p>NUMBER OF TRADERS</p> <p>...</p> <ul style="list-style-type: none"> ▪ as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>. <p><u>But not any <i>employees</i> or <i>agents</i> who work solely in the <i>firm's MTF operation</i>.</u></p>
...	
A.12	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform the <i>customer functions</i> (CF 30), but excluding those <i>persons who work solely in the firm's MTF operation</i> or solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions related to these.</p>
A.13	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform the <i>customer functions</i> (CF 30), but excluding those <i>persons who work solely in the firm's MTF operation</i> or solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions related to these.</p>
...	
A18	<p>ANNUAL INCOME</p> <p>...</p> <p>Notes on annual income:</p> <p>...</p> <p><u>(6) The same <i>firm</i> may receive income under paragraph (a) and (c).</u></p>

	<p>(7) A firm must include in paragraph (a) any income it receives from <i>home finance mediation activity carried on by another person with respect to any home finance transaction</i> into which the firm has entered as lender, plan provider or home purchase provider.</p> <p>(8) In calculating the net amount retained, a firm may not deduct amounts that it rebates to a person other than another firm, a person falling within the extended definition of firm in Note (4) or the firm's customer.</p> <p>(9) A firm may only deduct amounts under paragraph (a) in calculating its net amount retained if the amount is to be deducted from income that the firm must include under paragraph (a). Therefore for example:</p> <ul style="list-style-type: none"> (a) if a mortgage lender (Firm A) pays a firm commission for arranging a <i>regulated mortgage</i> under which Firm A is a lender, Firm A may not take that expense into account in calculating its annual income if Firm A does not receive a fee from the borrower or another person in respect of that <i>regulated mortgage</i>; and (b) if a mortgage lender (Firm A) pays a firm (Firm B) commission for arranging a <i>regulated mortgage</i> under which Firm A is a lender, Firm A receives a payment from the borrower under that transaction and the amount payable to Firm B exceeds the amount payable by the borrower, Firm A may not take that excess into account in calculating its annual income and must instead net the sum payable by the borrower to zero. <p>(10) A firm must include in paragraph (a) any survey and booking fees due to it in respect of or in relation to <i>home finance mediation activity</i> or which would have been <i>home finance mediation activity</i> if they had been carried on or after the dates in paragraph (a).</p>
...	
B. Service companies	...
<u>B. MTF operators</u>	<u>Not applicable</u>

Part 3

This table indicates the valuation date for each fee-block. A firm can calculate its tariff data by applying the tariff bases set out in Part 2 with reference to the valuation dates shown in this table

Activity Group	Valuation date
...	
B. Service companies	...
<u>B. MTF operators</u>	<u>Not applicable</u>

4 Annex 2R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2008 2009 to 31 March 2010

Part 1

This table shows the tariff rates applicable to each fee block

...	
Activity Group	Fee payable
...	
B. Service Companies	...
<u>B. MTF operators</u>	<u>As set out in FEES 4 Annex 10R (Periodic fees for MTF operators).</u>

...

Part 3

This table shows the modifications to fee tariffs that apply to *incoming EEA firms* and *incoming Treaty firms* which have established branches in the UK.

Activity Group	Percentage deducted from the tariff payable under Part 1	Minimum amount payable

	applicable to the firm	
...		
<u>B. MTF operators</u>	<u>Not applicable</u>	<u>Not applicable</u>

...

4 Annex 3R **Transaction reporting fees for the period from 1 April 2007 2009 to 31 March 2008 2010**

This table shows the fees payable for *firms* using the FSA's Transaction Reporting System.

Fee Type	Fee amount (<u>including VAT</u>)	
Transaction charge	Number of transactions per annum	Fee per transaction (<u>inc- VAT</u>)
	For the first 1,000	0p
	1,001 – 1,000,000	<u>3p 1.91p</u>
	1,000,001 – 4,000,000	<u>2.75p 1.70p</u>
	4,000,001 – 8,000,000	<u>2.5p 1.49p</u>
	8,000,001 – 13,000,000	<u>2.25p 1.28p</u>
	13,000,001 – 20,000,000	<u>2p 1.06p</u>
	>20,000,000	<u>1.75p 0.85p</u>
Firms using the Transaction Reporting System will be additionally invoiced for:		
...		
(c)	an annual enrolment fee of £235 £200 (<u>including VAT</u>) per registration held on 1 April each year for users of the FSA's Transaction Reporting System.	

...

4 Annex 10R**Periodic fees for MTF operators payable in relation to the period 1 April 2009 to 31 March 2010**

Name of MTF operator	Fee payable (£)	Due date
<u>Barclays Bank Plc</u>	<u>2,600</u>	<u>30 April 2009</u>
<u>BATS Trading Ltd</u>	<u>38,000</u>	
<u>BGC Brokers L.P</u>	<u>2,600</u>	
<u>Cantor Index Limited</u>	<u>5,600</u>	
<u>CantorCO2e Limited</u>	<u>2,600</u>	
<u>Chi-X Europe Limited</u>	<u>38,000</u>	
<u>EuroMTS Limited</u>	<u>20,000</u>	
<u>GFI Brokers Limited</u>	<u>2,600</u>	
<u>GFI Securities Limited</u>	<u>2,600</u>	
<u>ICAP Electronic Broking Limited</u>	<u>4,400</u>	
<u>ICAP Energy Limited</u>	<u>2,600</u>	
<u>ICAP Europe Limited</u>	<u>2,600</u>	
<u>ICAP Hyde Tanker Derivatives Limited</u>	<u>2,600</u>	
<u>ICAP Securities Limited</u>	<u>2,600</u>	
<u>ICAP WCLK Limited</u>	<u>2,600</u>	
<u>Liquidnet Europe Limited</u>	<u>20,000</u>	
<u>MF Global UK Limited</u>	<u>2,300</u>	
<u>My Treasury Limited</u>	<u>2,600</u>	
<u>NASDAQ OMX Europe Limited</u>	<u>38,000</u>	
<u>NYMEX</u>	<u>20,000</u>	

<u>TFS-ICAP Limited</u>	<u>2,600</u>	
<u>Tradeweb Europe Limited</u>	<u>9,200</u>	
<u>Tradition (UK) Limited</u>	<u>2,600</u>	
<u>Tradition Financial Services Limited</u>	<u>2,600</u>	
<u>Tullett Prebon (Europe) Limited</u>	<u>2,600</u>	
<u>Tullett Prebon (Securities) Limited</u>	<u>2,600</u>	
<u>Turquoise Services Limited</u>	<u>38,000</u>	
<u>Any other firm whose permission includes operating a multilateral trading facility, including:</u> <u>(a) an EEA firm; or</u> <u>(b) a firm that, during the course of the relevant financial year, receives permission for operating a multilateral trading facility or whose permission is extended to include this activity.</u>	<u>In the case of an EEA firm that:</u> <u>(a) has not carried on the activity of operating a multilateral trading facility in the UK at any time in the calendar year ending 31 December 2008;</u> <u>and</u> <u>(b) notifies the FSA of that fact by the end of March 2009;</u> <u>the fee is zero.</u> <u>Information required under (b) is to be treated as information required under FEES 4.4 (Information on which Fees are calculated)</u> <u>In any other case:</u> <u>2000</u>	<u>In the case of a firm that, during the course of the relevant financial year, receives permission for operating a multilateral trading facility or whose permission is extended to include this activity, within 30 days of receiving that permission or extension.</u> <u>In any other case, 30 April 2009</u>

...

5.8 Joining the Financial Ombudsman Service

...

- 5.8.2 R (1) This rule deals with the calculation of:
- (a) a firm's general levy in the 12 months ending on the 31 March in which it obtains permission, or its permission is extended, and the following 12 months ending on the 31 March, and
 - (b) the tariff base for the industry blocks that relate to that permission or extension, as the case may be.
- (2) Unless this rule says otherwise, the tariff base is calculated using the projected valuation for its first and second year of the business to which the tariff relates.
- (3) The rest of this rule only applies to a firm that becomes authorised, or extends its permission, on or after 1 April 2009.
- (a) If the tariff base is calculated using data from a period that begins on or after the date that the firm receives its permission or extension of permission, as the case may be, the firm must use that data.
 - (b) If a firm satisfies the following conditions it must calculate its tariff base under (c) for the FSA financial year following the FSA financial year it obtained permission:
 - (i) the firm receives its permission or extension of permission, as the case may be, between 1 April and 31 December inclusive; and
 - (ii) the firm's tariff base, but for this rule, is calculated by reference to the firm's financial year ended in the calendar year ending 31 December or the twelve months ending 31 December prior to the FSA financial year.
 - (c) If a firm satisfies the conditions in (b) it must calculate its tariff base as follows:
 - (i) it must use actual data in relation to the business to which the tariff relates rather than projected valuations;
 - (ii) the tariff is calculated by reference to the period beginning on the date it acquired permission, or had its permission extended, and ending on the 31 December before the start of the FSA financial year; and

- (iii) the figures are annualised by increasing them by the same proportion as the period of 12 months bears to the period starting from when the firm received its permission or extension to the 31 December, as the case may be.
- (d) Where a firm is required to use the method in (c) it must notify the FSA of its intention to do so by the date specified in FEES 5.4 (Information requirement).
- (e) Where a firm is required to use actual data under this rule FEES 4 Annex 1R Part 3 is modified in relation to the calculation of that firm's valuation date in its second financial year.

Application of FEES 5.8.2R

- 5.8.3 G The table below sets out the period within which a firm's tariff base is calculated ("the data period") for second year levies calculated under FEES 5.8.2R. The example is based on a firm that acquires permission on 1 November 2009 and has a financial year ending 31 March. Where valuation dates fall before the firm receives permission it should use projected valuations in calculating its levies.

References in this table to dates or months are references to the latest one occurring before the start of the FSA's financial year unless otherwise stated.

<u>Type of permission acquired on 1 November</u>	<u>Tariff base</u>	<u>Valuation date but for FEES 5.8.2R</u>	<u>Data period under FEES 5.8.2R</u>
<u>Insurers – general</u>	<u>Relevant annual gross premium income</u>	<u>31 March 2009 – so projected valuations will be used</u>	<u>1 November to 31 December 2009.</u>
<u>Fund managers (including those holding client money/ assets and not holding client money/assets)</u>	<u>Relevant funds under management</u>	<u>Valued at 31 December</u>	<u>Valued at 31 December</u>
<u>Advisory arrangers, dealers or brokers holding and controlling client money and/or assets</u>	<u>Number of relevant persons approved to perform the customer function with certain exclusions</u>	<u>Relevant approved persons as at 31 December</u>	<u>Relevant approved persons as at 31 December</u>

...

5 Annex 1R Annual Fees Payable in Relation to 2008/09 2009/10

...

Part 2: Fee tariffs for general levy and supplementary levy

...

Industry block	Tariff base	General levy payable by firm
1- Deposit acceptors, <i>home finance providers</i> and <i>home finance administrators</i> (excluding firms in blocks 13 & 15)	Number of accounts relevant to the activities in <i>DISP 2.6.1R</i> as at <u>31 December</u> <u>For an e-money firm, the tariff base includes the number of e-money accounts multiplied by 0.15. (7)</u>	£0.023 per relevant account, subject to a minimum levy of £100

Notes	
4	...
...	
7	<p>(1) An e-money account is, subject to (2), <i>e-money</i> that has been issued by an <i>e-money firm</i> and which can reasonably be regarded as being held by the owner of the <i>e-money</i> as a single balance and under the same arrangements.</p> <p>(2) An account that would be an e-money account under (1) will not be one where, as at 31 December, it carries a nil balance and/or has been inactive for a period of 12 months or more.</p>

Specific costs levy for newly authorised firms6.4.10A R (1) This rule deals with the calculation of:

- (a) a participant firm's specific costs levy in the financial year of the FSCS following the FSCS financial year in which it became a participant firm; or
- (b) a participant firm's specific costs levy in the financial year of the FSCS in which it had its permission extended, and the following FSCS financial year; and

- (c) the tariff base for the *class or sub-classes* that relate to the relevant *permissions* or extensions, as the case may be.
- (2) Unless this *rule* says otherwise the tariff base is calculated, where necessary, using the projected valuation of the business to which the tariff relates.
- (3) The rest of this *rule* only applies to a *firm* that becomes a *participant firm*, or extends its *permission*, on or after 1 April 2009.
- (a) If a *participant firm's* tariff base is calculated using data from a period that begins on or after it became a *participant firm* or on or after the date that the *participant firm* receives its extension of *permission*, as the case may be, the *participant firm* must use that data.
- (b) If a *participant firm* satisfies the following conditions it must calculate its tariff base under (c) for the *FSCS* financial year following the *FSCS* financial year it became a *participant firm*:
- (i) it became a *participant firm* or receives its extension of *permission*, as the case may be, between 1 April and 31 December inclusive; and
 - (ii) its tariff base, but for this *rule*, is calculated by reference to the financial year ended in the calendar year ending 31 December or the twelve *months* ending 31 December before the *FSCS* financial year.
- (c) If a *participant firm* satisfies the conditions in (b) it must calculate its tariff base as follows:
- (i) it must use actual data in relation to the business to which the tariff relates rather than projected valuations;
 - (ii) the tariff is calculated by reference to the period beginning on the date it became a *participant firm* or had its *permission* extended, and ending on the 31 December before the start of the *FSCS* financial year; and
 - (iii) the figures are annualised by increasing them by the same proportion as the period of 12 *months* bears to the period starting from when the *participant firm* became a *participant firm* or had its *permission* extended to the 31 December, as the case may be.
- (d) Where a *participant firm* is required to use the method in (c) it must notify the *FSCS* of its intention to do so by the date specified in *FEES 6.5.13R* (Reporting Requirements).

- (e) Where a *participant firm* is required to use actual data under this rule FEES 6 Annex 3R is disapplied, to the extent it is incompatible, in relation to the calculation of that *participant firm's* valuation date in its second financial year.

Application of FEES 6.4.10AR

- 6.4.10B G The table below sets out the period within which a *participant firm's* tariff base is calculated ("the data period") for second year levies calculated under FEES 6.4.10B. The example is based on a *participant firm* that extends its permission on 1 November 2009 and has a financial year ending 31 March.

References in this table to dates or months are references to the latest one occurring before the start of the FSCS financial year unless otherwise stated.

<u>Type of permission acquired on 1 November</u>	<u>Tariff base</u>	<u>Valuation date but for FEES 6.5.13BR</u>	<u>Data period under FEES 6.5.13BR</u>
<u>Accepting deposits</u>	<u>Protected deposits</u>	<u>As at 31 December 2009</u>	<u>As at 31 December 2009</u>
<u>Effecting contracts of insurance</u> <u>(Insurers – general)</u>	<u>Relevant net premium income</u>	<u>The firm's tariff base calculated in the year 2009 – so projected valuation will be used.</u>	<u>1 November to 31 December 2009</u>
<u>Dealing in investments as agent in relation to General Insurance Intermediation</u>	<u>Annual eligible income</u>	<u>Financial year ended 31 March 2009 – so projected valuations will be used.</u>	<u>1 November to 31 December 2009</u>

...

Compensation costs levy for newly authorised firms

- 6.5.9A R FEES 6.4.10AR applies to the calculation of a *participant firm's compensation costs levy* and its tariff base as it applies to the calculation of its *specific costs levy*.
- 6.5.9B G The example table in FEES 6.4.10BG can be applied to the calculation of the tariff bases under FEES 6.5.9AR.

**MORTGAGES AND HOME FINANCE: CONDUCT OF BUSINESS SOURCEBOOK
(DEFERRED INTEREST FORBEARANCE AMENDMENTS) INSTRUMENT 2009**

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);
 - (5) section 157(1) (Guidance); and
 - (6) section 214 (General).
- B. The provisions listed above relevant to making rules are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2009.

Amendments to the Handbook

- D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Mortgages and Home Finance: Conduct of Business Sourcebook (Deferred Interest Forbearance Amendments) Instrument 2009.

By order of the Board
26 March 2009

Annex

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

- 7.5.3A R (1) *MCOB 7.5.3R(1)(b) does not apply where as a result of the customer having payment difficulties:*
- (a) *the regulated mortgage contract has changed to an interest-only mortgage; and*
 - (b) *interest is being deferred and capitalised by the firm.*
- (2) *Paragraph (1) applies only where the customer continues to have payment difficulties.*
- ...
- 7.6.28 R If a *customer* requests, or agrees to, a change to a *regulated mortgage contract* (other than a change as described in *MCOB 7.6.7R* to *MCOB 7.6.27R 7.6.26G*) that changes the amount of each payment due, a *firm* must provide the *customer* with the following information, in a single communication (subject to MCOB 7.6.28AR(3)), before the change takes effect:
- ...
- 7.6.28A R (1) *MCOB 7.6.28R(5) does not apply where the regulated mortgage contract is changing to an interest-only mortgage and interest is being deferred and capitalised by the firm as a result of the customer having payment difficulties.*
- (2) *Where (1) applies, the firm must instead provide a prominent reminder to the customer of the amount outstanding together with an explanation of the implications of deferred payments being capitalised, before the change in the regulated mortgage contract takes effect.*
- (3) *The reminder in (2) may be provided in a separate communication.*

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (CONSEQUENTIAL
AMENDMENTS NO 2) INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 247 (Trust scheme rules); and
 - (f) section 248 (Scheme particulars rules); and
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2009.

Amendments to the Handbook and related material

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Fees manual (FEES)	Annex C
Supervision manual (SUP)	Annex D
Collective Investment Schemes sourcebook (COLL)	Annex E
Credit Unions sourcebook (CRED)	Annex F
Electronic Money sourcebook (ELM)	Annex G
Listing Rules sourcebook (LR)	Annex H

Amendments to material outside the Handbook

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

Citation

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Consequential Amendments No 2) Instrument 2009.

By order of the Board

26 March 2009

Annex A

Amendments to the Glossary of definitions

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

<i>accounting reference date</i>	(1) (except in <i>COLL</i> and <i>CIS</i>): ...
	(2) (in <i>COLL</i> and <i>CIS</i>): ...
<i>accrual interval</i>	(in <i>COLL</i> and <i>CIS</i>) (in relation to an authorised fund manager's periodic charge) the interval specified in the instrument constituting the scheme over which the periodic charge accrues.
<i>accumulation share</i>	a share in respect of which income is credited periodically to capital under <i>CIS</i> 9.2.4R (Annual allocation to accumulation shares or accumulation units) or <i>CIS</i> 9.2.6R (Interim allocations of income).
<i>affected person</i>	(in <i>COLL</i> and <i>CIS</i>): ...
<i>annual accounting period</i>	(1) (in <i>CIS</i>) a period determined in accordance with <i>CIS</i> 9.2.1R (Accounting period); [deleted] (2) (in <i>COLL</i>): the period determined in accordance with COLL <i>COLL</i> 6.8.2R(3) to COLL <i>COLL</i> 6.8.2R(7) (Accounting periods).
<i>appropriate valuer</i>	(in <i>COLL</i> and <i>CIS</i>) a person who complies with the requirements of <i>COLL</i> 5.6.18R(7) (Investment in property); or <i>COLL</i> 8.4.11R(4) (Investment in property) or, as the case may be, <i>CIS</i> 5A.8.5R(7) (Approved immovables).
<i>approved bank</i>	(except in <i>COLL</i> and <i>CIS</i>)
	(in <i>COLL</i> and <i>CIS</i>) ...
<i>approved derivative</i>	(1) (in <i>COLL</i> and <i>CIS</i>)
<i>approved immovable</i>	an interest in any land or building which satisfies the conditions in <i>CIS</i> 5A.8.5R (Approved immovables).
<i>approved mortgage</i>	(in <i>COLL</i> and <i>CIS</i>) a mortgage:

- (a) ~~which the trustee reasonably believes can be discharged on demand or within 28 days by repayment of all the money secured by the mortgage (including, where appropriate, any additional sum provided for under the mortgage); and~~
 - (b) ~~on which there is not secured any property, whether immediately or contingently, other than the approved immovable in question.~~
- approved security* (1) (in *COLL* and *CIS*) ...
...
authorised corporate director the director of an *ICVC* who is the *authorised corporate director* of the *ICVC* in accordance with *COLL* 6.5.3R (Appointment of an ACD) ~~or, as the case may be, *CIS* 7.2.1R (The directors)~~ including, if relevant, an *EEA UCITS management company*.
- authorised property unit trust* (in *LR*) 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*.
- base currency* (1) (in *COLL* and *CIS*) ...
...
bearer certificate (in *COLL* and *CIS*) ...
cancellation (in *COLL* and *CIS*) ...
capital account (in *COLL* and *CIS*) ...
capital property (in *COLL* and *CIS*) ...
CIS the Collective Investment Schemes sourcebook.
class (1) ...
(2) (in *COLL* and *CIS*):
...
...
class meeting (in *COLL* and *CIS*) ...
close out (in *COLL* and *CIS*) ...
collateral (1) (in *COLL* and *CIS*) ...
...

<i>currency class share</i>	(in relation to an <i>ICVC</i>) a <i>class of share</i> denominated in a currency that is not the <i>base currency</i> of the <i>ICVC</i> or, if permitted by <i>CIS</i> 2.5.4R(1), (<i>Currency class shares: requirements</i>) denominated in the <i>base currency</i> .
<i>dealing day</i>	(in <i>COLL</i> and <i>CIS</i>) ...
<i>dealing period</i>	(in <i>COLL</i> and <i>CIS</i>) ...
<i>dedicated</i>	(in relation to <i>investments</i> of an <i>authorised fund</i>) intended that the holders should participate in or receive:
	<ul style="list-style-type: none"> (a) profits or income arising from the acquisition, holding, management or disposal of <i>investments</i> of the relevant description; or (b) sums paid out of profits or income in (a); or (c) other benefits where expressly permitted by a provision in <i>CIS</i> <i>COLL</i>.
<i>director</i>	<ul style="list-style-type: none"> (1) (except in <i>COLL</i>, <i>DTR</i>, <i>LR</i>, and <i>PR</i> and <i>CIS</i>) (2) (in <i>COLL</i> and <i>CIS</i>)
<i>distribution account</i>	(in <i>COLL</i> and <i>CIS</i>) the account to which the <i>income property</i> <i>income property</i> of an <i>authorised fund</i> <i>authorised fund</i> must be transferred as at the end of each <i>annual accounting period</i> <i>annual accounting period</i> under <i>COLL</i> 6.8.3R (Income allocation and distribution), or <i>COLL</i> 8.5.15R (Income) or, as the case may be, <i>CIS</i> 9.2.3R (Annual allocation of income).
<i>ECA Regulations</i>	the Open Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 (SI 1996/2827).
<i>eligible</i>	(in <i>COLL</i> and <i>CIS</i>) (in relation to a <i>securities</i> or a <i>derivatives</i> market) a market that satisfies the requirements in <i>COLL</i> 5.2.10R (Eligible markets: requirements), <i>CIS</i> 5.2.12R or <i>CIS</i> 5A.3.3R (Eligible markets: requirements) in relation to schemes falling under <i>COLL</i> 5, <i>CIS</i> 5 or <i>COS</i> 5A respectively.
<i>eligible institution</i>	<ul style="list-style-type: none"> (in <i>COLL</i> and <i>CIS</i>)
<i>eligible investment trust</i>	an <i>investment trust</i> that satisfies the requirements of <i>CIS</i> 5A.10.4R (Feeder fund investing in a single eligible investment trust).

<i>extraordinary resolution</i>	(in <i>COLL</i> and <i>CIS</i>) ...
<i>feeder fund</i>	an <i>AUT</i> that is a <i>relevant pension scheme</i> and <i>dedicated to units</i> in a single <i>regulated collective investment scheme</i> or to shares or debentures of a single eligible investment trust .
<i>fund of funds scheme</i>	an authorised fund dedicated to <i>units</i> in a number of <i>regulated collective investment schemes</i> or <i>sub funds</i> of one or more <i>regulated collective investment schemes</i> (or both).
<i>futures and options scheme</i>	an authorised fund dedicated to <i>derivatives</i> (where most or all of the transactions in <i>derivatives</i> are fully covered by cash, <i>securities</i> or <i>derivatives</i>), with or without <i>transferable securities</i> .
<i>geared futures and options scheme</i>	an authorised fund dedicated to <i>derivatives</i> (where most or all of the extent of the <i>investment</i> is limited by the amount of <i>property</i> available to put up as an <i>initial outlay</i>), whether with or without <i>transferable securities</i> .
<i>gross accumulation share</i>	(in <i>CIS</i>) a <i>share</i> in respect of which income is credited periodically to capital under <i>CIS 9.2.4R</i> (Annual allocation to accumulation shares or accumulation units) or <i>CIS 9.2.6R</i> (Interim allocations of income) but, in accordance with relevant law, without deduction by the <i>ICVC</i> of any income tax.
<i>half-yearly accounting period</i>	(in <i>COLL</i> and <i>CIS</i>) a period determined in accordance with <i>CIS 9.2.1R(6)</i> (Accounting period) or, as the case may be <i>COLL 6.8.2R(2)</i> (Accounting periods).
<i>income account</i>	(in <i>COLL</i> and <i>CIS</i>) ...
<i>income share</i>	a <i>share</i> in respect of which income is allocated periodically to <i>shareholders</i> under <i>CIS 9.2.3R</i> (Annual allocation of income) or <i>CIS 9.2.6R</i> (Interim allocations of income).
<i>initial offer</i>	(in <i>COLL</i> and <i>CIS</i>) an offer for sale of <i>units</i> <i>units</i> in an authorised fund <i>authorised fund</i> or in a <i>sub-fund</i> (otherwise than in accordance with arrangements of the type described in <i>COLL 5.5.9R(3)(b)(iii)</i> (Guarantees and indemnities) or, as the case may be, <i>CIS 5.15.8R(3)(b)(iii)</i> or <i>(e)</i> (Guarantees and indemnities)), where all or part of the consideration paid for the account of the authorised fund <i>authorised fund</i> for the <i>units</i> <i>units</i> is to be used to acquire the initial scheme property <i>scheme property</i> of the authorised fund <i>authorised fund</i> or the initial scheme property <i>scheme property</i> attributable to the sub-fund <i>sub-fund</i> .
<i>interim accounting period</i>	(in <i>COLL</i> and <i>CIS</i>) ...
<i>issuer</i>	(1) (except in <i>CIS</i> , <i>LR</i> , <i>PR</i> and <i>DTR</i>):

<i><u>limited issue share</u></i>	a share of a class the issue of which is restricted by reference to:
	(a) the occasion or occasions on which shares of that class may be issued; or
	(b) the amount or value of shares that may be issued.
<i><u>limited issue unit</u></i>	a unit of a class the issue of which is restricted by reference to:
	(a) the occasion or occasions on which units of that class may be issued; or
	(b) the amount or value of units that may be issued.
<i><u>margin</u></i>	(in <i>COLL</i> and <i>CIS</i>) ...
<i><u>money market scheme</u></i>	an authorised fund dedicated to:
	(a) <i>deposits</i> ; and
	(b) <i>debentures</i> which are not <i>transferable securities</i> ;
	whether with or without securities which are transferable securities.
<i><u>net accumulation share</u></i>	(in relation to an <i>ICVC</i>) a share in respect of which income (net of any tax deducted or accounted for by an ICVC) is credited periodically to capital under CIS 9.2.4R (Annual allocation to accumulation shares or accumulation units) or CIS 9.2.6R (Interim allocations of income).
<i><u>notified point</u></i>	a point that is within the two hours immediately following a valuation point and is notified in accordance with CIS 4.3.9R(3) (Issue of units to meet authorised fund manager's obligation to sell) or CIS 15.3.4R(4) (Issue of units: manager's instructions).
<i><u>plan investor</u></i>	a <i>person</i> entered in the <i>plan register</i> under <i>COLL</i> 6.4.9R (Plan registers) or, as the case may be, <i>CIS</i> 6.5.4R (Requirement).
<i><u>plan register</u></i>	(1) ...
	(2) (in relation to an <i>AUT</i>) a sub-register to the <i>register</i> , which subregister <i>sub-register</i> records <i>persons</i> who subscribe to a <i>group plan</i> and for whom units <i>units</i> in the <i>AUT</i> are held for the purposes of the plan by the <i>plan manager</i> or a nominee (other than any sub-register that has not been established and maintained in accordance with <i>COLL</i> 6.4.4R (<i>Register</i> Register: general requirements

requirements and contents) or, as the case may be, CIS 6.5.4R (Requirement) or for the establishment of which no payments are to be made out of the *scheme property*).

plan shares shares entered in a plan register under CIS 6.5.4R(7) (Requirement).

plan units units entered in a plan register under CIS 6.5.4R(12) (Requirement).

property investment company (in CIS) a body corporate, a substantial activity of which relates to permitted immovables (whether by way of investing, dealing in, developing, redeveloping or refurbishing them and whether directly or indirectly).

property related assets (in CIS):

- (a) shares, debentures or warrants which are issued by a property investment company;
- (b) certificates representing certain securities which confer rights in respect of investment within (a).

property scheme (in CIS) an authorised fund dedicated to permitted immovables and property related assets, whether with or without transferable securities.....

prospectus

- (1) ...
- (2) (except in LR and PR) (in relation to a collective investment scheme collective investment scheme) a document containing information about the scheme 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); or 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.

redemption charge an amount levied by the operator operator of a scheme scheme upon the redemption redemption of units units, in the case of an authorised fund authorised fund under:

- (a) COLL 6.7.7R (Charges on buying and selling units); or
- (b) CIS 8.2.7R (Redemption charge: ICVCs); or
- (c) CIS 8.5.2R (Redemption charge: single priced AUTs); or
- (d) CIS 15.4.10R (Redemption charge).

register (1) ...

	(2) (in <i>CIS</i>) the register of holders 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. [deleted]
	(3) (in <i>COLL</i>) the register of <i>unitholders</i> ... of <i>units</i> <i>units</i> in it.
<i>sale</i>	(in <i>COLL</i> and <i>CIS</i>) ...
<i>scheme of arrangement</i>	(in <i>COLL</i> and <i>CIS</i>) an <i>arrangement</i> relating to an <i>authorised fund</i> <i>authorised fund</i> ("transferor fund") or to a <i>sub fund</i> <i>sub-fund</i> of a <i>scheme</i> that is an <i>umbrella</i> ("transferor <i>sub-fund</i> ") under which:
	(a) either:
	(i) all or part of the property of the transferor fund, or all or part of the property attributed to the transferor <i>sub fund</i> <i>sub-fund</i> , is to become the property of one or more <i>regulated collective investment schemes</i> ("transferee <i>schemes</i> "); or
	(ii) all or part of the property attributed to the transferor <i>sub fund</i> <i>sub-fund</i> is to become part of the property attributed to one or more other <i>sub-funds</i> of the same <i>umbrella scheme</i> ("transferee <i>sub funds</i> <i>sub-funds</i> "); and
	(b) holders of <i>units</i> in the transferor fund or transferor <i>sub fund</i> <i>sub-fund</i> , the property of which is being transferred or reattributed under (a), are to receive, in exchange for their respective interests in that property, either:
	(i) <i>units</i> in the transferee <i>scheme</i> <i>scheme</i> or one or more of the transferee <i>schemes</i> <i>schemes</i> , to which the property is transferred; or
	(ii) <i>units</i> in the transferee <i>sub fund</i> <i>sub-fund</i> or one or more of the transferee <i>sub funds</i> <i>sub-funds</i> , to which the property is reattributed.
<i>securities scheme</i>	an <i>authorised fund</i> dedicated to <i>transferable securities</i> , excluding an <i>authorised fund</i> which is a <i>feeder fund</i> , a <i>fund of funds scheme</i> or a <i>warrant scheme</i> .
<i>shareholder</i>	(1) (in relation to an <i>ICVC</i> , and subject to <i>CIS</i> 11.2.2R (Special meaning of shareholder)):
	...
	...
<i>standing independent valuer</i>	the person appointed as such under <i>COLL</i> 5.6.20R (Standing independent valuer and valuation) and <i>COLL</i> 8.4.13R(1) (Standing independent valuer and valuation) or, as the case may be, <i>CIS</i>

	12.3.1R (Standing independent valuer).
<i>transferable security</i>	(1) ...
	(2) (in <i>COLL and CIS</i>) an <i>investment</i> within <i>COLL 5.2.7R</i> (transferable Transferable securities), <i>CIS 5.2.9R</i> (Transferable securities) or, as the case may be, <i>CIS 5A.2.9R</i> (Transferable securities) in relation to <i>schemes</i> falling under <i>COLL 5, CIS 5 or CIS 5A</i> respectively.
	...
<i>trust deed</i>	(1) ...
	(2) (in <i>COLL and CIS</i>) the deed referred to in <i>COLL COLL 3.2.3R</i> (The trust deed for AUTs) or, as the case may be, <i>CIS 2.2.5R</i> (The <i>trust deed</i> for <i>AUTs</i>), together with any deed expressed to be supplemental to it, made between the manager manager and the trustee trustee (or, in the case of a recognised scheme recognised scheme that is a unit trust scheme unit trust scheme , the instrument constituting the scheme instrument constituting the scheme as amended from time to time).
<i>trust scheme rules</i>	rules in <i>COLL and CIS</i> made by the FSA under section 247(1) of the Act (<i>Trust scheme rules Trust scheme rules</i>) ...
<i>umbrella</i>	(in <i>FEES, COLL, CIS</i> and <i>COBS</i>) ...
<i>umbrella scheme</i>	(in <i>CIS</i>) an <i>authorised fund</i> that is an <i>umbrella</i> except in <i>CIS 2.1</i> and <i>CIS 5A</i> where such a reference is to a <i>scheme</i> authorised as the type of <i>scheme</i> under <i>CIS 21.1.4R(10)</i> (Types of authorised fund).
<i>units in existence</i>	(in <i>CIS</i>) (in relation to an <i>AUT</i>) all <i>units</i> which are in issue and any <i>units</i> which the <i>trustee</i> is obliged to <i>issue</i> , less any <i>units</i> which the <i>trustee</i> is obliged to <i>cancel</i> .
<i>valuation point</i>	(in <i>COLL and CIS</i>) a <i>valuation point</i> fixed by the authorised fund manager authorised fund manager for the purpose of <i>COLL COLL 6.3.4R</i> (Valuation points), <i>COLL</i> or <i>COLL 8.5.9R</i> (Valuation, pricing and dealings dealing), <i>CIS 4.8.5R</i> (Regular valuation points), <i>CIS 4.8.6R</i> (Additional valuation points) or <i>CIS 15.8.3(1)</i> or <i>2(R)</i> (Frequency of valuation).
<i>warrant scheme</i>	an <i>authorised fund</i> which invests entirely in <i>warrants</i> .

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

3.2 Areas covered by systems and controls

...

The compliance function

...

3.2.8 R (1) ...

(2) In ~~SYSC 3.2.8R~~(1) “compliance” means compliance with the *rules* in:

(a) ...

(b) *COLL* (~~New~~ Collective Investment Schemes sourcebook) and *CIS* (~~Collective Investment Schemes~~); and

...

Annex C

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

3.1 Introduction

3.1.5 G (1) ...

(2) ... This fee is adjusted when the *scheme* concerned is an *umbrella scheme*.

...

...

3 Annex 2R Application and notification fees payable in relation to collective investment schemes

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee	Umbrella scheme factor (note 1)
Part 1 Application fees payable for firms to be subject to CIS [deleted]				
<u>Regulation 12 of the OEIC Regulations</u>	<u>On application for an order declaring a scheme to be an ICVC</u>	<u>An applicant</u>	<u>£1,200</u>	<u>2-[deleted]</u>
<u>Section 242 of the Act</u>	<u>On application for an order declaring a scheme to be an AUT</u>	<u>An applicant</u>	<u>£1,200</u>	<u>2-[deleted]</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-[deleted]</u>
Part 2 Application fees payable for firms to be subject to COLL				
<u>Regulation 12 of the Act</u> <u>OEIC</u>	...	...	...	...

<u>Regulations</u>				
...				

Notes:

- 1 For an *umbrella scheme* the fee is multiplied by the factor shown in the final column of the table.

...

4 Annex Periodic fees in relation to collective investment schemes ...

4R

...

Fees are charged according to the number of funds or ~~sub-funds~~ *sub-funds* operated by a *firm* as at 31 March 2008 2009. Where a new *collective investment scheme* becomes authorised during a year, fees are charged according to the number of funds or ~~sub-funds~~ *sub-funds* operated by a *firm* as at the date of authorisation. Where more than one fund or ~~sub-fund~~ *sub-fund* is operated, the number of funds (not including the ~~umbrella~~ *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~~ *operator*. Fund factors are applied per ~~operator~~ *operator* rather than per ~~scheme~~ *scheme* so that the fees relate to the number of funds rather than the number of ~~schemes~~ *schemes*. This means that, for example, an ~~authorised fund manager~~ *authorised fund manager* of three ~~schemes~~ *schemes* pays the same as an ~~operator~~ *operator* or ~~authorised fund manager~~ *authorised fund manager* of one ~~scheme~~ *scheme* with three ~~sub-funds~~ *sub-funds* (as only the ~~sub-funds~~ *sub-funds* are counted).

~~Schemes~~ *Schemes* set up under section 264 of the Act are charged according to the number of funds or ~~sub-funds~~ *sub-funds* which a *firm* is operating...

Annex D

Amendments to the Supervision manual (SUP)

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

1 The FSA's approach to supervision

...

- 1.2.2 G ... For *UCITS qualifiers* see also *COLLG*, and *CIS 2.3, CIS 16 and CIS 17*.

...

6 Applications to vary and cancel Part IV permission

...

- 6.1.2 G If appropriate, a *firm* which is ~~the manager of a collective investment scheme~~ ~~an authorised fund manager~~ should also refer to *COLL 7 and CIS 14* for guidance on the termination of *ICVCs* and *AUTs* and on winding up ~~schemes~~ ~~authorised funds~~ that are not commercially viable.

...

8 Waiver and modification of rules

...

Waiver of rules in CIS COLL

- 8.2.3 G Section 250 of the *Act* and regulation 7 of the *OEIC Regulations* allow the FSA to *waive* the application of certain *rules* in *COLL* and *CIS* to:

...

...

- 8.6.4 G In making *waiver* applications under section 250 of the *Act* or regulation 7 of the *OEIC Regulations*, SUP 8.6.2G(2) should be read in application to *rules* in *COLL* or *CIS* as if the word “commercial” were omitted.

...

13 Exercise of passport rights by UK firms

...

- 13.1.3 G This chapter does not apply to:

...

- (4) the marketing of a *UCITS scheme* by its operator in another *EEA State* under the *UCITS Directive* (see *COLLG* 2.1.8G and *CIS* 2.3.4G).
- ...

13A Qualifying for authorisation under the Act

...

- 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~~ 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 rules* on what facilities need to be maintained.
- ...

13A Annex 1G Application of the Handbook to Incoming EEA Firms

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>COLL</i> and <i>CIS</i>	<i>COLL</i> and <i>CIS</i> apply if the firm: ...	...
...		
...		

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

...

14.1.2 G *SUP 14.6 (Cancelling qualification for authorisation)*, which sets out how to cancel qualification for *authorisation* under the *Act*, also applies to:

- (1) ...
- (2) a *UCITS qualifier* that is an *authorised person* under Schedule 5 to the *Act*; a *UCITS qualifier* should, however, refer to ~~COLL 9.4.2R~~
~~COLLG 3.1.11G and CIS~~ for full details of applicable *rules* and *guidance*.

...

14.6.11 G ... *UCITS qualifiers* should also refer to ~~COLLG 3.1.11G and CIS 17.4.8G~~
(Revocation of recognition: ~~Schemes recognised under section 264 of the Act of overseas schemes (section 279)~~).

...

15 Notifications to the FSA

...

15.8.7 G A *UCITS management company* which delegates any of its functions to a third party must, as well as complying with ~~SUP 15.8.4G 15.8.6R~~, comply with the requirements in ~~COLL 6.6.15R(2), CIS 7.6.1R(2) or CIS 7.10.4R(1)~~ as appropriate.

...

16 Reporting requirements

...

16.6.8 R (1) The report from a *trustee* of an *AUT* to the *FSA* must state, in relation to the *manager* of each *AUT* for which it is a *trustee*, the number of times during the quarter in which facts came to the *firm's* knowledge from which it appeared, or might have appeared, that the *manager* had failed (materially or otherwise) to:

- (a) give correct instructions to the *trustee* to create or cancel *units* in the *AUT* when the *manager* should have done so, and the error:
 - (i) ...
 - (ii) was not corrected in accordance with the *FSA's* *guidance* as set out in ~~COLL 6.2.12G or CIS App as the case may be~~;
- (b) price *units* in the *AUT* in accordance with ~~COLL 6.2 6.3 or CIS 4 as the case may be for single priced AUTs and CIS 15~~

~~for dual-priced AUTs, ...~~

...

- (2) The report from a *depositary* of an *ICVC* to the *FSA* must state, in relation to the *authorised corporate director* of each *ICVC* for which the *firm* is a *depositary*, the number of times during the quarter in which facts came to the *firm's* knowledge from which it appeared, or might have appeared, that the *authorised corporate director* had failed (materially or otherwise) to:
- (a) arrange for the ~~issue~~ *issue* or cancellation of *shares* in the *ICVC* when the *authorised corporate director* should have done so, and the error:
 - (i) ...
 - (ii) was not corrected in accordance with the *FSA's* *guidance* as set out in *COLL 6.2.12G* or ~~CIS App as the case may be~~;
 - (b) price *shares* in the *ICVC* in accordance with *COLL 6.3* or ~~CIS 4 for ICVCs as the case may be~~, ...

...

...

Appendix 1 Prudential categories and sub-categories

App 1.3.1G Prudential categories and sub-categories used in the Prudential sourcebooks and the Supervision manual

<i>Prudential categories</i> (note 1)	Applicable prudential requirements (Note 2)	Prudential sub-categories
...		
<i>ICVC*</i>	None, but see <i>COLL</i> and <i>CIS</i>	
...		
...		

...

Sch 2 Notification requirements

...

Sch 2.2

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 16.6.6R	Reporting – compliance reports – <u>trustee trustee</u> of an AUT	<p>...</p> <p>(a) give correct instructions to the <i>trustee</i> to create or cancel <i>units</i> in the <i>AUT</i> when the <i>manager</i> should have done so, and the error:</p> <p>(i) resulted in....the <i>cancellation cancellation</i> of too many <i>units</i>;</p> <p>...</p> <p>(ii) was not corrected in accordance with the FSA's <i>guidance</i> as set out in <i>COLL 6.2.12G</i> and <i>CIS App 1</i>;</p> <p>(b) <i>price unit price units</i> in the <i>AUT</i> in accordance with <i>COLL 6</i> and <i>CIS 4</i> for <i>single priced AUTs</i> and <i>CIS 15</i> for <i>dual priced AUTs</i>, ...</p> <p>(i) greater than 0.5% of the <i>price price</i> of a unit...</p> <p>(ii) less than 0.5% of the <i>price price</i> of a <i>unit</i>...</p>	...	...
SUP 16.6.6R	Reporting – compliance reports – <i>depositary</i> of an ICVC	<p>...</p> <p>(a) arrange for the <i>issue issue</i> or cancellation of <i>shares</i> in the <i>ICVC</i> when the</p>		

		<p><i>authorised corporate director</i> should have done so, and the error:</p> <p>(i) ...</p> <p>(ii) ... as set out in <i>COLL 6.2.12G</i> and;</p> <p>(b) price <i>shares</i> in the <i>ICVC</i> in accordance with <i>COLL 6 and CIS 4 for ICVCs</i>, ...</p>		
...				

Annex E

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

...

6.6.16 G (1) *SYSC 4.1 (General requirements and Directors of an ICVC, authorised fund managers and depositaries should also have regard to SYSC 8 (outsourcing Outsourcing)) contain guidance relating to delegation, including external delegation.* SYSC 8.1.6R states that a firm remains fully responsible for disclosing discharging all of its obligations under the regulatory system *regulatory system* even if it outsources crucial or important operational functions *or any relevant services and activities.*

...

8.5 Powers and responsibilities

...

8.5.6 G *Directors of an ICVC, authorised fund managers and depositaries should also have regard to SYSC 8 (Outsourcing) contains guidance relating to delegation including external delegation, and.* SYSC 8.1.6R states that a firm remains fully responsible for discharging all of its obligations under the regulatory system if it outsources crucial or important operational functions or any relevant services and activities.

...

TP 1 Transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	Extra time provisions				
	Existing schemes electing to comply with COLL				

1	Each and every rule in <i>COLL</i>	R	The rules in <i>COLL</i> do not apply to any relevant party in relation to an authorised fund in respect of which an application for an authorisation order was received by the FSA before 1 April 2004, unless the authorised fund manager of the scheme has exercised its right of election on behalf of the scheme to comply with <i>COLL</i> , instead of <i>CIS</i> , in accordance with <i>CIS</i> 1.1.1AR (Right to elect to comply with <i>COLL</i>).	From 1 April 2004 to 12 February 2007 <u>Expired</u>	1 April 2004 [deleted]
1A	Each and every rule in <i>COLL</i>	R	The rules in <i>COLL</i> do not apply to any relevant party in relation to an authorised fund where the winding up of the fund has commenced before 12 February 2007, provided that each relevant party shall continue to comply with the provisions of <i>CIS</i> as if they still applied to them.	From 12 February 2007	12 February 2007
2	Each and every rule in <i>COLL</i>	G	The effect of transitional provision 1 is that the default position for the relevant parties of existing authorised funds (by which is meant authorised funds in respect of which the application for the authorisation order was received by the FSA before 1 April 2004) is that <i>CIS</i> continues to apply until 12 February 2007 unless the relevant authorised fund manager has exercised its right of election in accordance with <i>CIS</i> 1.1.1AR to comply with <i>COLL</i> , instead of <i>CIS</i> . [deleted]	<u>Expired</u>	
New schemes electing to comply with <i>CIS</i>					
3	Each and every	R	(1) The authorised fund	From 1 April	1 April 2004

	<p><i>rule in COLL</i></p> <p><i>manager of an authorised fund whose authorisation order application was received by the FSA on or after 1 April 2004 may, with the consent of each of the other relevant parties:</i></p> <p>(a) <i>elect to comply with CIS; and</i></p> <p>(b) <i>subsequently revoke such an election and elect to comply with COLL in which case no further election is permitted for that fund.</i></p> <p>(2) <i>An election or revocation in (1) does not take effect unless the authorised fund manager has notified the FSA in writing of:</i></p> <p>(a) <i>the election or revocation;</i></p> <p>(b) <i>the date from which it is to take effect.</i></p> <p>(3) <i>While an election in (1)(a) remains in effect, COLL does not apply to any relevant party in respect of the authorised fund. Instead, each relevant party must comply with CIS.</i></p> <p>(4) <i>The right of election referred to in (1) only applies in relation to an authorised fund which is a UCITS scheme, a money market scheme, a futures and options scheme, a geared futures and options scheme, a property scheme, a feeder fund or a fund of funds scheme.</i></p> <p>(5) <i>The authorised fund manager must make a record of any election or revocation under (1), and retain it for a period of six years from the date it takes effect.</i></p>	<p>2004 to 12 February 2007 <u>Expired</u></p>	
--	---	--	--

4	Each and every rule in COLL	G	<p>(1) It is not necessary for the schemes referred to in transitional provision 3(4) initially to have complied with COLL, before an election is made on its behalf under transitional provision 3(1)(a) to comply with CIS. [deleted]</p> <p>(2) Note that whilst the FSA's permission is not required for an election under paragraph 3(1)(a) or a revised election under paragraph 3(1)(b), changes to the relevant instrument constituting the scheme and prospectus to give effect to such a revised election will require the FSA's written permission, as explained in CIS 16.1.11G (Notification of proposed changes to ICVCs) and CIS 16.1.12G (Notification of proposed changes to AUTs). [deleted]</p>	<u>Expired</u>	
UCITS business restrictions					
5	COLL 6.9.9R(4) to (6) (Restrictions of business for UCITS management companies)	R	<p>A UCITS management company must not carry on any of the activities specified in COLL 6.9.9(4) COLL 6.9.9(5) COLL 6.9.9(6) COLL 6.9.9R(4) to (6) (inclusive) unless it is a UCITS investment firm:</p> <p>(a) whose permission to carry on any such activity was given before 13 February 2004; or</p> <p>(b) which complies with BIPRU.</p>	From 1 April 2004 to 12 February 2007 <u>Expired</u>	1 April 2004 [deleted]
6	COLL 6.9.9(4) COLL 6.9.9(5) COLL 6.9.9(6) COLL 6.9.9R(4) to (6) (restrictions of	G	A UCITS investment firm will not be able to act as such and exercise an EEA right under the UCITS Directive unless it complies with BIPRU. [deleted]	<u>Expired</u>	

	business for UCITS management companies)				
	Committees and delegation				
7	COLL 6.6.15R(2), (4) and (5) (Committees and delegation)	R	<p>(1) Subject to (2), a UCITS management company which became authorised before 13 February 2004 will not contravene COLL 6.6.15(2), COLL 6.6.15(4) and COLL 6.6.15(5) (Committees and delegation) to the extent that it complies with CIS 7.6.1R(2), CIS 7.6.1R(4) and CIS 7.6.1R(5) and CIS 7.10.4R(1), CIS 7.10.4R(5) and CIS 7.10.4R(6) as they applied before 12 February 2004.</p> <p>(2) Paragraph (1) does not apply in relation to any UK firm which exercises an EEA right under the UCITS Directive.</p>	From 1 April 2004 to 12 February 2007 <u>Expired</u>	1 April 2004 [deleted]
	Existing dual priced AUTs: dealing and valuation				
8	COLL 6.2 (dealing); COLL 6.3 (Valuation and pricing); COLL 5.2.5R (Valuation) and COLL 4.2.5R 16 (Table: contents of the prospectus)	R	<p>(1) Subject to (2), the manager of a dual priced AUT which has exercised its entitlement under CIS 1.1.AR to comply with COLL instead of CIS, will not contravene any of the provisions in column (2) to the extent that it complies with CIS 15 (Dual pricing and dealing), CIS 5.2.5R (Valuation) and CIS 5A.2.5R (Valuation) (and references in COLL to the rules in column (2) are to be construed accordingly).</p> <p>(2) Where the rules in COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing) and COLL 5.2.5R (Valuation) conflict with the relevant</p>	From 1 April 2004 until 12 February 2007 <u>Expired</u>	1 April 2004 [deleted]

			<p>requirements of <i>CIS</i> 15 (Dual pricing and dealing), <i>CIS</i> 5.2.5R (Valuation) and <i>CIS</i> 5A.2.5R (Valuation), the <i>manager</i> must proceed on the basis that the former rules (<i>COLL</i>) override the latter (<i>CIS</i>) unless compliance with a relevant rule in <i>COLL</i> 6.2 or <i>COLL</i> 6.3 or <i>COLL</i> 5.2.5R would not be possible.</p>		
9	<i>COLL</i> 6.2 (dealing); <i>COLL</i> 6.3 (Valuation and pricing); <i>COLL</i> 5.2.5R (Valuation) and <i>COLL</i> 4.2.5R 16 (Table: contents of the prospectus)	G	<p>(1) A <i>dual priced</i> <i>AUT</i> values on a basis that results in different <i>issue</i> and <i>cancellation prices</i> compared to a single priced scheme. Furthermore, the <i>manager</i> sets <i>sale</i> and <i>redemption prices</i> within the pricing envelope of the <i>cancellation price</i> and <i>issue price</i> together with the <i>preliminary charge</i>. Transitional provision 8 allows such a system to continue to operate. [deleted]</p> <p>(2) However, transitional provision 8 also requires the <i>COLL</i> provisions to override the applicable <i>CIS</i> provisions where appropriate, that is in circumstances where there is a conflict between them. So, for example, publishing <i>prices</i> should comply with <i>COLL</i> 6.3.11R (Publication of prices) rather than <i>CIS</i> 15.4.14R. Where complying with the relevant <i>COLL</i> rules would not be practicable or not feasible for some reason, the <i>manager</i> is advised to contact the FSA. [deleted]</p>	Expired	
10	<i>FEES</i> 3.2.1R	R	<p>(1) If the <i>authorised fund manager</i> of a scheme notifies the FSA under section 251 of the Act or regulation 21 of the <i>OEIC Regulations</i> in relation</p>	1 April 2004 to 12 February 2007 Expired	1 April 2004 [deleted]

			<p>to a proposal to alter a <i>scheme</i> under transitional provision 1 or transitional provision 3(1)(b), the <i>authorised fund manager</i> must pay to the FSA a fee of £400 for each individual <i>scheme</i> and a fee of £800 for each <i>umbrella scheme</i></p> <p>(2) A fee payable under this provision must be paid by bankers draft, cheque or other payable order when the notification is made.</p>		
	Definition of relevant party				
11	<i>COLL</i>	R	<p>For the purposes of these transitional <i>rules</i>, a “relevant party” in relation to:</p> <p>(1) any <i>AUT</i>, is its <i>manager</i> and <i>trustee</i>; and</p> <p>(2) any <i>ICVC</i>, is</p> <p>(a) the <i>ICVC</i>;</p> <p>(b) its <i>ACD</i>;</p> <p>(c) any other <i>directors</i> of the <i>ICVC</i>; and</p> <p>(d) its <i>depositary</i>.</p>	<p>From 1 April 2004 until 12 February 2007 <u>Expired</u></p>	1 April 2004 [deleted]
12				Expired	
13	<i>COLL 4.2.5R</i> , Table paragraphs 2 (bb), 11 (a)(v) and 23 (e)	R	<p>In relation to any <i>authorised fund</i> in existence on the day before 6 April 2006 there is no obligation to revise the <i>prospectus</i> as a result of the applications of <i>COLL 4.2.5R</i>, Table paragraphs 2 (bb), 11 (a)(v) or 23 (e) until the earlier of:</p> <p>(1) the date the <i>prospectus</i> is next revised; and</p> <p>(2) 6 April 2007.</p>	<p>From 6 April 2006 to 6 April 2007 <u>Expired</u></p>	6 April 2006 [deleted]

14	Amendments to <i>COLL</i> made by the Collective Investment Schemes Sourcebook (UCITS Eligible Assets Directive and Other Amendments) Instrument 2008	R	<p>(1) The <i>authorised fund manager</i> of an <i>authorised fund</i> may elect for early compliance with the instrument, in which case <i>COLL</i> applies as if it had been amended by the instrument.</p>	<u>From 6 March 2008 until 23 July 2008</u> <u>Expired</u>	<u>23 July 2008 except for this part of the instrument which comes into force on 6 March 2008</u>
			<p>(2) An election is irrevocable and does not take effect until the <i>authorised fund manager</i> notifies the <i>depositary</i> and the <i>FSA</i> in writing of the date it takes effect.</p>	<u>From 6 March 2008 until 23 July 2008</u> <u>Expired</u>	
			<p>(3) The <i>authorised fund manager</i> must make a record of the election and retain it for a period of six years from the date it takes effect.</p>	From 6 March 2008 until 6 years from the date the relevant election took effect	

Annex F

Amendments to the Credit Unions sourcebook (CRED)

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

Appendix 1.1 ...

	Sourcebook or manual	Reference code
...		
Specialist sourcebooks	<p>...</p> <p><u>Collective investment schemes</u></p>	<p><i>CIS</i> [deleted]</p>
	<p>New Collective Investment Scheme Schemes sourcebook</p>	<i>COLL</i>
...		
...		

Annex G

Amendments to the Electronic Money sourcebook (ELM)

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

Application of other parts of the Handbook to ELMIs

1.5.2 G

Block	Module	Application
...		
Specialist sourcebooks other than <i>ELM</i>	Credit unions (<i>CRED</i>), Professional firms; (<i>PROF</i>), Collective Investment Schemes (<i>CIS</i>) or (<i>COLL</i>) and Recognised Investment Exchanges and Recognised Clearing Houses (<i>REC</i>).	These sourcebooks do not apply to an <i>ELMI</i> .
...		...
...		

Annex H**Amendments to the Listing Rules sourcebook (LR)**

In this Annex, striking through indicates deleted text.

Appendix 1 Relevant definitions

...

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~~.

Annex I

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, striking through indicates deleted text.

Establishing etc collective investment schemes

- 2.7.12 G ... The process for applying for authorisation of a *collective investment scheme* is described in *COLLG 2* (Authorised fund applications) ~~and CIS 16 (Application and notification)~~. ...
- ...

Other guidance that may be relevant

- 9.1.4 G ... *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)~~ contains *rules and guidance* on forming such *bodies corporate*.
- ...

- 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).
- ...

Marketing of shares or securities issued by body corporate

- 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:
- ...

- (3) *collective investment schemes* that are *recognised schemes* (see *COLL 9* (Recognised schemes) ~~and CIS 17 (Recognised schemes)~~).
- ...

**PERIMETER GUIDANCE (PAYMENT SERVICES SCOPE)
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of its powers under:
- (1) section 157(1) (Guidance) of the Financial Services and Markets Act 2000; and
 - (2) regulation 93 of the Payment Services Regulations 2009.

Commencement

- B. This instrument comes into force on 1 November 2009.

Amendments to the Perimeter Guidance manual

- C. The Perimeter Guidance manual (PERG) is amended in accordance with the Annex to this instrument. The general guidance in PERG does not form part of the Handbook.

Citation

- D. This instrument may be cited as the Perimeter Guidance (Payment Services Scope) Instrument 2009.

By order of the Board
26 March 2009

Annex

Amendments to the Perimeter Guidance manual (PERG)

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

1.4.2 G Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
...		
<u>PERG 15: Guidance on the scope of the Payment Services Regulations 2009</u>	<u>Any person with an establishment in the UK who needs to know whether the Payment Services Directive, as transposed in UK legislation by the Payment Services Regulations 2009, applies to him.</u> <u>Q46 applies specifically to persons providing payment services from an establishment outside the EEA to persons located in the UK.</u>	<u>the scope of the PSD Regulations 2009.</u>

After PERG 14 insert the following new chapter. The inserted text is not underlined.

15. Guidance on the scope of the Payment Services Regulations 2009

15.1 Introduction

The purpose of this chapter is to help businesses in the UK consider whether they fall within the scope of the Payment Services Directive (2007/64/EC) (PSD), as given effect to in the Payment Services Regulations 2009 (the “PSD regulations”). The PSD regulations create a separate authorisation and registration regime which differs from the authorisation requirements under the Financial Services and Markets Act. In particular, it is aimed at helping these businesses consider whether they need to be separately authorised or registered for the purposes of providing payment services in the UK. References to individual regulations are to the PSD regulations, unless otherwise stated.

Background

PSD provides the legal framework for the operation of a single market in payment services. This includes the creation of a harmonised authorisation regime, designed to establish a single licence for payment service providers which are neither deposit-takers nor e-money issuers. Authorised payment institutions can provide services on a cross-border or branch basis, using passport rights acquired under the PSD.

The relevant payment services, as transposed in the PSD regulations, are set out fully in Annex 2 to this chapter and include, amongst other things, services relating to the operation of payment accounts (for example, cash deposits and withdrawals from current accounts and flexible savings accounts), execution of payment transactions, card issuing, merchant acquiring, money remittance and certain mobile phone-based payment services. The directive focuses on electronic means of payment including direct debit, debit card, credit card, standing order, mobile or fixed phone payments and payments from other digital devices as well as money remittance services; it does not apply to cash-only transactions or paper cheque-based transfers.

Scope

In terms of scope, the PSD regulations are likely to be of relevance to a range of firms including credit institutions, e-money issuers, the Post Office Limited, money remitters, certain bill payment service providers, card issuers, merchant acquirers and certain telecommunications network operators. It is also likely to be relevant to those agents of the above businesses which provide payment services.

Generally speaking, depending on the nature and size of its activities, a business to which the PSD regulations apply (other than a credit institution, e-money issuer or an EEA authorised payment institution) will need to be:

- authorised by the FSA as an authorised payment institution; or
- registered as a “small payment institution”; or
- registered as an agent of an authorised payment institution, EEA authorised payment institution or a small payment institution.

The conditions for authorisation as a payment institution are set out in regulation 6. In addition to the authorisation regime for payment institutions, there is an alternative lighter regime for those which fall within the category of small payment institutions (that is businesses which meet the conditions in regulation 13). Broadly, the category of small payment institutions will only be relevant to firms executing payment transactions with a monthly average of 3 million euros (or an equivalent amount) or less, over a 12 month period. Broadly, small payment institutions are not subject to the authorisation requirements in regulation 6 or the requirements in Part 3 of the PSD regulations (including capital requirements), but they are subject to a registration regime and the conduct of business provisions in Parts 5 and 6.

The PSD regulations also provide for the appointment of agents by authorised payment institutions and small payment institutions. These agents are exempt from the authorisation requirements in regulation 6 but they are required to be registered on the FSA register by their principal. When the agent's principal is an EEA authorised payment institution, it needs to be registered on the Home State register of that payment institution. A business can also

provide payment services as an agent of a credit institution or e-money issuer, in which case there are no registration requirements under the PSD regulations.

Exemptions and exclusions

As well as small payment institutions and agents, the PSD regulations make provision for a limited number of exempt bodies, notably credit unions and municipal banks. The regulations do not apply to these bodies although municipal banks are required to notify the FSA if they propose to provide payment services.

More generally, there is a broad range of activities which do not constitute payment services under Schedule 1 Part 2 to the PSD regulations. Amongst these excluded activities, set out more fully in Annex 3, are:

- payment transactions through commercial agents;
- money exchange business (for example, bureaux de change);
- payment transactions linked to securities asset servicing (for example, dividend payments, share sales or unit redemptions);
- services provided by technical service providers;
- payment services based on instruments used within a limited network of service providers or for a limited range of goods or services; and
- payment services provided by telecommunications operators other than as an intermediary between payer and payee.

These and other activities are the subject of Q&A in PERG 15.5. A firm will be exempt from authorisation and registration requirements under the regulations to the extent that its activities fall within one or more of the exclusions in Schedule 1 Part 2 to the regulations. In each case, it will be for businesses to consider their own circumstances and whether they fall within the relevant exclusions.

Other scope issues

As explained in PERG 15.2, Q13, the regulations also apply in limited circumstances to non-payment service providers, if they provide a currency conversion service. Likewise, a non-payment services provider which imposes charges or offers reductions for the use of a given

payment instrument is required to provide information on any such charges or reductions (see regulations 50 and 113).

Transitional

Subject to the exclusions and exemptions outlined above, a payment institution with an establishment in the UK (other than an EEA payment services provider and its agents) is caught by the authorisation and registration requirements of the PSD regulations when it provides payment services, by way of business, in or from the UK. That said, there are important transitional provisions which delay the need for businesses to apply for authorisation or registration, before and during an initial period after the commencement of regulation on 1 November 2009.

How does this chapter work?

The chapter is made up of Q&As divided into the following sections:

- General (PERG 15.2)
- Payment services (PERG 15.3)
- Small payment institutions, agents and exempt bodies (PERG 15.4)
- Negative scope/exclusions (PERG 15.5)
- Territorial scope (PERG 15.6)
- Transitional arrangements (PERG 15.7)
- Flowcharts and tables (PERG 15 Annexes 1, 2 and 3)

Definitions

The PSD regulations contain their own definitions which you can find in regulation 2. We refer to some of these in the Q&A including “payment transaction”, “payment account”, “payment instrument” and “money remittance”.

15.2 General

Q1. Why does it matter whether or not we fall within the scope of the PSD regulations?

Broadly, when you provide payment services, by way of business, in the UK and these services do not fall within an exclusion or exemption, you must be:

- (a) an authorised payment institution; or
- (b) an EEA authorised payment institution; or
- (c) a small payment institution; or
- (d) a credit institution (either one with a Part IV permission to accept deposits or an EEA credit institution where it is exercising passport rights under paragraph 4 of Annex 1 to the Banking Consolidation directive); or
- (e) an e-money issuer (that is either an e-money issuer with a Part IV permission or a *small e-money issuer* or an EEA e-money issuer exercising passport rights); or
- (f) the Post Office Limited, Bank of England, a central bank or government departments and local authorities; or
- (g) an exempt person (that is a credit union, municipal bank and the National Savings Bank); or
- (h) an agent of a person listed in (a) to (g) above.

Unless you are one of the above, subject to transitional provisions you risk committing a criminal offence under regulation 110.

Q2. Is there anything else we should be reading?

The Q&As complement, and should be read in conjunction with, the Payment Services Regulations 2009.

Q3. How much can we rely on these Q&As?

The answers given in these Q&As represent the FSA's views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of the PSD regulations affects the regulatory position of any particular person will depend on his individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As do not purport to be exhaustive and are not a substitute for reading the relevant legislation.

In addition to FSA guidance, some PSD provisions may be the subject of guidance or communications by the European Commission.

Q4. We are a UK firm not authorised under FSMA providing payment services to our clients, as a regular business activity. Are we required to be authorised or registered under the regulations?

Yes, unless the exclusions or exemptions in the regulations apply to you or you are an e-money issuer, the Post Office Limited or an agent of a credit institution or e-money issuer. If this is not the case, you need to be:

- authorised by the FSA as an authorised payment institution; or
- registered as a small payment institution; or
- registered as an agent of an authorised payment institution, EEA authorised payment institution or a small payment institution.

You might find helpful the overview, in the form of flowcharts, of the authorisation and registration requirements in the PSD regulations as they apply to payment institutions (that is payment service providers other than credit institutions, e-money issuers and their agents), set out in PERG 15 Annex 1.

Q5. As a payment institution rather than a credit institution, are we right in thinking that our maintenance of payment accounts does not amount to accepting deposits?

Yes, articles 9AB and 9L of the *Regulated Activities Order* provide that funds received by payment institutions from payment services users with a view to the provision of payment services shall constitute neither deposits nor e-money.

As an authorised payment institution, any funds you hold must only be used in relation to payment transactions (see regulation 28 of the PSD regulations). A “payment transaction” for these purposes is defined in regulation 2 of the PSD regulations as meaning “an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee”. The fact that a payment account operated by a payment institution can only be used for payment transactions distinguishes it

from a deposit. A deposit can nevertheless be a form of payment account and for guidance on what constitutes a deposit for the purposes of the regulated activity of “accepting deposits” and guidance on the regulated activity itself, see PERG 2.6.2G to 2.6.4G and PERG 2.7.2G.

A payment institution is not prohibited from paying interest on a payment account but such interest cannot be paid from funds received from customers. More generally, if a payment institution were to offer savings facilities to its customers in the accounts it provides, in our view it would be holding funds not simply in relation to payment transactions and so would be in breach of regulation 28.

Q6. We are a credit card company and a payment institution. We are not a bank. Sometimes our customers will have a positive balance on their account because they have accidentally overpaid or because of refunds. Would this put us in breach of the requirement in regulation 28 to use a payment account only in relation to payment transactions?

No. In our view, this does not amount to a breach of regulation 28 and nor does the handling of credit balances in the circumstances constitute the activity of accepting deposits.

Q7. We are a credit institution. Do the PSD regulations apply to us?

Yes. If you are a credit institution, you will be subject to the conduct of business requirements in the PSD regulations to the extent that you provide payment services. In our view, the authorisation process applying to UK and non-EEA credit institutions remains that imposed by Part IV of the *Act*. Authorised credit institutions will not though need to apply for a separate *Part IV permission*, in order to provide payment services. In other words, if a UK credit institution has a Part IV permission to carry on the regulated activity of accepting deposits, it will not need to be separately authorised to provide payment services in the UK. We are aware that the Commission has indicated that branches of non-EEA credit institutions are unable to provide payment services in the EEA, in this legal form. Whilst it is for firms to consider their own position, in our view the UK branch of a non-EEA credit institution with a Part IV permission to accept deposits is also authorised to provide payment services in the UK.

An EEA credit institution wishing to provide payment services through a UK branch must exercise its passport rights under paragraph 4 of the Annex to the Banking Consolidation

directive (BCD). Similarly, a UK credit institution which wishes to provide payment services in other Member States may exercise its BCD passport rights to do so.

Q8. We are an e-money issuer. Do the PSD regulations apply to us?

Yes. If you are an e-money issuer, you will be subject to the conduct of business requirements in the PSD regulations. The authorisation regime applying to UK e-money issuers remains that imposed by the *Act* (see PERG 3.2 for guidance about the regulated activity of issuing e-money).

Authorised e-money issuers will not need to apply for a separate Part IV permission, in order to provide payment services. In other words, if you have a Part IV permission to carry on the regulated activity of *issuing e-money*, you will also be authorised to provide payment services to the extent permitted by ELM 4.3. If you are a *small e-money issuer*, you will not be subject to the authorisation requirements of either the *Act* or the PSD regulations.

Q9. If we provide payment services to our clients, will we always require authorisation or registration under the regulations?

Not necessarily; you will only be providing payment services, for the purpose of the regulations, when you carry on one or more of the activities in PERG 15 Annex 2:

- as a regular occupation or business activity; and
- these are not excluded or exempt activities.

Simply because you provide payment services as part of your business does not mean that you require authorisation or registration. You have to be providing payment services, themselves, as a regular occupation or business to fall within the scope of the regulations (see definition of “payment services” in regulation 2(1)). Accordingly, we would not generally expect solicitors or broker dealers, for example, to be providing payment services for the purpose of the regulations merely through operating their client accounts in connection with their main professional activities.

Q10. We are a “financial institution” under the Banking Consolidation Directive (BCD). How does PSD apply to us?

Financial institutions are only subject to the authorisation and conduct of business requirements of the regulations where they provide payment services by way of business and are unable to rely on any of the statutory exclusions. For those financial institutions which are subject to the regulations, they may be able to benefit from transitional relief from the requirement to be authorised or registered as a payment institution if their parent undertaking is subject to consolidated supervision.

A “financial institution” for the purposes of the PSD regulations, as for the BCD, is an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex 1 to the BCD (see SUP App 3.9.4G). It may include, for example, an authorised person under the *Act* which is neither a credit institution nor an e-money issuer.

Q11. Is it possible to be both an authorised person under FSMA and the agent of an authorised payment institution or a small payment institution?

Yes. There is nothing in the PSD regulations or the *Act* (for example section 39) which prevents a person from being both an *authorised person* and the agent of an authorised payment institution or a small payment institution.

Q12 We provide electronic foreign exchange services to our customers/clients. Will this be subject to the PSD regulations?

Not necessarily, as providing foreign exchange services is not itself a payment service. Foreign exchange transactions may exist as part of, or independent from, payment services. You will fall within the scope of the PSD regulations if you are providing payment services, by way of business, in the UK. For example, where a customer instructs his bank to make payment in euros from his sterling bank account to a payee’s bank account, we expect conduct of business requirements in the regulations to apply to the transfer of funds including information requirements relating to the relevant exchange rate.

By contrast, we would not expect the conduct of business provisions (including the right of cancellation) in the Payment Services regulations to apply to a spot or forward fx transaction

itself. That said, the electronic transmission, for example, by a bank on behalf of a customer to an fx services provider is likely to be subject to the PSD, because this is a transfer of funds executed by the bank. Similarly, the onward payment by a bank or fx services provider, on behalf of a client, to a third party of currency purchased in an fx transaction may amount to a payment service.

Q.13 We are a business that does not provide payment services. We usually accept payment in sterling for our goods and services but also offer a facility to our customers who prefer to pay us in euros, to do so on the basis of a sterling/euro conversion when making electronic payments via their payment service provider. Do the regulations apply to us?

Generally no. You are not required to be authorised or registered under the regulations. You will though be required to disclose information relating to your currency conversion service, including charges and the exchange rate to be used (for further information including details of criminal sanctions, see regulations 49 and 113).

15.3 Payment Services

Q14. Where do we find a list of payment services?

In Schedule 1 Part 1 to the PSD regulations. There are seven payment services, set out in full in Annex 2 to this chapter. References to categories of payment services below adopt the structure of Schedule 1 to the PSD regulations: for example, paragraph (1)(f) refers to “money remittance”.

Q15. When might we be providing services enabling cash to be placed on a payment account (paragraph 1(a))?

When you are accepting cash electronically or over-the counter or through ATMs which is placed on a payment account which you operate.

The crediting of interest to a payment account is not a service enabling cash to be placed on a payment account.

Q16. What is a payment account?

“Payment account” is defined in regulation 2 as “an account held in the name of one or more payment service users which is used for the execution of payment transactions”. When determining whether or not an account is a “payment account” for the purposes of the regulations, in our view it is appropriate to focus on its underlying purpose. To establish this it is necessary to consider a number of factors including:

- the purpose for which the account is designed and held out;
- the functionality of the account (the greater the scope for carrying out payment transactions on the account, the more likely it is to be a payment account);
- restrictive features relating to the account (for example, an account that has notice periods for withdrawals, or reduced interest rates if withdrawals are made, may be less likely to be a payment account);
- a limited ability to place and withdraw funds unless there is additional intervention or agreement from the payment service provider (this will tend to point more towards the account not being a payment account); and
- the extent to which customers use an account’s payment service functionality in practice.

Accordingly, in our view, “payment accounts” can include, for example, current accounts, e-money accounts, flexible savings accounts, credit card accounts and current account mortgages. On the other hand, in our view fixed term deposit accounts (where there are restrictions on the ability to make withdrawals), child trust fund deposit accounts and cash Individual Savings Accounts (ISAs) are not payment accounts.

We consider only the features of the account used for the purpose of making transactions, to which the regulations apply, fall within scope. For example, in the case of a current account mortgage, the mortgage element of the account would be out of scope, albeit that a mortgage payment from the current account would be subject to the regulations.

In our view, mortgage or loan accounts do not fall within the scope of the regulations. This is on the basis that the simple act of lending funds or receiving funds by way of repayment of that loan does not amount to provision of a payment service.

Q17. When might we be providing services enabling cash withdrawals from a payment account (paragraph 1(b))?

When you provide, for example, an ATM cash withdrawal or over the counter cash withdrawal service in relation to the payment accounts which you operate.

Q18. When might we be providing execution of (i) direct debits, including one-off direct debits, or (ii) payment transactions through a payment card or a similar device or (iii) credit transfers, including standing orders (paragraph 1(c))?

When you provide a service to clients enabling them to complete payment by way, for example, of direct debit, payment card (such as a debit card), electronic cheque or credit transfer (such as a standing order). Where these services are provided using a credit line though, you will be providing the service in paragraph 1(d).

In our view, the simple act of accepting payment by way of debit card or credit card for supply of your own goods or services does not generally amount to the provision of the service of execution of payment transactions through a payment card. For instance, where a restaurant accepts payment from a customer using his payment card it is not providing a payment service to the customer, but simply accepting payment for the price of the meal. It is merely a payment service user receiving payment from the customer. The firm providing

the merchant acquiring service enabling the restaurant to process the card transaction and receive payment is providing a payment service in this instance.

As regards a “direct debit”, regulation 2 defines this as meaning “a payment service for debiting the payer’s payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee’s payment service provider or to the payer’s own payment service provider”. As well as the likes of utility and other household bills, in our view this definition extends to a case where sender and recipient are the same person, for example where the person holds two bank accounts in two different banks.

Q19. When might we be providing execution of the following types of payment transaction where the funds are covered by a credit line for the payment user-

- (i) direct debits, including one-off direct debits,**
- (ii) payment transactions executed through a payment card or a similar device,**
- (iii) credit transfers, including standing orders (paragraph 1(d))?**

When you provide a service to clients enabling them to complete payment, for example, by way of direct debit using overdraft facilities, payment card such as deferred debit or credit card, electronic cheque using overdraft facilities or credit transfer (such as a standing order) using overdraft facilities.

Q20. When might we be issuing payment instruments (paragraph 1(e))?

A payment instrument is defined in regulation 2 and means any (a) personalised device or (b) personalised set of procedures agreed between the payment service user and the payment service provider, in both cases where used by the payment service user in order to initiate a payment order.

Examples of persons issuing payment instruments, for the purposes of Schedule 1 to the regulations, include credit card and debit card issuers and e-money issuers. In addition to the issue of physical instruments such as cards, arrangements by way of telephone call with password, or online instruction by which a payment order can be initiated could also amount to issuing payment instruments, depending on the service being provided.

We would not generally expect you to be issuing payment instruments (or providing other payment services) if all you do is issue direct debit mandates simply for the purpose of being paid for the goods or services you provide to your customers or clients. Nor if the payment transaction is initiated by paper, would that document be considered to be a payment instrument.

Q21. When might we be acquiring payment transactions (paragraph 1(e))?

If your business includes “merchant acquiring”. This will typically include providing services enabling suppliers of goods, services, accommodation or facilities to be paid for purchases arising from card scheme transactions.

Q22. When might we be providing money remittance services (paragraph 1(f))?

Money remittance is defined in regulation 2 as:

“.... a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or payee, where-

- (a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or
- (b) funds are received on behalf of, and made available to, the payee”.

The service of money remittance cannot therefore involve the creation of payment accounts. Recital 7 of the PSD describes money remittance as “a simple payment service that is usually based on cash provided by a payer to a payment service provider, which remits the corresponding amount, for example, via communication network, to a payee or to another payment service provider acting on behalf of the payee”.

This service is likely therefore to be relevant, for example, to money transfer companies and hawala brokers.

Q23. We are a mobile network operator offering our client facilities to transfer funds – how do we tell whether and when the regulations apply to us (paragraph 1(g))?

You will be subject to the regulations if you provide a payment execution service to customers and:

- (i) customer consent to execute payment is provided by means of the mobile device you provide; and
- (ii) you receive payment for transmission to a supplier of goods and services, acting only as intermediary between the payment service user and supplier.

By contrast, when you add value to the good or service being purchased from a third party, you will not be acting only as an intermediary and hence will not be subject to the regulations (see PERG 15 Annex 3, paragraph (1)). Adding value may take the form of adding intrinsic value to goods or services supplied by a third party, for instance by providing access (including an SMS centre), search or distribution facilities. Nor will you be providing this service when a customer uses his mobile device merely as an authentication tool to execute payment from his bank account (for example, simply providing instructions to his bank via SMS), and does not transmit payment via you. Mobile phone top-ups also fall outside the scope of the regulations.

Q24 Do the same provisions apply to other types of telecommunications providers as they do to mobile network operators?

Yes, paragraph 1(g) and PERG 15 Annex 3(1) refer to payment transactions executed by means of any telecommunications, digital or IT device. These could include, for example, desktop and laptop computers, personal digital assistants and interactive television sets. Our guidance for mobile phone operators in relation to these provisions applies, by analogy, to other types of telecommunication provider.

Q25. We are a bill payment firm. Do the PSD regulations apply to us?

Not in our view where you receive payment on behalf of the payee so that your receipt constitutes settlement of the payer's debt to the payee. By contrast, if you provide a remittance service which does not involve receipt on behalf of the payee and corresponds to the definition of "money remittance" in regulation 2, you will be providing a money remittance service.

15.4 Small payment institutions, agents and exempt bodies

Q26. What criteria must we meet to be a “small payment institution”?

The conditions are set out in regulation 13 and include the following:

- the average of the preceding 12 months' total amount of payment transactions executed by you, including your agents in the UK, does not exceed 3 million euros (or an equivalent amount) per month;
- none of the individuals responsible for the management or operation of your business has been convicted of offences relating to money laundering or terrorist financing, the *Act*, the PSD regulations or financial crimes;
- your head office, registered office or place of residence, as applicable, is in the UK; and
- you must comply with the registration requirements of the Money Laundering Regulations 2007, where they apply to you.

Q27. We satisfy the conditions for registration as a small payment institution – does that mean we have to register as one?

No, there are other options available to you. If you register as a small payment institution, you cannot acquire passport rights under the regulations, so you may wish to become an authorised payment institution if you wish to take advantage of the passport. You may also choose to become an agent of a payment services provider. An overview of the options available to you is set out in PERG 15 Annex 1, Flowcharts 1 and 2.

Q28. We only wish to be an agent of a payment institution. Do we need to apply to the FSA for registration?

No. If your principal is a payment institution, it is its responsibility to apply for registration on your behalf. Assuming your principal is not an EEA firm, you are required to be registered on the FSA register before you provide payment services, subject to any relevant transitional provisions (see PERG 15.7) which may delay or avoid the need for registration. If your principal is an EEA firm, your principal will need to comply with the relevant Home State legislation relating to your appointment.

Q29. We are an agent of a credit institution for the purpose of providing payment services. Do we need to apply to the FSA for registration?

No. If you are such an agent of a credit institution which is permitted to provide payment services in the UK, you are not required to be registered under the PSD regulations. A credit institution will be permitted to provide payment services if it has a Part IV permission to accept deposits, or if it is an EEA credit institution exercising passport rights under paragraph 4 of the Annex to the Banking Consolidation directive.

Q30. We are an agent of an e-money issuer for the purpose of providing payment services. Do we need to apply to the FSA for registration?

No. If you are such an agent of an e-money issuer which is permitted to provide payment services in the UK, you are not required to be registered under the PSD regulations. An e-money issuer will be permitted to provide payment services if it has a Part IV permission to issue e-money, or if it is either an EEA e-money issuer exercising passport rights or a *small e-money issuer*.

Q31. We are a credit union. Are we exempt from the regulations?

Yes. You are exempt from the regulations by virtue of regulation 3.

Q32. We are a municipal bank. Are we exempt from the regulations?

Yes. You are exempt from the regulations (together with credit unions and the National Savings Bank), by virtue of regulation 3. Unlike credit unions, you are required to notify us if you wish to provide payment services, although you only need to do this once.

15.5 Negative scope/exclusions

Schedule 1 Part 2 to the regulations contains a list of activities which do not constitute payment services. The following questions only deal with a selection of these. You should consult Annex 3 to this chapter for a full list of provisions, if you require more details.

Q33. Our business consists of cash payments directly from or to our customers – do the regulations apply to us?

No. The regulations do not apply to payment transactions made in cash, without the intervention of an intermediary (see PERG 15 Annex 3, paragraph (a)).

Q34. We are a charity which collects cash donations and transmits funds via bank transfer to the intended recipients – do the regulations apply to us?

No. The regulations do not apply to payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity (see PERG 15, Annex 3, paragraph (d)).

Q35. We provide a “cashback” service to our customers when they pay for their goods at the checkout – do the regulations apply to us?

No. The regulations do not apply to cashback services (see PERG 15, Annex 3, paragraph (e)).

Q36. We are a bureau de change providing cash only forex services and our clients do not have accounts with us – are these services outside the scope of the regulations?

Yes. The regulations do not apply to money exchange business consisting of cash-to cash operations where the funds are not held on a payment account (see PERG 15, Annex 3, paragraph (f)). If you allow a customer to pay for foreign currency using a payment card, this does not mean that you will be providing a payment service. The regulations will though apply to the payment transaction made using the payment card and the payment service provided to you by the merchant acquirer. In other words, the regulations apply to the merchant acquirer's services but yours remain outside the scope of authorisation or registration.

The regulations do not affect your obligations under the Money Laundering Regulations 2007.

Q37. Do the regulations distinguish between (i) payment transactions between payment service providers and (ii) payment services provided to clients?

Yes, broadly the object of the regulations is the payment service provided to specific clients and not the dealings among payment service providers to deliver the end payment arising from that service. A payment transaction may involve a chain of payment service providers. Where a bank, for example, provides a cash withdrawal or execution of payment transaction service to its customer which involves the use of a clearing bank, it will still be providing a payment service to its customer.

The regulations do not though cover inter-bank settlement. More specifically, the regulations do not apply to payment transactions carried on within a payment or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system (see PERG 15 Annex 3, paragraph (h)).

Q38. We are an *investment firm* providing investment services to our clients – are payment transactions relating to these services caught by the regulations?

Generally, no. Where payment transactions only arise in connection with your main activity of providing investment services, in our view it is unlikely that you will be providing payment services by way of business. In those limited cases where you are, the regulations do not apply to securities assets servicing, including dividends, income or other distributions and redemption or sale (see PERG 15 Annex 3, paragraph (i)).

Q39. We are a firm simply providing IT support in connection with payment system infrastructures – are these services subject to the regulations?

No. There is an exclusion for technical service providers which simply provide IT support for the provision of payment services (see PERG 15 Annex 3, paragraph (j)). Other services excluded from the regulations include data processing, storage and authentication.

Q40. Which types of payment card could fall within the so-called “limited network” exclusion (see PERG 15, Annex 3, paragraph (k))?

The “limited network” exclusion forms part of a broader exclusion which applies to services based on instruments that can be used to acquire goods or services only-

- (a) in or on the instrument issuer's premises; or
- (b) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services ...".

As regards (a), examples of excluded instruments could include:

- (1) staff catering cards – reloadable cards for use in the employer's canteen or restaurant;
- (2) tour operator cards – issued for use only within the tour operator's holiday village or other premises (for example, to pay for meals, drinks and sports activities);
- (3) store cards – where the card can only be used at the store's premises (so where a store card is co-branded with a third party debit card or credit card issuer and can be used as a debit card or credit card outside the store, it will still fall within the regulations).

As regards (b), this exclusion has two discrete limbs and so applies either to instruments that can be used only:

- (i) within a limited network of service providers; or
- (ii) for a limited range of goods or services.

In our view, examples of excluded instruments falling within (b) include:

- (1) transport cards – where these are used only for purchasing travel tickets (for example, the Oyster card which provides access to different service providers within the London public transport system);
- (2) petrol cards (including pan-European cards) – where these are issued for use at a specified chain of petrol stations and forecourts at these stations;
- (3) membership cards – where a card can only be used to pay for goods or services offered by a specific club or organisation;
- (4) store card – where the card can be used at a specified chain of stores at their premises or on their website.

Instruments for the purpose of this exclusion can include, for example, vouchers and other devices.

Q41. Do the regulations specify or define what a “limited network” is for these purposes?

Neither the PSD nor consequently the PSD regulations provide any definition, conditions or criteria for determining what is a “limited network of service providers”. The issue of whether or not a “limited network” is in existence is ultimately a question of judgement that, in our view, should take account of various factors (none of which is likely to be conclusive in itself). These include the number of service providers involved, the scale of the services provided, whether membership of the network is open-ended, the number of clients using the network and the nature of the services being offered.

While a “limited network” could include transport cards, petrol cards, membership cards and store cards, we would not generally expect “city cards” to fall within this exclusion, to the extent that these tend to provide users with access to a broad range of goods and services offered by a city’s shops and businesses.

Q42. We are a payment services provider which carries out payment transactions for our own account – are these payment transactions excluded from the scope of the regulations?

Yes. Payment transactions carried out between payment service providers, or their agents or branches, for their own account, are all excluded from the scope of the regulations (see PERG 15 Annex 3, paragraph (m)). This would include, for example, electronic payment from one payment services provider to another, in discharge of a debt owed by one to the other.

Q43. We are a company which performs a group treasury function, including providing payment services directly to other group companies – are these intra-group payment services excluded from the regulations?

Yes. Intra-group payment transactions are excluded from the regulations, where payment is made direct from one group company to another (see PERG 15 Annex 3, paragraph (n)). This includes the case where the group company providing the payment service is, itself, a payment service provider otherwise subject to the regulations.

Q44. We are an independent ATM deployer offering cash dispensing facilities to users. We are not a bank. Are we subject to the regulations?

No, assuming you do not provide other payment services listed in Schedule 1 Part 1 to the regulations (see PERG 15 Annex 3, paragraph (o)). If other payment services are provided, all your payment services (including the ATM cash dispensing facilities) will be subject to the regulations, to the extent that other exclusions are inapplicable.

15.6 Territorial scope

Q45. We are a UK payment institution – when will we need to make a passport notification?

You will need to make a notification if you intend to exercise passport rights either for the purposes of:

- establishment (for example, setting up a branch in another EEA State); or
- providing services in another EEA State.

As to the circumstances in which you may need to exercise these rights, this gives rise to issues of interpretation both under the PSD regulations and the local law of the EEA State in which you wish to do business. Our guidance below relates only to the PSD regulations and may differ from the approach in other EEA States. We cannot give guidance on the local law of other EEA States and you may therefore wish to take professional advice if you think your business is likely to be affected by these issues (for instance, if you are soliciting clients in other EEA States).

As regards the provision of payment services in other EEA States and passport notification, in our view the Commission Interpretative Communication (Freedom to provide services and the interest of the general good in the Second Banking Directive (97C 209/04)) provides a useful starting point, in particular because payment services form part of the BCD passport. On this basis, we would identify the following factors as being relevant to whether you need to make a passport notification.

Factors indicating the provision of payment services in another EEA State and the need for passport notification

- (i) The establishment of a physical presence (for example, offices) in another EEA State, for use by you, triggers the need for a branch notification.
- (ii) The appointment of an agent established in another EEA State is likely to amount to an exercise of a right of establishment where the agent (a) has a permanent mandate in relation to payment services, (b) is subject to your management and control and (c) is able to provide payment services on your behalf.

- (iii) The installation of an ATM in another EEA State, where the ATM is your only presence in that other EEA State, gives rise to the need for a services (and not an establishment) notification.

Actions which are not sufficient alone to constitute cross-border services into another EEA State and the need for passport notification

- (i) The act of executing direct debits/standing orders/credit transfers from the UK where the payee is located in another EEA State.
- (ii) The act of remitting money from the UK to a payee in another EEA State.
- (iii) The act of executing a payment transaction to a payee located in another EEA State upon receipt of an instruction from the payer received by e-mail, text, or other electronic means (for example, internet banking).
- (iv) Where you provide an execution service enabling your credit or debit cardholders to use their credit card/debit card within the territory of another EEA State, for example for the purposes of a hotel bill (see the services in PERG 15 Annex 2, paragraphs (c) and (d)).

Q46. We are a non-EEA payment institution providing payment services to UK customers from a location outside the EEA. Do we require authorisation or registration under the regulations?

No. When considering whether you fall within the scope of the regulations, our starting point is to consider whether a UK payment services provider would be providing cross-border services in analogous circumstances (for example, when it provides payment services to EEA customers from a location in the UK).

Accordingly, we would not generally expect a payment services provider incorporated and located outside the EEA to be within the scope of the regulations, if all it does is to provide internet-based and other services to UK customers from that location.

A non-EEA payment institution for these purposes would include firms incorporated in the Isle of Man or Channel Islands, both of which are outside the scope of the Payment Services Directive.

15.7 Transitional arrangements

Q47. We are a UK payment institution wishing to become an authorised payment institution – do we need to have applied for authorisation prior to 1 November 2009?

Not necessarily. Provided that you:

- are a body corporate; and
- lawfully provided payment services in the UK before 25 December 2007

you (and your UK agents including those appointed after 25 December 2007) can continue to provide those same payment services until 1 May 2011 (see regulation 122), without being either authorised or registered as an agent.

Your rights under the transitional arrangements in regulation 122 do not extend to passport rights. If you wish to exercise passport rights as a payment institution, you will first need to have applied for and been granted authorisation.

If you are also a “financial institution”, you may be able to take advantage of the separate transitional arrangements for these bodies. If you do so, the transitional arrangements under regulation 122 will not apply to you.

Q48. We are a UK financial institution to which the regulations apply – do we need to have applied for authorisation or registration prior to 1 November 2009?

Not necessarily. From 1 November 2009 to 25 December 2009, you will be deemed to be an authorised payment institution provided that you:

- were carrying on payment services prior to 25 December 2007; and
- met the conditions in article 24(1)(e) BCD (so your parent undertaking will need to be subject to consolidated supervision).

If you wish to continue being deemed to be authorised after 25 December 2009, you will need to have submitted the requisite information to us before 25 December 2009, in accordance with regulation 121(2), before 25 December 2009. This comprises information in relation to Schedule 2 paragraphs 1, 4, 7 to 9 and 12 to the regulations, including your programme of operations, procedures relating to safeguarding of funds, controllers and evidence of good repute and competence of directors and management. If we are satisfied

that you meet the required conditions in relation to these matters, you will be deemed to be an authorised payment institution and able to make passport notifications without the need to apply separately for authorisation.

An overview of the position of financial institutions and the transitional provisions in the PSD regulations is set out in PERG 15 Annex 1, Flowchart 2.

Q49. We are a UK payment institution which meets the conditions to be a “small payment institution” – do we need to have applied for registration prior to 1 November 2009?

Not necessarily. Provided that you were lawfully providing payment services in the UK before 25 December 2007 you do not need to be registered as a small payment institution, until 25 December 2010 (see regulation 123).

If you are also a “financial institution”, you may be able to take advantage of the separate transitional arrangements for these bodies. Likewise, you may be able to take advantage of the transitional arrangements in regulation 122 (see Q47). If you qualify for the transitional arrangements for financial institutions or those in regulation 122, you will not fall within the transitional regime for small payment institutions under regulation 123.

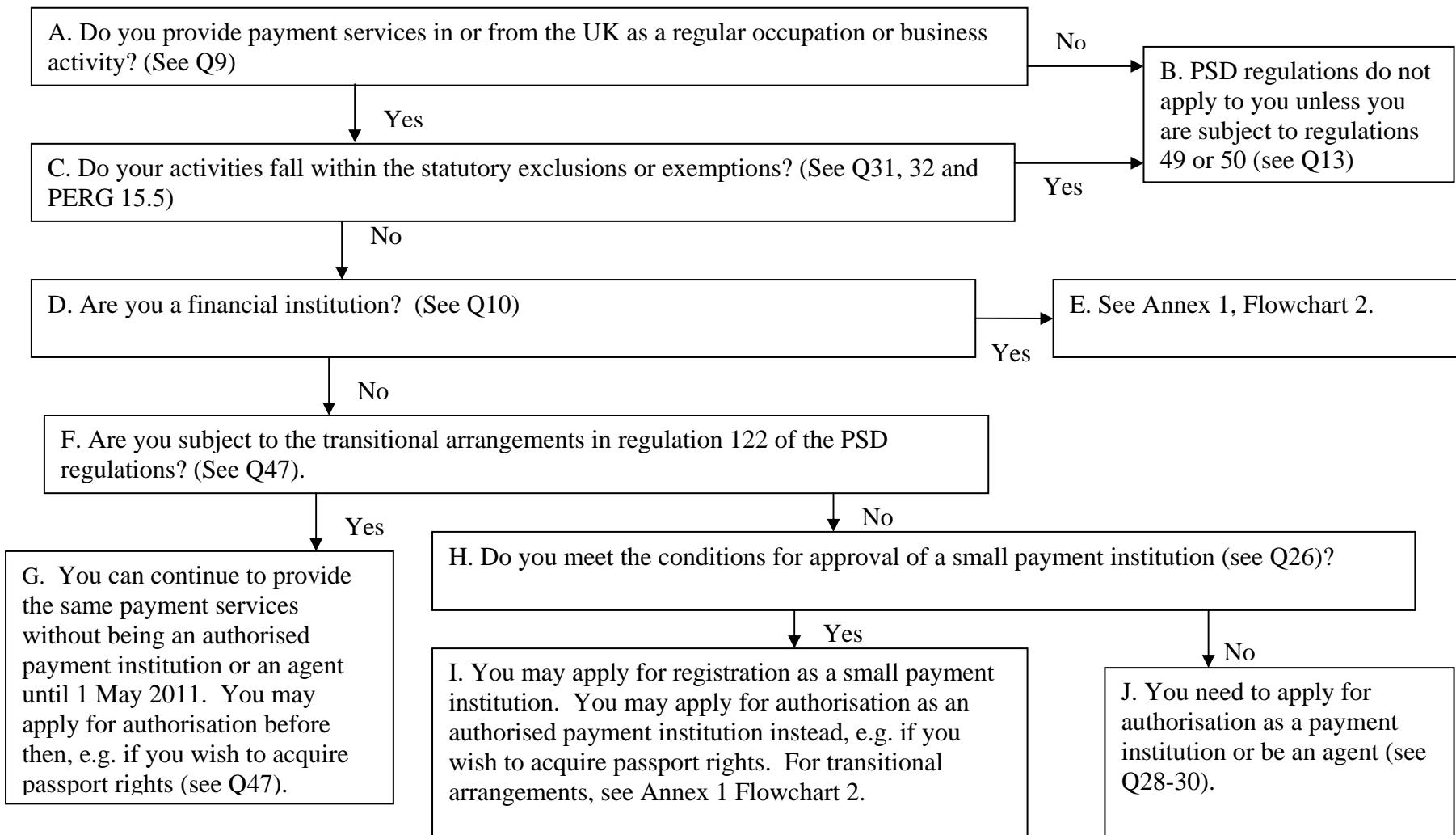
An overview of the position of small payment institutions under the transitional provisions in the PSD regulations is set out in PERG 15 Annex 1, Flowchart 2.

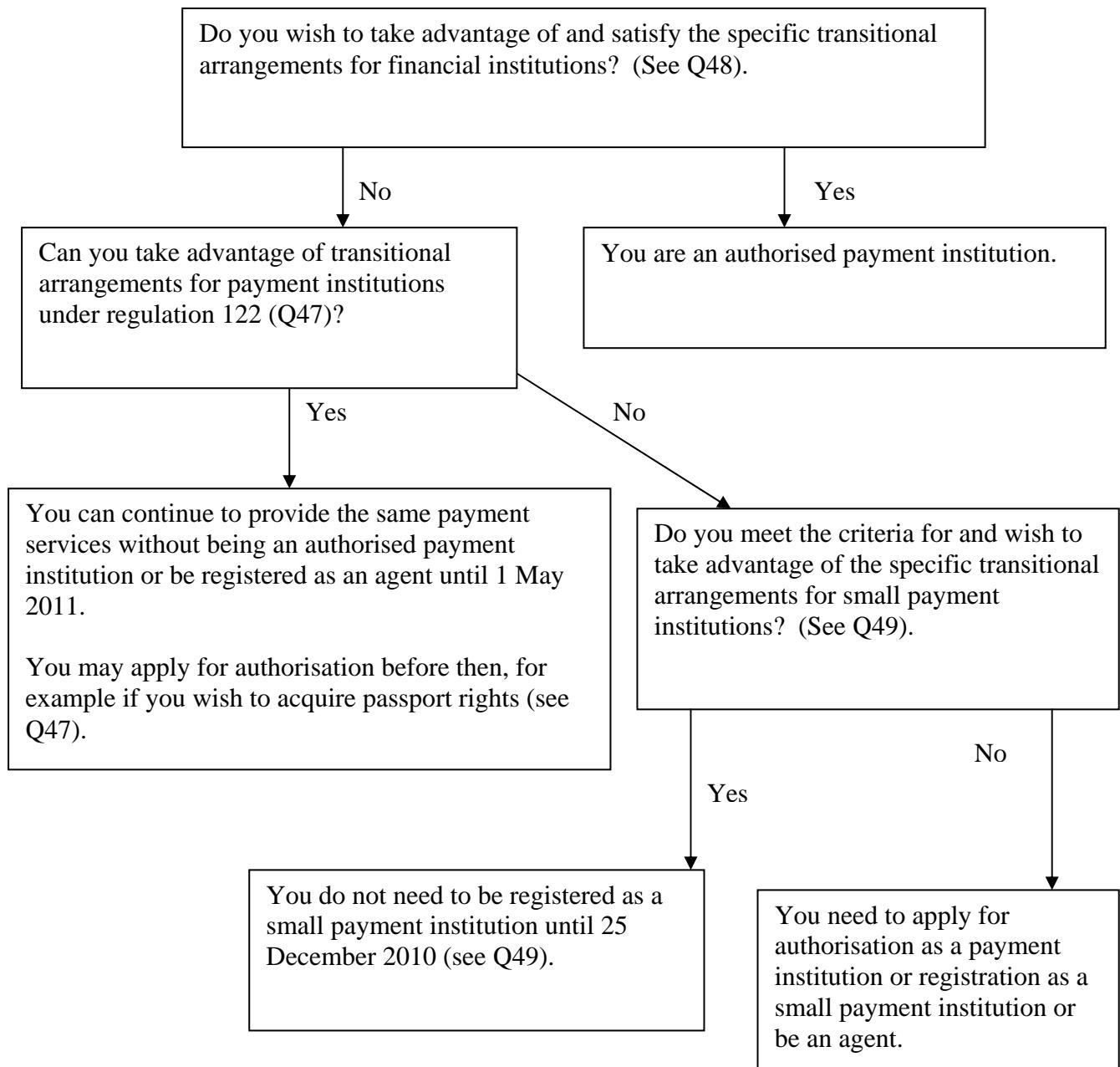
Q50. Is there a transitional regime in relation to conduct of business requirements under the regulations?

No. The conduct of business requirements under the regulations will apply from 1 November 2009.

ANNEX 1

Annex 1 provides an overview, using flowcharts, of the application of the PSD regulations to payment institutions. It does not apply to other payment services providers including *credit institutions, e-money issuers* or the Post Office Limited.

ANNEX 1**Flowchart 1 – Payment institutions established in the UK – do the PSD regulations apply to us?**

Flowchart 2 – PSD transitional arrangements

ANNEX 2**Payment Services in Schedule 1 Part 1 to the PSD regulations**

- (a) Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account
- (b) Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account
- (c) The execution of the following types of payment transaction –
 - (i) direct debits, including one-off direct debits;
 - (ii) payment transactions through a payment card or a similar device;
 - (iii) credit transfers, including standing orders
- (d) The execution of the following types of payment transaction where the funds are covered by a credit line for the payment user-
 - (i) direct debits, including one-off direct debits;
 - (ii) payment transactions executed through a payment card or a similar device;
 - (iii) credit transfers, including standing orders
- (e) Issuing payment instruments or acquiring payment transactions
- (f) Money remittance
- (g) The execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment user and the supplier of the goods or services

ANNEX 3

Schedule 1 Part 2 to the PSD regulations: Activities which do not constitute payment services

- (a) Payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention.
- (b) Payment transactions between the payer and the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee.
- (c) The professional physical transport of banknotes and coins, including their collection, processing and delivery.
- (d) Payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity.
- (e) Services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction.
- (f) Money exchange business consisting of cash-to-cash operations where the funds are not held on a payment account.
- (g) Payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee—
 - (i) paper cheques of any kind, including travellers' cheques;
 - (ii) bankers' drafts;
 - (iii) paper-based vouchers;
 - (iv) paper postal orders.
- (h) Payment transactions carried out within a payment or securities settlement system between payment services providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system.
- (i) Payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in subparagraph (h) or by investment firms, credit institutions, collective investment

undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments.

- (j) Services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, including—
 - (i) the processing and storage of data;
 - (ii) trust and privacy protection services;
 - (iii) data and entity authentication;
 - (iv) information technology;
 - (v) communication network provision; and
 - (vi) the provision and maintenance of terminals and devices used for payment services.
- (k) Services based on instruments that can be used to acquire goods or services only—
 - (i) in or on the issuer's premises; or
 - (ii) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services,

and for these purposes the “issuer” is the person who issues the instrument in question.
- (l) Payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.
- (m) Payment transactions carried out between payment service providers, or their agents or branches, for their own account.
- (n) Payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group.
- (o) Services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not party to the framework contract

with the customer withdrawing money from a payment account, where no other payment service is conducted by the provider.

SUPERVISION MANUAL (CONTROLLERS) (AMENDMENT) INSTRUMENT 2009**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 178 (Obligation to notify the Authority: acquisitions of control); and
 - (5) section 191D (Obligation to notify the Authority: dispositions of control).
- 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 28 March 2009.

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
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex D

Citation

- E. This instrument may be cited as the Supervision Manual (Controllers) (Amendment) Instrument 2009

By order of the Board
26 March 2009

Annex A

Amendments to the Glossary of definitions

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

section 178 notice

(in accordance with section 178(3) of the Act) a notice given to the FSA under section 178 of the Act.

control

...

(3) (except in (2)) (in accordance with section 182 of the Act) a controller (“A”) (whether acting alone or in concert) increases control over a firm (“B”) when:

(a) the percentage of shares A holds in B or a parent undertaking (“P”) of B increases by any of the following steps:

- (i) from less than 20% to 20% or more;
- (ii) from less than 30% to 30% or more;
- (iii) from less than 50% to 50% or more;

(b) the percentage of voting power A holds in B or P increases by any of the steps mentioned above; or

(c) A becomes a parent undertaking of B.

(4) (except in (2)) (in accordance with section 183 of the Act) a controller (“A”) (whether alone or acting in concert) reduces control over a firm (“B”) whenever:

(a) the percentage of shares which A holds in B or a parent undertaking (“P”) of B decreases by any of the following steps:

- (i) from 50% or more to less than 50%;
- (ii) from 30% or more to less than 30%;
- (iii) from 20% or more to less than 20%;

(b) the percentage of voting power which A holds in B or P decreases by any of the steps mentioned above; or

(c) A ceases to be a parent undertaking of B.

(5) (except in (2)) (in accordance with section 183 of the Act) a controller (“A”) (whether acting alone or in concert) ceases to have control over a firm (“B”) if A ceases to hold any of the following:

(a) 10% or more of the shares in B or a parent undertaking (“P”) of B;

(b) 10% or more of the *voting power* in B or P;

(c) shares or *voting power* in B or in P as a result of which A is able to exercise significant influence over the management of B.

(6) (for the purposes of the calculations in (3) to (5)) the holding of shares or *voting power* by a person ("A1") includes any shares or *voting power* held by another ("A2") if A1 and A2 are acting in concert.

controller

~~(1) (in relation to a firm or other *undertaking* ("A")) other than an UK insurance intermediary) (in accordance with section 422 of the Act (*Controller*)) a person who falls within any of the following cases; the cases are where the person:⁵~~

~~(a) holds 10% or more of the shares in A; or~~

~~(b) is able to exercise significant influence over the management of A through his shareholding in A; or~~

~~(c) holds 10% or more of the shares in a parent *undertaking* ("P") of A; or~~

~~(d) is able to exercise significant influence over the management of P through his shareholding in P; or~~

~~(e) is entitled to exercise, or control the exercise of, 10% or more of the *voting power* in A; or~~

~~(f) is able to exercise significant influence over the management of A through his *voting power* in A; or~~

~~(g) is entitled to exercise, or control the exercise of, 10% or more of the *voting power* in P; or~~

~~(h) is able to exercise significant influence over the management of P through his *voting power* in P;~~

~~(2) (in relation to an UK insurance intermediary) (in accordance with article 17 of the Insurance Intermediaries Order) a person who would fall within (1) if 20% were substituted for 10%;⁵ in (1) and (2) of this definition:⁵~~

~~(i) "the person" means:~~

~~(A) the person; or~~

~~(B) any of the person's associates; or~~

~~(C) the person and any of his associates;~~

~~(ii) "associate", in relation to a person ("H") holding shares in an *undertaking* ("C") or entitled to exercise or control the exercise of~~

~~voting power~~ in relation to another *undertaking* ("D"), means:

- (A) the spouse or civil partner of H;
 - (B) a child or stepchild of H (if under 18);
 - (C) the trustee of any settlement under which H has a life interest in possession (or in Scotland a life interest);
 - (D) an *undertaking* of which H is a director;
 - (E) a person who is an employee or partner of H;
 - (F) if H is an *undertaking*:
 - (I) a director of H;
 - (II) a subsidiary *undertaking* of H;
 - (III) a director or employee of such a subsidiary *undertaking*; and
 - (G) if H has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in C or D or under which they undertake to act together in exercising their *voting power* in relation to C or D, that other person;
 - (iii) "settlement" includes any disposition or arrangement under which property is held on trust (or subject to a comparable obligation);
 - (iv) "shares" means:
 - (A) in relation to an *undertaking* with a share capital, allotted shares;
 - (B) in relation to an *undertaking* with capital but no share capital, rights to share in the capital of the *undertaking*;
 - (C) in relation to an *undertaking* without capital, interests:
 - (I) conferring any right to share in the profits, or liability to contribute to the losses, of the *undertaking*, or
 - (II) giving rise to any obligation to contribute to the debts or expenses of the *undertaking* in the event of a winding up.
- (1) (in relation to a *firm* or other *undertaking* ("B"), other than a *non-directive firm*), a person ("A") who (whether acting alone or in concert):
 - (a) holds 10% or more of the *shares* in B or in a *parent*

undertaking (“P”) of B;

(b) holds 10% or more of the voting power in B or in P; or

(c) holds shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(2) (in relation to a non-directive firm (“B”)) a person (“A”) who (whether acting alone or in concert):

(a) holds 20% or more of the shares in B or in a parent undertaking (“P”) of B;

(b) holds 20% or more of the voting power in B or in P; or

(c) holds shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(3) for the purposes of calculations relating to (1) and (2), the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

(4) shares and voting power that a person holds in a firm (“B”) or in a parent undertaking of B (“P”) are disregarded for the purposes of determining control in the following circumstances:

(a) shares held for the sole purposes of clearing and settling within a short settlement cycle;

(b) shares held by a custodian or its nominee in its custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power attached to the shares in accordance with instructions given in writing;

(c) shares representing no more than 5% of the total voting power in B or P held by an investment firm, provided that:

(i) it holds the shares in the capacity of a market maker (as defined in article 4.1(8) of MIFID);

(ii) it is authorised by its Home State regulator under MIFID; and

(ii) it does not intervene in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price;

(d) shares held by a credit institution or investment firm in its trading book are disregarded, provided that:

(i) the shares represent no more than 5% of the total

voting power in B or P; and

(ii) the credit institution or investment firm ensures that the voting power is not used to intervene in the management of B or P;

(e) shares held by a credit institution or an investment firm are disregarded, provided that:

(i) the shares are held as a result of performing the investment services and activities of:

(A) underwriting share issues; or

(B) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of MIFID; and

(ii) the credit institution or investment firm:

(A) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and

(B) retains the holding for a period of less than one year;

(f) where a management company and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other;

(g) but (f) does not apply if the management company:

(i) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;

(ii) has no discretion to exercise the voting power attached to such holdings; and

(iii) may only exercise the voting power in relation to such holdings under direct or indirect instruction from:

(A) its parent undertaking; or

(B) an undertaking in respect of which of the parent undertaking is a controller;

(h) where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm:

- (i) has permission to provide *portfolio management*;
- (ii) exercises its *voting power* independently from the *parent undertaking*; and
- (iii) may only exercise the *voting power* under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

credit institution

...

(2) (in *REC* and in *SUP 11 (Controllers and close links)* and *SUP 16 (Reporting requirements)*):

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

non-directive firm

(in *SUP 11 (Controllers and close links)* and *SUP 16 (Reporting requirements)*) (in accordance with the *Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)*) a *UK domestic firm* other than:

- (a) a credit institution authorised under the *Banking Consolidation Directive*;
- (b) an investment firm authorised under *MIFID*;
- (c) a management company as defined in article 1a.2 of the *UCITS Directive*, authorised under that directive;
- (d) an undertaking pursuing the activity of direct insurance within the meaning of:
 - (i) article 2 of the *Consolidated Life Directive*, authorised under that directive; or
 - (ii) article 1 of the *First Non-Life Directive*, authorised under that directive;
- (d) an undertaking pursuing the activity of reinsurance within the meaning of article 2.1 (a) of the *Reinsurance Directive*, authorised under that directive.

restriction notice

a notice served under section 191B of the *Act*.

...

shares

(1) (except in COLL, LR , DTR and REC, SUP 11 (Controllers and close links) and SUP 16 (Reporting requirements)) the *investment*, specified in article 76 of the *Regulated Activities Order* (Shares etc), which is in summary: a share or stock in the share capital of:

- (a) any *body corporate* (wherever incorporated);
- (b) any unincorporated body constituted under the law of a country or territory outside the *United Kingdom*.

...

(5) (in SUP 11 (Controllers and close links) and SUP 16 (Reporting requirements)) (in accordance with section 422 of the Act):

- (a) in relation to an *undertaking* with share capital, allotted shares;
- (b) in relation to an *undertaking* with capital but no share capital, rights to share in the capital of the *undertaking*;
- (c) in relation to an *undertaking* without capital, interests:
 - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the *undertaking*; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the *undertaking* in the event of a winding up.

voting power

~~(in relation to an *undertaking*) (in accordance with section 422(7) of the Act (Controller)) voting power exercisable at a general meeting of the *undertaking* or, if the *undertaking* does not have general meetings at which matters are decided by the exercise of voting rights, the right under the constitution of the *undertaking* to direct the overall policy of the *undertaking* or to alter the terms of its constitution.~~

(in SUP 11 (Controllers and close links) and SUP 16 (Reporting requirements)) (in accordance with section 422 of the Act):

- (a) includes, in relation to a *person* ("H"):
 - (i) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the *undertaking* in question;
 - (ii) voting power held by a third party under an

agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;

(iii) voting power attaching to *shares* which are lodged as collateral with H, provided that H controls the voting power and declares an intention to exercise it;

(iv) voting power attaching to *shares* in which H has a life interest;

(v) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by a subsidiary *undertaking* of H;

(vi) voting power attaching to *shares* deposited with H which H has discretion to exercise in the absence of specific instructions from the shareholders;

(vii) voting power held in the name of a third party on behalf of H;

(viii) voting power which H may exercise as a proxy where H has discretion about the exercise of the voting power in the absence of specific instructions from the shareholders; and

(b) in relation to an *undertaking* which does not have general meetings at which matters are decided by the exercise of voting rights, the right under the constitution of the *undertaking* to direct the overall policy of the *undertaking* or alter the terms of its constitution.

Annex B

Amendments to the Supervision manual (SUP)

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

Controllers and close links

11.1 Application

...

11.1.2 R Applicable sections (see SUP 11.1.1R)

	Category of firm	Applicable sections
(1)	A <i>UK domestic firm</i> other than a <i>building society</i> , a <i>non – directive friendly society</i> or a <i>UK insurance intermediary non-directive firm</i>	All except <i>SUP 11.3, SUP 11.4.2AR and SUP 11.4.4 R</i>
(1A)	A <i>building society</i>	(a) In the case of an exempt change in <i>control</i> (see Note), <i>SUP 11.1, SUP 11.2 and SUP 11.9</i> (b) In any other case, all except <i>SUP 11.3, SUP 11.4.2AR and SUP 11.4.4R</i>
(2)	A <i>non-directive friendly society</i>	<i>SUP 11.1, SUP 11.2, and SUP 11.9</i>
(2A)	A <i>UK insurance intermediary non-directive firm</i>	all except <i>SUP 11.3, SUP 11.4.2R</i> <i>SUP 11.4.3G and SUP 11.4.4R</i>
(3)	An <i>overseas firm</i>	All except <i>SUP 11.3, SUP 11.4.2R , SUP 11.4.2AR, SUP 11.4.3G, SUP 11.4.9G, SUP 11.5.8G to SUP 11.5.10G, SUP 11.6.2R, SUP 11.6.3R, SUP 11.6.6G, SUP 11.7</i>
Note	In row (1A), a change in <i>control</i> is exempt if the <i>controller</i> or proposed <i>controller</i> is exempt from any obligation to notify the FSA under Part XII of the Act (<u>Control Notices of acquisitions of control over Authorised Persons UK authorised persons</u>) because of The Financial Services and Markets Act 2000 (Controllers) (Exemption) (No 2) Order 2001 2009 (SI 2001/3338 2009/774). (See SUP	

	11.3.2AG).
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...

Application to controllers

- 11.1.4 D *SUP 11.1, SUP 11.2.1G, SUP 41.33 11.3 and SUP 11.7 apply to a controller or a proposed controller of a UK domestic firm not listed in SUP 11.1.1R(1) to SUP 11.1.1R(6).*

...

11.2 Purpose

- 11.2.1 G Part XII of the *Act* (Control Notices of acquisitions of control over UK authorised persons) places an obligation on the *controllers* and proposed *controllers* of those *UK domestic firms* not listed in *SUP 11.1.1R(1)* to *SUP 11.1.1R(6)* to notify the *FSA* of changes in *control*, including acquiring, increasing or reducing control or ceasing to have control over a firm. Furthermore, those *persons* are required to obtain the *FSA's approval* before becoming a *controller* or increasing the level of control held (in certain circumstances) increasing their control over a firm. *SUP 11.3* is intended to assist those *persons* in complying with their obligations under Part XII of the *Act* and also sets out the information which a *controller* or proposed *controller* must provide to the *FSA* before becoming a *controller* or increasing the level of *control* held.
- 11.2.2 G The *rules* in *SUP 11.4* to *SUP 11.6* are aimed at ensuring that the *FSA* receives information it needs from *firms* to assist the *FSA* with its responsibility to monitor and, in some cases, give prior approval to *firms' controllers*.
- 11.2.2A G ~~Part XII of the Act does not place an obligation on a controller of a UK insurance intermediary to notify the FSA where it becomes or ceases to be a parent undertaking. Nevertheless, the rule in SUP 11.4.2R(2) requires the UK insurance intermediary notify the FSA of parent undertakings so that the FSA can monitor the firm's continuing satisfaction of the threshold conditions, which includes consideration of its controllers and parent undertakings (see COND). [deleted]~~

...

- 11.2.8 G An event described in *SUP 11.4.2R(1) to SUP 11.4.2 R(4) [and SUP 11.4.2AR(1) and SUP 11.4.2AR(2)]*, *SUP 11.4.2AR* and *SUP 11.4.4R* is referred to in this chapter as a "change in *control*".

11.3 Requirements on controllers or proposed controllers under the Act

- 11.3.1 G The notification requirements are set out in sections 178, 179, 191D and 191E of the Act and holdings which may be disregarded are set out in section 184 of

the Act. A summary of the notification requirements described in this section is given in SUP 11 Annex 1.

Requirement to notify a proposed change in *control*

- 11.3.2 G Sections 178(1) and ~~190(1)~~ 191D(1) of the *Act* require a *person* (whether or not he is an *authorised person*) to notify the FSA in writing if he ~~proposes decides to take a step which would result in his acquiring control or increasing or reducing acquire, increase or reduce his control or to cease to have control in a UK domestic firm in a way described in SUP 11.4.2 R (1) to SUP 11.4.2R (4), or acquiring or reducing his control in a way described in SUP 11.4.2 R (1) and (2).~~ Failure to notify is an offence under section 191F(1) of the *Act* (Offences under this Part).
- 11.3.2A G The Treasury have made the following exemptions from the obligations under section 178 of the Act:
- (1) *controllers* and potential *controllers* of *non-directive friendly societies* are exempt from the obligation to notify a change in *control* (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2001 2009 (SI 2001/3338 2009/774));
 - (2) *controllers* and potential *controllers* of *building societies* are exempt from the obligation to notify a change in *control* unless the change involves the acquisition of a holding of a specified percentage of a *building society*'s capital or the increase or reduction by a specified percentage of a holding of a *building society*'s capital (The Financial Services and Markets Act 2000 (Controllers) (Exemption) ~~(No 2)~~ Order 2001 2009 (SI 2001/3338 2009/774)). The "capital" of a *building society* for these purposes consists of:
 - (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which have been issued by the society (in practice, likely to be permanent interest bearing shares (PIBS)); and
 - (b) the general reserves of ~~the that~~ *building society*;
 - (3) *potential controllers of non-directive firms ("A") are exempt from the obligation to notify a change in control unless the change results in the potential controller holding:*
 - (a) *20% or more of the shares in A or in a parent undertaking of A ("P");*
 - (b) *20% or more of the voting power in A or P; or*
 - (c) *shares or voting power in A or P as a result of which the controller is able to exercise significant influence over the management of A;*

or where the change in control over A would lead to the controller ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).

11.3.3 G [deleted]

Approval required before acquiring or increasing control

11.3.4 G If a person proposes decides to acquire control or increase his control over a UK domestic firm in a way described in SUP 11.4.2R (1) to (4) or acquire control in a way described in SUP 11.4.2AR(1), he must obtain the FSA's approval before doing so. ~~Failure to obtain approval Making an acquisition before the FSA has approved of it~~ is an offence under section 191F(3) of the Act (Offences under this Part). ~~The FSA has up to three months to consider whether to approve such a change in control: see SUP 11.7 for guidance on the approval procedures.~~

11.3.5 G The FSA's approval is not required before a controller reduces his control or ceases to have control over a UK domestic firm.

Pre-notification and approval for fund managers

11.3.5A G The FSA recognises that firms acting as investment managers may have difficulties in complying with the prior notification requirements in sections 178(1) and 191D of the Act as a result of acquiring or disposing of listed shares in the course of that fund management activity. To ameliorate these difficulties, the FSA may accept pre-notification of proposed changes in control, made in accordance with SUP 11.3.5BD, and may grant approval of such changes for a period lasting up to a year.

11.3.5B D The FSA may treat as notice given in accordance with sections 178(1) and 191D of the Act a written notification from a firm which contains the following statements:

- (1) that the firm proposes to acquire and/or dispose of control, on one or more occasions, of any UK domestic firm whose shares or those of its ultimate parent undertaking are, at the time of the acquisition or disposal of control, listed or which are admitted to listing on a designated investment exchange;
- (2) that any such acquisitions and/or disposals of control will occur only in the course of the firm's business as an investment manager; and
- (3) that the level of control the firm so acquires in the pre-approval period will at all times remain less than 20%; and
- (4) that the firm will not exercise any influence over the UK domestic firm in which the shares are held, other than by exercising its voting rights as a shareholder or by exercising influence intended to promote generally accepted principles of good corporate governance.

11.3.5C G Where the FSA approves changes in *control* proposed in a notice given under SUP 11.3.5BD:

- (1) the *controller* remains subject to the requirement to notify the FSA when a change in *control* actually occurs; and
- (2) the notification of change in *control* should be made no later than five *business days* after the end of each *month* and set out all changes in the *controller's* control position for each *UK domestic firm* for the *month* in question.

At that stage, the FSA may seek from the *controller* further information, ~~including that which would have been supplied under SUP 11.3.7D(2)~~.

Change in control without taking any step

11.3.6 G ~~If a change in control occurs without the person himself having taken any step, he must notify the FSA within 14 days of becoming aware of the change (sections 178(2) and 190(2) of the Act). Failure to notify is an offence under section 191(2) of the Act.~~ [deleted]

Custodians obtaining control

11.3.6A G ~~The FSA considers that a custodian or its wholly owned subsidiary nominee company, acting only in that capacity, does not itself take any step for the purposes of sections 178(2) and 190(2) of the Act when it becomes the controller of a UK domestic firm, its control of a UK domestic firm changes or it ceases to be the controller of a UK domestic firm as a result of acquiring or disposing of custody assets in the form of shares in accordance with its client's instructions.~~ [deleted]

11.3.6B G ~~For the purposes of sections 178(2) and 190(2) of the Act and where there has been more than one change in control for each UK domestic firm in a fortnightly period, a custodian or its wholly owned subsidiary nominee company to which SUP 11.3.6A G applies need only notify the FSA of its final control position for each UK domestic firm for that fortnight, so long as it also supplies the highest control position for each UK domestic firm it obtained during that period.~~ [deleted]

11.3.6C G ~~Reporting by a custodian or its wholly owned subsidiary nominee company does not relieve any other person with an interest in any custody assets from its control notification responsibilities under Part XII of the Act.~~ [deleted]

Form Forms of notification notifications when acquiring or increasing control

11.3.7 D A ~~notification ("notice of control") section 178 notice~~ given to the FSA by a person who is acquiring *control* or increasing *control* over a *UK domestic firm*, in a way described in SUP 11.4.2R, or acquiring *control* in a way described in SUP 11.4.2AR(1), must: ~~contain the information and be accompanied by such documents as are required by the controllers form approved by the FSA for the relevant application.~~

- (1) where the controller or a proposed controller is not an authorised person, contain the information required in the relevant controllers form;
 - (1A) where the controller is a *custodian* or a *nominee company* notifying under SUP 11.3.6AG, comply with that direction;
 - (2) where the controller or proposed controller is any other authorised person, contain the information required in the relevant controllers form; and
 - (3) if a notification is not submitted on the relevant form specified in (1) or (2), provide reasons why that form was not used.
- 11.3.7A G The controllers forms approved by the FSA may be found at the FSA's website (<http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/Control/index.shtml>).
- 11.3.8 D [deleted]
- 11.3.9 D If a relevant controllers form, or an Application to perform controlled functions under the approved persons regime (the relevant Form A in SUP 10 Annex 4) in respect of a governing function, has already been submitted to the FSA in relation to a relevant individual, then the information in that form need not be submitted to the FSA as long as details of any changes in the information previously submitted, or confirmation that there are none, is submitted. [deleted]
- 11.3.10 D (1) A person who has submitted a notification a *section 178 notice* under SUP 11.3.7D must notify the FSA immediately if he becomes aware, or has information that reasonably suggests, that he has or may have provided the FSA with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed, in a material particular. The notification must include:
 - (a) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
 - (b) an explanation why such information was or may have been provided; and
 - (c) the correct information.
 (2) If the information in (1)(c) cannot be submitted with the notification *section 178 notice* (because it is not immediately available), it must instead be submitted as soon as possible afterwards.

 (3) The requirement in (1) ceases if the change in control occurs or will not take place.
- 11.3.11 G The FSA, for administrative reasons, expects notifications within SUP 11.3.7D to be given on the relevant controllers form as appropriate. If notifications are

~~not made on these forms the applicant must inform the FSA of the reasons for not using them. The FSA will inform a section 178 notice giver as soon as reasonably practicable if it considers the section 178 notice to be incomplete.~~

- 11.3.12 G ~~If a controller or proposed controller considers that the requirements in SUP 11.3.7 D to SUP 11.3.9 D are not appropriate to his circumstances (for example, if control is temporary), he should consult the FSA. The FSA has power, under section 182(3) 179(3) of the Act (Notification Requirements for section 178 notices), to amend vary or waive those these requirements in relation to a section 178 notice in particular cases if it considers it appropriate to do so.~~
- 11.3.13 G ~~The Act provides that the FSA may request any additional information or documentation from the controller or proposed controller that it reasonably requires in order to determine what action it is to take in response to the notification. A controller or proposed controller which is an authorised person is required to submit less information under SUP 11.3.7D than other persons and consequently the FSA may ask for confirmation of details already held or any additional information required under SUP 11.5.1R which it considers appropriate.~~
- 11.3.14 G ~~Pursuant to section 188 of the Act (Assessment: consultation with EC competent authorities). The the FSA is obliged to consult regulatory authorities in other EEA States any appropriate Home State regulator 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 MiFID investment firm, a BCD credit institution, an EEA insure, 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. making a determination under section 185 of the Act (Assessment: general).~~

Form of notification Notification when reducing control

- 11.3.15 G ~~A notification given to the FSA by a person who is reducing his control over a UK domestic firm, in a way described SUP 11.4.2R (1) to (4), must, in accordance with section 190(4) of the Act (Notification):~~
- (1) ~~be in writing; and~~
 - (2) ~~provide details of the extent of control (if any) which the controller will have following the change in control. [deleted]~~
- 11.3.15A D ~~A notice given to the FSA by a person who is reducing or ceasing to have control over a UK domestic firm, as set out in SUP 11.4.2R or SUP 11.4.2AR must:~~

- (1) be in writing; and
- (2) provide details of the extent of control (if any) which the controller will have following the change in control.

Notification when change in control occurs

- 11.3.16 G ~~A person who is under a duty to notify the FSA of a proposed change in control is also required to notify the FSA when the relevant change in control has occurred (sections 178(3) and 190(3) of the Act).~~ [deleted]

Joint and shared notifications

- 11.3.17 G Notifications to the FSA by proposed controllers and controllers under Part XII of the Act may be made on a joint or shared basis outlined in SUP 11.5.8G to SUP 11.5.10G.

11.4 Requirements on firms

...

Requirement to notify a change in control

- 11.4.2 R A UK domestic firm, other than a ~~UK insurance intermediary non-directive firm~~, must notify the FSA of any of the following events concerning the firm:
- (1) a person acquiring control or ceasing to have control;
 - (2) an existing controller increasing acquiring an additional kind of control or ceasing to have a kind of control;
 - (3) an existing controller reducing increasing or decreasing a kind of control which he already has so that the percentage of shares or voting power concerned becomes or ceases to be equal to or greater than 20, 33 or 50;
 - (4) an existing controller becoming or ceasing to be a parent undertaking have control.

- 11.4.2A R A ~~UK insurance intermediary non-directive firm~~ must notify the FSA of any of the following events concerning the firm:

- (1) a person acquiring control becoming controller of the firm; or
- (2) in relation to an existing controller: ceasing to be controller of the firm.
 - (a) the percentage of shares held in the firm decreasing from 20% or more to less than 20%; or

- (b) the percentage of *shares* held in a *parent undertaking* of the *firm* decreasing from 20% or more to less than 20%; or
 - (c) percentage of *voting power* which it is entitled to exercise, or control the exercise of, in the *firm* decreasing from 20% or more to less than 20%; or
 - (d) the percentage of *voting power* which it is entitled to exercise, or control the exercise of, in a *parent undertaking* of the *firm* decreasing from 20% or more to less than 20%;
- (3) an existing *controller* becoming or ceasing to be a *parent undertaking*.
- 11.4.3 G ~~SUP 11 Annex 2 gives examples of the circumstances in which a notification in accordance with SUP 11.4.2R is required.~~ [deleted]
- 11.4.4 R An *overseas firm* must notify the FSA if a *person* becomes a *controller* of the *firm*, increases or reduces *control* over the *firm* or ceases to have *control* over the *firm* of any of the following events concerning the *firm*:
- (1) a *person* acquiring *control* or ceasing to have *control*;
 - (2) an existing *controller* becoming or ceasing to be a *parent undertaking*.
- 11.4.5 G If there is uncertainty whether a particular relationship constitutes *control*, it may be appropriate for the *firm* or *controller* or proposed *controller* to ask the FSA for individual *guidance* (see SUP 9) and to obtain its own legal advice. For example, if the *control* is to be held through a trust, then certain trustees, beneficiaries and other parties may qualify as *controllers* for the purposes of the Act and this chapter. Furthermore, a *person* may qualify as a *controller* if he is able to exercise 10%. (20% if the *firm* is a UK insurance intermediary) or more of the *voting power* at a *firm's* general meeting as a result of the ability to exercise proxy votes. [deleted]
- ...

Content and timing of the notification

- 11.4.7 R The notification by a *firm* under SUP 11.4.2R, SUP 11.4.2AR or SUP 11.4.4R must:
- ...
- (3) be made:
- (a) as soon as the *firm* becomes aware that a *person* is proposing to take a step that would result in the event concerned, whether alone or acting in concert, has decided to acquire *control* or to increase or reduce *control*; or
 - (b) if the event change in *control* takes place without the knowledge of the *firm*, within 14 days of the *firm* becoming aware of the

change in *control* concerned.

- 11.4.8 G *Principle 11 requires firms to be open and cooperative with the FSA. A firm should discuss with the FSA, at the earliest opportunity, any prospective changes of which it is aware, in controllers' a controller's or proposed controllers' controller's shareholdings or voting power (if the change is material). These discussions may take place before the formal notification requirement in SUP 11.4.2R, SUP 11.4.2AR or SUP 11.4.4R arises. (See also SUP 11.3.2G).* As a minimum, the FSA considers that such discussions should take place before a person:
- (1) enters into any formal agreement in respect of the purchase of shares or a proposed acquisition or merger which would result in a change in *control* (whether or not the agreement is conditional upon any matter, including the FSA's approval); or
 - (2) purchases any *share options, warrants* or other financial instruments, the exercise of which would result in the person acquiring *control* or any other change in *control*.
- 11.4.9 G The ~~obligation obligations~~ in SUP 11.4.2R and SUP 11.4.2AR(1) and SUP 11.4.2AR(2) applies apply whether or not the controller himself has given or intends to give a notification, in accordance with his obligations under the Act.
- ...

11.5 Form of notification Notifications by firms

- 11.5.1 R Information to be submitted by the firm (see SUP 11.4.7R(2)(a))

(1)	The name of the <i>firm</i> ;
(2)	the name of the controller or proposed controller and, if it is a body corporate and is not an authorised person, the names of its directors and its controllers;
(3)	a description of the proposed event including the shareholding and voting power of the person concerned, both before and after the proposed event change in control; and
(4)	any other information of which the FSA would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the Act (see SUP 11.7.5 G) and any relevant supporting documentation.

- 11.5.3 G ~~In determining what the FSA would reasonably expect notice of in accordance with row (4) in SUP 11.5.1R, a firm should have regard, in particular, to the following matters to the extent that the firm is aware of them:~~

- (1) whether the *controller* intends to make any significant changes to the firm's or firms' regulated activities, business plan or strategy as a result of the change in control;
- (2) whether the *controller* intends any restructuring either in terms of the legal form of the firm(s) or in its or their borrowings, capital restructuring or financing arrangements;
- (3) whether the FSA is obliged to consult with regulatory authorities in other EEA States (see SUP 11.3.14G);
- (4) in the case of a share acquisition or similar, how it is to be financed;
- (5) whether the *controller* has any interests which may conflict with its role as controller of the UK domestic firm.

Firms are also reminded of the circumstances set out in SUP 15.3.8G (Communication with the FSA in accordance with Principle 11) which may arise on a change in control and which should also be notified. [deleted]

...

- 11.5.5 G If a *controller* proposes any significant changes to the firm, for instance to its regulated activities, business plan or strategy, the firm may be requested to provide a business plan (see SUP 2: Information gathering by the FSA on its own initiative). If an *insurer* comes under the control of a new parent undertaking, such a business plan would be a scheme of operations in accordance with SUP App 2. [deleted]
- 11.5.6 G The FSA may request the firm to provide additional information (see SUP 2 (Information gathering by the FSA on its own initiative)). In determining any additional information requirements, the FSA will have regard to the supervision being exercised over the firm by any overseas regulators. [deleted]

...

Joint and shared notifications

- 11.5.8 G A firm and its controller or proposed controller may discharge an obligation to notify the FSA by submitting a single joint notification section 178 notice containing the information required from the firm and the controller or proposed controller. In this case, the relevant controllers form section 178 notice may be used to submit a notification on behalf of both the firm and the controller or proposed controller.
- 11.5.9 G If a person is proposing a change in control over more than one firm within a group, then the controller or proposed controller may submit a single notification section 178 notice in respect of all those firms. The notification section 178 notice should contain all the required information as if separate notifications had been made, but information and documentation need not be duplicated.

11.5.10 G When an event occurs (for example, a *group* restructuring or a merger) as a result of which:

- (1) more than one *firm* in a *group* would undergo a change in *control*; or
- (2) a single *firm* would experience more than one change in *control*;

then, to avoid duplication of documentation, all the *firms* and their *controllers* or proposed *controllers* may discharge their respective obligations to notify the FSA by submitting a single ~~notification section 178 notice~~ containing one set of information.

11.6 Subsequent notification requirements by firms

Changes in the information provided to the FSA

...

11.6.2 R After submitting a ~~notification a section 178 notice~~ under SUP 11.4.2R or SUP 11.4.2AR(1) and SUP 11.4.2AR(2) ~~SUP 11.4.2AR~~ and until the change in *control* occurs (or is no longer to take place), SUP 15.6.4R and SUP 15.6.5R apply to a *UK domestic firm* in relation to any information its *controller* or proposed *controller* provided to the FSA under SUP 11.5.1R or SUP 11.3.7D .

...

11.6.6 G ~~A notification under SUP 11.6.4R may be given jointly with the notification of the controller under SUP 11.3.16G.~~ [deleted]

11.7 Acquisition or increase of control: assessment approval procedures process and criteria

11.7.1 G The ~~assessment approval procedures are summarised in SUP 11 Annex 3~~ process and the assessment criteria are set out in sections 185 to 191 of the *Act*.

Approval with or without conditions

11.7.2 G If the FSA decides to approve a proposed acquisition or increase of *control* ~~unconditionally, it must give an 'approval notice' without delay (section 184(1) of the Act). Section 191A deals with the procedure the FSA must follow where there has been a failure to notify or a default.~~

11.7.3 G ~~Alternatively, the FSA may decide to approve the proposed acquisition or increase of control subject to such conditions as it considers appropriate, having regard to the FSA's duty to ensure that the firm concerned will satisfy, and continue to satisfy, the threshold conditions (section 185 of the Act). The FSA may serve restriction notices in certain circumstances in accordance with~~

section 191B of the Act.

- (1) ~~If the FSA proposes to approve subject to conditions, it must give a warning notice.~~
- (2) ~~If the FSA decides to proceed to approve subject to conditions, it must give a decision notice.~~

- 11.7.4 G ~~A notice which approves a change of control (with or without conditions) is effective only for a limited period as set out in the notice (or, if no such period is specified, for one year) (section 184(3) of the Act). An approved change in control may not therefore take place after the end of this period. The FSA may apply to the court for an order for the sale of shares in accordance with section 191C of the Act.~~

Approval requirements and objection

- 11.7.5 G ~~The FSA may object to a proposed acquisition or increase of control unless it is satisfied that the approval requirements are met (section 186 of the Act). These are that:~~
- (1) ~~the acquirer is a fit and proper person to have the control over the firm that he has or would have if he acquired the control in question; and~~
 - (2) ~~the interests of consumers would not be threatened by the acquirer's control or by his acquiring that control.~~ [deleted]
- 11.7.6 G ~~In deciding whether the approval requirements are met, the FSA must have regard, in relation to the control that the acquirer:~~
- (1) ~~has over the firm; or~~
 - (2) ~~will have over the firm if the proposal to which the notification relates is carried out;~~
- ~~to the FSA's duty to ensure that the firm will satisfy, and continue to satisfy, the threshold conditions (section 186(3) of the Act).~~ [deleted]
- 11.7.7 G (1) ~~If the FSA proposes to object, it must issue a warning notice.~~
- (2) ~~If the FSA decides to proceed with its proposed objection, it must issue a decision notice.~~
- (3) ~~If the FSA considers that the approval requirements would be met if a particular step were taken or not taken, the decision notice must identify that step (section 186(4) of the Act).~~ [deleted]
- 11.7.8 G ~~The FSA may also object if it has not received sufficient information from either the controller or the firm to satisfy itself that the approval requirements are met.~~ [deleted]

Warning notices and decision notices

- 11.7.9 G The procedure followed by the FSA in relation to the giving of *warning notices* and *decision notices* is set out in *DEPP 2*. [deleted]

The FSA's timeframe for responding to a notification

- 11.7.10 G If the FSA receives a valid notification from a *controller* or proposed *controller*, the FSA must respond within three *months* (section 183(1) of the Act). The response from the FSA will be either an approval notice or a *warning notice*. [deleted]

- 11.7.11 G (1) Where the FSA becomes aware of a possible breach by the *controller* or proposed *controller* of his obligations under section 178(1) or (2) of the Act (Obligation to notify the Authority), it may require the *person concerned* to provide additional information or *documents* (section 188(4) of the Act).

- (2) If the FSA is satisfied that a breach has occurred, but is not satisfied that the approval requirements are met, the FSA may give a *warning notice* to the *controller* or proposed *controller* (section 187(1) and 188(1) of the Act).

- (3) Alternatively, the FSA may retrospectively approve the change in *control* as if a notification had been received from the *controller* or proposed *controller* (section 187(2) of the Act). [deleted]

- 11.7.12 G If the FSA does not receive a notification from the *controller* or proposed *controller* and proposes to give a *warning notice*, it must do so within three *months* of the date on which it became aware that the *controller* or proposed *controller* had failed to comply with his duty to notify (section 188(3) of the Act). [deleted]

- 11.7.13 G Before making a determination under section 185 or giving an approval notice or a *warning notice* under section 191A, the FSA must comply with the certain requirements as to consultation with EC competent authorities set out in section 188 of the Act, outside the United Kingdom (sections 183(2) and 188(2) of the Act and the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001). The *Financial Groups Directive* Regulations make special provision in relation to (the change in *control* over a UK authorised person (within the meaning of section 178(4) of the Act) which is a member of a *third country group*.

The FSA's right to object to existing controllers

- 11.7.14 G If a *controller* fails to give a notification under section 178 of the Act on acquiring or increasing *control*, and the FSA is not satisfied that the approval requirements are met, the FSA may propose to object to the *controller* by giving him a *warning notice* (sections 187(1) and 188(1) of the Act). [deleted]

- 11.7.15 G The FSA may propose to object to a *controller* by giving him a *warning notice* at any time if it becomes aware of matters as a result of which it is satisfied

that:

- (1) ~~the approval requirements are not met with respect to the controller; or~~
- (2) ~~a condition attached to an approval required the controller to do (or refrain from doing) a particular thing and that condition has been breached by the controller (sections 187(3) and 188(1) of the Act).~~
~~[deleted]~~

11.7.16 G If the FSA gives a *warning notice* as described in SUP 11.7.14 G or SUP 11.7.15 G, section 188 of the Act sets out various requirements as to timetable, consultation and provision of information. ~~[deleted]~~

11.7.17 G Following a *warning notice* as described in SUP 11.7.14 G or SUP 11.7.15 G, the FSA may decide to object to the controller and give him a *decision notice*. If the FSA does so, or if a conditional approval has been contravened, it may impose restrictions on some or all of the controller's shares by notice in writing or apply to the court for an order that the controller dispose of them (section 189 of the Act). ~~[deleted]~~

11.7.18 G If it appears to the FSA that the likely effect of an acquisition of control on a firm, or on any of its activities, is uncertain, the FSA may, in accordance with section 46 of the Act (Variation of permission on acquisition of control), vary the firm's Part IV permission by:

- (1) ~~imposing a requirement (see SUP 7: Individual requirements); or~~
- (2) ~~varying an existing requirement.~~

The *warning notice* and *decision notice* procedure does not apply to action taken under section 46 of the Act, but the FSA will operate a procedure that is fair in the circumstances. ~~[deleted]~~

11 Annex 1G: Summary of notifications required in this chapter

Event triggering a notification	Requirement	reference
	When	How
Notifications from a controller or proposed controller of a UK domestic firm other than a UK insurance intermediary non-directive firm		
<p>1. A <u>When a person proposing decides to become a controller or an existing controller proposing to increase his level of control decides to increase control</u></p> <p>2. An <u>When an existing controller proposing to reduce his control decides to reduce control or to cease to have control</u></p> <p>3. When a <u>change in control actually takes place</u></p>		
1.	SUP 11.3.2G SUP 11.3.6G	SUP 11.3.7D to SUP 11.3.14G
2.	SUP 11.3.2G SUP 11.3.6G	SUP 11.3.15G SUP 11.3.15AD
3.	SUP 11.3.16G	SUP 11.3.16G
Notifications from a controller or proposed potential controller of a UK insurance intermediary non-directive firm		
1.	A <u>person proposing to become a controller</u> When a <u>potential controller of a non-directive firm ("A") decides to acquire (a) 20% or more of the shares in A or in a parent undertaking of A ("P"); (b) 20% or more of the voting power in A or P; or (c) shares or voting power in A or P as a result of which the potential controller will be able to exercise significant influence over the management of A</u>	SUP 11.3.2G SUP 11.3.2AG(3)
2.	An <u>When an existing controller proposing to reduce his control decides to reduce control over A in a manner which will result in the controller failing to fall in any of the cases described in 1 above</u>	SUP 11.3.2G SUP 11.3.6G SUP 11.3.2AG(3)
3.	When a <u>change in control actually takes place</u>	SUP 11.3.16G
Notifications from a UK domestic firm other than a UK insurance intermediary non-directive firm relating to a change in control		
1.	When a <u>firm becomes aware of a person proposing to become a controller or an existing controller proposing to increase his level of control increase his control over the firm</u>	SUP 11.4.2R SUP 11.4.7R SUP 11.4.8G
2.	When a <u>firm becomes aware that an existing controller is proposing to reduce his level of control over the firm or is proposing to cease to be a controller of the firm</u>	SUP 11.4.2R SUP 11.4.7R SUP 11.4.8G
3.	When a <u>firm becomes aware of any material inaccuracies, omissions or changes in information previously provided to the FSA either by the firm or by the controller</u>	SUP 11.6.1G SUP 11.6.2R

4.	When a change in <i>control</i> actually takes place or, although a notification has been submitted, is not, after all, going to take place	SUP 11.6.4R SUP 11.6.5R	SUP 15.7
Notification from a UK insurance intermediary <u>non-directive firm</u> relating to a change in control			
1.	<u>When a firm becomes aware that a person ("A") is becoming or ceasing to be a controller or parent undertaking acquiring (a) 20% or more of the shares in the firm ("B") or in a parent undertaking of B ("P"); (b) 20% or more of the voting power in B or P; or (c) shares or voting power in B or P as a result of which the controller is able to exercise significant influence over the management of B</u>	SUP 11.4.2AR SUP 11.4.7R SUP 11.4.8G	SUP 11.5.1R SUP 11.5.2R SUP 11.5.3G
2.	<u>When a firm becomes aware of any material inaccuracies omissions or changes in information previously provided to the FSA either by the firm or by the controller When a firm becomes aware that A is ceasing to fall in any of the cases described in 1 above</u>	SUP 11.6.1G SUP 11.6.2R SUP 11.4.2R SUP 11.4.7R SUP 11.4.8G	SUP 15.7 <u>SUP 11.5.7R</u> <u>SUP 15.7</u>
3.	<u>When a change in control actually takes place or, although a notification has been submitted, is not, after all, going to take place When a firm becomes aware of any material inaccuracies omissions or changes in information previously provided to the FSA either by the firm or by the controller</u>	SUP 11.6.4R 11.6.5R SUP 11.6.1G SUP 11.6.2R	SUP 15.7
4.	<u>When a change in control actually takes place or, although a notification has been submitted, is not, after all, going to take place</u>	SUP 11.6.4R 11.6.5R	SUP 15.7
Notifications from an overseas firm relating to a change in control			
1.	<u>When a firm becomes aware that a person is becoming or ceasing to become becomes a controller or parent undertaking of the firm, increases or reduces his control over the firm or ceases to be have control over the firm</u>	SUP 11.4.4R SUP 11.4.7R SUP 11.4.8G	SUP 11.5.1R SUP 11.5.2R SUP 11.5.3G SUP 15.7
2.	<u>When a firm becomes aware of any material inaccuracies, omissions or changes in information previously provided to the FSA by the firm</u>	SUP 11.6.1G	SUP 15.7
3.	<u>When a change in control actually takes place or, although a notification has been submitted, is not, after all, going to take place</u>	SUP 11.6.4R SUP 11.6.5GR	SUP 15.7
Other ongoing notifications from a firm (UK domestic or overseas)			
1.	<u>When a firm becomes aware of a change in the circumstances of an existing controller</u>	SUP 11.8.1R to SUP 11.8.4G	SUP 15.7
2.	<u>When a firm becomes aware that it has become or ceased to be closely linked with any person</u>	SUP 11.9.1R	SUP 15.7

11 Annex 2G: Guidance on events requiring approval

Delete Annex 2 of SUP 11. The deleted text is not shown.

11 Annex 3G: Summary of procedures on a notification of a change in control

Delete Annex 3 of SUP 11. The deleted text is not shown.

16.4 Annual controllers report

Application

...

16.4.2 G This section may be of relevance to a *directive friendly society*:

...

(3) ...; or

where a member or delegate, whether alone or ~~with any associate acting in concert~~, is entitled to exercise, or control the exercise of, 10% or more of the total voting power.

16.4.2A G This section may be of relevance to non-directive firms.

...

Purpose

16.4.4 G A *firm* and its *controllers* are required to notify certain changes in *control* (See SUP 11 (*Controllers and close links*)). The purpose of the *rules and guidance* in this section is:

- (1) to ensure that, in addition to such notifications, the FSA receives regular and comprehensive information about the identities of all of the *controllers* of a *firm*, which is relevant to a *firm*'s continuing to satisfy the *threshold conditions* (see COND 2.3) ~~and to the protection of consumers~~;
- (2) ...
- (3) to support the FSA's functions under Part XII of the *Act* (Notices of acquisitions of control over UK authorised persons) (see SUP 11 (*Controllers and close links*)).

Reporting requirement

16.4.5 R ...

- (3) If a *firm* is not aware:
- (a) ...
 - (b) ...
 - (c) of any changes in the percentage of shares or *voting power* in the *firm* held by any *controllers* (alone or ~~with any associate acting in concert~~) since the submission of its previous report; then the report in (1) must confirm this.
- (4) Unless (3) applies, the report in (1) must contain a list of all the *controllers* as at the *firm's accounting reference date* of which it is aware and, for each such *controller*, state:
- (a) ...
 - (b) the percentage of voting power in the *firm*, or in the *firm's parent undertaking*, which it is entitled to exercise or control the exercise of, whether alone or ~~with any associate acting in concert~~;
 - (c) the percentage of shares in the *firm*, or in the *firm's parent undertaking*, which it holds, whether alone or ~~with any associate acting in concert~~;
- ...
- (5) ~~In this section, 'associate' and 'shares' have the meanings given in the definition of controller. [deleted]~~

Exceptions: friendly societies and building societies

- 16.4.11 R In SUP 16.4.5R and SUP 16.4.10R, a *building society* may regard a *person* as not being a *controller* if that *person* is exempt from the obligation to notify a change in *control* under The Financial Services and Markets Act 2000 (Controllers) (Exemption) (No.2) Order 2001 2009 (SI 2001/3338 2009/774) (see SUP 11.3.2AG(2)).

Annex C

Amendments to the Decisions Procedure and Penalties Manual (DEPP)

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

2 Annex 1G Statutory notices and the allocation of decision making

Warning notices and decision notices under the *Act* and certain other enactments

Section of the Act	Description	Handbook reference	Decision maker
...			
<u>183(3)/ 186(1) 189(4)/(7)</u>	when the FSA is proposing or deciding to object to a change in <i>control</i> following receipt of a <i>notice of control</i> <u>section 178 notice</u>	SUP 11	<i>Executive procedures</i>
<u>185(3)/(4) 189(4)/(7)</u>	when the FSA is proposing or deciding to <u>approve a change in control following receipt of a notice of control but subject to conditions</u> <u>approve a change in control with conditions</u> , <u>following receipt of a section 178 notice</u>	SUP 11	<i>Executive procedures</i>
<u>187(1)/(3) and 188(1) 191A(4)/(6)</u>	when the FSA is proposing or deciding to object to a <i>person</i> who has <u>failed to submit a notice of control or a notice on acquiring, or increasing, control, or to object to an existing controller</u> <u>acquired or increased control without giving a section 178 notice</u>	SUP 11	<i>Executive procedures</i>
<u>191A(4)/(6)</u>	<u>when the FSA is proposing or deciding to object to a person's control on the basis of the matters in section 186</u>	<u>SUP 11</u>	<u><i>Executive procedures</i></u>
<u>191A(4)/(6)</u>	<u>when the FSA is proposing or</u>	<u>SUP 11</u>	<u><i>Executive</i></u>

	<u>deciding to object to a person's control on the grounds that he is in breach of a condition imposed under section 187</u>		<u>procedures</u>
...			
<u>301C(5)/(7)</u> <u>301G(3)(b)/(5)</u>	when the FSA is proposing or deciding to object to a <u>change in control proposed acquisition</u> of a UK RIE following receipt of a section 301A notice of control.	<i>REC 4.2C</i>	<i>Executive procedures</i>
<u>301D(1)/(4)</u> <u>301I(3)/(4)</u>	when the FSA is <u>not satisfied that the approval requirement is met</u> , it may give a decision notice (which must be preceded by a warning notice) to a person who has failed to comply with a duty to notify imposed by section 301A <u>proposing or deciding to object to a person who has acquired or increased control in a UK RIE without giving a section 301 notice</u>	<i>REC 4.2C</i>	<i>Executive procedures</i>
<u>301D(3)/(4)</u> <u>301I(3)/(4)</u>	when the FSA becomes aware of matters as a result of which it is satisfied that the approval requirement is not met with respect to a person who is a controller of a recognised investment exchange, it may give a decision notice (which must be preceded by a warning notice) to the controller <u>is proposing or deciding to object to a person's control in a UK RIE on the basis of the approval requirement in section 301F(4)</u>	<i>REC 4.2C</i>	<i>Executive procedures</i>

Annex D

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

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

4 Supervision

...

4.2C Control over a UK RIE

- 4.2C.1 G ~~Chapter~~ Section 301A(1) of chapter 1A of Part XVIII of the *Act* places an obligation on ~~controllers and proposed controllers of UK RIEs~~ a person who decides to acquire or increase control (see sections 301D and 301E of the *Act*) over a *UK RIE* to notify the FSA, before making the acquisition of acquisitions of or increases in control. Furthermore, those *persons* are required to obtain the FSA's approval before ~~becoming a controller acquiring control~~ or increasing the level of control held (in certain circumstances).
- 4.2C.2 G The FSA will approve an acquisition of or an increase in control if it is satisfied that the acquisition of control by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE* (see section 301F(4) of the *Act*).
- 4.2C.3 G If a proposed ~~controller acquirer or controller~~ has complied with the obligation to notify, the procedure the FSA will follow if it approves or does not approve of that *person becoming a controller acquiring or increasing the level of control held increasing control* is set out in sections 301C 301F and 301G of the *Act*.
- 4.2C.4 G ~~If a controller or proposed controller has not complied with the duty to notify, the procedure the FSA will follow if it approves or does not approve of that person becoming a controller or increasing the level of control held is set out in section 301D of the Act. [deleted]~~
- 4.2C.5 G ~~If the FSA becomes aware of matters as a result of which it is satisfied that the criterion set out in REC 4.2C.2 G is not met, the procedure it will follow is set out in criterion 301D of the Act. [deleted]~~
- 4.2C.6 G The FSA's internal arrangements provide for any decisions to refuse to approve an change of control of acquisition or object to an existing control to be taken at an appropriately senior level.
- 4.2C.7 G If the FSA refuses to approve an change of acquisition control or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal* (see EG 2.39).

- 4.2C.8 G The powers the FSA can exercise in the event that a *person* acquires or continues to exercise control notwithstanding the *FSA*'s refusal to approve the acquisition of control or the *FSA*'s objection to the exercise of control are set out in sections ~~301E~~ 301J and 301K of the *Act*.
- 4.2C.9 G The offences for which a *person* who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the *Act* is liable are set out in section ~~304F~~ 301L of the *Act*.

COMPENSATION SOURCEBOOK (PROTECTED DEPOSIT TRANSFERS UNDER THE SPECIAL RESOLUTION REGIME) INSTRUMENT 2009

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 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 at 16:00 on 29 March 2009.

Amendments to the Handbook

- D. The Compensation sourcebook (COMP) is 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 Compensation Sourcebook (Protected Deposit Transfers under the Special Resolution Regime) Instrument 2009.

By order of the Board
28 March 2009

Annex

Amendments to the Compensation sourcebook (COMP)

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

Protected deposit transfers under the special resolution regime

- 10.2.11 R (1) This *rule* applies from 16:00 on 29 March 2009 to 30 September 2009.
- (2) In the event of a transfer of *protected deposits* from one *deposit-taking firm* to another *deposit-taking firm* pursuant to the property transfer powers under the Banking Act 2009, there is a separate and additional £50,000 maximum payment limit for a claimant with respect to *claims for protected deposits* held under the name of the transferor provided the following conditions are satisfied:
- (a) the transfer takes effect between 16:00 on 29 March 2009 and 30 September 2009;
 - (b) the transferee has notified the *FSA* before the transfer takes effect that it wishes this *rule* to apply;
 - (c) before the transfer took effect, the claimant had a *protected deposit* with each of the transferor and the transferee; and
 - (d) the transferee continues to operate the business relating to the transferred *protected deposits* under the name of the transferor (or such part of the name as is permitted by law).
- [**Note:** The *FSA* will publish the names of any transferee and the relevant name to which a separate £50,000 limit applies.]
- (3) A transferee to which this *rule* applies must make and retain a written record of potential claimants for whom the separate limit applies.

HANDBOOK ADMINISTRATION (NO 13) INSTRUMENT 2009

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of:

- (1) the following powers and related provisions in the Act:
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary powers);
 - (c) section 145 (Financial promotion rules);
 - (d) section 156 (General supplementary powers); and
 - (e) section 157(1) (Guidance); and
- (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

Commencement

C. This instrument comes into force as follows:

- (1) Annex J (DTR) comes into force on 1 June 2009;
- (2) the remainder of this instrument comes into force on 6 May 2009.

Amendments to the Handbook and related material

D. The Insurance: New Conduct of Business sourcebook (ICOBS) is renamed the Insurance: Conduct of Business sourcebook (ICOBS).

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Fit and Proper test for Approved Persons sourcebook (FIT)	Annex C
Fees manual (FEES)	Annex D
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex E
Prudential sourcebook for UCITS Firms (UPRU)	Annex F
Complaints against the FSA sourcebook (COAF)	Annex G
Supervision manual (SUP)	Annex H
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex I

Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex J
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Notes

- F. 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

- G. This instrument may be cited as the Handbook Administration (No 13) Instrument 2009.

By order of the Board
23 April 2009

Annex A

Amendments to the Glossary of definitions

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

close links

- (1) (in relation to *MiFID business*) a situation in which two or more persons are linked by:
 - (a) participation which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;
 - (b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

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

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

- (2) (except where (1) applies, and except in SUP 3 (Auditors) and SUP 4 (Actuaries)) (in accordance with paragraph 3(2) in Schedule 6 to the Act (Close links)) the relationship between a person (“A”) and another person (“CL”) which exists if:

...

...

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

8.1.8 R A *common platform firm* must in particular take the necessary steps to ensure that the following conditions are satisfied:

...

(5) the *firm* must retain the necessary expertise to supervise the *outsourced* functions effectively and to manage the risks associated with the *outsourcing*, ~~and must manage those risks~~ and must supervise those functions and manage those risks;

...

Annex C**Amendments to the Fit and Proper test for Approved Persons sourcebook (FIT)**

In this Annex, underlining indicates new text.

- 1.2.4A G Under Article 5(1)(d) of the *MiFID Implementing Directive* and Article 31 and 32 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of a *person* to perform a *controlled function* solely in relation to the *MiFID business* of an *incoming EEA firm*, the *FSA* will not have regard to that *person's* competence and capability. Where the *controlled function* relates to matters outside the scope of *MiFID*, for example money laundering responsibilities (see CF11), or to business outside the scope of the *MiFID business* of an *incoming EEA firm*, for example insurance mediation activities in relation to life policies, the *FSA* will have regard to a *candidate's* competence and capability as well as his honesty, integrity, reputation and financial soundness.

Annex D

Amendments to the Fees manual (FEES)

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

- 2.1.5 G Paragraph 17 of Schedule 1 to and section 99 ~~to~~ of the *Act* enable the FSA to charge fees to cover its costs and expenses in carrying out its functions. ...

Annex E

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text.

- 4.4.59 R For *exposures* to companies where the total annual sales for the consolidated group of which the firm is a part is less than EUR 50 million a *firm* may use the following correlation formula for the calculation of *risk weights* for *corporate exposures*. In this formula S is expressed as total annual sales in millions of Euros with EUR 5 million < = S < = EUR 50 million. Reported sales of less than EUR 5 million must be treated as if they were equivalent to EUR 5 million. In accordance with *BIPRU 4.8.21R*, for purchased receivables the total annual sales are the weighted average by individual *exposures* of the pool. The formula for the calculation of correlation (R) is:

$$0.12 \times (1 - \underline{\text{EXP}(-50 * \text{PD})}) / (1 - \text{EXP}(-50)) + 0.24 *$$

$$[1 - (1 - \underline{\text{EXP}(-50 * \text{PD})}) / (1 - \text{EXP}(-50))] - 0.04 * (1 - (S - 5) / 45)$$

[Note: BCD Annex VII Part 1 point 5 (part)]

Annex F

Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

In this Annex, striking through indicates deleted text.

TP1 Transitional Provisions for UPRU

(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.	This sourcebook	R	An operator of a UCITS scheme authorised on or before 12 February 2004 need not comply with the provisions in this sourcebook until 12 February 2007 provided it continues to comply instead with the provisions in IPRU(INV) 5 and it continues to restrict its activities to those specified under CIS 16.5.1R(1) to (3) or COLL 6.9.9(1) to (3), as appropriate.	From 01/01/07 to 12/02/07	01/01/07

Annex G

Amendments to the Complaints against the FSA sourcebook (COAF)

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

1.5 Procedure

...

- 1.5.1F G For all complaints dealt with under the ‘fast track’ procedure, the *FSA* will advise the complainant of his right to refer his complaint to the *FSA’s Company Secretariat Corporate Services Division* if he believes the complaint has not been resolved or is otherwise dissatisfied with the way it has been dealt with.

Handling of ‘fast track’ complaints referred to the Company Secretariat Corporate Services Division

- 1.5.1G G (1) If the complainant refers his complaint to the *FSA’s Company Secretariat Corporate Services Division*, the *FSA* will acknowledge this complaint within five *business days* of receiving this referral.
- (2) ...

Annex H

Amendments to the Supervision manual (SUP)

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

Auditors' statutory duty to report

- 3.8.10 G (1) Auditors are subject to regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to the *FSA*). Section 343 and the regulations also apply to an auditor of an authorised person in his capacity as an auditor of a person who has close links with the authorised person.
- (2) These regulations oblige auditors to report certain matters to the *FSA*. Sections 342(3) and 343(3) of the *Act* provide that an auditor does not contravene any duty by giving information or expressing an opinion to the *FSA*, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the *FSA*. ...

...

Actuaries' statutory duty to report

- 4.5.7 G (1) *Actuaries* appointed under this chapter are subject to regulations made by the Treasury under ~~seection~~ sections 342(5) and 343(5) of the *Act* (Information given by ~~auditor~~ actuary or ~~actuary~~ actuary to the Authority). Section 343 and the regulations also apply to an actuary of an authorised person in his capacity as an actuary of a person with close links with the authorised person.
- (2) These regulations oblige *actuaries* to report certain matters to the *FSA*. Sections 342(3) and 343(3) of the *Act* provide that an *actuary* does not contravene any duty by giving information or expressing an opinion to the *FSA*, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the *FSA*. These provisions continue to have effect after the end of the *actuary's* term of appointment. ...

...

Sch 4 Powers exercised

4.1 G	The following powers and related provisions in the <i>Act</i> have been exercised by the FSA to make the <i>rules</i> in SUP:
...	...
(12)	...
(12A)	<u>Section 178 (Obligation to notify the Authority: acquisitions of control)</u>
(12B)	<u>Section 191D (Obligation to notify the Authority: dispositions of control)</u>
...	...

Annex I

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

Sch 4 Powers exercised

4.1 G	The following powers and related provisions in the <i>Act</i> have been exercised by the FSA to make the <i>rules</i> in REC:
	Section 156 (General supplementary powers)
	<u>Section 178 (Obligation to notify the Authority: acquisitions of control)</u>
	<u>Section 191D (Obligation to notify the Authority: dispositions of control)</u>
	...
	...

Annex J

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

Comes into force on 1 June 2009

5.1.4 R ...

- (3) References to a *market maker* also include a *third country investment firm* and a *credit institution* when acting as a *market maker* and which, in relation to that activity, is subject to regulatory supervision under the laws of ~~a Member State~~ an EEA State.

...

5.3.1 R ...

- (3) For the purposes of (2) a client-serving intermediary is a *person* satisfying the following conditions:
 - (a) (i) it is authorised by its *Home State* under *MiFID* or the *BCD*, or, subject to (iii), as a *third country investment firm*, to deal as principal, in a client-serving capacity, in *financial instruments* falling within (1)(b), and to carry on any relevant business connected to such dealing; or
 - ...
 - (iii) references to a *third country investment firm* in (i) are limited to relevant business carried on by such *firms* which is subject to regulatory supervision under the laws of ~~a Member State~~ an EEA State;
 - ...
 - ...
 - ...

5.3.3 G ...

- (2) For the purposes of *DTR 5.3.1R(1)(b)*, in the *FSA*'s view:
 - ...
 - (c) a *financial instrument* referenced to a basket or index of *shares* will not have similar economic effects to a qualifying *financial*

instrument unless:

- (i) the *shares* in the basket represent ~~both~~ 1% or more of the class in issue ~~and or~~ 20% or more of the value of the securities in the basket or index, or both; and or
- (ii) use of the *financial instrument* is connected to the avoidance of notification;

...

FEES (PAYMENT SERVICES) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following provisions of the Payment Services Regulations 2009 (SI 2009/209):
 - (a) regulation 82 (Reporting requirements);
 - (b) regulation 92 (Costs of supervision); and
 - (c) regulation 93 (Guidance); and
 - (2) the following provisions of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 156 (General supplementary powers); and
 - (b) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- 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 May 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fees (Payment Services) Instrument 2009.

By order of the Board
23 April 2009

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Insert the following new definition in the appropriate alphabetical position.

fee-paying payment service provider a payment institution, a full credit institution or an e-money issuer. A full credit institution or an e-money issuer that is an EEA firm is only a fee-paying payment service provider if it is exercising an EEA right in accordance with Part 2 of Schedule 3 to the Act (exercise of passport rights) to provide payment services in the United Kingdom.

Amend the following definition as shown.

firm ...

(4) ...

(5) (in FEES 3) includes a fee-paying payment service provider in accordance with FEES 3.1.1AR.

...

Annex B

Amendments to the Fees manual (FEES)

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

Application

1.1.2 R This manual applies in the following way:

(1) *FEES 1, 2 and 3 apply to:*

...

- (o) every *firm* applying for or being concerned in an application for permission to use an *advanced prudential calculation approach* or *guidance* on the availability of such a permission (including any future proposed amendments to those approaches); ~~and~~
- (p) every *firm* or *person* referred to in category (u) of Column 1 of *FEES 3.2.7R*;
- (q) every applicant applying for authorisation as an *authorised payment institution* or registration as a *small payment institution* under the *Payment Services Regulations*; and
- (r) every applicant for variation of its authorisation or registration under the *Payment Services Regulations*.

...

Purpose

...

2.1.5 G Paragraph 17 of Schedule 1 and section 99 to the *Act* and regulation 92 of the *Payment Services Regulations* 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.

2.1.5A G Regulation 92 of the *Payment Services Regulations* provides that the functions of the FSA under the regulations are treated for the purposes of paragraph 17 of Schedule 1 to the *Act* as functions conferred on the FSA under the *Act*. Paragraphs 17(2) and (3) however, have not been included by the *Payment Services Regulations*. These are, respectively, the FSA obligation to ensure that the amount of penalties received or expected to be received are not to be taken into account in determining the amount of any fee payable and the provision that allows fees to be raised to repay borrowed monies in respect of expenses incurred, before or after the coming

into force of the Act or the Bank of England Act 1998.

...

- 2.1.11 G Whilst paragraph 17(2) of Schedule 1 to the Act has not been applied to the fee-raising power of the FSA under the *Payment Services Regulations*, regulation 92(2) of these regulations requires the FSA to apply amounts paid to it by way of penalties imposed under the regulations towards expenses incurred in carrying out its functions under the regulations, or for any incidental purpose.

...

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 (including fees relating to payment services 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).

...

- 3.1.1 R ...

- 3.1.1A R A reference to “firm” in this chapter includes a reference to a *fee-paying payment service provider* but not one which is a *small e-money issuer*.

...

- 3.1.6 G ...

- 3.1.6A G Application fees for authorisation or registration under the *Payment Services Regulations* are set out in FEES 3 Annex 8R. The fee depends on the type of *payment services* a firm wishes to provide and whether it will be a *small payment institution* or an *authorised payment institution*. The fee may also depend on the number of *agents* it has.

...

- 3.2.5 G (1) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part IV permission or authorisation, registration or variation under the Payment Services Regulations*. 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 or regulation 5(3) or 12(3) of the Payment Services Regulations*. 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.

...

...

...

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...		
<u>(y) An applicant for authorisation as an authorised payment institution under regulation 5 of the Payment Services Regulations</u>	<u>The highest of the tariffs set out in FEES 3 Annex 8R which apply to that application.</u> <u>Where an application only involves a simple change of legal status as set out in FEES 3 Annex 1R Part 6, the fee payable is 50% of the tariff that would otherwise be payable in FEES 3 Annex 8R</u>	<u>On or before the date the application is made.</u>
<u>(z) An application by a small payment institution for authorisation as an authorised payment institution because regulation 15 of the Payment Services Regulations applies</u>	<u>The highest of the tariffs set out in FEES 3 Annex 8R which apply to that application.</u>	<u>On or before the date the application is made.</u>
<u>(za) An applicant for registration as a small payment institution under regulation 12 of the Payment Services Regulations</u>	<u>FEES 3 Annex 8R, paragraph (1).</u> <u>Where an application only involves a simple change of legal status as set out in FEES 3 Annex 1R Part 6, the fee payable is 50% of the tariff that would otherwise be payable in FEES 3 Annex 8R.</u>	<u>On or before the date the application is made.</u>

<p><u>(zb) An authorised payment institution applying to vary its authorisation under regulation 8 of the Payment Services Regulations.</u></p>	<p><u>(1) If the payment services carried on by the authorised payment institution prior to the variation only fall within paragraph (f) or (g) of Part 1 of Schedule 1 to the Payment Services Regulations and any of the payment services in paragraphs (a) to (e) of that Schedule will apply after variation, the fee is 50% of the highest of the tariffs set out in FEES 3 Annex 8R which apply to that application.</u></p> <p><u>(2) Where the authorised payment institution:</u></p> <p><u>(i) already has authorisation to provide payment services within any one or more of paragraphs (a) to (e) of Part 1 of Schedule 1 to the Payment Services Regulations and wishes to add one or more other services in (a) to (g); or</u></p> <p><u>(ii) has authorisation to provide payment services in either paragraph (f) or (g) of Part 1 of Schedule 1 to the Payment Services Regulations and wishes to extend its authorisation to include the other paragraph ((f) or (g));</u></p> <p><u>the fee payable is £250 irrespective of the number of agents it has.</u></p> <p><u>(3) In cases where the variation involves only the reduction (and no increases) of the types of payment services to be carried on after the variation, no fee is payable.</u></p>	<p><u>On or before the date the application is made.</u></p>
---	--	--

<p><u>(zc) A small payment institution applying to vary its registration under regulation 12 of the Payment Services Regulations</u></p>	<p><u>(1) If the payment services carried on by the small payment institution prior to the variation only fall within paragraph (f) or (g) of Part 1 of Schedule 1 to the Payment Services Regulations and any of the payment services in paragraphs (a) to (e) of that Schedule will apply after variation, the fee is 50% of the highest of the tariffs set out in FEES 3 Annex 8R which apply to that application.</u></p> <p><u>(2) Where the small payment institution:</u></p> <p><u>(i) is already registered to provide payment services within any one or more of paragraphs (a) to (e) of Part 1 of Schedule 1 to the Payment Services Regulations and wishes to add one or more other of the services in (a) to (g); or</u></p> <p><u>(ii) is registered to provide payment services in either paragraph (f) or (g) of Part 1 of Schedule 1 to the Payment Services Regulations and wishes to extend its registration to include the other paragraph ((f) or (g));</u></p> <p><u>the fee payable is £250 irrespective of the number of agents it has.</u></p> <p><u>(3) In cases where the variation involves only the reduction (and no increases) of the types of payment services to be carried on after the variation, no fee is payable.</u></p>	<p><u>On or before the date the application is made.</u></p>
--	--	--

<u>(zd) A financial institution notifying the FSA in accordance with regulation 121(2)(a) of the <i>Payment Services Regulations</i>.</u>	<u>50% of the highest of the tariffs set out in FEES 3 Annex 8R, paragraphs (2) to (5) which apply to that application.</u>	<u>On or before the date the application is made.</u>
---	---	---

...

3 Annex 1R Authorisation fees payable

...

Part 6 - Change of legal status

An application involving only a simple change of legal status for the purposes of FEES 3.2.7R(a), <u>FEES 3.2.7R(y)</u> and <u>FEES 3.2.7R(za)</u> is from an applicant:	
(1) which is a new legal entity intending to carry on the business, using the same business plan, of an existing <i>firm</i> with no outstanding regulatory obligations cancelling its <u>Part IV permission, authorisation or registration under the Payment Services Regulations</u> , and	
(2) which is to:	
	(a) have the same or narrower <u>permission, scope of authorisation or registration under the Payment Services Regulations</u> , and the same <i>branches</i> (if any), as the <i>firm</i> ;
	(b) assume all of the rights and obligations in connection with the <u>regulated activities and payment services</u> carried on by the <i>firm</i> ;
	...

...

3 Annex 8R

Fees payable for authorisation as an authorised payment institution or registration as a small payment institution in accordance with the Payment Services Regulations

Authorisation and registration fees payable

<u>Application type for authorisation or registration under Part 2 of the <i>Payment Services Regulations</i></u>	<u>Amount payable</u>
<u>(1) <i>small payment institution</i></u>	<u>£500</u>
<u>(2) <i>authorised payment institution</i> - where the applicant is applying for authorisation to provide <i>payment services</i> in paragraph(s) (f) (money remittance) and/or (g) (consent given by electronic device) of Part 1 of Schedule 1 to the <i>Payment Services Regulations</i></u>	<u>£1,500</u>
<u>(3) <i>authorised payment institution</i> - where the applicant is applying for authorisation to provide <i>payment services</i> in any one or more of paragraph(s): (a) (cash placed on payment account); (b) (cash withdrawals enabled); (c) (execution of direct debits, etc); (d) (execution of direct debits, etc where credit line available); (e) (issuing payments and transactions) of Part 1 of Schedule 1 to the <i>Payment Services Regulations</i>.</u>	<u>£5,000</u>
<u>(4) <i>authorised payment institution</i> - where the applicant has or intends to have between 2,500 and 5,000 <i>agents</i></u>	<u>£12,500</u>
<u>(5) <i>authorised payment institution</i> - where the applicant has or intends to have more than 5,000 <i>agents</i></u>	<u>£25,000</u>

BANKING: CONDUCT OF BUSINESS SOURCEBOOK INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (1) section 138 (General rule-making power);
 - (2) section 139(4) (Miscellaneous ancillary matters);
 - (3) section 145 (Financial promotion rules);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Principles for Businesses are amended in accordance with Annex B to this instrument.

Making the Banking: Conduct of Business sourcebook (BCOBS)

- F. The Financial Services Authority makes the rules and gives the guidance in Annex C to this instrument.

Notes

- G. In the Annexes to this instrument, the "notes" (indicated by "Note:") are intended for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Banking: Conduct of Business Sourcebook Instrument 2009.
- I. The sourcebook in Annex C to this instrument may be cited as the Banking: Conduct of Business sourcebook (or BCOBS).

By order of the Board

23 April 2009

Annex A

Amendments to the Glossary of definitions

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

<i>banking customer</i>	(in <i>BCOBS</i>):
	(a) a <i>consumer</i> ;
	(b) a <i>micro-enterprise</i> ; or
	(c) a <i>charity</i> which has an annual income of less than £1 million.
	A natural person acting in a capacity as a trustee is a <i>banking customer</i> if he is acting for purposes outside his trade, business or profession.
<i>BCOBS</i>	the Banking: Conduct of Business sourcebook.
<i>charity</i>	(in <i>BCOBS</i>) includes:
	(a) in England and Wales, a charity as defined by section 1(1) of the Charities Act 2006;
	(b) in Scotland, a charity as defined by section 106 of the Charities and Trustee Investment (Scotland) Act 2005; or
	(c) in Northern Ireland, a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008 or, until that section comes into force, a body which is recognised as a charity for tax purposes by Her Majesty's Revenue and Customs.
<i>dormant account</i>	[Text to follow in a later instrument]
<i>retail banking service</i>	an arrangement with a <i>banking customer</i> , under which a <i>firm</i> agrees to accept a <i>deposit</i> from a <i>banking customer</i> on terms to be held in an account for that customer, and to provide services in relation to that <i>deposit</i> including but not limited to repayment to the customer.

Annex B

Amendments to the Principles for Businesses (PRIN)

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

Accepting deposits and issuing electronic money

- 1.1.3 G The *Principles* apply with respect to *regulated activities* generally, but, in applying the *Principles* with respect to *accepting deposits and issuing electronic money* the FSA will proceed only in a *prudential context*. That is to say, in this context, the FSA would not expect to exercise the powers brought into play by a contravention of a *Principle* unless the contravention amounted to a serious or persistent violation which had implications for confidence in the *financial system*, or for the fitness and propriety of the *firm* or for the adequacy of the *firm's* financial resources. [deleted]

...

- 3.2.1 R PRIN applies with respect to the carrying on of:

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
- (3) *ancillary activities* in relation to *designated investment business*, *home finance activity*, and *insurance mediation activity* and *accepting deposits*.

Annex C

Banking: Conduct of Business sourcebook (BCOBS)

Insert the following new sourcebook after the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) in the block of the Handbook titled “Business Standards”. The text is all new and is not underlined.

1 Application

1.1 General application

The general application rule

- 1.1.1 R This sourcebook applies to a *firm* with respect to the activity of *accepting deposits* from *banking customers* carried on from an establishment maintained by it in the *United Kingdom* and activities connected with that activity.

Modifications to the general application rule

- 1.1.2 R The general application *rule* is modified in the chapters of this sourcebook for particular purposes.

- 1.1.3 R Except as provided for in *BCOBS 1.1.4R*, this sourcebook does not apply to:
- (1) *payment services*; or
 - (2) a *person* or *firm* which has permission for *accepting deposits* but only for the purposes of, or in the course of, an activity other than *accepting deposits*.

- 1.1.4 R (1) Chapters 2, 5 and 6 of *BCOBS* apply to *payment services*.

- (2) Chapter 3 of *BCOBS* applies to *payment services* with the modifications set out in *BCOBS 3.1.2R (2)*.

- (3) A *firm* will not be subject to *BCOBS* to the extent that it would be contrary to the *United Kingdom's* obligations under the *Payment Services Directive*.

2 Communications with banking customers and financial promotions

2.1 Purpose and Application: Who and what?

- 2.1.1 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* 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. This chapter reinforces these requirements by requiring a *firm* to pay regard to the information needs of *banking customers* when communicating with, or making a *financial promotion* to, them and to communicate information in a way that is clear, fair and not misleading.
- 2.1.2 R In addition to the general application *rule* (*BCOBS 1.1.1R*), this chapter applies to the *communication*, or *approval* for *communication*, to a *person* in the *United Kingdom* of a *financial promotion* of a *retail banking service* unless it can lawfully be *communicated* by an *unauthorised person* without *approval*.
- 2.1.3 R This chapter applies to a *firm*:
- (1) communicating with a *banking customer* in relation to *accepting deposits*;
 - (2) *communicating a financial promotion* that is not an *excluded communication*; or
 - (3) *approving a financial promotion*.

2.2 The fair, clear and not misleading rule

- 2.2.1 R A *firm* must take reasonable steps to ensure that a *communication* or a *financial promotion* is fair, clear and not misleading.
- 2.2.2 G The fair, clear and not misleading *rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information that it is intended to convey. So a *communication* addressed to a *banking customer* who is not a *consumer* may not need to include the same information, or be presented in the same way, as a *communication* addressed to a *consumer*.
- 2.2.3 G The *rules* in *SYSC 3* (Systems and Controls) and *SYSC 4* (General organisational requirements) require a *firm* to put in place systems and controls or policies and procedures in order to comply with the *rules* in *COBS 4.6* (Past, simulated past and future performance), *COBS 4.7.1R* (Direct offer financial promotions), *COBS 4.10* (Systems and controls and approving and communicating financial promotions) and this chapter of *BCOBS*.

2.2.4 G Section 397 (Misleading statements and practices) of the *Act* creates a criminal offence relating to certain misleading statements and practices.

2.3 Other general requirements for communications and financial promotions

- 2.3.1 R A *firm* must ensure that each communication made to a *banking customer* and each *financial promotion* communicated or approved by the *firm*:
- (1) includes the name of the *firm*;
 - (2) is accurate and, in particular, does not emphasise any potential benefits of a *retail banking service* without also giving a fair and prominent indication of any relevant risks;
 - (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
 - (4) does not disguise, diminish or obscure important information, statements or warnings.
- 2.3.2 G The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *banking customer* can identify the *firm* communicating the information.
- 2.3.3 G In deciding whether, and how, to *communicate* information to a particular target audience, a *firm* should take into account the nature of the *retail banking service*, the *banking customer's* likely or actual commitment, the likely information needs of a reasonable recipient, and the role of the communication or *financial promotion* in the sales process.
- 2.3.4 G If a communication or a *financial promotion* names the *FSA* as the regulator of a *firm* and refers to matters not regulated by the *FSA*, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FSA*.
- 2.3.5 G When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *banking customer* being insufficient, unclear, unfair or misleading.
- 2.3.6 G The Credit Institutions (Protection of Deposits) Regulations 1995 may apply in relation to communications with a *banking customer*.
- 2.3.7 R If a communication or a *financial promotion* compares a *retail banking service* with one or more other *retail banking service* (whether or not provided by the *firm*), the *firm* must ensure that the comparison is meaningful and presented in a fair and balanced way.
- 2.3.8 R If any information refers to a particular tax treatment or rate of interest

payable, a *firm* must ensure that it prominently states that the tax treatment or the rate of interest payable depends on the individual circumstances of each *banking customer* and may be subject to change in the future.

- 2.3.9 G When designing a *financial promotion*, a *firm* may find it helpful to take account of the British Bankers' Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts.

2.4 Structured deposits, cash deposit ISAs and cash deposit CTFs

- 2.4.1 G If a *financial promotion* relates to a *structured deposit*, rules in COBS 4.6 (Past, simulated past and future performance) will also apply.
- 2.4.2 G If a *financial promotion* relates to a *cash deposit ISA* or *cash deposit CTF*, COBS 4.7.1R (Direct offer financial promotions) also applies.

3 Distance communications

3.1 Distance marketing

Application

- 3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

The distance marketing disclosure rules

- 3.1.2 R (1) Subject to (2), a *firm* must provide a *consumer* with the distance marketing information (*BCOBS* 3 Annex 1R) in good time before the *consumer* is bound by a *distance contract* or offer.
- (2) Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of *BCOBS* 3 Annex 1R.

[**Note:** articles 3(1) and 4(5) of the *Distance Marketing Directive*]

- 3.1.3 R A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent, such as minors.

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

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

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

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

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

Terms and conditions, and form

- 3.1.6 R A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (*BCOBS* 3.1.2R to 3.1.5R) in a *durable medium* available and

accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** articles 4(5) and 5 (1) of the *Distance Marketing Directive*]

- 3.1.7 G A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Commencing performance of the distance contract

- 3.1.8 R The performance of the *distance contract* may only begin after the *consumer* has given his approval.

[**Note:** article 7 (1) of the *Distance Marketing Directive*]

Exception: successive operations

- 3.1.9 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this chapter only apply to the initial agreement.

[**Note:** article 1(2) of the *Distance Marketing Directive*]

- 3.1.10 R (1) If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (*BCOBS* 3.1.2R to 3.1.5R) will only apply:

- (a) when the first operation is performed; and
- (b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[**Note:** recital 16 and article 1(2) of the *Distance Marketing Directive*]

- (2) In this section:

- (a) “initial service agreement” includes the opening of a bank account;
- (b) “operations” includes the deposit or withdrawal of funds to or from a bank account; and
- (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing *retail banking service*, does not constitute an

“operation” but an additional contract to which the rules in this chapter apply.

[**Note:** recital 17 of the *Distance Marketing Directive*]

Exception: voice telephony communications

- 3.1.11 R In the case of voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (*BCOBS* 3 Annex 2R) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information (*BCOBS* 3 Annex 1R) in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

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

Exception: means of distance communication not enabling disclosure

- 3.1.12 R A *firm* may provide the distance marketing information (*BCOBS* 3 Annex 1R) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer*’s request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** article 5(2) of the *Distance Marketing Directive*]

Exception: contracts for payment services

- 3.1.13 G Where a *distance contract* covers both *payment services* and non-*payment services*, the exception in *BCOBS* 3.1.2R (2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

Consumer’s right to request paper copies and change the means of communication

- 3.1.14 R At any time during the contractual relationship, the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[**Note:** article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

- 3.1.15 R (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of a reply not constituting consent.

(2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[**Note:** article 9 of the *Distance Marketing Directive*]

Mandatory nature of a consumer's rights

3.1.16 R If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[**Note:** article 12 of the *Distance Marketing Directive*]

Contracts governed by law of a third party state

3.1.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must *ensure* that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the territory of one or more *EEA States*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

3.2 E Commerce

Application

3.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.

Information about the firm and its products or services

3.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm* including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *FSA Register* and includes the *FSA* registration number;
- (5) if it is a *professional firm*, or a person regulated by the equivalent of a *designated professional body* in another *EEA State*:

- (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
- (b) the professional title and the *EEA State* where it was granted;
- (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
- (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

- 3.2.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the *E-Commerce Directive*]

- 3.2.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[**Note:** article 6 of the *E-Commerce Directive*]

- 3.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

- 3.2.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being

placed by the recipient of the service:

- (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filled in by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
- (4) make available to the *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[**Note:** articles 10(1) and 11(1) and (2) of the *E-Commerce Directive*]

- 3.2.7 R For the purposes of *BCOBS* 3.2.6R(3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.
- 3.2.8 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e mail

- 3.2.9 R The requirements relating to the placing and receipt of orders (*BCOBS* 3.2.6R(3)) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** articles 10(4) and 11(3) of the *E-Commerce Directive*]

3 Annex 1R Distance marketing information

This Annex belongs to *BCOBS 3.1.2R* (The distance marketing disclosure rules)

Information about the firm	
(1)	The name and the main business of the <i>firm</i> , the geographical address at which it is established and any other geographical address relevant for the <i>consumer's</i> relations with the <i>firm</i> .
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's EEA State</i> of residence, the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
(3)	Where the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant to the <i>consumer's</i> relations with that professional.
(4)	The particulars of the public register in which the <i>firm</i> is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (<i>GEN 4</i>), a statement that the <i>firm</i> is on the <i>FSA Register</i> and its <i>FSA</i> registration number.
Information about the financial service	
(5)	A description of the main characteristics of the service the <i>firm</i> will provide.
(6)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all related fees, charges and expenses, and all taxes paid through the <i>firm</i> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(7)	Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the <i>firm's</i> control and that past performance is no indicator of future performance.
(8)	Notice of the possibility that other taxes or costs may exist that are not paid via the <i>firm</i> or imposed by it.
(9)	Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a <i>firm's</i> offer applies as it stands.
(10)	The arrangements for payment and performance.
(11)	Details of any specific additional cost to the <i>consumer</i> for using a means of distance communication.

Information about the contract	
(12)	The existence or absence of a right to cancel under the cancellation rules (<i>BCOBS 6</i>) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i> , as well as the consequences of not exercising the right to cancel.
(13)	The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
(14)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
(15)	Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
(16)	The <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
(17)	Any contractual clause on the law applicable to the contract or on the competent court, or both.
(18)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Information about redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme.
(20)	Whether compensation may be available from the <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its liabilities.
[Note: Recitals 21 and 23 to, and article 3(1) of, the <i>Distance Marketing Directive</i>]	

3 Annex 2R

Abbreviated distance marketing information

This Annex belongs to *BCOBS 3.1.11R*

(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and his link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service including all taxes paid via the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes and/or costs may exist that are not paid via the <i>firm</i> or imposed by him.
(5)	The existence or absence of a right to cancel in accordance with the cancellation rules (<i>BCOBS 6</i>) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay on the basis of the cancellation rules.
(6)	That other information is available on request and what the nature of that information is.
[Note: article 3(3)(b) of the <i>Distance Marketing Directive</i>]	

4 Information to be communicated to banking customers

4.1 Enabling banking customers to make informed decisions

The appropriate information rule

- 4.1.1 R A firm must provide or make available to a *banking customer* appropriate information about a *retail banking service* and any *deposit* made in relation to that *retail banking service*:

- (1) in good time;
- (2) in an appropriate medium; and
- (3) in easily understandable language and in a clear and comprehensible form;

so that the *banking customer* can make decisions on an informed basis.

- 4.1.2 G (1) In determining:

- (a) what is “in good time”;
- (b) the appropriate medium for communicating information; and
- (c) whether it is appropriate to provide information (that is, send or give it directly to the *banking customer*) or make it available (that is, make it available to obtain at the *banking customer's* option);

a firm should consider the importance of the information to the decision-making process of the *banking customer* and the time at which the information may be most useful. Distance communications requirements are also relevant.

- (2) For example, (unless *BCOBS 3* applies) a firm should provide the terms and conditions of the contract for a *retail banking service* on paper or in another *durable medium* in good time before a *banking customer* is bound by them.
- (3) Where a firm proposes to make a change to the terms and conditions or charges that apply to a *retail banking service* that will be to the disadvantage of a *banking customer*, it should provide reasonable notice to the *banking customer* before the change takes effect, taking into account the period of notice required by the *banking customer* to cancel the contract for the *retail banking service*.

- 4.1.3 R Where a *rule* in this chapter requires information to be provided on paper or in another *durable medium* before a *banking customer* is bound by the terms and conditions of the contract, a firm may instead provide that information in accordance with the distance communication requirements (see *BCOBS 3.1*) (if

applicable).

- 4.1.4 G The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided by a *firm* to a *banking customer* should include information relating to:
- (1) the *firm*;
 - (2) the different *retail banking services* offered by the *firm* which share the main features of the *retail banking service* the *banking customer* has enquired about, or which have the product features the *banking customer* has expressed an interest in, unless the *banking customer* has expressly indicated that he does not wish to receive that information;
 - (3) the terms and conditions of the contract for a *retail banking service* and any changes to them;
 - (4) the rate or rates of interest payable on any deposit, how and when such interest is calculated and applied and any changes to that rate or those rates;
 - (5) any charges at any time payable by or on behalf of a *banking customer* in relation to each *retail banking service* and any changes to those charges;
 - (6) a *banking customer's* rights to cancel a contract for a *retail banking service*;
 - (7) how a *banking customer* may make a complaint (at the time and in the manner required by *DISP 1.2*);
 - (8) the terms of any compensation scheme if the firm cannot meet its obligations in respect of the *retail banking service*;
 - (9) basic bank accounts but only if the *firm* offers a basic bank account and the *banking customer* meets the *firm's* eligibility criteria for such an account; and
 - (10) the timescales for each stage of the cheque clearing process.
- 4.1.5 G The information required by the appropriate information *rule* may vary according to matters such as:
- (1) the *banking customer's* likely or actual commitment;
 - (2) the information needs of a reasonable recipient having regard to the type of *retail banking service* that is proposed or provided and its overall complexity, main benefits, risks, limitations, conditions and duration;

- (3) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see *BCOBS 3.1*)); and
 - (4) whether the same information has been provided to the *banking customer* previously and, if so, when that was.
- 4.1.6 G The existence of cancellation rights does not affect what information it is appropriate to give a *banking customer* in order to enable him to make an informed purchasing decision.
- 4.1.7 G If the *retail banking service* is a *cash deposit ISA* or a *cash deposit CTF*, the rules in *COBS 13.1* (Preparing product information) and *COBS 14.2* (Providing product information to clients) also apply.

4.2 Statements of account

- 4.2.1 R (1) A *firm* must provide or make available to a *banking customer* on paper or in another *durable medium* such regular statements of account as are appropriate to the type of *retail banking service* provided, but need not do so where:
- (a) the *firm* has provided a *banking customer* with a pass book or other document in a *durable medium* that records transactions in relation to the *retail banking service*;
 - (b) the *retail banking service* is provided at a distance by means of electronic equipment where the *banking customer* can access his account balance, view transactions and give instructions in relation to the *retail banking service* at a distance by such means;
 - (c) a *banking customer* has elected not to receive periodic statements of account, and for so long as such election is in force; or
 - (d) it has reasonable grounds to believe that the *banking customer* is not resident at the address last known to it as the address of the *banking customer* and it is not practicable after reasonable inquiry to ascertain the *banking customer's* address.
- (2) A *firm* must not charge for providing information which is required to be provided by (1).
- (3) A *firm* must provide a *banking customer* with a true copy of any statement of account provided to him under (1) on paper or in another *durable medium* within a reasonable period of time following a request to that effect made by or on his behalf.

- (4) A *firm* and a *banking customer* may agree on a charge for:
- (a) providing a copy of a statement of account under (3); or
 - (b) providing statements of account more frequently than required by (1);
- at the request of the *banking customer*. Any such charge must reasonably correspond to the *firm's* actual costs.

5 Post sale

5.1 Post sale requirements

Service

- 5.1.1 R A *firm* must provide a service in relation to a *retail banking service* which is prompt, efficient and fair to a *banking customer* and which has regard to any communications or *financial promotion* made by the *firm* to the *banking customer* from time to time.
- 5.1.2 G In determining the order in which to process payment instructions in relation to the *retail banking service*, a *firm* must have regard to its obligation to treat *banking customers* fairly.
- 5.1.3 G To the extent that it relates to a *retail banking service*, a *firm* may find it helpful to take account of the British Bankers' Association "A Statement of Principles: Banks and businesses - working together".

Dealings with customers in financial difficulty

- 5.1.4 G *Principle 6* requires a *firm* to pay due regard to the interests of its customers and to treat them fairly. In particular, a *firm* should deal fairly with a *banking customer* whom it has reason to believe is in financial difficulty.

Moving a retail banking service

- 5.1.5 R A *firm* must provide a prompt and efficient service to enable a *banking customer* to move to a *retail banking service* (including a *payment service*) provided by another *firm*.
- 5.1.6 G Where a *banking customer* wishes to move a *retail banking service* and there are no arrangements between the *firm* the *banking customer* wishes to move from and the *firm* that the *banking customer* wishes to move to, the service provided by the former *firm* will extend only to providing a prompt and efficient service in respect of termination of the *retail banking service*, for example by closing an account and returning any *deposit* (with interest as appropriate) to the *banking customer*.
- 5.1.7 G Where a *banking customer* wishes to move a *retail banking service* and there are arrangements between the *firm* the *banking customer* wishes to move from and the *firm* that the *banking customer* wishes to move to, the service provided by the former *firm* will include providing a prompt and efficient service in respect of termination of the *retail banking service*, for example by closing an account, transferring any account balance and making arrangements in respect of any direct debits or standing orders.
- 5.1.8 G A firm may find it helpful to take account of the European Banking Industry Committee Common Principles for Bank Account Switching and the British Bankers' Association/ Building Societies Association/ Tax Incentivised Savings

Association Cash ISA Transfers: Guidelines.

Lost and dormant accounts

- 5.1.9 R A *firm* must make appropriate arrangements to enable a *banking customer*, so far as is possible, to trace and, if appropriate, to have access to a *deposit* held (or formerly held) in a *retail banking service* provided by the *firm*. This applies even if:
- (1) the *banking customer* may not be able to provide the *firm* with information which is sufficient to identify the *retail banking service* concerned; or
 - (2) the *banking customer* may not have carried out any transactions in relation to that *retail banking service* for an extended period of time.
- 5.1.10 R If a *firm* participates in the scheme under the Dormant Bank and Building Society Accounts Act 2008, it must inform a *banking customer* of this fact and provide appropriate information regarding the terms of the scheme on entering into communications with a *banking customer* regarding a *dormant account*.

6 Cancellation

6.1 The right to cancel

Introduction

- 6.1.1 R Except as provided for in *BCOBS* 6.1.2R, a *banking customer* has a right to cancel a contract for a *retail banking service* (including a *cash deposit ISA*) without penalty and without giving any reason, within 14 calendar days.

[**Note:** article 6(1) of the *Distance Marketing Directive* in relation to *distance contracts*]

- 6.1.2 R There is no right to cancel:

- (1) a contract (other than a *cash deposit ISA*) where the rate or rates of interest payable on the *deposit* are fixed for a period of time following conclusion of the contract;
- (2) a contract whose price depends on fluctuations in the financial market outside the *firm's* control that may occur during the cancellation period; or
- (3) a *cash deposit CTF* (other than a *distance contract*).

- 6.1.3 G A *firm* may provide longer or additional cancellation rights voluntarily but, if it does, these should be on terms at least as favourable to the *banking customer* as those in this chapter, unless the differences are clearly explained.

Beginning of cancellation period

- 6.1.4 R The cancellation period begins:

- (1) either from the day of the conclusion of the contract for the *retail banking service*; or
- (2) from the day on which the *banking customer* receives the contractual terms and conditions of the *retail banking service* and any other pre-contractual information required under this sourcebook, if that is later than the date referred to in (1) above.

[**Note:** article 6(1) of the *Distance Marketing Directive* in relation to *distance contracts*]

Disclosing the right to cancel

- 6.1.5 R (1) The *firm* must disclose to a *banking customer* in good time or, if that is not possible, immediately after the *banking customer* is bound by a contract for a *retail banking service*, and in a *durable medium*, the existence of the right to cancel, its duration and the conditions for exercising it including information on the amount which the *banking*

customer may be required to pay, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which the notification of cancellation should be sent.

- (2) This *rule* applies only where a *banking customer* would not otherwise receive the information referred to in (1) under a *rule* in this sourcebook from the *firm* (such as under *BCOBS* 3.1.2R to 3.1.5R (the distance marketing disclosure rules)).

6.2 Exercising the right to cancel

- 6.2.1 R If a *banking customer* exercises his right to cancel he must, before the expiry of the cancellation period, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a *durable medium* available and accessible to the recipient, is dispatched before the cancellation period expires.

[**Note:** article 6(6) of the *Distance Marketing Directive* for distance contracts]

- 6.2.2 G The *firm* should accept any indication that the *banking customer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *banking customer* as the date when the notification was dispatched.

Record keeping

- 6.2.3 R The *firm* must make adequate records concerning the exercise of a right to cancel and retain them for at least three years.

6.3 Effects of cancellation

- 6.3.1 R By exercising a right to cancel, a *banking customer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

- 6.3.2 R (1) This *rule* applies in relation to a contract for a *retail banking service* that is not a *cash deposit ISA* or a *cash deposit CTF*.
- (2) When a *banking customer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The amount payable must not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;

(b) in any case be such that it could be construed as a penalty.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

- (3) The *firm* may not require a *banking customer* to pay any amount on the basis of this *rule* unless it can prove that the *banking customer* was duly informed about the amount payable and, in the case of a contract which is a *distance contract*, in conformity with the distance marketing disclosure rules. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the *banking customer's* prior request.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

6.4 Obligations on cancellation

Firm's obligation

- 6.4.1 R The *firm* must, without undue delay and within 30 calendar days, return to the *banking customer* any sums it has received from him except for any amount that the *banking customer* may be required to pay under *BCOBS 6.3.2R*. This period begins from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

Banking customer's obligation

- 6.4.2 R The *firm* is entitled to receive from the *banking customer* any sums or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period begins from the day on which the *banking customer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the *Distance Marketing Directive* in relation to *distance contracts*]

- 6.4.3 R Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

6.5 Other applicable legislation

- 6.5.1 R This chapter applies as modified to the extent necessary for it to be compatible with any enactment, including legislation relating to child trust funds.

Schedule 1

Record-keeping requirements

Notes:

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record-keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>BCOBS</i> 6.2.3R	Cancellation: exercise of right	Exercise of the right to cancel	Date of exercise	At least three years

Schedule 2

Notification requirements

There are no requirements for notification in *BCOBS*.

Schedule 3

Fees and other required payments

There are no requirements for fees or other payments in *BCOBS*.

Schedule 4

Powers exercised

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *BCOBS*:

- section 138 (General rule-making power);
- section 139(4) (Miscellaneous ancillary matters);
- section 145 (Financial promotion rules);
- section 156 (General supplementary powers).

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *BCOBS*:

- section 157(1) (Guidance).

Schedule 5

Rights of action for damages

- 5.1 The table below sets out the *rules* in *BCOBS* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
- 5.2 If a “Yes” appears in the column headed “For private person?”, the *rule* may be actionable by a *private person* under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A “Yes” in the column headed “Removed” indicates that the FSA has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
- 5.3 The column headed “For other person?” indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Rule	Right of action under section 150			
	For private person?	Removed?	For other person?	
Any rule in <i>BCOBS</i> which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability	Yes	No	Yes	Any other person
All other rules in <i>BCOBS</i>	Yes	No	No	

Schedule 6

Rules that can be waived

- 6.1 As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its *rules*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

**FINANCIAL SERVICES COMPENSATION SCHEME (LIMITS AMENDMENT)
INSTRUMENT 2009**

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 January 2010.

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)
Conduct of Business sourcebook (COBS)	Annex A
Insurance: Conduct of Business sourcebook (ICOBS)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Compensation sourcebook (COMP)	Annex D

Citation

- E. This instrument may be cited as the Financial Services Compensation Scheme (Limits Amendment) Instrument 2009.

By order of the Board
23 April 2009

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

6 Annex 1G Services and costs disclosure document described in COBS 6.3.7G(1)

...

8. Are we covered by the Financial Services Compensation Scheme (FSCS)? ...

...

Most types of investment business are covered ~~for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000 up to a maximum limit of £50,000.~~

...

6 Annex 2 Combined initial disclosure document described in COBS 6.3, ICOBS 4.5, MCOB 4.4.1R(1) and MCOB 4.10.2R(1)

...

8. Are we covered by the Financial Services Compensation Scheme (FSCS)? ...

...

Investment

Most types of investment business are covered ~~for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000 up to a maximum limit of £50,000.~~

Insurance

Insurance advising and arranging is covered ~~for 100% of the first £2000 and 90% of the remainder of the claim, without any upper limit.~~

[or] ...

[Mortgages] [and] [and Home Purchase Plans] [Equity Release Products] ...

[Mortgage], [and] [and Home Purchase] [and] [Equity release] advising and arranging is covered ~~for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000 up to a maximum limit of £50,000.~~

...

Annex B

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

In this Annex, striking through indicates deleted text.

4 Annex 1G Initial disclosure document

...

8. Are we covered by the Financial Services Compensation Scheme (FSCS)? ...

...

Insurance advising and arranging is covered for ~~100% of the first £2000 and 90% of the remainder~~ of the claim, without any upper limit.

[or] ...

Annex C

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

4 Annex 1R Initial disclosure document

...

8. Are we covered by the Financial Services Compensation Scheme (FSCS)? ...

...

[Mortgage/Home purchase plan] advising and arranging is covered ~~for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000 up to a maximum limit of £50,000.~~

...

8 Annex 1R Initial Disclosure Document

...

8. Are we covered by the Financial Services Compensation Scheme (FSCS)? ...

...

Equity release advising and arranging is covered ~~for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000 up to a maximum limit of £50,000.~~

...

Annex D

Amendments to the Compensation sourcebook (COMP)

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

- 10.2.2 G The limits apply to the aggregate amount of *claims* in respect of each category of *protected claim* that an *eligible claimant* has against the *relevant person*. Consequently, a claimant who has, for example, a *claim* against a *relevant person* in connection with *protected investment business* of £30,000 £40,000, and a further such *claim* of £20,000, will only receive the £50,000 limit. ~~not receive 100% compensation for both claims; instead he will receive £48,000 (100% of the first £30,000 and 90% of the next £20,000)~~. Similarly, if a claimant receives more than one payment in respect of a *claim or claims* on one or more *protected contract of insurance*, the claimant will only receive 100% of the first £2,000 of the total paid, and not 100% of the first £2,000 of each payment.

Table Limits

- 10.2.3 R This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
...
<i>Protected contract of insurance</i> when the contract is a <i>relevant general insurance contract</i>	(1) Where the claim <i>claim</i> is in respect of a liability subject to compulsory insurance: 100% of claim <i>claim</i> .	Unlimited
	(2) Where the claim arises under the Third Party (Rights against Insurers) Act 1930, is in respect of a liability within COMP 5.4.5R(1)(b), and is in connection with an Article 9 default: 90% of the claim.	Unlimited
	(3) (2) In all other cases: 100% × first £2,000 90% of remainder of the claim <i>claim</i> .	Unlimited

<i>Protected contract of insurance</i> when the contract is a <i>long-term insurance contract</i>	$100\% \times \text{first £2,000}$ At least 90% of the remaining value of the policy <u>claim</u> as determined in accordance with COMP 12.	Unlimited
<i>Protected investment business</i>	$100\% \times \text{first £30,000}$ $90\% \times \text{next £20,000 of claim}$	<u>£48,000</u> <u>£50,000</u>
<i>Protected home finance mediation</i>	$100\% \times \text{first £30,000}$ $90\% \times \text{next £20,000 of claim}$	<u>£48,000</u> <u>£50,000</u>
<i>Protected non-investment insurance mediation</i>	(1) where the <i>claim</i> is in respect of a <i>liability subject to compulsory insurance</i> : 100% of <i>claim</i>	Unlimited
	(2) In all other cases: 100% x first £2000 90% of the remainder of the <i>claim</i> <i>claim</i>	Unlimited

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...
18	<u>Amendments to COMP 10.2.3R introduced by the Financial Services Compensation (Limits Amendment) Instrument 2009</u>	R	<u>Provisions and definitions arising out of (2) only apply to defaults on or occurring after 1 January 2010.</u>	<u>From 1 January 2010 indefinitely</u>	<u>1 January 2010</u>

**ENFORCEMENT GUIDE (USE OF FIRM-COMMISSIONED REPORTS)
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 6 May 2009.

Amendments to the Enforcement Guide

- C. The Enforcement Guide (EG) is amended in accordance with the Annex to this instrument. The general guidance in EG does not form part of the Handbook.

Citation

- D. This instrument may be cited as the Enforcement Guide (Use of Firm-Commissioned Reports) Instrument 2009.

By order of the Board
23 April 2009

Annex

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text, unless otherwise stated.

3 Use of information gathering and investigation powers

- 3.1 The FSA has various powers under sections 97, 165 to 169 and 284 of the *Act* to gather information and appoint investigators, and to require the production of a report by a *skilled person*. In any particular case, the FSA will decide which powers, or combination of powers, are most appropriate to use having regard to all the circumstances. Further comments on the use of these powers are set out below.
- 3.1A Information may also be provided to the FSA voluntarily. For example, firms may at times commission an internal investigation or a report from an external law firm or other professional adviser and decide to pass a copy of this report to the FSA. Such reports can be very helpful for the FSA in circumstances where enforcement action is anticipated or underway. The FSA's approach to using firm-commissioned reports in an enforcement context is set out at the end of this chapter.
- ...

After EG 3.16 the following new text is inserted. The text is not underlined:

FSA approach to firms conducting their own investigations in anticipation of FSA enforcement action.

Firm-commissioned reports: the desirability of early discussion and agreement where enforcement is anticipated

- 3.17 The FSA recognises that there are good reasons for *firms* wishing to carry out their own investigations. This might be for, for example, disciplinary purposes, general good management, or operational and risk control. The *firm* needs to know the extent of any problem, and it may want advice as to what immediate or short-term measures it needs to take to mitigate or correct any problems identified. The FSA encourages this proactive approach and does not wish to interfere with a *firm's* legitimate procedures and controls.
- 3.18 A *firm's* report – produced internally or by an external third party – can clearly assist the *firm*, but may also be useful to the FSA where there is an issue of regulatory concern. Sharing the outcome of an investigation can potentially save time and resources for both parties, particularly where there is a possibility of the FSA taking enforcement action in relation to a *firm's* perceived misconduct or failing. This does not mean that *firms* are under any obligation to share the content of legally privileged reports they are given or advice they receive. It is for the *firm* to decide whether to provide such material to the FSA. But a *firm's* willingness to volunteer the results of its own investigation, whether protected by legal privilege or otherwise, is welcomed by the FSA and is something the FSA may take into account when deciding what

action to take, if any. (The FSA's approach to deciding whether to take action is described in more detail in *DEPP* 6.2 and paragraph 2.4 of this Guide.)

- 3.19 Work done or commissioned by the *firm* does not fetter the FSA's ability to use its statutory powers, for example to require a skilled person's report under section 166 of the *Act* or to carry out a formal enforcement investigation; nor can a report commissioned by the *firm* be a substitute for formal regulatory action where this is needed or appropriate. But even if formal action is needed, it may be that a report could be used to help the FSA decide on the appropriate action to take and may narrow the issues or obviate the need for certain work.
- 3.20 The FSA invites *firms* to consider, in particular, whether to discuss the commissioning and scope of a report with FSA staff where:
 - (1) *firms* have informed the FSA of an issue of potential regulatory concern, as required by *SUP* 15; or
 - (2) the FSA has indicated that an issue or concern has or may result in a referral to Enforcement.
- 3.21 The FSA's approach in commenting on the proposed scope and purpose of the report will vary according to the circumstances in which the report is commissioned; it does not follow that the FSA will want to be involved in discussing the scope of a report in every situation. But if the *firm* anticipates that it will proactively disclose a report to the FSA in the context of an ongoing or prospective enforcement investigation, then the potential use and benefit to be derived from the report will be greater if the FSA has had the chance to comment on its proposed scope and purpose.
- 3.22 Some themes or issues are common to any discussion about the potential use or value of a report to the FSA. These include:
 - (1) to what extent the FSA will be able to rely on the report in any subsequent enforcement proceedings;
 - (2) to what extent the FSA will have access to the underlying evidence or information that was relied upon in producing the report;
 - (3) where legal privilege or other professional confidentiality is claimed over any material gathered or generated in the investigation process, to what extent such material may nevertheless be disclosed to the FSA, on what basis and for what purposes the FSA may use that material;
 - (4) what approach will be adopted to establishing the relevant facts and how evidence will be recorded and retained;
 - (5) whether any conflicts of interest have been identified and whether there are proposals to manage them appropriately;
 - (6) whether the report will describe the role and responsibilities of identified individuals;

- (7) whether the investigation will be limited to ascertaining facts or will also include advice or opinions about breaches of FSA rules or requirements;
 - (8) how the *firm* intends to inform the FSA of progress and communicate the results of the investigation; and
 - (9) timing.
- 3.23 In certain circumstances the FSA may prefer that a *firm* does not commission its own investigation (whether an internal audit report or a report by external advisers) because action by the *firm* could itself be damaging to an FSA investigation. This is true in particular of criminal investigations, where alerting the suspects could have adverse consequences. For example, where the FSA suspects that individuals are abusing positions of trust within financial institutions and that an insider dealing ring is operating, it might notify the relevant *firm* but would not want the *firm* to embark on its own investigation: to do so would alert those under investigation and prejudice on-going monitoring of the suspects and other action. *Firms* are therefore encouraged to be alive to the possibility that their own investigations could prejudice or hinder a subsequent FSA investigation, and, if in doubt, to discuss this with the FSA. The FSA recognises that *firms* may be under time and other pressures to establish the relevant facts and implications of possible misconduct, and will have regard to this in discussions with the *firm*.
- 3.24 Nothing in paragraphs 3.17 to 3.23 extends or increases the scope of the existing duty to report facts or issues to the FSA in accordance with *SUP 15* or *Principle 11*.
- Firm-commissioned reports: material gathered*
- 3.25 Where a *firm* does conduct or commission an investigation, it is very helpful if the *firm* maintains a proper record of the enquiries made and interviews conducted. This will inform the FSA's judgment about whether any further work is needed and, if so, where the FSA's efforts should be focused.
- 3.26 How the results of an investigation are presented to the FSA may differ from case to case; the FSA acknowledges that different circumstances may call for different approaches. In this sense, one size does not fit all. The FSA will take a pragmatic and flexible approach when deciding how to receive the results of an investigation. However, if the FSA is to rely on a report as the basis for taking action, or not taking action, then it is important that the *firm* should be prepared to give the FSA underlying material on which the report is based as well as the report itself. This includes, for example, notes of interviews conducted by the lawyers, accountants or other professional experts carrying out the investigation.
- 3.27 The FSA is not able to require the production of "protected items", as defined in the *Act*, but it is not uncommon for there to be disagreement with *firms* about the scope of this protection. Arguments about whether certain documents attract privilege tend to be time-consuming and delay the progress of an investigation. If a *firm* decides to give a report to the FSA, then the FSA considers that the greatest mutual benefit is most likely to flow from disclosure of the report itself and any supporting papers. A

reluctance to disclose these source materials will, in the FSA's opinion, devalue the usefulness of the report and may require the FSA to undertake additional enquiries.

Firm-commissioned reports: FSA use of reports and the protection of privileged and confidential material

- 3.28 For reasons that the FSA can understand, *firms* may seek to restrict the use to which a report can be put, or assert that any legal privilege is waived only on a limited basis and that the *firm* retains its right to assert legal privilege as the basis for non-disclosure in civil proceedings against a private litigant.
- 3.29 The FSA understands that the concept of a limited waiver of legal privilege is not one which is recognised in all jurisdictions; the FSA considers that English law does permit such "limited waiver" and that legal privilege could still be asserted against third parties notwithstanding disclosure of a report to the FSA. However, the FSA cannot accept any condition or stipulation which would purport to restrict its ability to use the information in the exercise of the FSA's statutory functions. In this sense, the FSA cannot 'close its eyes' to information received or accept that information should, say, be used only for the purposes of supervision but not for enforcement.
- 3.30 This does not mean that information provided to the FSA is unprotected. The FSA is subject to strict statutory restrictions on the disclosure of confidential information (as defined in section 348 of the *Act*), breach of which is a criminal offence (under section 352 of the *Act*). Reports and underlying materials provided voluntarily to the FSA by a *firm*, whether covered by legal privilege or not, are confidential for these purposes and benefit from the statutory protections.
- 3.31 Even in circumstances where disclosure of information would be permitted under the "gateways" set out in the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations, the FSA will consider carefully whether it would be appropriate to disclose a report provided voluntarily by a *firm*. The FSA appreciates that *firms* feel strongly about the importance of maintaining confidentiality, and that *firms* are more likely to volunteer information to the regulator when they know that the regulator is mindful of this sensitivity and the impact of potential disclosure. Accordingly, if the FSA contemplates disclosing a report voluntarily provided by a *firm*, the *firm* will normally be notified and given the opportunity to make representations about the proposed disclosure. The exceptions to this include circumstances where disclosure is urgently needed, where notification might prejudice an investigation or defeat the purpose for which the information had been requested, or where notification would be inconsistent with the FSA's international obligations.

PERIODIC FEES (2009/2010) AND OTHER FEES INSTRUMENT 2009

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 99(1), (1A), (1C) and (2) (Fees);
 - (2) section 101 (Listing rules: general provisions);
 - (3) section 156 (General supplementary powers);
 - (4) section 157(1) (Guidance);
 - (5) section 234 (Industry Funding);
 - (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 purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 June 2009.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Citation

- E. This instrument may be cited as the Periodic Fees (2009/2010) and Other Fees Instrument 2009.

By order of the Board
28 May 2009

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position.

ceding insurer's waiver (in FEES) a waiver granted on the application of an insurer that waives or modifies its obligations under any one or more of GENPRU 2 Annex 7R, INSPRU 1.1.92AR and INSPRU 1.2.28R in order to enable it to:

- (a) treat amounts recoverable from an ISPV as:
 - (i) an admissible asset; or
 - (ii) reinsurance for the purposes of calculating its mathematical reserves; or
 - (iii) reinsurance reducing its MCR; or
- (b) otherwise ascribe a value to such amounts.

Delete the following definition.

supplementary levy (in FEES) a ~~levy, additional to the general levy, for the purposes of recovering the establishment costs.~~

Annex B

Amendments to the Fees manual (FEES)

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

Application

- 1.1.2 R This manual applies in the following way:
- (1) FEES 1, 2 and 3 apply to:
...
 - (q) ... ; ~~and~~
 - (r) ... ; and
 - (s) every insurer applying for a ceding insurer's waiver.
...
- 3.2.1 R 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 request for support relating to compatibility of its systems with *FSA* systems, or admission approval made, or notification or notice of exercise of a *Treaty right* given, or other matter as is applicable to it, as set out or calculated in accordance with the provisions referred to in column (2) of that table:
...
- 3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...		
<u>(ze) Any firm in any one or more of the A fee-blocks defined in FEES 4 Annex 1R Part 1, except fee-block A.16.</u>	<u>Special Project Fee for restructuring in accordance with FEES 3 Annex 9R.</u>	<u>30 days of the date of the invoice.</u>

<u>(z) An applicant for a ceding insurer's waiver.</u>	<u>£20,000</u>	<u>On or before the date the application is made.</u>
--	----------------	---

3 Annex 1 R Authorisation fees payable

Part 2 – Complexity Groupings Straightforward Cases R

Moderately Complex Cases R

Moderately complex cases	
Activity grouping	Description
...	
A.3	<i>UK ISPVs</i>
A.4	<i>UK ISPVs</i>
...	

Complex Cases R

Complex Cases	
Activity grouping	Description
...	
A.3	Insurers - general (excluding <i>friendly societies</i> and <i>UK ISPVs</i>)
A.4	Insurers - life (excluding <i>friendly societies</i> and <i>UK ISPVs</i>)
...	

After FEES 3 Annex 8R, insert the following new Annex. The text is not underlined.

3 Annex 9 R Special Project Fee for restructuring

- (1) The Special Project Fee for restructuring (“the SPFR”) is payable by a *firm* if:
 - (a) it falls within any of the A fee-blocks defined in Part 1 of *FEES 4 Annex 1R*, except if it is in fee-block A.16 only;
 - (b) it engages in, or prepares to engage in, the activity set out in (2); and
 - (c) none of the circumstances in (3) apply.
- (2) The activity referred to in (1)(b) involves the *firm* undertaking or making arrangements with a view to either:
 - (a) raising additional capital; or
 - (b) a significant restructuring of the *firm* or the *group* to which it belongs, including:
 - (i) mergers or acquisitions;
 - (ii) reorganising the *firm's group* structure; and
 - (iii) *reattribution*.
- (3) No SPFR is payable where:
 - (a) the amount calculated in accordance with (6) totals less than £50,000; or
 - (b) the *FSA* has given any *guidance* to the *firm* in relation to the same matter and charged for it; or
 - (c) the transaction only involves the *firm* seeking to raise capital within the *group* to which it belongs.
- (4) Where the transaction involves raising capital outside the *group* to which the *firm* belongs, any SPFR in relation to that transaction is only payable by the largest *firm* in that *group*. The largest *firm* is the one that pays the highest periodic fee in the *FSA* financial year (the 12 months ending 31 March) in which the bill is raised.
- (5) The definition of *group* is limited for the purposes of calculating the SPFR to *parent undertakings* and their *subsidiary undertakings*.
- (6) The SPFR is calculated as follows:
 - (a) Determine the number of hours, or part of an hour, taken by the *FSA* in relation to regulatory work conducted as a consequence of the activities referred to in (2).
 - (b) Next, multiply the applicable rate in the table at (8) by the number of hours or

- part hours obtained under (a).
- (c) Then add any fees and disbursements invoiced to the *FSA* by any *person* in respect of services performed by that *person* for the *FSA* in relation to assisting the *FSA* in performing the regulatory work referred to in (a).
 - (d) The resulting figure is the fee.
 - (e) The number of hours or part hours referred to in (a) are the number of hours or part hours as recorded on the *FSA*'s systems in relation to the regulatory work referred to in (a).
- (7) The first column in the table at (8) sets out the relevant pay grades of those employed by the *FSA* and the second column sets out the hourly rates chargeable in respect of those pay grades.
- (8) Table of hourly rates:

FSA pay grade	Hourly rate (£)
Administrator	25
Associate	50
Technical Specialist	85
Manager	90
Any other <i>person</i> employed by the <i>FSA</i>	135

- ...
- 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* 4 Annex 2R,~~or in the case of listed issuers, as notified to issuers annually, for the relevant year.~~

- ...
- 4.2.7B R (1) This *rule* deals with the calculation of:

- ...
- (2) Unless this *rule* says otherwise, the tariff base for a *firm*'s second financial year is calculated using projected valuations for its ~~second~~ ~~first~~ year (as provided to the *FSA* in the course of the *firm*'s application), of the business to which the tariff relates.

...
4.3.6 R ...

- (5) Paragraphs (1) and (2) do not apply to any Solvency 2 fee or Solvency 2 Implementation fee (as defined in Part 1 of *FEES 4 Annex 2R*) and such fee is fees are not taken into account for the purposes of the split in (1). Instead any Solvency 2 fee or Solvency 2 Implementation fee is payable on the date specified in (1)(a) or (2) (depending on which applies to the rest of its periodic fee) or any earlier date required by (3) or (4).

...
4 Annex 1 R Activity groups, tariff bases and valuation dates applicable

...
Part 2

Activity group	Tariff-base
...	
A.4	ADJUSTED GROSS PREMIUM INCOME AND MATHEMATICAL RESERVES
	<u>Except for UK ISPVs:</u> ...
	...
	... Notes: (1) ... (2) ... (3) For <u>UK ISPVs</u> the tariff base is not relevant and a flat fee set out in <i>FEES 4 Annex 2R</i> is payable. An insurer must include in its calculation of adjusted gross premium income (AGPI) and mathematical reserves (MR) the value of MR and AGPI relating to all risks ceded to <i>ISPVs</i> . (4) ...
...	

A19	<p>ANNUAL INCOME</p> <p>(a) <u>(A)</u> the net income ...</p> <p>Plus</p> <p>(b) <u>(B)</u> in relation to the activities set out in (a) <u>(A)</u>, for any <i>insurance mediation activity</i> carried out by the <i>firm</i> for which it receives payment from the <i>insurer</i> on a basis other than that in (a) <u>(A)</u>, the amount ... ;</p> <p>Plus</p> <p>(c) <u>(C)</u> if the <i>firm</i> is an <i>insurer</i>, in relation to the activities set out in (a) <u>(A)</u>, ... :</p> <p>(i) ... under (a) <u>(A)</u>; or</p> <p>...</p> <p>Notes on annual income:</p> <p>...</p> <p>(5) <u>The same firm may receive income under (A) and (C).</u></p> <p>(6) <u>A firm must include in (A) any income it receives from insurance mediation activity carried on by another person with respect to any general insurance contracts or pure protection contracts into which the firm has entered as insurer.</u></p> <p>(7) <u>In calculating the net amount retained, a firm may not deduct amounts that it rebates to a person other than another firm, a person falling within the extended definition of firm in Note (4) or the firm's customer.</u></p> <p>(8) <u>A firm may only deduct amounts under (A) in calculating its net amount retained if the amount is to be deducted from income that the firm must include under (A). Therefore for example:</u></p> <p>(a) <u>if an insurer (Firm A) pays a firm commission for arranging a general insurance contract or pure protection contract under which Firm A is the insurer, Firm A may not take that expense into account in calculating its annual income if Firm A does not receive a fee from the insured or another person in respect of that contract; and</u></p>
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	(b) if an insurer (Firm A) pays a <i>firm</i> (Firm B) commission for arranging a <i>general insurance contract</i> or <i>pure protection contract</i> under which Firm A is the <i>insurer</i> , Firm A receives a payment from the <i>insured</i> under that transaction and the amount payable to Firm B exceeds the amount payable by the <i>insured</i> , Firm A may not take that excess into account in calculating its annual <i>income</i> and must instead net the sum payable by the <i>insured</i> to zero.
...	

4 Annex 2 R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2009 to 31 March 2010

Part 1

This table shows the tariff rates applicable to each fee block

(1)	...	
	(a)	the firm's relevant fee; plus
	(b)	an additional fee calculated by multiplying the <i>firm</i> 's tariff data by the appropriate rates applying to each tranche of the tariff base, as indicated (<u>Note 1</u>).
...		
(3)	...	...
Note 1	<u>In the case of activity groups A.3 and A.4 there are two tariff rates. The rate in column 1 applies to all firms in their respective fee-blocks. The rate in column 2 relates to the Solvency 2 Implementation fee and firms must determine their obligation to pay this fee by reference to Part 5 of this Annex. The total periodic fee for each of these fee-blocks is determined by adding the amounts obtained under both columns.</u>	

Activity group	Fee payable		
A.1	...	160	
	£ million of Modified Eligible Liabilities (MELs)	Fee (£/£m or part £m of MELs)	
	0 – 0.5	0	
	...		
	>10 – 200	<u>24.72</u> <u>32.31</u>	
	>200 - 2,000	<u>24.69</u> <u>32.31</u>	
	>2,000 - 10,000	<u>24.61</u> <u>32.31</u>	
	>10,000 - 20,000	<u>24.43</u> <u>47.19</u>	
	>20,000	<u>24.26</u> <u>47.19</u>	
	...		
A.2	Minimum fee (£)	525	
	No. of mortgages	Fee (£/mortgage)	
	...		
	51 - 500	<u>4.92</u> <u>6.40</u>	
	501 - 1,000	<u>1.98</u> <u>2.37</u>	
	1,001 - 50,000	<u>1.48</u> <u>2.37</u>	
	50,001 - 500,000	<u>0.51</u> <u>1.35</u>	
	>500,000	<u>0.11</u> <u>0.32</u>	
A.3	Gross premium income (GPI)	<u>Column 1</u> <u>(General periodic fee)</u>	<u>Column 2</u> <u>(Solvency 2 Implementation Fee)</u>
	Minimum fee (£)	430	<u>25.04</u>

	£ million of GPI	Fee (£/£m or part £m of GPI)
0 – 0.5	0	<u>0</u>
>0.5 - 2	<u>2,134.95</u> <u>2,461.92</u>	<u>154.50</u>
>2 - 5	<u>1,983.75</u> <u>2,461.92</u>	<u>154.50</u>
>5 - 20	<u>1,860.84</u> <u>2,461.92</u>	<u>154.50</u>
>20 - 75	<u>592.39</u> <u>799.42</u>	<u>50.18</u>
>75 - 150	<u>519.31</u> <u>799.42</u>	<u>50.18</u>
>150	<u>73.20</u> <u>107.36</u>	<u>6.75</u>
PLUS		
Gross technical liabilities (GTL)	<u>Column 1</u> <u>(General Periodic fee)</u>	<u>Column 2</u> <u>(Solvency 2 Implementation fee)</u>
Minimum fee (£)	0	<u>0</u>
£ million of GTL	Fee (£/£m or part £m of GTL)	
0 – 1	0	<u>0</u>
>1 - 5	<u>51.03</u> <u>60.30</u>	<u>3.74</u>
>5 - 50	<u>47.30</u> <u>60.30</u>	<u>3.74</u>
>50 - 100	<u>43.89</u> <u>60.30</u>	<u>3.74</u>
>100 - 1,000	<u>43.83</u> <u>18.96</u>	<u>1.18</u>
>1,000	<u>5.54</u> <u>7.59</u>	<u>0.48</u>
PLUS		
Solvency 2 Special Project Fee (the “Solvency 2 fee”)		
...		

	There is only a single tariff band	The fee is calculated in accordance with Part 4 of this Annex. The percentage for this fee block (by which periodic fees are multiplied as described in Part 4) is <u>3.2%</u> <u>9.79%</u> .
--	------------------------------------	---

For *UK ISPV's* the tariff rates are not relevant and a flat fee of £430 is payable in respect of ~~the period 1 April 2008 to 31 March 2009 each FSA financial year (the 12 months ending 31 March)~~.

A.4	Adjusted annual gross premium income (AGPI)	<u>Column 1</u> <u>(General Periodic fee)</u>	<u>Column 2</u> <u>(Solvency 2 Implementation fee)</u>
	Minimum fee (£)	215	<u>10.09</u>
£ million of AGPI		Fee (£/£m or part £m of AGPI)	
0 - 1	0	<u>0</u>	
>1 - 50	<u>637.87</u> <u>740.00</u>	<u>40.84</u>	
>50 - 1,000	<u>594.67</u> <u>740.00</u>	<u>40.84</u>	
>1,000 - 2,000	<u>408.20</u> <u>554.56</u>	<u>30.60</u>	
>2,000	<u>280.26</u> <u>380.75</u>	<u>17</u>	
PLUS			
Mathematical reserves (MR)	<u>Column 1</u> <u>(General Periodic fee)</u>	<u>Column 2</u> <u>(Solvency 2 Implementation fee)</u>	
	Minimum fee (£)	215	<u>9.73</u>
£ million of MR		Fee (£/£m or part £m of MR)	
0 - 1	0	<u>0</u>	
>1 - 10	<u>33.55</u> <u>42.35</u>	<u>2.20</u>	
>10 - 100	<u>30.71</u> <u>42.35</u>	<u>2.20</u>	
>100 - 1,000	<u>20.79</u> <u>22.25</u>	<u>1.17</u>	
>1,000 - 5,000	<u>14.63</u> <u>22.25</u>	<u>1.17</u>	

	>5,000 - 15,000	<u>11.36</u> <u>15.04</u>	<u>0.79</u>	
	>15,000	<u>8.83</u> <u>15.04</u>	<u>0.79</u>	
	PLUS			
	Solvency 2 Special Project Fee (Solvency 2 fee)			
	...			
	There is only a single tariff band.	The fee is calculated in accordance with Part 4 of this Annex. The percentage for this fee block (by which periodic fees are multiplied as described in Part 4) is <u>1.41%</u> <u>9.66%</u> .		
	For UK ISPV's the tariff rates are not relevant and a flat fee of £430 is payable in respect of the period 1 April 2008 to 31 March 2009.			
A.5	Minimum fee (£)	580		
	£ million of Active Capacity (AC)	Fee (£/£m or part £m of AC)		
	0 - 50	0		
	>50 - 150	<u>114.91</u> <u>122.49</u>		
	>150 - 250	<u>96.71</u> <u>116.67</u>		
	>250	<u>28.37</u> <u>48.21</u>		
A.6	Flat fee	<u>1,284,725</u> <u>1,743,958</u>		
	PLUS			
	Solvency 2 Special Project Flat Fee (£)	<u>95,000</u>		
	PLUS			

	<u>Solvency 2 Implementation Flat Fee (£)</u>	<u>83,000</u>
A.7	For class 1(C), (2) and (3) <i>firms</i> :	
	...	
	£ million of Funds under Management (FuM)	Fee (£/£m or part £m of FuM)
	0 - 10	0
	>10 - 100	50.28 <u>58.27</u>
	>100 - 2,500	16.17 <u>18.74</u>
	>2,500 - 10,000	9.00 <u>10.43</u>
	>10,000	1.02 <u>1.60</u>
	...	
...		
A.9	Minimum fee (£)	1,890
	£ million of Gross Income (GI)	Fee (£/£m or part £m of GI)
	0 - 1	0
	>1 - 5	842.83 <u>991.25</u>
	>5 - 15	828.57 <u>955</u>
	>15 - 40	820.36 <u>955</u>
	>40	809.18 <u>940</u>
A.10	...	
	No. of traders	Fee (£/trader)
	...	
	3 - 5	2,564.00 <u>3,937</u>
	6 - 10	4,852.00 <u>2,677</u>

	11 – 50	1,712.00 <ins>2,677</ins>
	51 - 200	1,482.00 <ins>3,283</ins>
	>200	1,196.00 <ins>3,283</ins>
...		
A.12	Minimum fee (£)	1,960
	No. of persons	Fee (£/person)
	0 - 1	0
	2 – 4	1,125.00 <ins>1,232</ins>
	5 – 10	570.00 <ins>590</ins>
	11 – 25	418.00 <ins>504</ins>
	26 - 150	221.00 <ins>255</ins>
	151 – 1,500	167.00 <ins>255</ins>
	>1,500	112.00 <ins>160</ins>
...		
A.13	For class (2) firms	
	...	
	No. of persons	Fee (£/person)
	...	
	2 – 4	1,002.00 <ins>1,119</ins>
	5 – 10	978.00 <ins>1,073</ins>
	11 – 25	939.00 <ins>1,073</ins>
	26 - 500	835.00 <ins>939</ins>
	501 – 4,000	767.00 <ins>939</ins>
	>4,000	724.00 <ins>939</ins>
...		
A.14	Minimum fee (£)	1,335.00

	No. of persons	Fee (£/person)
	0 - 1	0
	2	1,258.00 <ins>1,393</ins>
	3 – 4	1,194.00 <ins>1,393</ins>
	5 – 10	1,098.00 <ins>1,211</ins>
	11 - 100	1,042.00 <ins>1,211</ins>
	101 – 200	729.00 <ins>902</ins>
	>200	438.00 <ins>902</ins>
	...	
	...	
A.18	...	
	£ thousands of Annual Income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	...	
	>100 - 1,000	5.18 <ins>6.93</ins>
	>1,000 - 5,000	4.33 <ins>5.60</ins>
	>5,000 - 10,000	3.46 <ins>5.60</ins>
	>10,000 - 20,000	2.60 <ins>4.33</ins>
	>20,000	2.18 <ins>3.71</ins>
A.19	...	
	£ thousands of Annual Income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	...	
	>100 - 1,000	4.31 <ins>4.66</ins>
	>1,000 - 5,000	3.77 <ins>4.30</ins>
	>5,000 - 15,000	2.60 <ins>2.99</ins>

	>15,000 - 100,000	£1.04 <u>£1.40</u>
	>100,000	£0.42 <u>£0.57</u>
B. Market Operators	£20,000 <u>£30,000</u>	
B. Service companies	Bloomberg LP	£37,000 <u>£40,000</u>
	EMX Co Ltd	£27,000 <u>£30,000</u>
	LIFFE Services Ltd	£27,000 <u>£30,000</u>
	OMGEO Ltd	£27,000 <u>£30,000</u>
	Reuters Ltd	£37,000 <u>£40,000</u>
	Swapswire Ltd	£27,000 <u>£30,000</u>
	Thomson Financial Ltd	£27,000 <u>£30,000</u>

Part 2

This table shows the permitted deductions that apply:

Activity group	Nature of deduction	Amount of deduction
A.1	...	£1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.2	...	£1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.3	...	£1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1). The deduction does not apply to any Solvency 2 fee (as defined in Part 1) <u>or Solvency 2 Implementation fee as applicable under Part 5.</u>
A.4	...	£1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1). The deduction does not apply to any Solvency 2 fee (as defined in Part 1) <u>or Solvency 2 Implementation fee as applicable under Part 5.</u>

A.5	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1).
A.6	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1). <u>The deduction does not apply to any Solvency 2 Special Project flat fee or Solvency 2 Implementation flat fee (as defined in Part 1).</u>
A.7	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.9	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.10	...	1.4 <u>6.3%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.12	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.13	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.14	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.18	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.19	...	1.4 <u>6.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)

...

Part 4					
This table shows the calculation of the Solvency 2 fee for <i>firms</i> falling into fee block A3 or A4					
(1)	...				
(2)	<p>The Solvency 2 fee is only payable by a <i>firm</i> if:</p> <table border="1" style="width: 100%;"> <tr> <td>(a)</td><td>it was in one or both of the insurance fee blocks at the start of the financial year <u>2008/9</u> <u>2009/10</u>;</td></tr> <tr> <td>(b)</td><td><i>FEES 4.3.13R (Firms Applying to Cancel or Vary Permission Before Start of Period) does not apply with respect to the fee block in (a); and</i></td></tr> </table>	(a)	it was in one or both of the insurance fee blocks at the start of the financial year <u>2008/9</u> <u>2009/10</u> ;	(b)	<i>FEES 4.3.13R (Firms Applying to Cancel or Vary Permission Before Start of Period) does not apply with respect to the fee block in (a); and</i>
(a)	it was in one or both of the insurance fee blocks at the start of the financial year <u>2008/9</u> <u>2009/10</u> ;				
(b)	<i>FEES 4.3.13R (Firms Applying to Cancel or Vary Permission Before Start of Period) does not apply with respect to the fee block in (a); and</i>				

	(c) it has not notified the FSA before the start of the financial year 2008/9 2009/10 that it intends to migrate out of the United Kingdom for regulatory purposes before the proposed Solvency II Directive is implemented; and
	(d) it is not an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> .
(3)	The Solvency 2 fee is payable by the top ten <ins>sixty</ins> firms in the list of firms that fall into (2) and into fee block A3, and by the top sixty firms in the list of firms that fall into (2) and into fee block A4. A firm's ranking in this the list for a particular insurance fee block is measured by reference to the amount of the periodic fees payable by it under FEES 4.3 in respect of the financial year 2007/8 2008/9 with respect to the that insurance fee blocks block.
(4)	The fee for a particular insurance fee block is calculated by multiplying the periodic fee payable by the firm with respect to that fee block (ignoring the Solvency 2 fee and the Solvency 2 Implementation fee) by the percentage specified in Part 1.
(5)	The total Solvency 2 fee payable by a firm (taking into account amounts payable under both insurance fee blocks) is capped at £50,000 £95,000 .
(6)	For the purpose of (3) firms falling into (2) that are in the same group at the start of the financial year 2008/9 2009/10 must be treated as a single firm, so that the total number of firms liable to pay the Solvency 2 fee may be greater than 20 120 .
(7)	Where (6) applies, the Solvency 2 fee payable by the firms in the group concerned for a particular insurance fee block is calculated by multiplying the total amount of the periodic fees payable by those firms with respect to that fee block (ignoring the Solvency 2 fee and the Solvency 2 Implementation fee) by the percentage specified in Part 1. All those firms are liable jointly and severally to pay the Solvency 2 fee. No incoming EEA firm or incoming Treaty firm that has established a branch in the UK is liable to pay any such joint fee.
(8)	Where (7) applies, (5) is applied to the group as a whole so that the total joint Solvency 2 fee payable by the group is capped at £50,000 £95,000 .
...	

Part 5

This Part sets out when a Solvency 2 Implementation fee is due for firms in the A.3 and A.4 fee-blocks.

(1)	<u>The Solvency 2 Implementation fee is only payable by a <i>firm</i> if it meets all the conditions in (2) and neither of the conditions in (3).</u>
(2)	<u>The conditions in this paragraph are:</u>
	<p>(a) <u><i>FEES 4.3.13R (Firms Applying to Cancel or Vary Permission Before Start of Period) does not apply with respect to the relevant fee-blocks;</i></u></p> <p>(b) <u><i>the firm has not notified the FSA before the start of the financial year 2009/10 that it intends to migrate out of the United Kingdom for regulatory purposes before the proposed Solvency II Directive is implemented;</i></u></p> <p>(c) <u><i>its gross premium income or adjusted gross premium income, as appropriate, referred to in FEES 4 Annex 1R Part 2, exceeds EUR 5 million at the end of the financial year ended in the calendar year ending 31 December prior to the FSA financial year;</i></u></p> <p>(d) <u><i>its gross technical liabilities or mathematical reserves, as appropriate, referred to in FEES 4 Annex 1R, Part 2, exceed EUR 25 million at the end of the financial year ended in the calendar year ending 31 December prior to the FSA financial year.</i></u></p>
(3)	<u>The conditions in this paragraph are:</u>
	<p>(a) <u><i>the firm is a <i>reinsurance undertaking</i> that has, by 10 December 2007, ceased to conduct new <i>insurance business</i> and only administers its existing portfolio in order to terminate its activity as a <i>reinsurance undertaking</i>;</i></u></p> <p>(b) <u><i>it is a <i>reinsurance undertaking</i> whose <i>insurance business</i> is conducted or fully guaranteed by the <i>United Kingdom</i> government for reasons of substantial public interest in the capacity of <i>reinsurer of last resort</i>.</i></u></p>
(4)	<u>Where a <i>firm</i> has notified the FSA that it intends to migrate out of the <i>United Kingdom</i> for regulatory purposes before the proposed Solvency II Directive is implemented in the <i>United Kingdom</i> but when the proposed Directive is implemented that <i>firm</i> remains in the <i>United Kingdom</i> for regulatory purposes, it must pay the Solvency 2 Implementation fee for each financial year commencing 1 April 2009 for which the Solvency 2 Implementation fee would have applied to the <i>firm</i> but for the <i>firm</i> notifying the FSA of its intention to migrate.</u>
(5)	<u>Where a <i>firm</i> is required to pay a Solvency 2 Implementation fee because of the circumstances described in (4) it must pay this fee</u>

	<u>within 30 days of the date of the invoice.</u>
(6)	<u>For the purposes of this Part, the exchange rate from the Euro to the pound sterling is calculated as at the last day of the October preceding the financial year of the FSA in question for which the exchange rates for the currencies of all European Union member states were published in the Official Journal of the European Union.</u>

...

4 Annex 4 R Periodic fees in relation to collective investment schemes payable for the period 1 April 2008 2009 to 31 March 2009 2010

Part 1 – Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
ICVC, AUT, Section 264 of the <i>Act</i> Section 270 of the <i>Act</i>	<u>670 570</u>	1-2 3 - 6 7 - 15 16 - 50 >50	1 2.5 5 11 22	<u>670 570</u> <u>4,675 1,425</u> <u>3,350 2,850</u> <u>7,370 6,270</u> <u>14,740 12,540</u>
Section 272 of the <i>Act</i>	<u>2730</u> <u>2,325</u>	1-2 3-6 7-15 16-50 >50	1 2.5 5 11 22	<u>2,730 2,326</u> <u>6,825 5,815</u> <u>13,650 11,630</u> <u>30,030 25,586</u> <u>60,060 51,172</u>

4 Annex 5 R Periodic fees for designated professional bodies payable in relation to the period 1 April 2009 to 31 March 2010

Table. Fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date
The Law Society of England & Wales	...	
	£31,455 <u>£18,105</u>	1 September <u>2008</u> <u>2009</u>
The Law Society of Scotland	£15,890 <u>£13,990</u>	1 July <u>2008</u> <u>2009</u>
The Law Society of Northern Ireland	£14,220 <u>£12,990</u>	1 July <u>2008</u> <u>2009</u>
The Institute of Actuaries	£10,160 <u>£10,110</u>	1 July <u>2008</u> <u>2009</u>
The Institute of Chartered Accountants in England and Wales	£33,720 <u>£25,630</u>	1 July <u>2008</u> <u>2009</u>
The Institute of Chartered Accountants of Scotland	£12,030 <u>£11,330</u>	1 July <u>2008</u> <u>2009</u>
The Institute of Chartered Accountants in Ireland	£10,940 <u>£10,630</u>	1 July <u>2008</u> <u>2009</u>
The Association of Chartered Certified Accountants	£19,600 <u>£17,070</u>	1 July <u>2008</u> <u>2009</u>
The Council for Licensed Conveyancers	£11,720 <u>£11,090</u>	1 July <u>2008</u> <u>2009</u>
Royal Institution of Chartered Surveyors	£15,010 <u>£13,650</u>	1 July <u>2008</u> <u>2009</u>

4 Annex 6 R Periodic fees for recognised investment exchanges and recognised clearing houses payable in relation to the period 1 April 2009 to 31 March 2010

...

Part 1 – Periodic fees for UK recognised bodies

Name of UK recognised body	Amount payable	Due date
Euroclear UK & Ireland Limited	...	
	£228,000 <u>£310,500</u>	1 September 2008 <u>2009</u>
ICE Futures Europe Ltd	...	
	£208,000 <u>£267,500</u>	1 September 2008 <u>2009</u>
LIFFE Administration and Management	...	
	£325,500 <u>£350,000</u>	1 September 2008 <u>2009</u>
LCH Clearnet Limited	...	...
	£276,500 <u>£315,000</u>	1 September 2008 <u>2009</u>
The London Metal Exchange Limited	...	
	£195,500 <u>£211,500</u>	1 September 2008 <u>2009</u>
London Stock Exchange plc	...	
	£190,000 <u>£252,500</u>	1 September 2008 <u>2009</u>
SWX Europe Ltd	...	
	£84,500 <u>£88,000</u>	1 September 2008 <u>2009</u>

EDX London Ltd	...	
	<u>£44,000</u> <u>£37,000</u>	1 September 2008 <u>2009</u>
PLUS Markets Plc	...	
	<u>£79,000</u> <u>£118,000</u>	1 September 2008 <u>2009</u>
European Central Counterparty Limited	...	
	<u>£202,000</u>	<u>1 September</u> <u>2009</u>
ICE Clear Europe Limited	...	
	<u>£243,000</u>	<u>1 September</u> <u>2009</u>
...		

Part 2 – Periodic fees for overseas recognised bodies

Name of overseas recognised body	Amount payable	Due date
Cantor Financial Futures Exchange	<u>£25,000</u> <u>£30,000</u>	1 July <u>2008</u> <u>2009</u>
The Chicago Mercantile Exchange (<u>CME</u>) (<u>ROIE</u>)	<u>£25,000</u> <u>£30,000</u>	1 July <u>2008</u> <u>2009</u>
Chicago Board of Trade	<u>£25,000</u> <u>£30,000</u>	1 July <u>2008</u> <u>2009</u>
EUREX (Zurich)	<u>£25,000</u> <u>£30,000</u>	1 July <u>2008</u> <u>2009</u>
National Association of Securities and Dealers Automated Quotations (NASDAQ)	<u>£25,000</u> <u>£30,000</u>	1 July <u>2008</u> <u>2009</u>

NQLX LLC	£25,000	1 July 2008
New York Mercantile Exchange Inc.	£25,000 <u>£30,000</u>	1 July 2008 <u>2009</u>
The Swiss Stock Exchange	£25,000 <u>£30,000</u>	1 July 2008 <u>2009</u>
Sydney Futures Exchange Limited	£25,000 <u>£30,000</u>	1 July 2008 <u>2009</u>
US Futures Exchange LLC	£25,000	1 July 2008
ICE Futures US Inc	£25,000 <u>£30,000</u>	1 July 2008 <u>2009</u>
RMX Risk Management Exchanges AG	£25,000	1 July 2008
SIS x-clear AG	£55,000 <u>£60,000</u>	1 July 2008 <u>2009</u>
Eurex Clearing AG	£55,000 <u>£60,000</u>	1 July 2008 <u>2009</u>
ICE Clear US Inc	£55,000 <u>£60,000</u>	1 July 2008 <u>2009</u>
CME Clearing Chicago Mercantile Exchange (CME) (ROCH)	£55,000 <u>£60,000</u>	1 July 2008 <u>2009</u>
Any other <i>overseas investment exchange</i> recognised as such by a <i>recognition order</i> made in the period	£25,000 <u>£30,000</u>	...
Any other <i>overseas clearing house</i> recognised as such by a <i>recognition order</i> made in the period	£55,000 <u>£60,000</u>	...

...

**4 Annex 7 R Periodic fees in relation to the Listing Rules for the period 1 April 2008
2009 to 31 March 2009 2010**

Fee type	Fee amount
Annual fees for the period 1 April 2008 2009 to 31 March 2009 2010	
.....	

Table 1

...

Table 2

Tiered annual fees for all other issuers

Fee payable	
Minimum fee (£)	3,425
£ million of Market Capitalisation	Fee (£/£m or part £m of Market Capitalisation)
0 - 100	0
>100 - 250	15.066000 21.845700
>250 - 1,000	6.026000 8.737700
>1,000 - 5,000	2.005000 5.378413
>5,000 - 25,000	0.037700 0.131196
>25,000	0.010080 0.042386

There is deducted from the fee specified in this Annex 6.4% of the fee payable to take into account financial penalties received by the FSA in the previous financial year.

4 Annex 8 R Periodic fees in relation to the disclosure rules and transparency rules for the period 1 April 2008 2009 to 31 March 2009 2010

...

Table 1

...

Table 2

Fee payable	
Minimum fee (£)	2,740
£ million of Market Capitalisation	Fee (£/£m or part £m of Market Capitalisation)
0 - 100	0
>100 - 250	<u>12.0528</u> <u>17.476560</u>
>250 - 1,000	<u>4.8208</u> <u>6.990160</u>
>1,000 - 5,000	<u>1.6040</u> <u>4.302730</u>
>5,000 - 25,000	<u>0.0302</u> <u>0.104957</u>
>25,000	<u>0.0081</u> <u>0.033909</u>

4 Annex 9 R Periodic fees in respect of securitised derivatives for the period from 1 April 2008 2009 to 31 March 2009 2010

Part 1

...

For the purposes of this Annex “relevant contracts” are all transactions entered into by *firms* in *securitised derivatives* entered into on or settled through *LIFFE* or Eurex Clearing AG, and the “relevant period” is 1 January 2007 2008 to 31 December 2007 2008 inclusive.

The fee shown in the table below for *firms* (but not for *market operators*) will be subject to a deduction of 1.4% 6.2%, as if that fee were a periodic fee charged under *FEES* 4.3.3R, and the deduction were a deduction set out in Part 2 of *FEES* 4 Annex 2R.

Fee amount for <i>firms</i>	
Number of relevant contracts entered into by the <i>firm</i> during the relevant period	Fee amount
0 - 100	£0
101 – 1,000	£150 <u>475</u>
1,001 – 100,000	£700 <u>2,450</u>
100,001 – 1,000,000	£1,900 <u>7,350</u>
1,000,001 – 5,000,000	£4,800 <u>17,100</u>
5,000,001 – 20,000,000	£8,800 <u>31,300</u>
>20,000,000	£13,400 <u>48,800</u>
...	

5 **Financial Ombudsman Service Funding**

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 This chapter also provides for unauthorised persons to pay case fees to FOS Ltd in respect of any *relevant complaints* which it handles.

5.4.1 R ...

(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) ...

(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 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.

...

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). [deleted]~~
- 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. [deleted]~~
- 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. [deleted]~~
- 5.6.4 G ~~The *supplementary levy* will be identified separately from the *general levy* for the purposes of invoicing firms and VJ participants. [deleted]~~
- 5.6.5 R ~~A firm must pay to the FSA a *supplementary levy* towards the costs of establishing the *Financial Ombudsman Service*. [deleted]~~
- 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 Annex 1R and will be calculated by following the steps set out in FEES 5.3.8R. [deleted]~~
- 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*. [deleted]~~
- ...
- 5.7.1 G ~~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.~~
- ...
- 5.8.1 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*.

...

- 5.9.2 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*.

...

5 Annex 1 R Annual Fees Payable in Relation to 2008/09 2009/10

Introduction: annual budget

1. The *annual budget* for 2008/09 2009/10 approved by the FSA is £62.6m 92.5m.

Part 1: General levy ~~and supplementary levy~~

2. The total amount expected to be raised through the *general levy* in 2008/09 2009/10 will be £17.2m £17.7m (net of £1.8m to be raised from consumer credit firms).

Part 2: Fee tariffs for general levy ~~and supplementary levy~~

3. ~~No establishment costs will be raised in 2008/09 by the supplementary levy.~~

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> and <i>home finance administrators</i> (excluding <i>firms</i> in block 14)	...	£0.023 £0.027 per relevant account, subject to a minimum levy of £100
...		

4 – Insurers – life (excluding <i>firms</i> in block 15)	...	£0.049 £0.028 per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £100
5 - Fund managers (including those holding <i>client money/assets</i> and not holding <i>client money/assets</i>)	<u>Relevant funds under management Flat fee</u>	...
...		
8 - Advisory <i>arrangers</i> , dealers or brokers holding and controlling <i>client money</i> and/or assets	...	£80 £45 per relevant <i>approved person</i> subject to a minimum levy of £80 £45
9-Advisory <i>arrangers</i> , dealers or brokers not holding and controlling <i>client money</i> and/or assets	...	£40 per relevant <i>approved person</i> subject to a minimum levy of £40
...		
12 -	N/A for <u>2008/09</u> <u>2009/10</u>	
...		
16 - <i>Home finance providers, advisers and arrangers</i> (excluding <i>firms</i> in blocks 13, 14 & 15)	...	Levy of £60 £70
17 - General insurance mediation (excluding <i>firms</i> in blocks 13, 14 & 15)	<u>Flat fee Annual income (as defined in MIPRU 4.3) relating to firm's relevant business</u>	<u>Levy of £60 £0.175 per £1,000 of annual income (as defined in MIPRU 4.3) relating to firm's relevant business</u> subject to a minimum levy of £80

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Sch 3 Fees and other required payment

- 3.1 G ~~The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant requirements for fees and other required payments. There are no requirements for fees or other payments in *DISP*.~~

~~It is not a complete statement of those requirements and should not be relied on as if it were.~~

- 3.2 G [deleted]

Type of fee	Trigger event	Date/Time for payment	Amount/rate	Handbook reference
<i>General levy</i>	<i>Annual invoice from FOS Ltd</i>	(1) On or before the later of 1 April and 30 calendar days after the date when the invoice is issued by FOS Ltd; or (2) for amounts exceeding the minimum levy, quarterly, at the beginning of each quarter, by direct debit.	Amount of relevant business according to applicable tariff base; or minimum levy.	<i>FFES 5.3</i> <i>FEES 5.7</i> Part 2 of <i>FEES 5</i> Annex 1R
<i>Supplementary levy</i>	<i>Annual invoice from FOS Ltd</i>	(1) On or before the later of 1 April and 30 calendar days after the date when the invoice is issued by FOS Ltd; or (2) for amounts exceeding the minimum levy, quarterly, at the	Amount of relevant business according to applicable tariff base; or minimum levy.	<i>FEES 5.6</i> <i>FEES 5.7</i> Part 2 of <i>FEES 5</i> Annex 1R

		beginning of each quarter, by direct debit.		
Case fees	<i>Monthly invoice from FOS Ltd</i>	Within 30 calendar days of date when the invoice is issued by FOS Ltd	Standard case fee (£360) or special case fee (£720), as applicable	<i>FFES 5.5 FEES 5.7 Part 3 of FFES 5 Annex 1R</i>

FEES (PAYMENT SERVICES) (NO 2) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following provisions of the Payment Services Regulations 2009 (SI 2009/209) ("the Regulations"):
 - (a) regulation 82 (Reporting requirements);
 - (b) regulation 92 (Costs of supervision); and
 - (c) regulation 93 (Guidance);
 - (2) the following provisions of the Financial Services and Markets Act 2000 ("the Act"):
 - (a) section 156 (General supplementary powers);
 - (b) section 234 (Industry Funding); and
 - (c) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- 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 November 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fees (Payment Services) (No 2) Instrument 2009.

By order of the Board
28 May 2009

Annex A

Amendments to the Glossary of definitions

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

<i>fee-paying payment service provider</i>	a <i>payment institution</i>, a <i>full credit institution</i> or an <i>e-money issuer</i>. <u>any of the following when they provide <i>payment services</i>:</u>
	(a) <u>a <i>payment institution</i>;</u>
	(b) <u>a <i>full credit institution</i>;</u>
	(c) <u>an <i>e-money issuer</i>;</u>
	(d) <u>the Post Office Limited;</u>
	(e) <u>the Bank of England, other than when acting in its capacity as a monetary authority or carrying out functions of a public nature; and</u>
	(f) <u>government departments and local authorities, other than when carrying out functions of a public nature.</u>
	A <i>full credit institution</i> or an <i>e-money issuer</i> that is an <i>EEA firm</i> is only a <i>fee-paying payment service provider</i> if it is exercising an <i>EEA right</i> in accordance with Part 2 of Schedule 3 to the <i>Act</i> (exercise of passport rights) to provide <i>payment services</i> in the <i>United Kingdom</i> . <u>An <i>EEA authorised payment institution</i> is only a <i>fee-paying payment service provider</i> if it is exercising a right under Article 25 of the <i>Payment Services Directive</i> to provide <i>payment services</i> in the <i>United Kingdom</i>.</u>
<i>firm</i>	...
	(5) (in <i>FEES 3 to 5</i>) includes a <i>fee-paying payment service provider</i> in accordance with <i>FEES 3.1.1AR</i> , <i>FEES 4.1.1AR</i> and <i>FEES 5.1.1AR</i> .
<i>relevant business</i>	(1) (in <i>DISP</i> and <i>FEES</i>) that part of a <i>firm's</i> business which it conducts with private individuals <u>consumers</u> and which is subject to the jurisdiction of the <i>Financial Ombudsman Service</i> as provided for in <i>DISP 2.3</i> (To which activities does the Compulsory Jurisdiction apply?), <i>DISP 2.4</i> (To which activities does the Consumer Credit Jurisdiction apply?) and <i>DISP 2.5</i> (To which activities does the Voluntary Jurisdiction apply?), measured by reference to the appropriate tariff-base for each <i>industry block</i> .
	...

Annex B

Amendments to the Fees manual (FEES)

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

Application

1.1.2 R This manual applies in the following way:

...

(2) FEES 1, 2 and 4 apply to:

... ...

(h) under the Listing Rules (*LR*) every *sponsor*; and

(i) under the Disclosure Rules and Transparency Rules (*DTR*) every *issuer* of *shares*, depositary receipts and securitised derivatives; and

(j) *every fee-paying payment service provider*.

(3) FEES 1, 2 and 5 apply to:

(a) *every firm and fee-paying payment service provider* which is subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*; and

...

...

Purpose

2.1.5 G Paragraph 17 of Schedule 1 to and section 99 of the *Act* and regulation 92 of the *Payment Services Regulations* 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. *Fee-paying payment service providers are not required to pay the FSCS levy but are liable for FOS levies.*

...

- Application
- 4.1.1 R ...
- 4.1.1A R A reference to “firm” in this chapter includes a reference to a *fee-paying payment service provider*.
- ...
- 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 to 11*. 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 ...
- (3) The periodic fees for *fee-paying payment service providers* are set out in *FEES 4 Annex 11R*. This annex sets out the activity groups, tariff base, valuation dates and, where applicable, the flat fees due for these *firms*.
- ...
- 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 4 Annex 2R or FEES 4 Annex 11R as applicable*, or in the case of listed issuers, as notified to issuers annually, for the relevant year.
- ...
- 4.2.7 R A *firm* (other than an *ICVC* or *UCITS qualifier*) which becomes authorised, or whose *permission is and/or payment service activities are* 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 and/or FEES 4 Annex 11R as appropriate* for the relevant financial year that apply to the *firm* only after the *permission* is received or extended or payment service activities are authorised or extended, but ignoring:
- ...
- ...
- 4.2.7A G Projected valuations for a *firm*’s first year will be collected for the 12 month period beginning with the date a *firm* becomes authorised or the date its permission is and/or payment service activities are extended. That information will be used to calculate the periodic fee for the remainder of the financial year in which the *firm* was authorised or its *permission was and/or payment service activities were* extended (adjusted in accordance

with FEES 4.2.7R) and to calculate the periodic fee for the following financial year. Projected valuations are not relevant for those fee payers that are only required to pay fixed fees.

4.2.7B R (1) This *rule* deals with the calculation of:

- (a) ~~a firm's fees for the FSA financial year following the FSA financial year in which the firm obtained permission or had its permission extended ("the second financial year"); a firm's fees for its second financial year. This is the FSA financial year following the FSA financial year in which it was given permission or was authorised under the Payment Services Regulations or had its permission and/or payment services activities extended ("the relevant permissions"); and~~
 - (b) ~~the tariff base for the fee block or fee blocks that relate to that permission or extension, as the case may be each of the relevant permissions.~~
- ...

(5) The rest of this *rule* only applies to a *firm* that becomes authorised, or extends its permission and/or payment services activities, on or after 1 April 2009.

- (a) If a *firm*'s tariff base is calculated using data from a period that begins on or after the date that the *firm* receives its permission or extension of permission, as the case may be, obtains the relevant permission to which that tariff base relates, the *firm* must use that data.
- (b) Unless (a) applies, if a *firm*:
 - (i) ~~receives its permission or extension of permission, as the case may be, a relevant permission between 1 April and 31 December inclusive; and~~
 - (ii) is, but for this *rule*, required to calculate its tariff base for that relevant permission by reference to the average of its modified eligible liabilities for October, November and December;

it must calculate that tariff base as at the December before the start of the *FSA* financial year.

- (c) If a *firm* satisfies the following conditions it must calculate its tariff base under (d):
 - (i) ~~the firm receives its permission or extension of permission, as the case may be, a relevant permission between 1 April and 31 December~~

- inclusive; and
- (ii) the *firm's* tariff base for that relevant permission is, but for this rule, is calculated by reference to the *firm's* financial year ended in the calendar year ending on the 31 December prior to before the start of the FSA financial year or the twelve months ending 31 December prior to before the start of the FSA financial year.
- (d) If a *firm* satisfies the conditions in (c) it must calculate its tariff base as follows:
- (i) it must use actual data in relation to the business to which the tariff relates rather than projected valuations;
 - (ii) the tariff is calculated by reference to the period beginning on the date it acquired permission, or had its permission extended the relevant permission relating to the tariff, and ending on the 31 December before the start of the FSA financial year; and
 - (iii) the figures are annualised by increasing them by the same proportion as the period of 12 months bears to the period starting from when the *firm* received its relevant permission or extension to the 31 December, as the case may be.
- ...
- (f) Where a *firm* is required to use actual data under this rule FEES 4 Annex 1R Part 3 is and FEES 4 Annex 11R Part 4 are modified in relation to the calculation of that *firm's* valuation date in its second financial year.
- ...
- 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*, and which are not provided on a *cross border services* basis. For payment services the adjustment only applies to the business to which the calculation made in FEES 4.3.12A relates.
- 4.2.9 G The *FSA* will not refund periodic fees if, after the start of the period to which they relate:
- ...

- (2) a *firm* reduces its permission or payment services activities so that it then falls out of the fee-block previously applied to it;
- ...

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:

...

- (2) unless *FEES* 4.3.6R(3), or *FEES* 4.3.6R(4) or *FEES* 4.3.6R(4A) (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 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fees
Any <i>firm</i> (except an <i>ICVC</i> or a <i>UCITS qualifier</i>)	<i>Firm</i> receives <u>permission, or becomes authorised or registered under the Payment Services Regulations</u> ; or <i>Firm firm</i> extends <u>permission or its payment service activities</u>
...			

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 plus
- (1A) any periodic fee applicable to it calculated in accordance with *FEES* 4.3.3AR using information relating to its *UK* business obtained in accordance with *FEES* 4.4 (or by other means in the case of the *Bank of England*); less

- (2) any deductions from the periodic fee specified in Part 2 of *FEES Annex 2R or Parts 6 and/or 7 of FEES 4 Annex 11R*. For the purposes of this deduction, any deduction available in Part 2 of *FEES 4 Annex 2R* shall not be applied to any fee calculated in accordance with *FEES 4.3.3AR* and any deduction available in Part 6 and/or 7 of *FEES 4 Annex 11R* shall not be applied to any fees calculated in accordance with *FEES 4.3.3R*.
- 4.3.2 G (1) The amount payable by each *firm* will depend upon the category (or categories) of *regulated activities or payment services* 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. In the case of firms that provide *payment services*, the relevant fee blocks, tariffs and rates are set out in *FEES 4 Annex 11R*.
- (2) *Incoming EEA firms, and incoming Treaty firms and EEA authorised payment institutions* 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* and *FEES 4.3.12AR*).

Calculation of periodic fee (excluding fee-paying payment service providers)

- 4.3.3 R The periodic fee referred to in *FEES 4.3.1R* is (except in relation to the *Society and fee-paying payment service providers*) calculated as follows:

...

Calculation of periodic fee for fee-paying payments service providers

- 4.3.3A R The periodic fee referred to in *FEES 4.3.1R* in relation to *fee-paying payment service providers* is calculated in accordance with *FEES 4 Annex 11R*.

Modification for firms with new or extended permissions

- 4.3.4 G (1) A *firm* which becomes authorised or registered 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 or the right to provide particular *payment services* - see *FEES 4.2.5G* and *FEES 4.2.6R*.
- (2) Similarly a *firm* which extends its permission or its right to provide particular *payment services* 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 or payment services activity - see FEES 4.2.6R and FEES 4.2.7R.

...

...

Time of payment

4.3.6 R ...

- (3) If a *firm* has applied to cancel its *Part IV permission* in the way set out in SUP 6.4.5D (Cancellation of permission), or its status as a payment institution under regulation 10 of the Payment Services Regulations (Cancellation of authorisation) or as regulation 10 is applied by regulation 14 of the *Payment Services Regulations* (Supplementary provisions), then (1) and (2) do not apply but it must pay the total amount due when the application is made.
 - (4) ...
 - (4A) If the FSA has cancelled a firm's authorisation or registration under regulation 10 of the Payment Services Regulations or its registration under regulation 10 as applied by regulation 14 of the Payment Services Regulations, then (1) and (2) do not apply but the firm must pay the total amount due immediately before the cancellation becomes effective.
- ...
- ...

Incoming EEA firms, and incoming Treaty firms and EEA authorised payment institutions

4.3.11 G The FSA recognises that its responsibilities in respect of an *incoming EEA firm*, or of an incoming Treaty firm or an EEA authorised payment institution 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 and EEA authorised payment institutions are reduced.

4.3.12 ...

- 4.3.12A R For a full credit institution or an e-money issuer which is a fee-paying payment service provider and an EEA firm, or for an EEA authorised payment institution, the calculation required by FEES 4.3.3AR is modified as follows:
- (1) the tariffs set out in Part 5 of FEES 4 Annex 11R are only applied to the payment services of the firm which are carried on from an establishment in the United Kingdom, including payment services

provided through any of its *agents* established in the *United Kingdom*; and

- (2) those tariffs are modified in accordance with Part 7 of FEES 4 Annex 11R.

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 SUP 6.4.5D (Cancellation of permission), or applies to vary (by reducing its scope) or cancel its authorisation or registration (regulation 8 and 10(1) of the *Payment Services Regulations* including as applied by regulation 14 of the *Payment Services Regulations*); an *issuer* makes an application for de-listing; or a *sponsor* notifies the FSA of its intention to be removed from the list of approved *sponsors*; and
- (b) the *firm*, *issuer* or *sponsor* makes the application or notification 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 or authorisation or registration under the Payment Services Regulations*, de-listing or removal from the list of approved *sponsor*, took effect immediately before 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 its authorisation or registration under the Payment Services Regulations* or the *firm* has exercised its *own-initiative powers* to cancel a *firm's Part IV permission or the FSA has exercised its powers under regulation 10 (Cancellation of authorisation)*, including as applied by regulation 14 (Supplementary provisions) of the *Payment Services Regulations* to cancel a *firm's authorisation or registration under the Payment Services Regulations*, the due dates for payment of periodic fees are modified by FEES 4.3.6R(3), and FEES 4.3.6R(4) and FEES 4.3.6R(4A) respectively.

Firms acquiring businesses from other firms

4.3.15 R (1) This *rule* applies if:

...

- (b) A became authorised or registered as a result of B's simple change of legal status (as defined in Part 6).

...

- (3) If the acquisition occurs after the valuation date applicable to the business (as set out in FEES 4 Annex 1R and FEES 4 Annex 11R) which A acquired from B, for the period following that in which the acquisition occurred, applies to A, in relation to that following period, as if the acquisition had occurred immediately before the relevant valuation date.

4.4

Information on which Fees are calculated

4.4.6

- R The obligations of a firm to supply information as set out in FEES 4.4.1R and FEES 4.4.2R do not apply in respect of any of its payment services business.

Information relating to payment services

4.4.7

- D An authorised payment institution, the Post Office Limited, government departments and local authorities or an EEA authorised payment institution must notify to the FSA the value (as at the valuation date specified in Part 4 of FEES 4 Annex 11R) of each element of business on which the periodic fee payable by the firm is to be calculated, including any payment services carried on by its agents from an establishment in the United Kingdom.

4.4.8

- D An authorised payment institution, the Post Office Limited, government departments and local authorities or an EEA authorised payment institution must send to the FSA in writing the information required under FEES 4.4.7D as soon as reasonably practicable, and in any event within two months, after the date specified as the valuation date in Part 4 of FEES 4 Annex 11R.

4.4.9

- D To the extent that an authorised payment institution or an EEA authorised payment institution has provided the information required by FEES 4.4.7D 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.

...

After FEES 4 Annex 10R, insert the following new Annex. The text is not underlined.

4 Annex 11R Periodic fees in respect of payment services carried on by fee-paying payment service providers under the Payment Services Regulations

Part 1 – Method for calculating the fee

- (1) The periodic fee for *fee-paying payment service providers* is calculated by adding the minimum fee to an additional fee calculated by multiplying the tariff base identified in Part 3 of *FEES 4 Annex 11R* by the appropriate rates applying to each tranche of the tariff base as indicated in the table at Part 5. For *small payment institutions* and *small e-money issuers* the tariff rates are not relevant and a flat fee is payable.
- (2) A *fee-paying payment service provider* may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:
 - (a) it has reasonable grounds for believing that the costs of identifying the firm's UK business separately from its non-UK business in the way described in Part 3 of *FEES 4 Annex 11R* is disproportionate to the difference in fees payable; and
 - (b) it notifies the FSA in writing at the same time as it provides the information concerned under *FEES 4.4 (Information on which fees are calculated)*, or, if earlier, at the time it pays the fees concerned.
- (3) For a *fee-paying payment service provider* which is required to comply with *FEES 4.4.9D (Information on which fees are calculated)* and has not done so 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 £650.

Part 2 – Activity groups

This table shows how the *payment services* performed by *fee-paying payment service providers* are linked to activity groups ('fee-blocks'). A *fee-paying payment service provider* can use the table to identify which fee-blocks it falls into based on its authorisation or registration.

Activity group	Fee payer falls into this activity group if:
G.2 Certain deposit	it is a <i>fee-paying payment service provider</i> not

acceptors and <i>e-money issuers</i>	falling within any of the other fee-blocks in this table
G.3 Large payment institutions	it is an <i>authorised payment institution</i> , an <i>EEA authorised payment institution</i> or the Post Office Limited
G.4 Small payment institutions	it is a <i>small payment institution</i> or a <i>small e-money issuer</i>
G.5 – Other institutions	it is the Bank of England or a government department or local authority that provides <i>payment services</i> other than when carrying out functions of a public nature.

Part 3

This table indicates the tariff base for each fee-block. The tariff base is the means by which the FSA measures the ‘amount of business’ conducted by *fee-paying payment service providers*.

Activity group	Tariff-base
G.2	MODIFIED ELIGIBLE LIABILITIES These are determined in the same manner as the tariff-base for relevant <i>firms</i> in the A.1 fee-block set out in FEES 4 Annex 1 Part 2 R.
G.3	RELEVANT INCOME This is the sum of the following elements of the <i>firm's</i> UK business: Interest income Interest expenses Gross commissions and fees received Gross other operating income calculated in the same manner as the “relevant indicator” referred to in paragraph 18(3) of Schedule 3 to the <i>Payment Services Regulations</i> . For the Post Office Limited only, Relevant Income relates only to its <i>payment services</i> business.
G.4	Not applicable.
G.5	As in G.3 and Relevant Income only relates to <i>payment services</i> business.

Part 4 – Valuation period

This table indicates the valuation date for each fee-block. A *fee-paying payment service provider* can calculate its tariff data by applying the tariff bases set out in Part 2 with reference to the valuation dates shown in this table.

Activity group	Valuation date
In this table, reference to specific dates or months are references to the latest one occurring before the start of the period to which the fee applies e.g. for 2010/11 fees (1 April 2010 to 31 March 2011), a reference to December means December 2009.	
Where a <i>fee-paying payment service provider</i> 's tariff data is in a currency other than sterling, it must be converted into sterling at the exchange rate prevailing on the relevant valuation date.	
G.2	For <i>banks, e-money issuers and building societies</i> as in FEES 4 Annex 1R Part 3.
G.3	Relevant income for the financial year ended in the calendar year ending 31 December.
G.4	Not relevant.
G.5	Relevant income for the twelve <i>months</i> ending 31 December.

Part 5 – Tariff rates

Activity group	Fee payable in relation to 2010/11	
G.2	Minimum fee (£)	400
	£ million of Modified Eligible Liabilities (MELS)	Fee (£/£m or part £m of MELS)
	[tariff band to follow]	[tariff rate to follow]
G.3	Minimum fee (£)	400
	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)

	[tariff band to follow]	[tariff rate to follow]
G.4	£400	
G.5	As in G.3.	

Part 6 – Permitted deductions for financial penalties

Fee-paying payment service providers may make deductions as provided in this Part.

Activity group	Nature of deduction	Amount of deduction
G.2	Financial penalties received	[to follow]
G.3	Financial penalties received	[to follow]
G.4	Financial penalties received	[to follow]
G.5	Financial penalties received	[to follow]

Part 7 – Permitted deductions for *EEA authorised payment institutions, full credit institutions* and *e-money issuers* that are *EEA firms*

Fee-paying payment service providers may make deductions as provided in this Part.

Activity group	Percentage deducted from the tariff payable under Part 5 applicable to the firm	Minimum amount payable
G.2	[to follow]	[to follow]
G.3 excluding the Post Office Limited	[to follow]	[to follow]

...

Amend the following as shown.

5 Financial Ombudsman Service

...

5.1.1A R A reference to “firm” in this chapter includes a reference to a *fee-paying payment service provider* except in FEES 5.5 and where “firm” is used elsewhere in this chapter in connection with the obligation to pay case fees.

...

5.4.1 R ...

(2) Paragraph (1) does not apply if the *firm* pays a *general levy* on a flat fee basis only or if it is the Bank of England.

...

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 consumers. *Relevant business* is defined in the *Glossary* as business with private individuals consumers only. So FEES 5.4.1R does not apply in relation to business done with other types of *eligible complainant* described in DISP 2.7.3R(2), DISP 2.7.6R(12)(a) and DISP 2.7.6R(12)(a); the funding of FOS Ltd in relation to that business is by special case only (see FEES 5.5.6R).

...

5.8.2 R (1) This *rule* deals with the calculation of:

(a) a *firm’s general levy* in the 12 months ending on the 31 March in which it obtains permission or was authorised under the Payment Services Regulations or had its permission and/or payment services activities extended (“relevant permissions”) or its permission is extended, and the following 12 months ending on the 31 March; and

(b) the tariff base for the industry blocks that relate to that permission or extension, as the case may be each of the relevant permissions.

(2) Unless this *rule* says otherwise, the tariff base is calculated using the projected valuation for its first and second year of the business to which the tariff relates.

(3) The rest of this *rule* only applies to a *firm* that becomes authorised, or extends its permission and/or payment services activities, on or after 1 April 2009.

- (a) If the tariff base is calculated using data from a period that begins on or after the date that the *firm receives its permission or extension, as the case may be* obtains the relevant permission to which that tariff base relates, the *firm* must use that data.
- (b) If a *firm* satisfies the following conditions it must calculate its tariff base under (c) for the *FSA* financial year following the *FSA* financial year it obtained *permission a relevant permission*:
 - (i) the *firm* receives *its permission or extension of permission, as the case may be, a relevant permission* between 1 April and 31 December inclusive; and
 - (ii) the *firm's* tariff base *for that relevant permission is*, but for this *rule*, *is* calculated by reference to the *firm's* financial year ended in the calendar year ending *on the 31 December before the start of the FSA financial year* or the twelve *months* ending 31 December *prior to before the start of the FSA financial year*.
- (c) If a *firm* satisfies the conditions in (b) it must calculate its tariff base as follows:
 - ...
 - (ii) the tariff is calculated by reference to the period beginning on the date it acquired *permission, or had its permission extended, the relevant permission relating to the tariff* and ending on the 31 December before the start of the *FSA* financial year; and
 - (iii) the figures are annualised by increasing them by the same proportion as the period of 12 *months* bears to the period starting from when the *firm* received *its permission or extension any relevant permissions* to the 31 December, *as the case may be*.

...

5 Annex 1R Annual Fees Payable in Relation to 2009/10

Introduction: annual budget

...

Industry block	Tariff base	General levy payable by firm
...		
<u>11 – <i>fee-paying payment service providers</i> (but excluding firms in any other Industry block)</u>	<p><u>N/A for 2008/09</u></p> <p><u>For authorised payment institutions, the Post Office Limited, the Bank of England, government departments and local authorities, and EEA authorised payment institutions relevant income as described in FEES 4 Annex 11R Part 3</u></p>	[to follow]
	<u>For small payment institutions and small e-money issuers a flat fee</u>	<u>Levy of £75 as from 2010/11</u>

**COMPENSATION SOURCEBOOK (DEPOSIT GUARANTEE SCHEMES
DIRECTIVE AMENDMENTS) INSTRUMENT 2009**

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 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 213 (The compensation scheme); and
 - (e) section 214 (General); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Annex A and Part 1 of Annex B come into force on 30 June 2009;
 - (2) Part 2 of Annex B comes into force on 1 January 2010; and
 - (3) Part 3 of Annex B comes into force on 31 December 2010.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Compensation sourcebook (COMP) is amended in accordance with Annex B to this instrument.

Notes

- F. 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

- G. This instrument may be cited as the Compensation Sourcebook (Deposit Guarantee Schemes Directive Amendments) Instrument 2009.

By order of the Board
28 May 2009

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position

non-EEA firm *a firm that has its registered office (or, if it has no registered office, its head office) in a non-EEA state.*

Amend the following definition as shown.

working day (1) (in *PR* and *COMP*) (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*.

...

Annex B

Amendments to the Compensation sourcebook (COMP)

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

Part 1: Changes which come into force on 30 June 2009

Informing the FSCS

- 2.2.9 G The FSA will inform the FSCS if it detects problems in a firm that is likely to give rise to the intervention of the FSCS.

[Note: article 10(1), part of last sub-paragraph of the Deposit Guarantee Directive]

...

- 6.3.1A G The FSA will make the determination in COMP 6.3.1R(2)(a) in relation to a DGD claim as soon as possible and in any event no later than five working days after being satisfied that either of the conditions in COMP 6.3.2R has been met.

[Note: article 1(3)(i) of the Deposit Guarantee Directive]

...

- 10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
<i>Protected deposit</i>	100% of <i>claim</i>	<u>£50,000 or €50,000 whichever is the greater on the date the relevant person is determined to be in default or the date the protected deposit was due and payable, if later.</u> <u>[Note: article 7(1) of the Deposit Guarantee Directive]</u> <u>(see also below for building society and other mutual society mergers (COMP 10.2.10R) and protected deposit transfers under the special resolution regime</u>

		(COMP 10.2.11R))
...		

- 14.3.1 R Where an *incoming EEA firm* obtains *top-up cover* under COMP 14.2, the FSCS must co-operate with that firm's Home State compensation scheme. In particular, the FSCS must seek to establish with that firm's Home State compensation scheme appropriate procedures for the payment of compensation to claimants, following the principles set out in Annex II of the *Deposit Guarantee Directive* or Annex II of the *Investor Compensation Directive*, as appropriate.

[Note: article 4(5) of the *Deposit Guarantee Directive*]

- 14.4.1 R The FSCS must terminate an *incoming EEA firm's top-up cover* where it is advised by the firm's Home State regulator or compensation scheme has ascertained that the conditions in COMP 14.2.1R are no longer satisfied.

- 14.4.4 R If the *incoming EEA firm* fails to meet its obligations for a period of twelve months following the notice, the FSCS may, subject to obtaining the consent of the incoming EEA firm's Home State regulator, terminate its *top-up cover*. Notwithstanding the termination of top-up cover under this rule, cover will continue for:
- (1) protected deposits which are not repayable on demand without penalty; and
 - (2) protected investment business transacted before that termination.

- 14.4.6 R When an *incoming EEA firm's top-up cover* comes to an end under COMP 14.4.1R, COMP 14.4.4R or COMP 14.4.5R, it must:
- (1) inform all the clients of its *UK branch* no later than six weeks after the date that its participation ends that they are no longer protected (or, if appropriate, of the more limited protection provided) by the *compensation scheme*, and of the level of compensation which is then available to them; and

After COMP 15 insert the following new chapter. The text is not underlined.

16 Disclosure requirements for firms that accept deposits

16.1 Application and purpose

16.1.1 R This chapter applies to:

- (1) a *UK domestic firm* that *accepts deposits*;
- (2) a *non-EEA firm* that *accepts deposits* in the *United Kingdom*; and
- (3) an *incoming EEA firm* that *accepts deposits* through a *UK branch*.

16.1.2 G The purpose of this chapter is to set out the information about compensation that these *firms* must disclose, and the methods of communication which should be used.

16.2 Informing depositors of limitations to coverage

16.2.1 R (1) If a *protected deposit* is not protected by the *compensation scheme*, the *firm* must inform the depositor accordingly.

(2) A *firm* must make the information required by (1) available in a readily comprehensible manner.

[**Note:** article 9(1) of the *Deposit Guarantee Directive*]

16.2.2 R When providing the information required by COMP 16.2.1R, a *firm* must use the communication channels it normally uses when communicating with its depositors.

Amend the following as shown.

TP 1.1 Transitional provisions table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions coming into force
...					
<u>18</u>	<u>COMP 10.2.3R</u>	<u>R</u>	<u>The change to the limit for protected</u>	<u>From 30 June 2009</u>	<u>30 June 2009</u>

			<u>deposits made by the Compensation Sourcebook (Deposit Guarantee Schemes Directive Amendments) Instrument 2009 does not apply in relation to a claim against a relevant person that was in default before 30 June 2009.</u>	<u>indefinitely</u>	
--	--	--	---	---------------------	--

Part 2: Changes which come into force on 1 January 2010

TP 1.1 Transitional provisions table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions coming into force
...					
<u>18</u> <u>19</u>	Amendments to COMP 10.2.3R introduced by the Financial Services Compensation Scheme (Limits Amendment) Instrument 2009	R	Provisions and definitions arising out of (2) only apply to defaults on or occurring after 1 January 2010.	From 1 January 2010 indefinitely	1 January 2010

Part 3: Changes which come into force on 31 December 2010

Systems

- 2.2.10 R The FSCS must perform regular tests of its systems relating to the payment of compensation with respect to claims for protected deposits.

[Note: article 10(1), part of last sub-paragraph of the Deposit Guarantee Directive]

...

- 9.2.1 R The FSCS must pay a *claim* as soon as reasonably possible after:
- (1) it is satisfied that the conditions in COMP 3.2.1R have been met; and
 - (2) it has calculated the amount of compensation due to the claimant;
- and in any event within:
- (3) in relation to a *claim* for a *protected deposit*, 20 working days of that date unless the FSA has granted the FSCS an extension, in which case payment must be made no later than 30 working days from that date; or

[Note: article 10(1), first and second sub-paragraphs of the *Deposit Guarantee Directive*]
 - (4) in relation to any other *claim*, three months of that date, unless the FSA has granted the FSCS an extension, in which case payment must be made no later than six months from that date.
- 9.2.1A R The time limits in COMP 9.2.1R(3) include the collection and transmission of accurate data on depositors and *protected deposits* which is necessary for the verification of claims.

**RECOGNISED INVESTMENT EXCHANGES AND
RECOGNISED CLEARING HOUSES SOURCEBOOK
(AMENDMENTS TO RECOGNITION REQUIREMENTS) INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of section 157 (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 15 June 2009.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Recognised Investment Exchanges and Recognised Clearing Houses Sourcebook (Amendments to Recognition Requirements) Instrument 2009.

By order of the Board
28 May 2009

Annex A

Amendments to the Glossary of definitions

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

market contract a market contract as described in section 155 of the Companies Act 1989 or article 80 of the Companies (No 2) (Northern Ireland) Order 1990 which is in summary:

(a) a contract entered into by a *member* or *designated non-member* of an *RIE* which is either:

(i) a contract made on the exchange or an exchange to whose undertaking the exchange has succeeded; or

(ii) a contract in the making of which the *member* or ~~designated on-member~~ *designated non-member* was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded;

(b) a contract entered into by an *RIE* or *RCH*, in its capacity as such, with one of its or with an RCH or with an RIE, for the purpose of:

(i) enabling the rights and liabilities of that *member*, or clearing house or other investment exchange, under transactions in a transaction, to be settled; or

(ii) providing central counterparty clearing services (as described in section 155(3A) of the Companies Act 1989) to that member or clearing house or other investment exchange.

Annex B

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, unless otherwise stated.

2.17 Recognition requirements relating to the default rules of UK recognised bodies

2.17.1 G The text of part of regulation 3 (Interpretation) of and Parts II and IV of the Schedule to the *Recognition Requirements Regulations* is set out below.

2.17.1A UK Regulation 3 (Interpretation) of the Recognition Requirements Regulations:

...

“default fund” means the sum of the default fund contributions by the members or designated non-members of a [recognised investment exchange] to that exchange or by one [recognised investment exchange] to another or by the members of a [recognised clearing house] to that clearing house or by one [recognised clearing house] to another to the extent those contributions have not been returned or otherwise applied;

“default fund contribution” has the same meaning as in section 188(3A) of the Companies Act [1989];”

...

2.17.2 UK Schedule to the Recognition Requirements Regulations, Part II

Paragraph 10 (Default rules in respect of market contracts)	
...	
(4)	<u>Sub-paragraph (5) applies where the exchange has arrangements for transacting business with, or in relation to common members of, a [recognised clearing house] or another [recognised investment exchange].</u>
(5)	<u>A [UK RIE] must have [default rules] which in the event of the clearing house or the investment exchange being or appearing to be unable to meet its obligations in respect of one or more [market contracts], enable action to be taken in respect of unsettled [market contracts] to which that person is a party.</u>
Paragraph 11 (Content of rules)	

....			
Paragraph 12 (Content of rules)			
(1)	This paragraph applies as regards contracts falling within section 155(2)(b) or (c) of the Companies Act [1989].		
(2)	The [default rules] must provide -		
	(a)	...	
	(b)	for the sums so payable by or to the defaulter in respect of different contracts <u>entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act [1989]</u> to be aggregated or set off so as to produce a net sum;	
	(bb)	<u>if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the investment exchange by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum;</u>	
	(e)	for that sum—	
		(i)	<u>if payable by the defaulter to the [UK RIE], to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;</u>
		(ii)	<u>if payable by the [UK RIE] to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and</u>
	(c)	<u>for the net sum referred to in [(2)](b) or, if relevant, the net sum referred to in [(2)](bb) -</u>	
		(i)	<u>if payable by the defaulter to the exchange, to be set off against -</u>
		(aa)	<u>any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);</u>
		(bb)	<u>to the extent (if any) that any sum remains after set off under (aa), any default fund contribution provided by the defaulter remaining after any application of such</u>

				<u>contribution;</u>
		(ii)		<u>to the extent (if any) that any sum remains after set off under (i), to be paid from such other funds, including the default fund, or resources as the exchange may apply under its default rules;</u>
		(iii)		<u>if payable by the exchange to the defaulter, to be aggregated with -</u>
			(aa)	<u>any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);</u>
			(bb)	<u>any default fund contribution provided by the defaulter remaining after any application of such contribution; and</u>
	(d)			...
(2A)				<u>In sub-paragraph (2), “margin set off agreement” means an agreement between the exchange and AP permitting any eligible position to which the Participant Member is party with the exchange and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to either the exchange or AP and/or margin to be provided to, either or both, the exchange and AP.</u>
(2B)				<p><u>In sub-paragraph (2) -</u></p> <p><u>“AP” means a [recognised clearing house] or another [recognised investment exchange] of whom a Participant Member is a member;</u></p> <p><u>“eligible position” means any position which may be included in the set off calculation;</u></p> <p><u>“Participant Member” means a person who</u></p> <ul style="list-style-type: none"> (a) <u>is a member of the exchange;</u> (b) <u>is a member or participant of AP; and</u> (c) <u>chooses to participate, in accordance with the rules of the exchange, in such agreement.</u>
(2C)				<u>The property, contribution, funds or resources referred to in (2)(c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.</u>

...	
<u>Paragraph 12A (Content of rules)</u>	
The rules of the [UK RIE] must provide that, in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 12(2)(c)(i) or (ii).	
...	
<u>Paragraph 14 (Cooperation with other authorities)</u>	
The [UK RIE] must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any <i>relevant office-holder</i> and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a <i>member</i> of the [UK RIE] or any [designated non-member] or the default of a [recognised clearing house] or another [recognised investment exchange].	
<u>Paragraph 15 (Margin)</u>	
(1)	Where the [UK RIE] provides clearing services, the [default rules] of the [UK RIE] must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a <i>client account other than a client account of the defaulter</i> .
(2)	...
(3)	For the purposes of this paragraph, “client account of the defaulter” means an account held by the [UK RIE] in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.
(4)	In sub-paragraph (3) “relevant transaction” has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.

2.17.3 UK Schedule to the Recognition Requirements Regulations, Part IV

<u>Paragraph 24 (Default rules in respect of market contracts)</u>	
...	
(3)	Sub-paragraph (4) applies where the clearing house has arrangements for transacting business with, or in relation to common members of, a [recognised investment exchange] or another [recognised clearing house].
(4)	A [UK RCH] must have [default rules] which in the event of the investment exchange or the clearing house being or appearing to

	<u>be unable to meet its obligations in respect of one or more [market contracts], enable action to be taken in respect of unsettled [market contracts] to which that person is a party.</u>		
Paragraph 25 (Content of rules)			
(1)	The [<i>default rules</i>] must provide -		
	(a)	...	
	(b)	for the sums so payable by or to the defaulter in respect of different contracts <u>entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act [1989]</u> to be aggregated or set off so as to produce a net sum;	
	(bb)	<u>if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the clearing house by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum;</u>	
	(e)	<u>for that sum—</u>	
		(i)	<u>if payable by the defaulter to the [UK RCH], to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;</u>
		(ii)	<u>if payable by the [UK RCH] to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and</u>
	(c)	<u>for the net sum referred to in [(1)](b) or, if relevant, the net sum referred to in [(1)](bb)</u>	
		(i)	<u>if payable by the defaulter to the clearing house, to be set off against -</u>
		(aa)	<u>any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);</u>
		(bb)	<u>to the extent (if any) that any sum remains after set off under (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;</u>

		(ii)		<u>to the extent (if any) that any sum remains after set off under (i), to be paid from such other funds, including the default fund, or resources as the clearing house may apply under its [default rules];</u>
		(iii)		<u>if payable by the clearing house to the defaulter, to be aggregated with</u>
			(aa)	<u>any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);</u>
			(bb)	<u>any default fund contribution provided by the defaulter remaining after any application of such contribution; and</u>
	(d)			...
(1A)				<u>In sub-paragraph (1), “margin set off agreement” means an agreement between the clearing house and AP permitting any eligible position to which the Participant Member is party with the clearing house and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to or by either the clearing house or AP and/or margin to be provided to, either or both, the clearing house and AP.</u>
(1B)				<p><u>In sub-paragraph (1A) -</u></p> <p><u>“AP” means a [recognised investment exchange] or another [recognised clearing house] of whom a Participant Member is a member;</u></p> <p><u>“eligible position” means any position which may be included in the set off calculation;</u></p> <p><u>“Participant Member” means a person who -</u></p> <ul style="list-style-type: none"> <u>(a) is a member of the clearing house;</u> <u>(b) is a member or participant of AP; and</u> <u>(c) chooses to participate, in accordance with the rules of the clearing house, in such agreement.</u>
(1C)				<u>The property, contribution, funds or resources referred to in (1)(c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.</u>

(2)	The reference in sub-paragraph (1) ... includes ... authorising -
	(a) the effecting by the <u>[market contracts]</u> <u>UK RCH</u> of corresponding contracts in relation to unsettled <i>market contracts</i> to which the defaulter is party;...
	...
...	
<u>Paragraph 25A (Content of rules)</u>	
<p><u>The rules of the [UK RCH] must provide that in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 25(1)(c)(i) or (ii).</u></p>	
...	
<u>Paragraph 27 (Cooperation with other authorities)</u>	
<p>The [UK RCH] must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any <i>relevant office-holder</i> and any other authority or body having responsibility for any matter arising out of or connected with the default of a <i>member</i> of the [UK RCH] or the default of a <u>[recognised investment exchange]</u> or another <u>[recognised clearing house]</u>.</p>	
<u>Paragraph 28 (Margin)</u>	
(1)	The <u>[default rules]</u> of the [UK RCH] must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a <u>client</u> <u>client account other than a client account of the defaulter</u> .
(2)	...
(3)	<u>For the purposes of this paragraph, “client account of the defaulter” means an account held by the [UK RCH] in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.</u>
(4)	<u>In sub-paragraph (3) “relevant transaction” has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.</u>

2.17.4 G *UK RIEs* which, under their rules, have *market contracts* and *UK RCHs* which, under their rules, enter into *market contracts* are required to have *default rules*. The *default rules* must enable the *UK recognised body* to take action in relation to a *member* or, an interoperating RIE or RCH and, for an *RIE*, a *designated non-member*, who appears unable, or likely to become unable to meet his obligations in respect of one or more unsettled

market contracts.

- 2.17.5 G This action is to provide for all rights and liabilities of the defaulter (including a recognised investment exchange or a recognised clearing house) and any counterparty to an unsettled *market contract* to be discharged and for there to be paid be paid between the defaulter and each counterparty one sum representing the net amount of all the contracts between them. ~~Where property has been~~ Property provided by the defaulter as cover for margin- (or any relevant sum owed under a margin set-off arrangement), or any remaining default fund contribution provided by the defaulter, ~~that property~~ may be set off against any amount owing by the defaulter. ...

**PERIODIC FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)
(2009/2010) INSTRUMENT 2009**

Powers exercised

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

Commencement

- C. This instrument comes into force on 1 June 2009.

Amendments to the FSA's rules

- 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) (2009/2010) Instrument 2009.

By order of the Board
28 May 2009

Annex

Amendments to the Unauthorised mutuals registration fees rules

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

Amend Annex 1R as shown.

ANNEX 1R

PERIODIC FEES PAYABLE FOR THE PERIOD 1 APRIL 2008 2009 TO 31 MARCH 2009 2010

Part 1

Periodic fee payable by Registered Societies (on 30 June 2008 2009)

This fee is not payable by a *credit union*.

Transaction	Total assets (£'000s)	Amount payable (£)
Periodic Fee	0 – 50	55
	> 50 to 100	<u>105</u> <u>110</u>
	> 100 to 250	<u>170</u> <u>180</u>
	> 250 to 1,000	<u>225</u> <u>235</u>
	> 1,000	<u>415</u> <u>425</u>

Part 2

Methods of payment of periodic fees

A periodic fee must be paid using either direct debit, credit transfer (BACS/CHAPS), cheque, switch or by credit card (Visa/Mastercard only). Any payment by permitted credit card must include an additional 2% of the sum paid.

FEES (ELECTRONIC PAYMENTS) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (1) section 156 (General supplementary powers); and
 - (2) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- 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 6 August 2009.

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fees (Electronic Payments) Instrument 2009.

By order of the Board
25 June 2009

Annex

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

Method of payment

3.2.3 R (1) Unless (2) or (3) applies, the sum payable under FEES 3.2.1R must be paid by bankers draft, cheque or other payable order.

...

(3) The sum payable under FEES 3.2.1R by a firm applying for a variation of its Part IV permission (FEES 3.2.7R(p)) must be paid by any of the methods described in (1) or by Maestro/Switch or credit card (Visa/Mastercard only). Any payment by a permitted credit card must include an additional 2% of the sum paid.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(OTHER EEA STATES INSURANCE STATISTICS AMENDMENT)
INSTRUMENT 2009**

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 6 July 2009 and applies to statements and notifications required to be submitted to the FSA in relation to insurance business carried on in, or insurance provided in, another EEA State in respect of calendar year 2009 and subsequent calendar years.

Amendments to the Handbook

- 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 (Other EEA States Insurance Statistics Amendment) Instrument 2009.

By order of the Board
25 June 2009

Annex

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

VOLUME ONE

RULES

CHAPTER 9

FINANCIAL REPORTING

9.37 ...

- (4) The statements required by this rule must be printed, and three copies must be deposited with the *FSA* within ~~nine~~ four months after the end of the calendar year to which they relate; but if in any case it appears to the *FSA* that the circumstances are such that a longer period than ~~nine~~ four months should be allowed, the *FSA* may extend that period by such period not exceeding three months as it thinks fit. ...

...

- (6) Subject to (7), where a *UK insurer* which has notified the *FSA* -
 - (a) in accordance with the rules in *SUP*, of its intention to establish a branch in a *EEA State* other than the United Kingdom; or
 - (b) in accordance with those rules, of its intention to provide insurance in such a State,

does not in any calendar year carry on *insurance business* or, as the case may be, provide insurance in that State, it must send to the *FSA* a notification of that fact within ~~nine~~ four months after the end of the calendar year to which the notification relates, signed by a *director*, a chief executive or the secretary of the *insurer*.

...

**INTEGRATED REGULATORY REPORTING (AMENDMENT NO 5)
INSTRUMENT 2009**

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) and (4) (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 6 July 2009.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Integrated Regulatory Reporting (Amendment No 5) Instrument 2009.

By order of the Board
25 June 2009

Annex

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

16.1 Application

...

16.1.3 R Application of difference sections of SUP 16

(1) Section(s)	(2) Categories of firms to which section applies		(3) Applicable rules and guidance
<i>SUP 16.1, SUP 16.2 and SUP 16.3</i>	All categories of <i>firm</i> except:		
	(a)	...	
	(b)	<i>an incoming EEA firm or incoming Treaty firm, which is not:</i>	
		(i)	<i>a firm of a type to which SUP 16.6 or SUP 16.7 or SUP 16.12 applies; or</i>
		...	
...			

...

16.12 Integrated Regulatory Reporting

Application

16.12.1 G The effect of *SUP 16.1.1R* is that this section applies to every *firm* carrying on business set out in column (1) of *SUP 16.12.4R* except:

...

- (3) *an authorised professional firm* (other than one that must comply

with *IPRU(Inv)* 3, 5–10 or 13 in accordance with *IPRU(Inv)* 2.1.4R, where *SUP* 16.12.4R will apply in respect of the business the firm undertakes), which must comply with *SUP* 16.12.30R and *SUP* 16.12.31R; and

...

Reporting Requirement

16.12.3 R (1) Any *firm* permitted to carry on any of the activities within each of the *RAGs* set out in column (1) of the table in *SUP* 16.12.4R must:

- (a) (i) unless (ii) or (iii) applies, submit to the *FSA* the duly completed *data items* or other items applicable to the *firm* as set out in the provision referred to in column (2) of that table;
 - (ii) ~~to the extent that unless (iii) applies, where a firm is required to submit completed data items in respect of for more than one RAG, the firm must only submit the data item of the same name and purpose in respect of the lowest numbered RAG applicable to it, RAG 1 being the lowest and RAG 10 the highest;~~
 - (iii) ~~(ii) does not apply to any data items relating to the FSA fees or FOS or FSCS levy, or threshold conditions, which must be submitted in respect of each RAG where a firm is, but for this rule, required to submit data items for more than one RAG and this includes the submission of data items in respect of FSA fees, the FOS or FSCS levy, or threshold conditions, that firm must only submit these data items if they belong to the lowest numbered of the RAGs applicable to it;~~
 - (iv) in the case of a *non-EEA bank*, or an *EEA bank* (whether or not it has *permission to accept deposits for accepting deposits*) other than one with *cross border services* *cross border services* only, any *data items* *data items* submitted should, unless indicated otherwise, only cover the activities of the branch operation in the *United Kingdom*;
- ...
- (b) submit this information at the frequency and in respect of the periods set out in the provision referred to in column

(3); and

- (c) submit this information by the due date referred to in the provision referred to in column (4).

...

- 16.12.3A G The following is designed to assist *firms* to understand how the reporting requirements set out in this chapter operate when the circumstances set out in SUP 16.12.3R(1)(a)(ii) apply.

(1) Example 1

A UK bank BIPRU 730K firm that undertakes activities in both RAG + 3 and RAG 7

Overlaying the requirements of RAG RAG + 3 (data items data items) with the requirements of RAG RAG 7 shows the following:

<u>RAG + 3 (SUP 16.12.6R 16.12.11R) data items</u>	<u>RAG 7 (SUP 16.12.22AR) data items</u>
<u>Annual accounts Annual reports and accounts</u>	<u>Annual accounts Annual reports and accounts</u>
<u>Audited accounts Annual report and accounts of the mixed-activity holding company</u>	<u>Annual accounts Annual report and accounts of the mixed-activity holding company</u> (note 10)
...	...
UK integrated group large exposures	UK integrated group large exposures
<u>Liquidity (other than stock)</u>	
<u>Liquidity stock</u>	
<u>Forecast data</u>	
Solo consolidation data	Solo consolidation data
<u>Pillar 2 questionnaire</u>	Pillar 2 questionnaire
<u>Interest rate gap report</u>	
Non-EEA sub-group	Non-EEA sub-group
	Professional indemnity insurance

	Threshold conditions
	Training and Competence
	<u>COBS</u> data
	<u>Supplementary product sales data</u>
<u>Client money and client assets</u>	Client money and client assets
	Fees and levies
<u>CFTC</u>	
<u>IRB portfolio risk</u>	<u>IRB portfolio risk</u>
<u>Securitisation</u>	<u>Securitisation</u>

From this, the additional reports that are required are:

- (a) ~~Pillar 2 questionnaire (FSA019), but the note that applies to the data item for RAG 7 firms (note 8) makes clear this only applies to BIPRU investment firms (so it should not be completed by a RAG 1 firm); [deleted]~~
- (b) Professional indemnity insurance, where ~~RAG 7 firms~~ complete Section E of the RMAR, and therefore a ~~RAG + 3 firm~~ should complete that;
- (c) ~~Threshold conditions, which is not applied across RAGs by virtue of SUP 16.12.3 R(1)(a)(iii); [deleted]~~
- (d) Training and competence data, where ~~RAG + 3 firms~~ should also complete Section G of RMAR;
- (e) Conduct of business data, where ~~RAG + 3 firms~~ should complete Section H of RMAR;
- (f) ~~Supplementary product sales data, the reporting requirements for which are met by completing Section I of RMAR; and [deleted]~~
- (g) ~~Fees and levies, which are not applied across RAGs by virtue of SUP 16.12.3 R(1)(a)(iii). [deleted]~~

The reporting frequency and submission times for items (b), and (d) and to (f) (e) above are then derived from the rules applicable to *BIPRU firms* in SUP 16.12.23R and SUP 16.12.24R. Threshold conditions and fees and levies reports do not need to be submitted as they are not required under the lowest numbered of the two RAGs in this example, see SUP 16.12.3R(1)(a)(iii).

(2) Example 2

A non-EEA UK bank in *RAG 1* that also carries on activities in *RAG 5*

Again, overlaying the *RAG 1* reporting requirements with the requirements for a *RAG 5 firm* gives the following:

<i>RAG 1 requirements (SUP 16.12.5R)</i>	<i>RAG 5 requirements (SUP 16.12.18AR)</i>
<u>Annual accounts</u> <i>Annual report and accounts</i>	<u>Annual accounts</u> <i>Annual report and accounts</i>
<u>Audited accounts</u> <i>Annual report and accounts</i> of the <i>mixed activity holding company</i>	
...	
<u>ELMI questions</u>	
<u>Non-EEA sub-group</u>	
<u>Sectoral information, including arrears and impairment</u>	
<u>Maturity analysis of assets and deposits</u>	
<u>IRB portfolio risk</u>	
<u>Securitisation</u>	
	Lending – Business flow and rates
	...
	Fees and levies

....

(a) ..

...

(h) Fees and levies, which are not applied across RAGs by virtue of SUP 16.12.3 R(1)(a)(iii).

Fees and levies are not applicable as they are not required to be submitted under the lowest numbered RAG in this example. The reporting frequency and

submission times for items (a) to (g) above are then derived from the rules applicable to *RAG 5 firms* in SUP 16.12.18R.

The fact that the ~~non EEA bank~~ has no specific data item to complete in respect of the balance sheet and capital adequacy in *RAG 1* means that the notional requirement to provide such reports is satisfied by a non submission. For example, in the case of the balance sheet for a ~~non EEA bank~~, this data is not requested as it duplicates data provided to the Bank of England, which is also available to the FSA.

- 16.12.3B G *Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.*

- 16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)	(2)	(3)	(4)	
<i>RAG number</i>	<i>Regulated activities</i>	Provisions containing:		
		<i>applicable data items</i>	<i>reporting/frequency period</i>	<i>Due date</i>
<i>RAG 1</i>	...	...	...	...
...				
<i>RAG 5</i>	<ul style="list-style-type: none"> ▪ entering into a regulated mortgage contract ▪ administering a regulated mortgage contract ▪ <i>home finance administration or home finance providing activity</i>	...	...	...
...				

- 16.12.4A G *RAG 1 includes an incoming EEA firm exercising a BCD right through a UK branch.*

Regulated Activity Group 1: Applicable data items

- 16.12.5 R The applicable *data items* and forms or reports referred to in SUP

16.12.4R are set out according to *firm* type in the table below:

Description of data item <i>data item</i>	Prudential category of <i>firm</i> , and applicable data items <i>data items</i> and reporting format (Note 1)						

<u>Annual accounts</u> <u>Annual report</u> <u>and accounts</u>	...	...	...	...	...	...	...
<u>Audited accounts</u> <u>Annual report</u> <u>and accounts</u> of the mixed-activity holding company (note 9)	...	...	...	...	...	...	...
...
...							
Note 4	<p>This is only applicable to a <i>firm</i> where, at the annual review of this requirement, following its <i>accounting reference date</i>,</p> <p>(a) for a <i>firm</i> that was reporting this <i>data item</i> or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or</p> <p>(b) for a <i>firm</i> that was not reporting this <i>data item</i> or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded;</p> <p>and in either case the FSA has notified the <i>firm</i> that it is required to submit the <i>data item</i> in accordance with the above.</p> <p><u>This applies to a <i>firm</i> that is required to submit <i>data item</i> FSA003 and, at any time within the 12 months up to its latest <i>accounting reference date</i> ("the relevant period"), was reporting <i>data item</i> FSA004 ("Firm A") or not reporting this item ("Firm B").</u></p> <p><u>In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the</u></p>						

	<p>threshold has been exceeded.</p>
	<p>In both cases, the <u>The threshold is exceeded if where data element 93A in data item FSA003 (or similar) is greater than £10 million, or its currency equivalent, at the relevant reporting date for the firm.</u></p>
Note 5	<p>Only applicable to firms with a <u>CAD2 waiver VaR model permission under GENPRU 2.1.52R.</u></p>
Note 6	<p>This is only applicable to a firm that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach or Advanced Modelling Approaches <u>either the standardised approach, alternative standardised approach, or advanced measurement approach</u> under BIPRU 6.</p>
Note 7	<p><u>Only applicable to a firm that has a waiver under BIPRU 2.1 to solo consolidate subsidiaries. Only applicable to a firm that has a solo consolidation waiver.</u></p>
...	
Note 11	<p>Members of a UK consolidation group should only submit this data item at the UK consolidation group level. <u>Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.</u></p>
Note 12	<p>Members of a UK integrated group should only submit this data item at the UK integrated group level. <u>Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.</u></p>
Note 13	<p>Only applicable to firms that have an IRB permission <u>IRB permission to use the IRB approach and BIPRU 4.</u></p>
...	

- 16.12.6 R The applicable reporting frequencies for submission of data items and periods referred to in SUP 16.12.5R are set out in the table below according to firm type. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise.

<u>Data item</u>	Unconsolidated UK banks and building societies	Solo consolidated UK banks and building societies	Report on a UK consolidation group basis by UK banks and building	Other members of RAG <u>RAG 1</u>

			<i>societies</i>	
<u>Annual accounts</u> <u>Annual report and accounts</u>	...			...
<u>Annual accounts</u> <u>Annual report and accounts of the mixed-activity holding company</u>	...			
...				

- 16.12.7 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.6R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
<u>Annual accounts</u> <u>Annual report and accounts</u>				...
<u>Annual accounts</u> <u>Annual report and accounts of the mixed-activity holding company</u>				...
...				
FSA015		<u>20</u> <u>30</u> <i>business days</i>	...	
...				

...

Regulated Activity Group 2.2

- 16.12.9 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

The applicable reporting frequencies for submission of *data items* and periods referred to in SUP 16.12.4R are set out in the table below and are calculated from a *firm's accounting reference date*, unless indicated otherwise.

The applicable due dates for submission referred to in SUP 16.12.4 R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

	<u>the Society of Lloyd's (note 1) Member's adviser (note 3)</u>	<u>Member's adviser (note 3) the Society (note 1)</u>			
<u>Description of <i>data item</i> and <i>Data data item</i></u>	Frequency	Submission deadline	<u>Description of <i>data item</i></u>	Frequency	Submission deadline
Annual audited accounts	Annually	6 months after the Society's accounting reference date	<u>Annual report and accounts</u>	Annually	6 month's after the Society's accounting reference date
Annual Lloyd's return	Annually	6 months after the Society's accounting reference date	<u>Annual Lloyd's return</u>	Annually	6 months after the Society's accounting reference date
Syndicate returns (note 2)	Annually	6 months after the Society's accounting reference date	<u>Syndicate accounts and reports (note 2)</u>	Annually	6 months after the Society's accounting reference date
Audited annual financial statements				Annually	3 months after the firm's accounting reference date
Annual reporting statement				Annually	3 months after the firm's accounting reference

					<i>date</i>
Annual reconciliation				Annually	<i>3 months after the firm's accounting reference date</i>
Audited accounts of any subsidiary, unless the rules in this chapter require those subsidiaries to submit accounts to the FSA				Annually	<i>3 months after the firm's accounting reference date</i>
Quarterly reporting statement	<u>Quarterly</u>	<u>15 business days after the quarter end</u>		<u>Quarterly</u>	<i>15 business days after the quarter end</i>
<u>Balance Sheet</u> <u>FSA001</u> (notes 4, 15, 20) or <u>FSA029</u>	<u>Quarterly or half yearly</u> <u>Quarterly</u> (note 14)	<u>(note 14)</u>			
<u>Income Statement</u> <u>FSA002</u> (notes 4, 20), or <u>FSA030</u>	<u>Quarterly or half yearly</u> (note 14) <u>Quarterly</u>	<u>(note 14)</u>			
<u>Capital Adequacy</u> <u>FSA003</u> (notes 4, 20) or <u>FSA033</u> (note	<u>Monthly, quarterly or half yearly</u> (note 14) <u>Quarterly</u>	<u>(note 14)</u>			

<u>12) or</u> <u>FSA034 (note 13) or</u>	<u>Quarterly</u>	<u>(note 14)</u>			
<u>FSA035 (note 13)</u>	<u>Quarterly</u>	<u>(note 14)</u>			
<u>Credit Risk</u> <u>FSA004 (notes 4, 5, 20)</u>	<u>Quarterly or half yearly</u> <u>(note 14)</u>	<u>(note 14)</u>			
<u>Market Risk</u> <u>FSA005 (notes 4, 6, 20)</u>	<u>Quarterly or half yearly</u> <u>(note 14)</u>	<u>(note 14)</u>			
<u>Market Risk Supplementary</u> <u>FSA006 (note 7)</u>	<u>Quarterly</u>	<u>20 business days</u>			
<u>Operational Risk</u> <u>FSA007 (notes 8, 9)</u>		<u>Annually</u> <u>(note 18)</u>	<u>2 months</u>		
<u>Large Exposures</u> <u>FSA008 (notes 4, 20)</u>	<u>Quarterly</u>		<u>20 business days (note 19)</u>		
<u>Solo consolidation</u> <u>FSA016 (note 17)</u>		<u>Half yearly</u>	<u>30 business days</u>		
<u>UK integrated large exposures</u> <u>FSA018 (note 11)</u>		<u>Quarterly</u>	<u>45 business</u>		

		<u>days</u>			
<u>Pillar 2 questionnaire</u> <u>FSA019</u> (note 10)	<u>Annually</u>	<u>2 months</u>			
<u>Non-EEA subgroup</u> <u>FSA028</u>	<u>Half yearly</u>	<u>30 business days</u>			
<u>IRB portfolio risk</u> <u>FSA045</u> (note 16)	<u>Quarterly or Half Yearly</u> (note 14)	<u>(note 14)</u>			
Note 1	The <i>Society of Lloyd's</i> must prepare its reports in the format specified in Lloyd's IPRU(INS) Appendix 9.11 , unless Note 2 applies.				
Note 2	The Society must ensure that the annual syndicate <u>returns accounts and reports</u> are prepared in accordance with, and in the format set out in, Lloyd's Syndicate Accounting Byelaw (No. 18 of 1994) as amended and in force at commencement of the Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 (S.I. 2008/1950).				
...					
Note 4	<u>Only firms subject to IPRU(INV) 4 report data item FSA003.</u>				
Note 5	<p><u>This applies to a firm that is required to submit data item FSA003 and, at anytime within the 12 months up to its latest accounting reference date ("the relevant period"), was reporting data item FSA004 ("Firm A") or not reporting this item ("Firm B").</u></p> <p><u>In the case of Firm A it must report this data item if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p> <p><u>The threshold is exceeded where data element 77A in data item FSA003 is greater than £10 million, or its currency</u></p>				

	<u>equivalent, at the relevant reporting date for the firm.</u>
Note 6	<p><u>This applies to a firm that is required to submit data item FSA003 and, at anytime within the 12 months up to its latest accounting reference date (“the relevant period”), was reporting data item FSA005 (“Firm A”) or not reporting this item (“Firm B”).</u></p> <p><u>In the case of Firm A it must report this data item if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p> <p><u>The threshold is exceeded where data element 93A in data item FSA003 is greater than £50 million, or its currency equivalent, at the relevant reporting date for the firm.</u></p>
Note 7	<u>Only applicable to firms with a VaR model permission.</u>
Note 8	<u>This will not be applicable to BIPRU limited activity firms or BIPRU limited licence firms unless they have a waiver under BIPRU 6.1.2G.</u>
Note 9	<u>This is only applicable to a firm that has adopted, in whole or in part, either the standardised approach, alternative standardised approach, or advanced measurement approach under BIPRU 6.</u>
Note 10	<p><u>Only applicable to BIPRU investment firms that:</u></p> <p class="list-item-l1">(a) <u>are subject to consolidated supervision under BIPRU 8, except those that are either included within the consolidated supervision of a group that includes a UK credit institution, or that have been granted an investment firm consolidation waiver; or</u></p> <p class="list-item-l1">(b) <u>have been granted an investment firm consolidation waiver; or</u></p> <p class="list-item-l1">(c) <u>are not subject to consolidated supervision under BIPRU 8.</u></p> <p><u>A BIPRU investment firm under (a) must complete the report on the basis of its UK consolidation group. A BIPRU investment firm under (b) or (c) must complete the report on the basis of its solo position.</u></p>
Note 11	<u>Members of a UK integrated group should only submit this</u>

	<u>data item at the UK integrated group level.</u>
<u>Note 12</u>	FSA033 is only applicable to <i>firms</i> subject to <i>IPRU(Inv) 3</i>
<u>Note 13</u>	<u>Only applicable to <i>firms</i> subject to <i>IPRU(Inv) 5</i>. FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(Inv) 5.2.3(2)R</i>.</u> <u>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(Inv) 5.2.3(2)R</i>.</u>
<u>Note 14</u>	<u>BIPRU 50K firms report half yearly on 30 business days submission, all other BIPRU firms on unconsolidated basis report quarterly on 20 business days submission. All UK consolidation group reports report half yearly on 45 business days submission. All other firms report monthly on 20 business days submission.</u>
<u>Note 15</u>	<u>This <i>data item</i> only applies to <i>BIPRU firms</i>.</u>
<u>Note 16</u>	<u>Only applicable to <i>firms</i> that have an <i>IRB permission</i>.</u>
<u>Note 17</u>	<u>Only applicable to a <i>firm</i> that has a <i>solo consolidation waiver</i>.</u>
<u>Note 18</u>	<u>The annual reporting date for this <i>data item</i> is six months after a <i>firm's</i> most recent <i>accounting reference date</i>.</u>
<u>Note 19</u>	<u>UK consolidation group reports have 45 business days submission.</u>
<u>Note 20</u>	<u>Firms that are members of a UK consolidation group are also required to submit FSA001, FSA002, FSA003, FSA004, FSA005 and FSA008 on a UK consolidation group basis.</u>

...

Regulated Activity Group 3

...

- 16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm type* in the table below:

Description of <i>data item</i>	<i>Firms prudential category and applicable <u>data items</u> (<u>note 1</u>)</i>							
	<i>BIPRU firms</i> (<u>note 17</u>)			<i>Firms other than BIPRU firms</i>				
	730K	125K and <i>UCITS investment</i>	50K	<i>IPRU(Inv) Chapter 3</i>	<i>IPRU(I NV) Chapter</i>	<i>IPRU(I NV) Chapter</i>	<i>IPRU(I NV) Chapter</i>	<i>UPRU</i>

		<i>firms</i>			5	9	13	
<u>Annual accounts</u> <u>Annual report</u> <u>and accounts</u>	...		..	...			No standar d format (<u>note 24</u>)	...
<u>Annual accounts</u> <u>Annual report</u> <u>and accounts</u> of the mixed- activity holding company (note 10)	...							
...		
Balance sheet	...	...	...	FSA029 (notes <u>16</u> and 18)	FSA0 29 (<u>note 16</u>)	FSA0 29	FSA029 (note <u>15</u> <u>16</u>), or Section A RMAR (note <u>24</u> <u>15</u>)	FSA029 <u>note 16</u>
Income statement	...	...	...	FSA030 (notes <u>16</u> and 18)	...	...	FSA030 (note <u>16</u> <u>15</u>) or Section B RMAR (note <u>24</u> <u>15</u>)	FSA030 (<u>note 16</u>)
Capital adequacy	...	...	...	FSA033 (notes <u>16</u> and 18)	FSA0 34 or FSA0 35 (note 14 and <u>16</u>)	...	FSA032 (note 15) or FSA037 (<u>note 15</u> and <u>16</u>) or Sections D1 and D2 RMAR (note <u>24</u> <u>15</u>)	FSA036 (<u>note 16</u>)
...								
Solo consolidation data	FSA 016 (<u>note 25</u>)	FSA016 (<u>note 25</u>)	FSA 016 (<u>note 25</u>)					
...								
CFTC	FSA 040 (<u>note 24</u>)	FSA040 (<u>note 24</u>)	FSA 040 (<u>note 24</u>)	FSA040 (<u>note 24</u>)	FSA 040 (<u>note 24</u>)	FSA 040 (<u>note 24</u>)	FSA040 (<u>note 24</u>)	FSA040 (<u>note 24</u>)
...								

Note 1	...
Note 2	<p><i>Firms</i> <i>Firms</i> that are members of a <i>UK consolidation group</i> subject to the capital resources requirement at stages 2, 3 or 4 of <i>BIPRU 8 Annex 5R</i> are also required to submit this report on a <i>UK consolidation group</i> basis.</p>
Note 3	<p>This is only applicable to a firm where, at the annual review of this requirement, following its accounting reference date,</p> <p>(a) for a firm that was reporting this data item or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or</p> <p>(b) for a firm that was not reporting this data item or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded;</p> <p>and in either case the FSA has notified the firm that it is required to submit the data item in accordance with the above.</p> <p><u>This applies to a firm that is required to submit data item FSA003 and, at any time within the 12 months up to its latest accounting reference date (“the relevant period”), was reporting data item FSA004 (“Firm A”) or not reporting this item (“Firm B”).</u></p> <p><u>In the case of Firm A it must report this data item if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p> <p><u>In both cases, the The threshold is exceeded if where data element 77A in data item FSA003 (or similar) is greater than £10 million, or its currency equivalent, at the relevant reporting date for the firm.</u></p>
Note 4	<p>This is only applicable to a firm where, at the annual review of this requirement, following its accounting reference date,</p> <p>(a) for a firm that was reporting this data item or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or</p> <p>(b) for a firm that was not reporting this data item or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded;</p> <p>and in either case the FSA has notified the firm that it is required to submit the data item in accordance with the above.</p>

	<p><u>This applies to a firm that is required to submit data item FSA003 and, at anytime within the 12 months up to its latest accounting reference date (“the relevant period”), was reporting data item FSA005 (“Firm A”) or not reporting this item (“Firm B”).</u></p> <p><u>In the case of Firm A it must report this data item if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p> <p><u>In both cases, the The threshold is exceeded if where data element 93A in data item FSA003 (or similar) is greater than £50 million, or its currency equivalent, at the relevant reporting date for the firm.</u></p>
Note 5	Only applicable to firms with a CAD2 waiver <u>VaR model permission under GENPRU 2.1.52R</u> .
...	
Note 7	This is only applicable to a firm that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach or Advanced Modelling Approaches <u>either the standardised approach, alternative standardised approach, or advanced measurement approach</u> under BIPRU 6.
Note 8	<p>Only applicable to BIPRU investment firms that are:</p> <p>(a) <u>are subject to consolidated supervision under BIPRU 8, except those that are either included within the consolidated supervision of a group that includes a UK credit institution, or that have been granted an investment firm consolidation waiver;</u> or</p> <p>(b) <u>subject to consolidated supervision under BIPRU 8 that have been granted an investment firm consolidation waiver; and</u> or</p> <p>(c) <u>are not subject to consolidated supervision under BIPRU 8.</u></p> <p>A BIPRU investment firm under (a) <u>should</u> <u>must</u> complete the report on the basis of its UK consolidation group. A BIPRU investment firm under (b) or (c) <u>should</u> <u>must</u> complete the report on the basis of its solo position.</p>
Note 9	This will be applicable to firms that are members of a UK consolidation group on the reporting date. <u>Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.</u>
...	

Note 12	Members of a <i>UK integrated group</i> should only submit this <i>data item</i> at the <i>UK integrated group</i> level. <i>Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.</i>
...	
Note 15	<u>FSA029, FSA030 and FSA032 must be completed by a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm. Section A or Section B RMAR and Sections D1 and D2 RMAR only apply to a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm.</u> <u>FSA037 must be completed by any other firm subject to IPRU(INV) Chapter 13 carrying out RAG 3 activities.</u>
Note 16	<u>The annual data item to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual data item must (except for exempt CAD firms or firms subject to the small firms audit exemption) be audited before it is submitted.</u> <u>[deleted]</u>
...	
Note 21	<u>This is only applicable to a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm.</u> <u>[deleted]</u>
Note 22	<u>Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4.</u> <u>Only applicable to firms that have an IRB permission.</u>
...	
Note 24	<u>Only applicable to firms granted a Part 30 exemption order and operating an arrangement to cover forward profits on the London Metals Exchange.</u>
Note 25	<u>Only applicable to a firm that has a solo consolidation waiver.</u>

- 16.12.12 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.4R are set out in the table below according to *firm type*. Reporting frequencies are calculated from a *firm's accounting reference data*, unless indicated otherwise.

<u>Data item</u>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>Consolidated BIPRU investment firm UK consolidation group</i>	<i>Firm other than BIPRU firms</i>

<u>Annual accounts</u> <u>Annual report and accounts</u>	...	...	...		...
<u>Annual accounts</u> <u>Annual report and accounts</u> of the <i>mixed-activity holding company</i>	...	...	...
...					
FSA005	...	...	...	<u>Quarterly</u> <u>Half yearly</u>	
...					
FSA007	<u>Annual</u> <u>(note 4)</u>	<u>Annual</u> <u>(note 4)</u>	<u>Annual</u> <u>(note 4)</u>	<u>Annual</u> <u>(note 4)</u>	
...					
FSA037					<u>Quarterly</u>
...					
...					
<u>Note 4</u>	<u>The reporting date for this <i>data item</i> is six months after a <i>firm's</i> most recent accounting reference date.</u>				

- 16.12.13 R The applicable due dates for submission referred to in SUP 16.12.6R 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.12R.

<i>Data item</i>	Monthly submission	Quarterly Submission	Half yearly Submission	Annual submission
<u>Annual accounts</u> <u>Annual report and accounts</u>				...
<u>Annual accounts</u> <u>Annual report and accounts</u> of the mixed-activity holding company				...
...				
FSA029		...		<i>80 business days</i>
FSA030		...		<i>80 business days</i>
...				
FSA033		...		<i>80 business days</i>
FSA034		...		<i>80 business days</i>
FSA035		...		<i>80 business days</i>
FSA036		...		<i>80 business days</i>
FSA037		<i>20 business days</i>		<i>80 business days</i>
...				
...				

Regulated Activity Group 4

...

- 16.12.15 R The applicable *data items* referred to in SUP 16.12.4 R according to type of *firm* are set out in the table below:

Description of data item <u>data item</u>	Firms prudential category and applicable data items (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
<u>Annual accounts</u> <u>Annual report and accounts</u>	No standard format (<u>note 13</u>)							
<u>Annual accounts</u> <u>Annual report and accounts</u> of the mixed-activity holding company (note 10)					...			...
...								
Balance sheet	...	...	...	FSA 029 (<u>note 16</u>)	FSA029 (<u>note 16</u>)	...	FSA029 (note 16 15) or Section A RMAR (note 17 15)	...
Income statement	...	...	...	FSA030 (<u>note 16</u>)	FSA030 (<u>note 16</u>)	FSA 030	FSA030 (note 16 15) or Section B RMAR (note 17 15)	...
Capital adequacy	...	...	...	FSA 033 (<u>note 16</u>)	FSA034 or FSA035 (note 14 and 16)	...	<u>FSA032</u> (<u>note 14</u>) or Section D1 and D2 RMAR (note 17) Section D1 and D2 RMAR or FSA032 (note 15)	FSA036 (<u>note 16</u>)

...								
Solo consolidation data	FSA016 <u>(note 20)</u>	FSA016 <u>(note 20)</u>	FSA016 <u>(note 20)</u>					
Threshold conditions							Section F RMAR <u>(note 17 15)</u>	
Volumes and type of business <u>(note 21)</u>	...	...	...	...	...	...	...	...
Client money and client assets	...	...	...	...	...	...	Section C RMAR <u>(note 17 15)</u> or FSA039	
CFTC	FSA040	FSA040	FSA040	FSA040	FSA040	FSA040	FSA040	FSA040
Asset managers that use hedge fund techniques <u>(note 21)</u>	...	...	...	...	...	...	...	...
UCITS <u>(note 22)</u>	...	...	...	...	...	...	...	...
...								
Note 1	...							
Note 2	<i>Firms that are members of a UK consolidation group subject to the capital resources requirement at stages 2, 3 or 4 of BIPRU 8 Annex 5R are also required to submit this report on a UK consolidation group basis.</i>							
Note 3	<p>This is only applicable to a firm where, at the annual review of this requirement, following its accounting reference date,</p> <p>(a) for a firm that was reporting this data item or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or</p> <p>(b) for a firm that was not reporting this data item or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded;</p> <p>and in either case the FSA has notified the firm that it is required to submit the data item in accordance with the above.</p> <p>This applies to a firm that is required to submit data item FSA003 and at anytime within the 12 months up to its latest accounting reference date ("the relevant period"), was reporting data item FSA004 ("Firm A") or not reporting this item ("Firm B").</p> <p><u>In the case of Firm A it must report this data item if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p>							

	<p>In both cases, the The threshold is exceeded if <u>where data element 77A in data item FSA003 (or similar)</u> is greater than £10 million, or its currency equivalent, at the <u>relevant reporting date for the firm</u>.</p>
Note 4	<p>This is only applicable to a <i>firm</i> where, at the annual review of this requirement, following its <u>accounting reference date</u>,</p> <p>(a) for a <i>firm</i> that was reporting this <u>data item</u> or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or</p> <p>(b) for a <i>firm</i> that was not reporting this <u>data item</u> or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded;</p> <p>and in either case the <i>FSA</i> has notified the <i>firm</i> that it is required to submit the <u>data item</u> in accordance with the above.</p> <p><u>This applies to a firm that is required to submit data item FSA003 and at any time within the 12 months up to its latest accounting reference date ("the relevant period"), was reporting data item FSA005 ("Firm A") or not reporting this item ("Firm B").</u></p> <p><u>In the case of Firm A it must report this data item if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p> <p>In both cases, the The threshold is exceeded if <u>where data element 93A in data item FSA003 (or similar)</u> is greater than £50 million, or its currency equivalent, at the <u>relevant reporting date for the firm</u>.</p>
Note 5	Only applicable to <i>firms</i> with a <u>CAD2 waiver VaR model permission under GENPRU 2.1.52R</u> .
...	
Note 7	This is only applicable to a <i>firm</i> that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach or Advanced Modelling Approaches either the <u>standardised approach, alternative standardised approach, or advanced measurement approach</u> under BIPRU 6.
Note 8	<p>Only applicable to <i>BIPRU investment firms</i> that are:</p> <p>(a) <u>are</u> subject to consolidated supervision under <i>BIPRU 8</i>, except those that are either included within the consolidated supervision of a group that includes a UK <i>credit institution</i>, or that have been granted an <i>investment firm consolidation waiver</i>; and or</p> <p>(b) <u>subject to consolidated supervision under BIPRU 8</u> that have been granted an <i>investment firm consolidation waiver</i>; and or</p> <p>(c) <u>are</u> not subject to consolidated supervision under <i>BIPRU 8</i>.</p>

	A BIPRU investment firm under (a) should <ins>must</ins> complete the report on the basis of its UK consolidation group. A BIPRU investment firm under (b) or (c) should <ins>must</ins> complete the report on the basis of its solo position.
Note 9	This will be applicable to firms that are members of a UK consolidation group on the reporting date. Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.
...	
Note 12	Members of a UK integrated group should only submit this data item at the UK integrated group level. Firms' attention is drawn to SUP 16.3.25 G regarding a single submission for all firms in the group.
Note 13	This does not apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm. This data item is applicable to all firms in this table except a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm.
...	
Note 15	FSA029, FSA030 and FSA032 must be completed by a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm. Section A, B, C or F RMAR and Sections D1 and D2 RMAR only apply to a firm subject to IPRU (INV) Chapter 13 which is not an exempt CAD firm.
...	
Note 17	This is only applicable to a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm. [deleted]
Note 18	Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4. Only applicable to firms that have an IRB permission.
...	
Note 20	<u>Only applicable to a firm that has a solo consolidation waiver.</u>
Note 21	<u>Only applicable to firms that have a managing investments permission.</u>
Note 22	<u>Only applicable to firms that have permission for establishing, operating or winding up a regulated collective investment scheme.</u>

- 16.12.16 R The applicable reporting frequencies for data items referred to in SUP 16.12.15R are set out in the table below according to firm type. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise.

Data item <u>Data item</u>	Firm's prudential category

	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K</i>	<i>Consolidated <u>BIPRU</u> <u>investment</u> <u>firm UK</u> <u>consolidation</u> <u>group</u></i>	<i>Firm other than <i>BIPRU</i> firms</i>
<u>Annual accounts</u> <u><i>Annual report and accounts</i></u>	...	...	...		...
<u>Annual accounts</u> <u><i>Annual report and accounts</i></u> of the mixed- activity holding company	...	...	...
...					
FSA005	Quarterly	Quarterly	Half yearly	<u>Quarterly</u> <u>Half yearly</u>	
...					
FSA007	Annual (note 4)	Annual (note 4)	Annual (note 4)	Annual (note 4)	
...					
FSA040	Quarterly	Quarterly	Quarterly		Quarterly
...					
...					
<u>Note 4</u>	<u>The reporting date for this <i>data item</i> is six months after a firm's most recent accounting reference date.</u>				

- 16.12.17 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.16R.

<i>Data item</i>	<i>Monthly submission</i>	<i>Quarterly submission</i>	<i>Half yearly submission</i>	<i>Annual submission</i>
<u>Annual</u>				...

<u>accounts</u> <u>Annual report and accounts</u>				
<u>Annual accounts</u> <u>Annual report and accounts</u> of the mixed-activity holding company				...
...				
...				
FSA029		...		80 business days
FSA030		...		80 business days
...				
FSA033		...		80 business days
FSA034		...		80 business days
FSA035		...		80 business days
FSA036		...		80 business days
FSA040		15 business days		
...				
...				

Regulated Activity Group 5

...

- 16.12.18A R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of data item	Data item (note 1)	Frequency	Submission deadline
<u>Annual accounts</u> <u>Annual report</u>

<u>and accounts</u>			
...			
...			

Regulated Activity Group 6

16.12.19A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firm's prudential category and applicable data item (note 1)</i>				
	<i>IPRU (INV)</i> Chapter 3	<i>IPRU (INV)</i> Chapter 5	<i>IPRU(INV)</i> Chapter 9	<i>IPRU(INV)</i> Chapter 13	<i>UPRU</i>
<u>Annual accounts</u> <u>Annual report and accounts</u>	...				
...					
Balance sheet	FSA029 (note 3)	FSA029 (note 3)	...	FSA029 (note 3) or Section A RMAR (note 7)	FSA029 (note 3)
Income statement	FSA030 (note 3)	FSA030 (note 3)	...	FSA030 (note 3) or Section B RMAR (note 7)	FSA030 (note 3)
Capital adequacy	FSA033 (note 3)	FSA034 or FSA035 (note 3 and 4)	...	...	FSA036 (note 3)
...					
CFTC	FSA040	FSA040	FSA040	FSA040	FSA040
...					
Note 3	The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for exempt CAD firm or firms subject to the small firms audit exemption) be audited before it is submitted. [deleted]				

...	
Note 7	<u>FSA029 and FSA030 only apply to a firm subject to IPRU (INV) Chapter 13 which is an exempt CAD firm and Sections A and B RMAR only apply This is only applicable to a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm.</u>

- 16.12.20 R The applicable reporting frequencies for submission of *data items* referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<u>Annual accounts</u> <u>Annual report and accounts</u>	Annually
...	
FSA040	Quarterly
...	

- 16.12.21 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.20R.

<i>Data item</i>	Quarterly submission	Half yearly submission	Annual submission
<u>Annual accounts</u> <u>Annual report and accounts</u>			...
...			
FSA029	...		80 business days
FSA030	...		80 business days
...			
FSA033	...		80 business days
FSA034	...		80 business days

FSA035	...		80 business days
FSA036	...		80 business days
...			

Regulated Activity Group 7

- 16.12.22A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>Data item</i>	<i>Firm Firm</i> prudential category and applicable <i>data item</i> (note 1)					
	BIP RU 730 K firm	BIPRU 125K firm and UCITS investment firm	BIPRU 50K firm	I ^P RU(INV) Chapter 13 firms carrying out European wide activities under MiFID Exempt CAD firms subject to I ^P RU(INV)) Chapter 13	I ^P RU(INV) Chapter 13 firms not carrying out European- wide activities under MiFID Firms (other than exempt CAD firms) subject to I ^P RU(INV) Chapter 13	<i>Firms</i> that are also in one or more of RAGS 1 to 6 and not subject to I ^P RU (INV) Chapter 13
<u>Annual accounts</u> <u>Annual report and accounts</u>	...			No standard format		
<u>Annual accounts</u> <u>Annual report and accounts</u> of the mixed- activity holding company (note 10)	...					
...						

Balance Sheet	...	...	...	<u>Section A RMAR</u>	..	
...						
Capital Adequacy	...	...	...	<u>FSA031 FSA032</u>	...	
...						
Solo consolidation data	FSA016	FSA016	FSA 016			
...						
Professional indemnity insurance (note 15)	...	...	...	<u>Section E RMAR</u>	...	<u>Section E RMAR</u>
Threshold Conditions	<u>Section F RMAR</u>	<u>Section F RMAR</u>	<u>Section F RMAR</u>	Section F RMAR	Section F RMAR	
Training and Competence	...	...	...	...	...	<u>Section G RMAR</u>
COBS data	...	...	...	...	...	<u>Section H RMAR</u>
Supplementary product sales data	<u>Section I RMAR</u>	<u>Section I RMAR</u>	<u>Section I RMAR</u>	Section I RMAR	Section I RMAR	
Client money and client assets	<u>Section C RMAR</u>	<u>Section C RMAR</u>	<u>Section C RMAR</u>	...	...
Fee and levies	Section J RMAR	Section J RMAR	Section J RMAR	Section J RMAR	Section J RMAR	
...						
...						
Note 2	<u>Firms</u> <u>Firms</u> that are members of a <u>UK consolidation group</u> subject to the capital resources requirement at stages 2, 3 or 4 of <u>BIPRU 8 Annex 5R</u> are also required to submit this report on a <u>UK</u>					

	<i>consolidation group basis.</i>
Note 3	<p>This is only applicable to a <i>firm</i> where, at the annual review of this requirement, following its <i>accounting reference date</i>,</p> <p>(a) for a <i>firm</i> that was reporting this <i>data item</i> or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or</p> <p>(b) for a <i>firm</i> that was not reporting this <i>data item</i> or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded;</p> <p>and in either case the <i>FSA</i> has notified the <i>firm</i> that it is required to submit the <i>data item</i> in accordance with the above.</p> <p>This applies to a <i>firm</i> that is required to submit <i>data item FSA003</i> and, at any time within the 12 months up to its latest <i>accounting reference date</i> ("the relevant period"), was reporting <i>data item FSA004</i> ("Firm A") or not reporting this item ("Firm B").</p> <p>In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</p> <p>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</p> <p>In both cases, the <i>The threshold is exceeded if where data element 77A in data item FSA003 (or similar) is greater than £10 million, or its currency equivalent, at the relevant reporting date for the firm.</i></p>
Note 4	<p>This is only applicable to a <i>firm</i> where, at the annual review of this requirement, following its <i>accounting reference date</i>,</p> <p>(a) for a <i>firm</i> that was reporting this <i>data item</i> or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or</p> <p>(b) for a <i>firm</i> that was not reporting this <i>data item</i> or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded;</p> <p>and in either case the <i>FSA</i> has notified the <i>firm</i> that it is required to submit the <i>data item</i> in accordance with the above.</p> <p>This applies to a <i>firm</i> that is required to submit <i>data item FSA003</i> and, at any time within the 12 months up to its latest <i>accounting reference date</i> ("the relevant period"), was reporting <i>data item FSA005</i> ("Firm A") or not reporting this item ("Firm B").</p> <p>In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</p>

	<p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p> <p><u>In both cases, the The threshold is exceeded if where data element 93A in data item FSA003 (or similar) is greater than £50 million, or its currency equivalent, at the relevant reporting date for the firm.</u></p>
Note 5	Only applicable to firms with a <u>CAD2 waiver VaR model permission under GENPRU 2.1.52R</u> .
...	
Note 7	This is only applicable to a firm that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach or Advanced Modelling Approaches either the <u>standardised approach, alternative standardised approach, or advanced measurement approach</u> under BIPRU 6.
Note 8	<p>Only applicable to BIPRU investment firms that are:</p> <p>(a) <u>are subject to consolidated supervision under BIPRU 8, except those that are either included within the consolidated supervision of a group that includes a UK credit institution, or that have been granted an investment firm consolidation waiver; or</u></p> <p>(b) <u>subject to consolidated supervision under BIPRU 8 that have been granted an investment firm consolidation waiver; and or</u></p> <p>(c) <u>are not subject to consolidated supervision under BIPRU 8.</u></p> <p>A BIPRU investment firm under (a) <u>should must</u> complete the report on the basis of its UK consolidation group. A BIPRU investment firm under (b) or (c) <u>should must</u> complete the report on the basis of its solo position.</p>
Note 9	This will be applicable to firms that are members of a UK consolidation group on the reporting date. <u>Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.</u>
...	
Note 12	Members of a UK integrated group should only submit this data item at the UK integrated group level. <u>Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.</u>
Note 13	<u>Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4. Only applicable to firms that have an</u>

	<u>IRB permission.</u>
...	
<u>Note 15</u>	This item only applies to <i>firms</i> that are subject to an <i>FSA requirement to hold professional indemnity insurance and are not exempt CAD firms.</i>

- 16.12.23 R The applicable reporting frequencies for *data items* referred to in *SUP 16.12.22AR* are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	<i>Frequency</i>				
	<i>Unconsolidated BIPRU investment firm</i>	<i>Solo consolidated BIPRU investment firm</i>	<i>Consolidated BIPRU investment firm UK Consolidation group</i>	<i>Annual regulated business revenue up to and including £5 million</i>	<i>Annual regulated business revenue over £5 million</i>
<u>Annual accounts</u> <u>Annual reports and accounts</u>	...				
...					
...					
FSA007	Annually (note 3)	Annually (note 3)	Annually (note 3)		
...					
<u>FSA031</u> <u>FSA032</u>				...	...
...					

Section I RMAR	Half yearly	Half yearly	Half yearly	Half yearly	Half yearly
...					
...					
<u>Note 3</u>	<u>The reporting date for this <i>data item</i> is six months after a firm's most recent accounting reference date.</u>				

- 16.12.24 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.23R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
<u>Annual accounts</u> <u>Annual reports and accounts</u>				...
<u>Annual accounts</u> <u>Annual report and accounts</u> of the mixed-activity holding company				...
...				
<u>FSA031</u>		...		
<u>FSA032</u>				
...				
<u>Section I RMAR</u>			<u>30 business days</u>	
...				

...	
-----	--

Regulated Activity Group 8

- 16.12.25A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firms</i> prudential category and applicable data items (note 1)							
	<i>BIPRU</i>			<i>Firms</i> other than <i>BIPRU firms</i>				
	730K	125K	50K	<i>IPRU</i> (<i>INV</i>) Chapter 3	<i>IPRU</i> (<i>INV</i>) Chapter 5	<i>IPRU</i> (<i>INV</i>) Chapter 9	<i>IPRU</i> (<i>INV</i>) Chapter 13	<i>UPRU</i>
<u>Annual accounts</u> <u>Annual report and accounts</u>	...							
<u>Annual accounts</u> <u>Annual report and accounts</u> of the <i>mixed-activity holding company</i> (note 10)	...							
...								
Balance sheet	FSA 029 (<u>note 16</u>)	FSA029 (<u>note 16</u>)	...	<u>FSA029</u> (<u>note 16</u>) or Section A RMAR (note 17) or <u>FSA029</u>	<u>FSA029</u> (<u>note 16</u>)
Income statement				FSA030 (<u>note 16</u>)	FSA030 (<u>note 16</u>)		<u>FSA030</u> (<u>note 16</u>) or Section B RMAR (note 17) or <u>FSA030</u>	FSA030 (<u>note 16</u>)
Capital adequacy				FSA033 (<u>note 16</u>)	FSA034 or FSA035 (note 14 and 16)	<u>FSA03</u> <u>3</u> <u>FSA03</u> <u>1</u>	<u>FSA032</u> (<u>note 15</u>) or Section D1 and D2 RMAR (note 17) or	FSA036 (<u>note 16</u>)

							<u>FSA032</u> <u>(note 15)</u>	
...								
Solo consolidation data	FSA 016 <u>(note 20)</u>	FSA0 16 <u>(note 20)</u>	FSA 016 <u>(note 20)</u>					
...								
CFTC	FSA040	FSA0 40	FSA040	FSA040	FSA040	FSA04 0	FSA040	FSA040
...								
...								
Note 2	<i>Firms that are members of a UK consolidation group subject to the capital resources requirement at stages 2, 3 or 4 of BIPRU 8 Annex 5R are also required to submit this report on a UK consolidation group basis.</i>							
Note 3	<p>This is only applicable to a firm where, at the annual review of this requirement, following its accounting reference date,</p> <p>(a) for a firm that was reporting this data item or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or</p> <p>(b) for a firm that was not reporting this data item or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded;</p> <p>and in either case the FSA has notified the firm that it is required to submit the data item in accordance with the above.</p> <p><u>This applies to a firm that is required to submit data item FSA003 and, at any time within the 12 months up to its latest accounting reference date (“the relevant period”), was reporting data item FSA004 (“Firm A”) or not reporting this item (“Firm B”).</u></p> <p><u>In the case of Firm A it must report this data item if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p> <p><u>In both cases, the The threshold is exceeded if where data element 77A in data item FSA003 (or similar) is greater than £10 million, or its currency equivalent, at the relevant reporting date for the firm.</u></p>							
Note 4	<u>This is only applicable to a firm where, at the annual review of this</u>							

	<p>requirement, following its <i>accounting reference date</i>, (a) for a <i>firm</i> that was reporting this <i>data item</i> or similar in the previous year, one or both of the last two quarterly submissions in the previous year show that the threshold was exceeded; or (b) for a <i>firm</i> that was not reporting this <i>data item</i> or similar in the previous year, both of the last two quarterly submissions in the previous year show that the threshold was exceeded; and in either case the FSA has notified the <i>firm</i> that it is required to submit the data item in accordance with the above.</p> <p>This applies to a <i>firm</i> that is required to submit <i>data item</i> FSA003 and, at any time within the 12 months up to its latest <i>accounting reference date</i> ("the relevant period"), was reporting <i>data item</i> FSA005 ("Firm A") or not reporting this item ("Firm B").</p> <p><u>In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded.</u></p> <p><u>In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded.</u></p> <p>In both cases, the The threshold is exceeded if where <i>data element</i> 93A in <i>data item</i> FSA003 (or similar) is greater than £50 million, or its currency equivalent, at the <u>relevant reporting date for the firm</u>.</p>
Note 5	Only applicable to <i>firms</i> with a CAD2 waiver <i>VaR model permission</i> under GENPRU 2.1.52R .
...	
Note 7	This is only applicable to a <i>firm</i> that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach or Advanced Modelling Approaches either the <i>standardised approach, alternative standardised approach, or advanced measurement approach</i> under <i>BIPRU 6</i> .
Note 8	<p>Only applicable to <i>BIPRU investment firms</i> that are:</p> <p>(a) <u>are</u> subject to consolidated supervision under <i>BIPRU 8</i>, except those that are either included within the consolidated supervision of a group that includes a UK <i>credit institution</i>, or that have been granted an <i>investment firm consolidation waiver</i>; <u>or</u></p> <p>(b) subject to consolidated supervision under BIPRU 8 that have been granted an <i>investment firm consolidation waiver</i>; <u>and</u> <u>or</u></p> <p>(c) <u>are</u> not subject to consolidated supervision under <i>BIPRU 8</i>.</p> <p>A <i>BIPRU investment firm</i> under (a) <u>should</u> <u>must</u> complete the report on the basis of its <i>UK consolidation group</i>. A <i>BIPRU investment firm</i> under (b) or (c) <u>should</u> <u>must</u> complete the report on the basis of its <i>solo position</i>.</p>

Note 9	This will be applicable to <i>firms</i> that are members of a <i>UK consolidation group</i> on the reporting date. Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.
...	
Note 12	Members of a <i>UK integrated group</i> should only submit this <i>data item</i> at the <i>UK integrated group</i> level. Firms' attention is drawn to SUP 16.3.25 G regarding a single submission for all firms in the group.
...	
Note 16	The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for exempt CAD firms or firms subject to the small firms audit exemption) be audited before it is submitted. [deleted]
...	
Note 18	Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4. Only applicable to firms that have an IRB permission.
<u>Note 20</u>	<u>Only applicable to a firm that has a solo consolidation waiver.</u>

16.12.26 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.25A are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firms</i>	<i>Consolidated BIPRU investment firm UK consolidation group</i>	<i>Firms other than BIPRU firms</i>
<u>Annual accounts</u> <u>Annual reports and accounts</u>
<u>Annual accounts</u> <u>Annual report and</u>	

<u>accounts of the mixed-activity holding company</u>					
...					
FSA005	Quarterly	Quarterly	Half yearly	<u>Quarterly</u> <u>Half yearly</u>	...
...					
FSA007	Annually (note 4)	Annually (note 4)	Annually (note 4)	Annually (note 4)	...
...					
FSA039	...	...	...	<u>Half yearly</u>	...
FSA040	Quarterly	Quarterly	Quarterly	Quarterly	Quarterly
...					
...					
<u>Note 4</u>	<u>The reporting date for this data item is six months after a firm's most recent accounting reference date.</u>				

- 16.12.27 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.26R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
<u>Annual accounts</u> <u>Annual reports and accounts</u>				...
<u>Annual accounts</u> <u>Annual report</u>				<u>As soon as available after the year end</u>

<i>and accounts of the mixed- activity holding company</i>				<u>7 months</u>
...				
FSA029		...		80 business days
FSA030		...		80 business days
...				
FSA033		...		80 business days
FSA034		...		80 business days
FSA035		...		80 business days
FSA036		...		80 business days
...				
FSA040		<i>15 business days</i>		
...				
...				

Regulated Activity Group 9

16.12.28 R (1) SUP 16.12.28AR does not apply to:

...

(c) a local authority;_

(d) a third party processor in respect of any home finance activity.

...

16.12.28A R The applicable data items, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <u>data item</u> <u>data item</u>	<u>Data item</u> <u>Data item</u> (note 1)	Frequency		Submission deadline
		Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million	
...				
Professional indemnity insurance (note 2)	...	...	<u>Half yearly</u> <u>Quarterly</u>	...
...				
COBS data	...			
Supplementary product sales data	Section I RMAR	<u>Annually</u> <u>Half yearly</u>	...	...
...				
Fees and levies	...	...	...	...
...				
<u>Note 2</u>	<u>This item only applies to firms that may be subject to an FSA requirement to hold professional indemnity insurance and are not exempt CAD firms.</u>			

Authorised professional firms

- 16.12.30 R (1) An *authorised professional firm*, other than one that must comply with *IPRU(INV)* 3, 5, 10 or 13 in accordance with *IPRU(INV)* 2.1.4R, must submit an annual questionnaire, contained in *SUP* 16 Annex 9R, unless:

...

...

...

Financial conglomerates

- 16.12.33 R Financial reports from a member of a financial conglomerate (see *SUP* 16.12.32R)

Content of report	Form (Note 1)	Frequency	Due Date
...			
Report on compliance with <i>PRU</i> 8.4.35R <i>GENPRU</i> 3.1.35R where it applies	...	...	...
...			
Note 2	If Part 1 of <i>GENPRU</i> 3 Annex 1R <i>GENPRU 3 Annex 1R</i> (method 1), Part 2 of <i>GENPRU</i> 3 Annex 1R (method 2), or Part 3 of <i>GENPRU</i> 3 Annex 1R (method 3) applies, there is no specific form. Adequate information must be provided, and each <i>financial conglomerate</i> for which the <i>FSA</i> is the <i>co-ordinator</i> must discuss with the <i>FSA</i> how to do this.		
	<u>If Part 4 of <i>GENPRU</i> 3 Annex 1R applies (method 4):</u> (1) a <i>banking/investment banking and investment services conglomerate</i> must use FSA003; and		
...			

Note 4	<p>For the purposes of this reporting requirement, an <i>intra-group transaction</i> will be presumed to be significant if its amount exceeds 5% of the total amount of capital adequacy requirements at the level of the <i>financial conglomerate</i>.</p> <p>Rather than specifying a standard format for each <i>financial conglomerate</i> to use, each <i>financial conglomerate</i> for which the FSA is the <i>co-ordinator</i> will need to <ins>must</ins> discuss with the FSA the form of the information to be reported. This should mean that usual information management systems of the <i>financial conglomerate</i> can be used to the extent possible to generate and analyse the information required.</p> <p>When reviewing the <i>intra-group transactions</i>, the FSA will in particular monitor the possible risk of contagion in the <i>financial conglomerate</i>, the risk of a conflict of interests, the risk of circumvention of <i>sectoral rules</i>, and the level or volume of risks.</p>
Note 5	<p>The frequency and due date will be as follows:</p> <p>(1) <i>banking/investment conglomerate banking and investment services conglomerate</i>: frequency is half-yearly with due date 45 business days after period end</p> <p>(2) <i>insurance conglomerate</i>: frequency is yearly with due date four months after period end for the capital adequacy return and three months after period end for the report on compliance with <i>GENPRU 3.1.35R</i> where it applies.</p>
...	

...

16 Annex 24 R

FSA044

Analysis of assets and deposits by maturity band

...

Off-balance sheet items
 32 ...
 ...
 39 o/w subject to credit deterioration

A	B	C	D
Total	Unconditionally cancellable	Cancellable <1 year	Cancellable > 1 yr
	...		

...

16 Annex 25 G

...

FSA002 – Income Statement

...

6B Of which : Other

...

Receipts from security lending / borrowing should only be included when cash collateral is involved – other income from security lending / borrowing should be classified as fees.
~~Exclude any interest paid relating to interest rate swaps, which should be reported under data element 14B.~~

...

26B Interest paid

...

For *BIPRU investment firms*, this is likely to be limited to interest paid, or overdraft charges paid, to banks (also detailed in 27B) or on intra-group loans (detailed in 30B) or on other deposits (detailed in 31B).

...

31B Of which: On other deposits

This will not only be relevant for *BIPRU investment firms if they have issued bonds or commercial paper*.

Deposit takers will include all interest paid on all other balances not reported in 27B to 30B. It includes interest payments on bonds and subordinated loans, certificate of deposits and commercial paper issued.

FSA003 – Capital adequacy

...

17A Core tier one capital

This element is equivalent to stage A in

...

- *GENPRU 2 Annex 6R for a BIPRU investment firm* with a waiver from consolidated supervision.

[CEBS' CA 1.1.1 less 1.1.1.2 plus 1.1.2]

...

19A Profit and loss account and other reserves

See *GENPRU 2.2.85R* to *GENPRU 2.2.90R*, but excluding interim net losses reported in 20A below.

[CEBS' CA 1.1.2.1 plus part of 1.1.2.6]

20A Interim net losses

See *GENPRU 2.2.85R*. *UK banks* and *building societies* should include all losses for the current financial year. In the case of *BIPRU investment firms*, only material interim net losses should be reported.

[CEBS' CA 1.1.2.4 plus 1.1.2.4b plus part of 1.1.2.6]

...

27A Deductions from tier one capital

...

- *GENPRU 2 Annex 6R for a BIPRU investment firm* with a waiver from consolidated supervision.

[CA 1.1.5 plus 1.1.1.2 all with the opposite sign]

...

34A Material holdings

...

See Note (4) to *GENPRU 2 Annex 6R* and also *GENPRU 2.2.208R* to *GENPRU 2.2.215R*.

[Part of CA 1.1.4.3.2 but in the opposite sign.]

...

If the report is for a *UK consolidation group*, this should be zero – see *BIPRU 8.3.3G*

76A Variable capital requirements to be met from tier one and tier two capital

See *GENPRU 2.2.44R*. This is the sum of the *credit risk capital component* (data element 77A), the *operational risk capital requirement* (data element 85A, less data element 90A if applicable) and the *counterparty risk capital component* (data element 91A). ~~It also includes that part of 92A that is not met from tier three capital alone (58A).~~

...

91A Counterparty risk component

See *BIPRU 14.2.1 R* and *BIPRU 13.*

[*CEBS' CA 2.2*]

...

105A Capital resources requirement arising from capital floors

This is only relevant for a firm that has adopted the *IRB approach*. Firms should enter the total amount of capital resources required ~~to equal or exceed the amounts as~~ defined in *BIPRU TP 2* and *BIPRU TP 2.8R* in particular. When reporting, the scaling factors set out in *BIPRU TP 2.8R* should have been applied.

...

106B Surplus/deficit of own funds

This is 15B less 70A.

...

Firms should note that although this figure may show a surplus, if ~~this~~ the figure reported in data element 57B is less than the *base capital resources requirement* (reported in data element 69A), the firm's *capital resources* are less than its *capital resources requirement*. See Note (2) in *GENPRU 2 Annexes 2R, 3R, 4R, 5R and 6R.*

...

FSA011 – Building society liquidity

...

Definitions

...
Column E The amount of prudential liquidity.

Note : In the case of complex, multi-step transactions:

Whether conducting a repo or a reverse repo, firms should take particular care not to "double count" either the stock or the cash as liquidity. This is especially relevant to more complex situations, where for example, gilts reversed in are subsequently repoed out or sold, taking in any timing mismatches that occur.

FSA017 – Interest rate gap

This data item collects information on the interest rate gap. It is designed to provide the FSA with sufficient information to understand the interest rate sensitivity of a firm's assets and liabilities. ~~Some firms may already have sophisticated models capable of showing the impact of a 2% shift in interest rates and, in such cases, these firms may seek a waiver from reporting this data item.~~

FSA019 – Pillar 2 questionnaire

6B Have your external auditors audited your firm's financial statements in the last 12 months?

The answer 'Yes', 'No' or 'Not applicable'. Firms that have a small firm's exemption audit should choose 'not applicable'.

12A to Is your firm exposed to the risks listed 23A

See GENPRU 1.2.30R. The answer to each question is either 'Yes' or 'No'.

BIPRU limited activity firms and BIPRU limited licence firms that also have to consider a fixed overheads requirement should assess their capital requirements under each of the headings even though their fixed overheads requirement may be higher. Data element 23A should include not only any risks other than those separately identified above, but it should also include the firm's assessment of how much capital is required to cover the fixed overheads requirement.

12B to If so, what is the amount of internal capital you have allocated to each of 23 B them?

For each answer in Column A that is ‘Yes’, enter the amount in column B in 000s.

BIPRU limited activity firms and BIPRU limited licence firms should include in 23B their assessment of the capital required to cover the fixed overheads requirement. A firm may assess that capital to be allocated to cover the fixed overheads requirement is more than one quarter of their annual fixed overheads.

...

28B In your firm’s ICAAP, do you take account of the results of the stress tests set out in BIPRU 4.3.39R and BIPRU 4.3.40R?

See BIPRU 4.3.39R and BIPRU 4.3.40R. The answer is either ‘Yes’ or ‘No’.

...

FSA030 – Income Statement

...

Description	Data element	Guidance
Dealing Profit/(Loss)		
...		
Revenue	A firm should complete <u>only</u> the sections relevant to the business it undertakes	
...		
Investment management fees	7A	This is the total of underwriting fees and commissions, fees from investment advice, valuations, management of investments and unit trusts, pension funds, discretionary management and collective investment schemes.
<u>Investment Advisory Fees</u>	<u>8A</u>	<u>Include all fees arising from investment advice (see PERG 2.7.15G).</u>
...		

...

FSA039 – Client Money and Client Assets

Description	Data element	Guidance
...
Does the firm undertake or allow stock lending activities using <i>client's</i> custody assets?	2A	<p>Please answer yes or no as applicable.</p> <p>For the purposes of this question, stock lending is an agreement for the temporary transfer of securities, in which the borrower undertakes to return equivalent securities at a pre-determined time. The lender retains ownership of the securities, and typically earns income from the borrower for agreeing to the loan, but the borrower is able to exercise the voting rights attached to the securities.</p> <p><u>Firms should note that CASS requires firms to obtain express prior consent from clients to enter into securities financing transactions and have due regard to the client's best interest rule.</u></p>

...

FSA042 - UCITS

Description	Data element	Guidance
<u>Do you operate one or more UK authorised UCITS scheme?</u>	<u>1A</u>	<u>That is, are you the <i>authorised fund manager</i> or <i>ACD</i> of at least one <i>UCITS scheme</i> that is authorised by the <i>FSA</i> (not simply notified under section 264 of the <i>Act</i>)?</u>
<u>Do you use derivatives in the scheme(s) derivatives in the UCITS scheme(s)?</u>	<u>2B 2A</u>	FSA Handbook Glossary Definition: <i>Derivative: a contract for differences, a future or an option.</i>

Are you using derivatives for investment purposes?	4A 3A	"Using derivatives for investment purposes" is a term with which we believe managers are familiar. This term suggests that derivatives are not being used in pursuit of efficient portfolio management
Have you notified the FSA of the following details of your Risk Management Process: The methods used for estimating risks in derivative and forward transactions	5B	Required under <i>COLL 5.2.24 (2)(a)</i> http://fsahandbook.info/FSA/html/handbook/COLL/5/2
Have you notified the FSA of the following details of your Risk Management Process: The types of derivatives and forward transactions to be used within the scheme(s) together with the underlying risks and relevant quantitative limits	6B	Required under <i>COLL 5.2.24 (2)(a)</i> http://fsahandbook.info/FSA/html/handbook/COLL/5/2
Have there been any material alterations to the details provided within the last 6 months?	7B	The degree of materiality is to be decided by the manager and is in line with <i>COLL 5.2.24 (3)</i> . http://fsahandbook.info/FSA/html/handbook/COLL/5/2

...
FSA044 – Maturity analysis of assets and deposits

...
Off-balance sheet elements

Maturity (columns B – D)

...

Commitments, contingent liabilities or undrawn credit lines inward with a residual maturity up to one year should be included in column C, ~~and commitments~~ Commitments, contingent liabilities or undrawn credit lines inward with a residual maturity over one year, together with any non-cancellable commitments, should be included in column D.

SHORT SELLING (NO 6) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 119 (The code);
 - (2) section 121 (Codes: procedure);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 30 June 2009 and applies in relation to any position held on or after that date.

Amendments to the Handbook

- D. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Short Selling (No 6) Instrument 2009.

By order of the Board
25 June 2009

Annex

Amendments to the Market Conduct sourcebook (MAR)

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

1.9 Market abuse (misleading behaviour) & market abuse (distortion)

...

Short selling in relation to financial sector companies

- | | |
|--------|---|
| 1.9.2C | E ... |
| 1.9.2D | <p>E (1) Failure by a person who has a <i>disclosable short position</i> in a <i>UK financial sector company</i> to provide adequate ongoing disclosure of their position is <i>behaviour</i> which, in the opinion of the FSA, is <i>market abuse (misleading behaviour)</i>.</p> <p>(2) In (1), “adequate ongoing disclosure” means disclosure made on a <i>RIS</i> by no later than 3.30pm on the <i>business day</i> following the day on which the position reaches, exceeds or falls below a <i>disclosable short position</i> of 0.25%, 0.35%, 0.45% and 0.55% of the issued share capital of the company and each 0.1% threshold thereafter.</p> <p style="margin-left: 20px;">(a) [deleted]</p> <p style="margin-left: 20px;">(b) [deleted]</p> <p>(2A) The disclosure referred to in (1) must include the name of the person who has the position, the amount of the <i>disclosable short position</i> and the name of the company in relation to which it has that position.</p> <p>(3) For the avoidance of doubt, changes in a <i>disclosable short position</i> between the thresholds referred to in (2) do not need to be disclosed under this section. For example, an increase from 0.25% to 0.31% of the issued share capital of the company does not need to be disclosed.</p> <p>(4) For the avoidance of doubt, (1) applies during a <i>rights issue period</i>.</p> <p>(5) This provision ceases to have effect on 30 June 2009. [deleted]</p> |

**INTERIM PERMITTED REGULATED SALE AND RENT BACK ACTIVITIES
INSTRUMENT 2009**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the rules in Annex H (Dispute Resolution: Complaints sourcebook (DISP)) to this instrument for firms relating to the Compulsory Jurisdiction in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
 - (1) section 226 (Compulsory jurisdiction); and
 - (2) paragraph 14 (The scheme operator’s rules) of Schedule 17 (The Ombudsman Scheme).
- B. The making of these rules by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

- C. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
 - (1) article 33(1) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI No 2009/1342) (“the Order”); and
 - (2) the following sections of 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);
 - (g) section 214 (General); and
 - (h) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- D. Article 33(2) of the Order is relevant to the exercise of the powers set out in paragraph C(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.
- E. The provisions listed above relevant to making rules are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.
- F. The Financial Services Authority consents to and approves the rules made by the Financial Ombudsman Service Limited.

Commencement

G. This instrument comes into force on 1 July 2009.

Direction

H. The FSA makes the directions set out in Annex A to this instrument.

Amendments to the Handbook

I. 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 B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Fees manual (FEES)	Annex D
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex E
Training and Competence sourcebook (TC)	Annex F
Supervision manual (SUP)	Annex G
Dispute Resolution: Complaints sourcebook (DISP)	Annex H

Notes

J. 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

K. Annex A to this instrument may be cited as the Directions, rules and guidance for Interim Permitted Regulated Sale and Rent Back Activities.

L. This instrument may be cited as the Interim Permitted Regulated Sale and Rent Back Activities Instrument 2009.

By order of the Board of the Financial Ombudsman Service Limited
1 July 2009

By order of the Board of the Financial Services Authority
1 July 2009

Annex A

Directions, rules and guidance for Interim Permitted Regulated Sale and Rent Back Activities

In this Annex, new provisions relevant to interim permitted regulated sale and rent back activities are being introduced. All the text is new text and is not underlined.

Handbook and other requirements for Interim Permitted Regulated Sale and Rent Back Activities

1 Application and purpose

- 1.1 R These *rules* and directions apply to:
- (1) an *authorised person* with an *interim permission*; and
 - (2) an *authorised person* with an *interim variation of permission*.
- 1.2 G The purposes of these Directions are:
- (1) to make rules relating to disclosure of their regulated status by *persons* with an *interim permission* or an *interim variation of permission*; and
 - (2) to direct, in accordance with article 33(1) of the *Order*, that certain provisions of the *Handbook* that would otherwise apply to *persons* with an *interim permission* or an *interim variation of permission* are not to apply.

2 Disapplication of certain modules or provisions of the Handbook

- 2.1 D The *FSA* directs that the modules or parts of the modules of the *FSA's Handbook of rules* and guidance listed in the Schedule to this direction do not apply to an *authorised person* with an *interim permission* or an *interim variation of permission* to the extent that the *person* conducts *regulated sale and rent back activity*.

3 Application of the Handbook of rules and guidance

- 3.1 R The *Handbook* applies to an *authorised person* with an *interim permission* or an *interim variation of permission* when carrying on *regulated sale and rent back activity* to the extent set out below:
- (1) *Glossary* of definitions – subject to the modifications made in Annex B to this instrument;
 - (2) Principles for Businesses (*PRIN*);
 - (3) Chapter 1.1A, SYSC 4.1.1R to SYSC 4.1.2A G, SYSC 4.4.1R to SYSC

4.4.6G, Chapters 5 (Employees, agents and other relevant persons) and 9 (Record keeping) of the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*), subject to the modifications made in Annex C to this instrument;

- (4) Threshold Conditions (*COND*);
- (5) Fees manual: (*FEES*), subject to the modifications made in Annex D to this instrument;
- (6) Mortgages and Home Finance: Conduct of Business sourcebook (*MCOB*) (to the extent shown in the Schedule to this Annex), subject to the modifications made in Annex E to this instrument;
- (7) Training and Competence (*TC*), subject to the modifications made in Annex F to this instrument;
- (8) Supervision manual (*SUP*), subject to the modifications made in Annex G to this instrument; and
- (9) Dispute Resolution: Complaints sourcebook (*DISP*), subject to the modifications made in Annex H to this instrument.

4 Guidance on disclosure of interim permission status

- 4.1 G This instrument makes special provision for *persons* with an *interim permission* or an *interim variation of permission* 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 the affairs of a *firm* with an *interim permission* or an *interim variation of permission*.

5 Disclosure of interim permission status

- 5.1 R Whenever an *authorised person* with an *interim permission* or an *interim variation of permission* is required, and whenever that *person* is permitted and chooses, to disclose that:

- (1) it is an *authorised person* or it is regulated by the FSA, and that disclosure is made in respect of; or
- (2) it has *permission* to carry on;

one or more of the *regulated sale and rent back activities* described in the *Order*, the FSA directs that that *person* must, in place of *GEN 1.2* (Referring to approval by the FSA), disclose that:

- (a) (if it is an *authorised person* with an *interim permission*):
 - (i) it is an *authorised person* with an *interim permission* that allows it to carry on *regulated sale and rent back activity* on an interim basis only; and

- (ii) compensation will not be available from the *compensation scheme* if the *authorised person* cannot meet its obligations in relation to that activity; or
- (b) (if the *authorised person* has an *interim variation of permission*) it is an *authorised person* with an *interim variation of permission* that allows it to carry on *regulated sale and rent back activity* on an interim basis only.

6

Defined terms

- 6.1 R In these *rules* and directions, the terms in (1) have the meanings ascribed to them by (2). Further, terms in italics that do not appear below have the meaning given to them in the *Glossary of definitions* in the *FSA's Handbook*.

(1)	(2)
<i>application for interim permission</i>	an application for <i>interim permission</i> made under article 32 (1) (Interim permission and interim variation of permission) of the <i>Order</i> to carry on one or more of the <i>regulated sale and rent back activities</i> described in the <i>Order</i> .
<i>application for interim variation of permission</i>	an application for <i>interim variation of permission</i> made under article 32 (1) (Interim permission and interim variation of permission) of the <i>Order</i> to carry on one or more of the <i>regulated sale and rent back activities</i> described in the <i>Order</i> .
<i>interim permission</i>	a <i>Part IV permission</i> deemed to have been granted by article 32 (Interim permission and interim variation of permission) of the <i>Order</i> to a <i>person</i> because his <i>application for interim permission</i> in accordance with article 32(1) of the <i>Order</i> has been submitted to and approved by the <i>FSA</i> .
<i>interim variation of permission</i>	a <i>Part IV permission</i> deemed to have been granted by article 32 (Interim permission and interim variation of permission) of the <i>Order</i> to a <i>person</i> because his <i>application for interim variation of permission</i> in accordance with article 32(1) of the <i>Order</i> has been submitted to and approved by the <i>FSA</i> .

<i>Order</i>	The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342).
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Schedule

Modules or parts of modules of the *FSA's Handbook of rules* and guidance that are being disapplied in relation to *persons* to the extent that they carry on *regulated sale and rent back activity*

Module	Disapplication
Senior Management Arrangements, Systems and Controls sourcebook (<i>SYSC</i>)	This sourcebook does not apply, except for <i>SYSC 1.1A</i> , <i>SYSC 4.1.1R</i> to <i>4.1.2AG</i> , <i>SYSC 4.4.1R</i> to <i>SYSC 4.4.6G</i> and <i>SYSC 5</i> and <i>SYSC 9</i> , all of which do apply subject to the modifications shown in Annex C to this instrument.
Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)	This sourcebook does not apply.
The Fit and Proper Test for Approved Persons (<i>FIT</i>)	This sourcebook does not apply.
General provisions (<i>GEN</i>)	This sourcebook does not apply. Note: <i>GEN 1.2</i> (Referring to approval by the FSA) does not apply to <i>persons</i> with an <i>interim permission</i> or an <i>interim variation of permission</i> for <i>regulated sale and rent back activity</i> . Instead, paragraph 5 of this Direction makes provision about <i>persons</i> with <i>interim permission</i> or an <i>interim variation of permission</i> to carry on <i>regulated sale and rent back activity</i> referring to approval by the FSA or <i>authorisation</i> for the purposes of the <i>Act</i> .
Prudential sourcebook for Mortgages and Home Finance Firms and Insurance Intermediaries (<i>MIPRU</i>)	This sourcebook does not apply.

Mortgages and Home Finance: Conduct of Business sourcebook (<i>MCOB</i>)	This sourcebook does not apply, except for <i>MCOB</i> 1, <i>MCOB</i> 2.1, <i>MCOB</i> 2.2.6R to 2.2.7G, <i>MCOB</i> 2.4.1G to 2.4.3G, <i>MCOB</i> 2.6A.1R to 2.6A.4G, <i>MCOB</i> 2.6A.5AR, <i>MCOB</i> 2.6A.8R to 2.6A.12R, <i>MCOB</i> 2.6A.13E (1) and (4), <i>MCOB</i> 2.6A.15R to 2.6A.16G, <i>MCOB</i> 2.6A.17AR and 2.6A.18G, <i>MCOB</i> 5.1.1R and <i>MCOB</i> 5.1.2R, <i>MCOB</i> 5.9, <i>MCOB</i> 12.1.1R to 12.1.3R, <i>MCOB</i> 12.2.1G, <i>MCOB</i> 12.5.1R to 12.5.3G, all of which do apply subject to the modifications made in Annex E to this instrument.
Client Assets sourcebook (<i>CASS</i>)	This sourcebook does not apply.
Dispute Resolution: Complaints sourcebook (<i>DISP</i>)	<i>DISP</i> 1.10 (Complaints reporting rules) does not apply. The remainder of <i>DISP</i> does apply subject to the modification made in Annex H to this instrument.
Compensation sourcebook (<i>COMP</i>)	This sourcebook does not apply to <i>persons</i> with an <i>interim permission</i> . Note: <i>COMP</i> will apply in accordance with its terms to <i>persons</i> with an <i>interim variation of permission</i> .

Annex B

Amendments to the Glossary of definitions

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

administering a home finance transaction any of the *regulated activities* of *administering a regulated mortgage contract, administering a home purchase plan, or administering a home reversion plan or administering a regulated sale and rent back agreement*.

administering a regulated sale and rent back agreement the *regulated activity*, specified in article 63J(2) of the *Regulated Activities Order*, which is in summary any of the following:

(a) notifying the agreement seller of changes in payment due under *a regulated sale and rent back agreement or of other matters of which that agreement requires him to be notified*;

(b) taking any necessary steps for the purpose of making payments to the agreement seller under that *agreement*; and

(c) taking any necessary steps for the purposes of collecting or recovering payments due under that *agreement* from the agreement seller;

but a person is not to be treated as administering a *regulated sale and rent back agreement* because he has, or exercises, a right to take action for the purposes of enforcing that *agreement* (or to require that such action is or is not taken);

and in relation to a person who acquires obligations or rights under *a regulated sale and rent back agreement*, an activity is a specified kind of activity for the purposes of this definition only if the *agreement* was entered into by the *agreement provider* (rather than the obligations or rights acquired) on or after 1 July 2009.

advising on a home finance transaction any of the *regulated activities* of *advising on regulated mortgage contracts, advising on a home purchase plan, or advising on a home reversion plan or advising on a regulated sale and rent back agreement*.

advising on a regulated sale and rent back agreement the *regulated activity*, specified in article 53D of the *Regulated Activities Order*, which is in summary advising a person if the advice:

(a) is given to a person in his capacity as:

(i) an agreement seller or potential agreement seller; or

(ii) an agreement provider or potential agreement provider; and

- (b) is advice on the merits of his doing either of the following:
- (i) entering into a particular regulated sale and rent back agreement; or
 - (ii) varying the terms of a regulated sale and rent back agreement entered into on or after 1 July 2009 by him as agreement seller or agreement provider, in such a way as to vary his obligations under that agreement and in relation to a person who acquires obligations or rights under a regulated sale and rent back agreement, an activity is a specified kind of activity for the purposes of this part of the definition only if the agreement was entered into by the agreement provider (rather than the obligations or rights acquired) on or after 1 July 2009.
- arranging (bringing about) a home finance transaction any of the regulated activities of arranging (bringing about) a regulated mortgage contract, arranging (bringing about) a home purchase plan, or arranging (bringing about) a home reversion plan or arranging (bringing about) a regulated sale and rent back agreement.
- arranging (bringing about) a regulated sale and rent back agreement the regulated activity, specified in article 25E(1) of the Regulated Activities Order, which is in summary making arrangements:
- (a) for another person to enter into a regulated sale and rent back agreement as an agreement seller or as an agreement provider; or
 - (b) for another person to vary the terms of a regulated sale and rent back agreement, entered into on or after 1 July 2009 by him as agreement seller or agreement provider, in such a way so as to vary his obligations under that agreement and in relation to a person who acquires obligations or rights under a regulated sale and rent back agreement, an activity is a specified kind of activity for the purposes of this part of the definition only if the agreement was entered into by the agreement provider (rather than the obligations or rights acquired) on or after 1 July 2009;
- including making arrangements with a view to a person who participates in the arrangements entering into a regulated sale and rent agreement as agreement seller or agreement provider.
- entering into a home finance transaction any of the regulated activities of entering into a regulated mortgage contract, entering into a home purchase plan, or entering into a home reversion plan or entering into a regulated sale and rent back agreement.

entering into a regulated sale and rent back agreement

the regulated activity, specified in article 63J(1) of the Regulated Activities Order, which is in summary entering into a regulated sale and rent back agreement as an agreement provider, including acquiring any obligations or rights of the agreement provider, including the agreement provider's interest in land or interests under one or more such agreements.

full RSRB permission

(in FEES) an authorisation which is not an interim RSRB permission to carry on one or more regulated sale and rent back activities.

home finance administration

any of the regulated activities of:

...

(c) administering a home reversion plan; or

(cc) administering a regulated sale and rent back agreement; or

(d) agreeing to carry on a regulated activity in (a) to (cc).

...

home finance mediation activity

any mortgage mediation activity, home purchase mediation activity, or reversion mediation activity or regulated sale and rent back mediation activity.

home finance providing activity

any of the regulated activities of:

(a) ...

(aa) entering into a regulated sale and rent back agreement;

...

home finance transaction

a regulated mortgage contract, home purchase plan or, home reversion plan or regulated sale and rent back agreement.

interim RSRB permission

(in SYSC and FEES) a Part IV permission to carry on one or more regulated sale and rent back activities deemed to have been granted by article 32 (Interim permission and interim variation of permission) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) to a person because he has submitted an application for interim permission or an interim variation of permission in accordance with article 32(1) of the Order and such permission has been given by the FSA.

making arrangements with a view to a home finance transaction

any of the regulated activities of making arrangements with a view to a regulated mortgage contract, making arrangements with a view to a home reversion plan, or making arrangements with a view to a home purchase plan or making arrangements with a view to a regulated sale and rent back agreement.

making arrangements with a view to a regulated sale and rent back agreement

the regulated activity, specified in article 25E(2) of the Regulated Activities Order, which is in summary making arrangements with a view to a person who participates in the arrangements entering into a regulated sale and rent back agreement as agreement seller or agreement provider.

regulated activity (in accordance with section 22 of the Act (The classes of activity and categories of investment) any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

...

(gh) arranging (bringing about) a regulated sale and rent back agreement (article 25E(1));

(gi) making arrangements with a view to a regulated sale and rent back agreement (article 25E(2));

...

(pd) advising on a regulated sale and rent back agreement (article 53D);

...

(sg) entering into a regulated sale and rent back agreement (article 63J(1));

(sh) administering a regulated sale and rent back agreement (article 63J(2));

...

regulated sale and rent back activity any of the following *regulated activities*:

(a) arranging (bringing about) a regulated sale and rent back agreement (article 25E(1));

(b) making arrangements with a view to a regulated sale and rent back agreement (article 25E(2));

(c) advising on a regulated sale and rent back agreement (article 53D);

(d) entering into a regulated sale and rent back agreement (article 63J(1));

(e) administering a regulated sale and rent back agreement (article 63J(2)); or

- (f) agreeing to carry on a regulated activity in (a) to (e) (article 64).

regulated sale and rent back agreement

(in accordance with article 63J(3)(a) of the *Regulated Activities Order*) an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

- (a) the arrangement is one under which a person (an agreement provider), buys all or part of the qualifying interest in land in the United Kingdom from an individual or trustees (the “agreement seller”); and
 - (b) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated *home reversion plan*.

regulated sale and
rent back firm

any of the following regulated activities:

regulated sale and rent back mediation activity

- (a) arranging (bringing about) regulated sale and rent back agreements (article 25E(1));
 - (b) making arrangements with a view to regulated sale and rent back agreements (article 25E(2));
 - (c) advising on regulated sale and rent back agreements (article 53D);
 - (d) agreeing to carry on a regulated activity in (a) to (c) (article 64).

regulated sale and rent back transaction

a transaction involving a regulated sale and rent back agreement under which a SRB agreement seller, in return for the sale of a qualifying interest in land in whole or in part to a SRB agreement provider, is granted, or any member of his family is granted, a right to occupy the land in question as, or in connection with, a dwelling, and intends so to occupy it.

related party

(in *LR*) as defined in *LR* 11.1.4R-;

(in relation to an agreement seller under a *regulated sale and rent back agreement* or, where the agreement seller is a trustee, a beneficiary of the trust), means:

- (a) that person's spouse or civil partner;
 - (b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristic of the relationship between husband and wife; or
 - (c) that person's parent, brother, sister, child, grandparent or grandchild.
- relevant person*
- (1) (in *COMP*) a person (other than a person with an *interim RSRB permission* because he has submitted an application for interim permission in accordance with article 32(1) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) which has been approved by the FSA) for *claims* against whom the *compensation scheme* provides cover, as defined in *COMP* 6.2.1R.

...

SRB administrator

a firm which carries on the regulated activity of administering a regulated sale and rent back agreement.

SRB adviser

a firm which carries on the regulated activity of advising on a regulated sale and rent back agreement.

SRB agreement provider

(in accordance with article 63J(3)(a) of the Regulated Activities Order) a firm which buys all or part of the qualifying interest in land in the United Kingdom from a SRB agreement seller under a regulated sale and rent back agreement, including a firm which acquires obligations or rights under a regulated sale and rent back agreement.

SRB agreement seller

(in accordance with article 63J(3)(a) of the Regulated Activities Order) an individual or trustees, or a related party of his, who sells all or part of the qualifying interest in land in the United Kingdom to an agreement provider under a regulated sale and rent back agreement and who is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so.

SRB arranger

a firm which carries on the regulated activity of arranging (bringing about) a regulated sale and rent back agreement or making arrangements with a view to a regulated sale and rent back agreement.

unauthorised SRB

a person who carries on, or proposes to carry on, the activity specified in article 63J(1) of the Regulated Activities Order which is

agreement provider

entering into a regulated sale and rent back agreement as agreement provider, and who does not have permission for, and is not an exempt person in relation to, entering into a regulated sale and rent back agreement; and in this definition references to an agreement provider include a person who acquires obligations or rights under a regulated sale and rent back agreement.

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

4.1.2A G Other *firms* should take account of the comprehensiveness and proportionality *rule* (SYSC 4.1.2R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R but a firm with an interim RSRB permission to the extent that it carries on regulated sale and rent back activity, need not take into account the specific technical criteria described in SYSC 4.1.7R, SYSC 5.1.7R and SYSC 7.

...

4.4.1A R SYSC 4.4.3R (Maintaining a clear and appropriate apportionment) also applies to a firm with an interim RSRB permission to the extent that it carries on regulated sale and rent back activity.

Annex D

Amendments to the Fees manual (FEES)

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

1.1.2 R This manual applies in the following way:

...

(4) FEES 1, 2 and 6 apply to:

(a) every *participant firm other than a person with an interim RSRB permission (and no other permissions) because he has submitted an application for interim permission in accordance with article 32(1) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) and that permission has been given;*

...

3 Annex 1 R Authorisation fees payable

Part 1 – Authorisation fees payable R

Application type (see Part 2)	Amount payable
...	...
(d) Straightforward	£1,500 (<u>unless otherwise specified in Part 2</u>)
(e) Moderately complex	£5,000 (<u>unless otherwise specified in Part 2</u>)
...	...

Part 2 – Complexity Groupings Straightforward Cases **R**

Straightforward cases	
Activity grouping	Description
...	
A.18	<p><i>Home finance providers, advisers and arrangers</i> (excluding <i>home finance providers</i>). <u>In the case of applicants for <i>interim RSRB permission</i> within this activity group the specified amount payable is £1,000.</u> <u>In the case of applicants for <i>full RSRB permission</i> within this activity group the specified amount payable is £500.</u></p>
...	

Moderately Complex Cases **R**

Moderately complex cases	
Activity grouping	Description
...	
A.2	<p><i>Home finance providers and administrators.</i> <u>In the case of applicants for <i>interim RSRB permission</i> within this activity group the specified amount payable is £3,000.</u> <u>In the case of applicants for <i>full RSRB permission</i> within this activity group the specified amount payable is £2,000.</u></p>
...	

...

4 Annex 1 R Activity groups, tariff bases and valuation dates applicable

Part 1

...

...

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 *FEES* 4 Annex 2R Part 1).

Activity group	Tariff-base
...	
A.2	<p>NUMBER OF MORTGAGES OR OTHER HOME FINANCE TRANSACTIONS ENTERED INTO AND ADMINISTERED</p> <p>The number of new mortgage contracts, <i>home purchase plans</i>, <i>or home reversion plans</i> <u>and regulated sale and rent back agreements</u> entered into;</p> <p>AND</p> <p>The number of mortgage contracts, <i>home purchase plans</i>, <i>or home reversion plans</i> <u>and regulated sale and rent back agreements</u> being administered, multiplied by 0.05 for mortgage outsourcing <i>firms</i> or other home finance outsourcing <i>firms</i> and by 0.5 for all other <i>firms</i>.</p> <p>Notes:</p> <p>(1) Mortgage outsourcing <i>firms</i> are <i>firms</i> with <i>permission</i> for <i>administering regulated mortgage contracts</i>, but not to enter the contract as lender.</p> <p>Home finance outsourcing <i>firms</i> are <i>firms</i> with <i>permission</i> for <i>administering a home finance transaction</i>, but not <i>entering into a home finance transaction</i>.</p> <p>(2) In this context a 'mortgage' means a loan secured by a first charge over residential property in the <i>United Kingdom</i>. For the measure of the number of contracts being administered, each first charge counts as one contract, irrespective of the number of loans involved.</p> <p>(3) Mortgages, <i>home purchase plans</i>, <i>or home reversion plans</i></p>

	<u>and regulated sale and rent back agreements</u> administered include those that the <i>firm</i> administers on behalf of other <i>firms</i> .
...	
A.18	<p>ANNUAL INCOME</p> <p>(a) the net amount retained by the <i>firm</i> of all brokerages, fees, commissions and other related income (eg administration charges, overriders, profit shares) due to the <i>firm</i> in respect of or in relation to <i>home finance mediation activity</i> (or activities which would have been <i>mortgage mediation activity</i> if they had been carried out after 30 October 2004 or <i>home purchase mediation activity</i> or <i>home reversion mediation activity</i> if they had been carried out on or after 6 April 2007 <u>or regulated sale and rent back mediation activity if they had been carried out on or after 1 July 2009</u>);</p> <p>Plus</p> <p>(b) for any <i>home finance mediation activity</i> carried out by the <i>firm</i> for which it receives payment from the lender or provider on a basis other than that in (a), the value of all new mortgage advances and amounts provided under other <i>home finance transactions</i> resulting from that activity multiplied by 0.004;</p> <p>Plus</p> <p>(c) if the <i>firm</i> is a <i>home finance provider</i>, the value of all new mortgage advances and amounts provided under other <i>home finance transactions</i> which are or would be <i>regulated mortgage contracts</i> if they had been made after 30 October 2004 or <i>home purchase plans</i> or <i>home reversion plans</i> if they had been made on or after 6 April 2007 <u>or regulated sale and rent back mediation activity if they had been carried out on or after 1 July 2009</u> (other than those made as a result of <i>home finance mediation activity</i> by another <i>firm</i>), multiplied by 0.004. For mortgage outsourcing <i>firms</i> or home finance outsourcing <i>firms</i> whose permission does not include <i>advising on a home finance transaction</i> the relevant amounts are multiplied by 0.15.</p> <p>Notes on annual income:</p> <p>...</p> <p>(4) Reference to a "firm" above also includes reference to any person who carried out activities which would be <i>mortgage mediation activity</i> if they had been carried out after 30 October 2004 or <i>home purchase mediation activity</i> or <i>reversion mediation activity</i> if they had been carried out on or after 6 April 2007 <u>or regulated sale and rent back mediation activity if they had been carried out on or after 1 July 2009</u>.</p> <p>...</p>

...

Part 3 This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data by applying the tariff bases set out in Part 2 with reference to the valuation dates shown in this table.

Activity group	Valuation date
...	
...	
A.2	<p>Number of mortgages, <i>home purchase plans</i>, or <i>home reversion plans and regulated sale and rent back agreements</i> entered into in the twelve months ending 31 December.</p> <p>AND</p> <p>Number of mortgages, <i>home purchase plans</i>, or <i>home reversion plans and regulated sale and rent back agreements</i> being administered on 31 December.</p>
...	

4 Annex 2 R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2009 July 2009 to 31 March 2010 1 July 2010

Part 1

...

...		
Activity group	Fee payable	
...		
A.2	Minimum fee (£)	525
	No. of mortgages <u>and/or home finance transactions</u>	Fee (£/mortgage)
	...	
...		

...

6 Financial Services Compensation Scheme Funding

...

6.1.1 R This chapter applies to:

- (1) every *participant firm other than a person with an interim RSRB permission* (and no other *permissions*) because he has submitted an *application for interim permission in accordance with article 32(1) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342)* and that *permission has been given*;

...

...

FEES TP Transitional Provisions

FEES TP 1.1

(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	<u>FEES 4 Annex 1R, Activity Group A.2</u>		<u>Any reference to the number of regulated sale and rent back agreements must be read as including any sale and rent back agreement entered into or administered before 1 July 2009, as relevant, which would be a regulated sale and rent back agreement if entered into or administered on or after 1 July 2009.</u>	<u>1 July 2009 to 30 June 2010</u>	<u>1 July 2009</u>

Annex E

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

Firm types and the home finance activities

- 1.2.2 G (1) This sourcebook applies to activities carried out in respect of ~~three four~~ types of product: *regulated mortgage contracts* (which includes *lifetime mortgages*), *home purchase plans*, ~~and~~ *home reversion plans* and *regulated sale and rent back agreements*.

...

- 2.1.2 R This table belongs to MCOB 2.1.1R

(1) Category of firm	(2) Applicable section
...	
<i>reversion adviser</i>	...
<u><i>SRB administrator</i></u> <u><i>SRB arranger</i></u>	As for a <i>SRB agreement provider</i> together with <i>MCOB 2.6A.17AR</i> and <i>MCOB 2.6A.18G</i> (which do apply) but the relevant provisions of <i>MCOB 2.6A</i> only apply when making arrangements for a <i>regulated sale and rent back agreement</i> to be entered into by a <i>SRB agreement seller</i> with, or administering a <i>regulated sale and rent back agreement</i> provided by, an <i>unauthorised SRB agreement provider</i> .
<u><i>SRB adviser</i></u>	As for a <i>SRB agreement provider</i> but <i>MCOB 2.6A</i> does not apply
<u><i>SRB agreement provider</i></u>	<i>MCOB 2.1, MCOB 2.2.6R to 2.2.7G, MCOB 2.4.1G to 2.4.3G, MCOB 2.6A.1R to 2.6A.4G, MCOB 2.6A.5AR, MCOB 2.6A.8R to 2.6A.12R, MCOB 2.6A.13E (1) and (4) and MCOB 2.6A.15R to 2.6A.16G.</i>
...	

What?

2.1.3 R This chapter applies in relation to:

...

(1A) the extent specified in MCOB 2.1.2R Table, regulated sale and rent back activity;

...

2.2.6A R A firm which approves a financial promotion of a home purchase plan or regulated sale and rent back agreement must take reasonable steps to ensure that the financial promotion is clear, fair and not misleading.

...

2.4 High pressure sales: regulated mortgage contracts, and home reversion plans and regulated sale and rent back agreements

Purpose

2.4.1 G The purpose of this section is to remind firms of the relevance of the high level standards in PRIN, especially with regard to the use of sales methods that may lead a customer to feel pressurised to enter into, or vary, a regulated mortgage contract, or home reversion plan or regulated sale and rent back agreement.

2.4.2 G (1) Principle 6 (Customers' interests) requires that a firm must pay due regard to the interests of its customers and treat them fairly. This means, for example, that a firm should avoid selling practices that commit customers (or lead customers to believe that they are committed) to any regulated mortgage contract or home reversion plan. One such practice might be to present a new customer with an illustration, offer document and mortgage deed at one time and to require the mortgage deed to be signed on the same occasion (when there is no urgent need to do so).

(2) For regulated sale and rent back agreements, the firm should avoid practices that commit customers (or lead customers to believe they are committed) to any such agreement before they have been able to consider the information that is required by MCOB 5.9.1R.

2.4.3 G Principle 7 (Communications with clients) requires that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading. This means, for example, that a firm should avoid giving any customer a false impression about the availability of a regulated mortgage contract, or home reversion plan or regulated sale and rent back agreement, such as describing it as a

‘special offer’ not available after a certain date unless this is really the case.

...

2.6A Protecting customer’s interests: home purchase plans, and home reversion plans and regulated sale and rent back agreements

Protecting customer’s interests: home purchase plans, and home reversion plans and regulated sale and rent back agreements

- 2.6A.1 R A firm must ensure that the interests of its *customer* under a *home purchase plan, or home reversion plan or regulated sale and rent back agreement* are protected to a reasonable standard.
- 2.6A.2 G Circumstances that a *firm* should consider include how the *customer* will be protected in the event of:
- (1) the *failure of a reversion provider, or home purchase provider or SRB agreement provider*;
 - (2) the transfer of a *reversion provider’s, or home purchase provider’s or SRB agreement provider’s* interest (or the interest the provider would have had, had it not nominated a third party to hold it) in the property to a third party;
 - (3) other dealings by a *reversion provider, or home purchase provider or SRB agreement provider* (or its nominee) with a third party; and
 - (4) a *reversion provider’s, or home purchase provider’s or SRB agreement provider’s* (or its nominee’s) failure to perform obligations owed to third parties, or imposed by statute.
- 2.6A.3 G The steps that a *firm* might take in order to protect its *customer’s* interests will depend on a number of factors, including the nature and structure of the *home purchase plan, or home reversion plan or regulated sale and rent back agreement* and the jurisdiction in which the property is situated. ...

...

Protecting customer’s interests: regulated sale and rent back agreements

- 2.6A.5A R A firm must ensure that before a SRB agreement seller enters into a regulated sale and rent back agreement, the SRB agreement seller is made aware of the availability and importance of independent legal or professional advice.

...

Treating customers fairly: home purchase plans, and home reversion plans and regulated sale and rent back agreements

- 2.6A.8 R A firm must pay due regard to the interests of its *customer* and treat him fairly when drafting, amending the terms of, or imposing obligations or

exercising rights or discretions under, a *home purchase plan*, or *home reversion plan* or *regulated sale and rent back agreement*.

2.6A.9 G A *firm* is unlikely, for example, to be treating its *customer* fairly in relation to termination of a *home purchase plan*, or *home reversion plan* or *regulated sale and rent back agreement* if:

- (1) the grounds on which it may terminate all or part of a plan or *agreement* are unduly wide, or on which a *customer* may terminate are unduly narrow; or

...

2.6A.10 G A *firm* is also unlikely to be treating its *customer* fairly if, upon termination of an agreement under a *home purchase plan*, or *home reversion plan* or *regulated sale and rent back agreement*, the *customer* does not receive (net of any reasonable sums payable by the *customer*):

- (1) in the case of a *home reversion plan* or *regulated sale and rent back agreement* where the *customer* retains a beneficial interest in the property, the value of that beneficial interest; or

...

Note: The terms of a *home purchase plan*, or *home reversion plan* or *regulated sale and rent back agreement* should take into account relevant legal obligations such as those under the *Unfair Terms Regulations* and, where applicable, the Housing Act 1988 (or in Scotland, the Housing (Scotland) Act 1988). ...

Treating customers fairly: home reversion plans and *regulated sale and rent back agreements*

2.6A.11 G A *firm* is unlikely, for example, to be treating a *reversion occupier* or *SRB agreement seller* fairly if:

- (1) the *reversion occupier* or *SRB agreement seller* is obliged to maintain the property to a standard that exceeds the standard that the property is in when the *home reversion plan* or *regulated sale and rent back agreement* commences;
- (2) the *reversion occupier* or *SRB agreement seller* is not entitled to, or is not given, reasonable notice of an inspection, or the inspection is conducted in a way that is biased against him;
- (3) unreasonable restrictions are imposed on who may occupy the property, taking into account the potential needs of the *reversion occupier* or *SRB agreement seller* throughout the duration of the *home reversion plan* or *regulated sale and rent back agreement*;
- (4) ...

- (5) the *reversion occupier or SRB agreement seller* is unreasonably treated as having abandoned the property. For example, it is likely to be unreasonable to treat a property as abandoned based on a period of non-occupation;
- (5A) the rent payable under a regulated sale and rent back agreement is increased by an unreasonable amount or any charges payable under a regulated sale and rent back agreement are unreasonably imposed after the agreement is concluded; and
- (6) ...

Independent valuation: home reversion plans and regulated sale and rent back agreements

2.6A.12 R A firm must ensure that any valuation is carried out by a competent valuer who is independent of the *reversion provider or SRB agreement provider*.

2.6A.13 E ...

- (3) For a home reversion plan, Compliance compliance with (1) and (2) may be relied upon as tending to establish compliance with MCOB 2.6A.12R.
- (4) For a regulated sale and rent back agreement, compliance with (1) may be relied upon as tending to establish compliance with the competence requirement of MCOB 2.6A.12R.

...

Obtaining best price: partial home reversion plans or regulated sale and rent back agreements

2.6A.15 R A firm must take reasonable steps to ensure that, when a *home reversion plan or regulated sale and rent back agreement* ends and the *customer* retains a beneficial interest in the property:

...

...

Arranging or administering for unauthorised providers: regulated sale and rent back agreements

2.6A.17A R For the purpose of this section (except this rule), a SRB arranger's or SRB administrator's customer:

- (1) includes a SRB agreement seller or potential SRB agreement seller who enters, or proposes to enter, into a regulated sale and rent back agreement with an unauthorised SRB agreement provider who is the firm's customer; and

(2) excludes an unauthorised SRB agreement provider.

Arranging or administering for unauthorised providers: home reversion plans and regulated sale and rent back agreements

- 2.6A.18 G A person may enter into a home reversion plan or regulated sale and rent back agreement as provider or agreement provider without being regulated by the FSA (or an exempt person) if the person does not do so by way of business (see PERG 14.5). If a firm arranges or makes arrangements for such a person to enter into a home reversion plan or regulated sale and rent back agreement as provider or agreement provider, the firm will be responsible for ensuring that the reversion occupier's or SRB agreement seller's interests are protected to a reasonable standard, even if the reversion arranger or SRB arranger is not acting for the reversion occupier or SRB agreement seller. A reversion administrator or SRB administrator is under the same obligation in relation to a reversion occupier or SRB agreement seller under a home reversion plan or regulated sale and rent agreement which it administers on behalf of an unauthorised reversion provider or unauthorised SRB agreement provider.

...

5.1 Application

...

- 5.1.2 R This Table belongs to MCOB 5.1.1R

(1) Category of firm	(2) Applicable section
...	
<i>reversion provider</i> <i>reversion adviser</i> <i>reversion arranger</i>	...
<u>SRB adviser</u>	<u>MCOB 5.1.1R, MCOB 5.1.2R,</u> <u>MCOB 5.9.4R and MCOB 5.9.5G</u>
<u>SRB agreement provider</u>	<u>MCOB 5.1.1R to 5.1.3R, MCOB 5.9.1R and MCOB 5.9.2R.</u>
<u>SRB arranger</u>	<u>MCOB 5.1.1R, MCOB 5.1.2R and MCOB 5.9.3R to 5.9.5G</u>

5.9 Regulated sale and rent back agreements

Pre-sale disclosure

5.9.1 R (1) A SRB agreement provider must not enter into a regulated sale and rent back agreement with a SRB agreement seller unless the following disclosures and warnings have been made to the SRB agreement seller, both orally and confirmed in writing:

- (a) the market value of the property that is the subject matter of the regulated sale and rent back agreement, as determined by any independent valuation under MCOB 2.6A.12R;
- (b) if the valuer that has produced the independent valuation in (a) was not acting for the SRB agreement seller in doing so, a prominent warning that this is the case and as such that it is advisable for the SRB agreement seller specifically to consider whether he is content with the market valuation in (a);
- (c) any fees, charges or retentions that the firm will deduct from the purchase price for the property and any fees or charges otherwise payable;
- (d) the purchase price that the firm will pay the SRB agreement seller for the property, net of any fees, charges or retentions;
- (e) the percentage of the figure in (a) for the market value of the property that the figure in (d) for the purchase price represents;
- (f) brief details of the type and period of the tenancy under the regulated sale and rent back agreement;
- (g) the minimum period that the SRB agreement seller and his family have a contractual right to remain in the property under the terms of the proposed agreement;
- (h) if the terms of the tenancy provide for a period of occupancy that is shorter than the minimum contractual period under (g), details of how the firm intends to meet the contractual period under (g);
- (i) a prominent warning that once the minimum contractual period under (g) expires, the SRB agreement seller and his family may be required to leave the property;
- (j) the initial rent due under the proposed agreement;
- (k) the circumstances in which the rent in (j) can be increased or

- changed in any way; and
- (1) the risks associated with the transaction from the SRB agreement seller's perspective, including in particular:
- (i) that failure to abide by the terms of the tenancy may result in the loss of the right to occupy the property; and
- (ii) that failure to obtain legal or professional advice may mean his interests are not fully protected.
- (2) The firm must make the written disclosures and warnings specified in (1) to the SRB agreement seller in a clear, fair and not misleading way before he enters into the proposed regulated sale and rent back agreement and in doing so must ensure that:
- (a) the information is set out in the same order as set out in (1);
- (b) the disclosures and warnings are made in a separate and standalone document; and
- (c) the disclosures and warnings are accompanied by a prominent written statement from the firm drawing the SRB agreement seller's attention to the importance of the information.

Records of pre-sale disclosure

- 5.9.2 R A SRB agreement provider must keep a record of the disclosures and warnings made to the SRB agreement seller under MCOB 5.9.1R for a period of:
- (1) 12 months after the end of the minimum period that the SRB agreement seller and his family have a contractual right to remain in the property; or
- (2) five years from the date of the disclosures and warnings;
whichever is the longer.

Initial disclosure information to SRB agreement sellers: unauthorised SRB agreement providers

- 5.9.3 R (1) A firm must ensure that, on first making contact with a prospective SRB agreement seller, whether or not he is the firm's customer, who is proposing to enter into a regulated sale and rent back agreement with an unauthorised SRB agreement provider, it provides him with the written warning in (2) before he enters into any such agreement.
- (2) The warning in (1) is that:
- (a) the agreement provider is not authorised or regulated by the

FSA, and that key protections under the *regulatory system* will not apply; and

- (b) the provider is not subject to the jurisdiction of the *Financial Ombudsman Service*, and that the *SRB agreement seller* will not be entitled to refer complaints against the provider to the *Financial Ombudsman Service*.

Initial disclosure information: unauthorised SRB agreement providers

- 5.9.4 R (1) A firm must ensure that, on first making contact with a customer who is both an individual and an *unauthorised SRB agreement provider*, when it anticipates giving personalised information or advice on a *regulated sale and rent back agreement*, it must provide him with the written warning in (2).
- (2) The warning in (1) is that a *regulated sale and rent back agreement* is a complex legal arrangement and that expert independent legal advice should be obtained before entering into any such agreement.
- 5.9.5 G A person may enter into a *regulated sale and rent back agreement* as agreement provider without being regulated by the FSA (or an *exempt person*) if the person does not do so by way of business.

...

12.1 Application

...

- 12.1.2 R This table belongs to MCOB 12.1.1R

(1) Category of firm	(2) Applicable section
...	
<i>... a firm that was a <i>home purchase provider</i> or <i>home purchase administrator</i> before the sale of a repossessed property</i>	...
<i>regulated sale and rent back firm</i>	<u>MCOB 12.1.1R to 12.1.3R, MCOB 12.2.1G and MCOB 12.5</u>
...	

- 12.2.1 G ...

- (2) The level of charges under a *regulated mortgage contract*, or *home reversion plan* or *regulated sale and rent back agreement* is not

typically a matter for regulation. ... This chapter considers four specific circumstances, where:

...

- (c) the charges (including rates of interest) imposed on a *customer* under a *regulated mortgage contract, or home reversion plan or regulated sale and rent back agreement* are excessive and contrary to the *customer's* interests; and
- (d) the charges made to a *customer* in connection with a *firm entering into, making a further advance on, administering, arranging or advising on a regulated mortgage contract, or home reversion plan or regulated sale and rent back agreement,* or *arranging or advising on a variation to the terms of a regulated mortgage contract, or home reversion plan or regulated sale and rent back agreement* are excessive.

...

12.5 Excessive charges: regulated mortgage contracts, and home reversion plans and regulated sale and rent back agreements

- 12.5.1 R A *firm* must ensure that any *regulated mortgage contract, or home reversion plan or regulated sale and rent back agreement* that it *enters into* does not impose, and cannot be used to impose, excessive charges upon a *customer*.
- 12.5.2 R A *firm* must ensure that its charges to a *customer* in connection with the *firm entering into, making a further advance or further release on, administering, arranging or advising on a regulated mortgage contract, or home reversion plan or regulated sale and rent back agreement,* or *arranging or advising on a variation to the terms of a regulated mortgage contract, or home reversion plan or regulated sale and rent back agreement* are not excessive.

...

Schedule 1

Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>MCOB 5.4.21R</i>	...	...	...	...
<i>MCOB 5.9.2R</i>	<u>Each pre-sale disclosure</u>	<u>A record of the main terms of the regulated sale and rent back agreement</u>	<u>The date on which the disclosure is made</u>	<u>The longer of a period of 12 months from the end of the minimum period that the SRB agreement seller and his family have the contractual right to remain in the property or five years from the date of the disclosure</u>
...				

Annex F

Amendments to the Training and Competence sourcebook (TC)

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

App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

1.1.1R

Activity	Products/Sectors		Is there an appropriate examination requirement?
...			
<u>Regulated sale and rent back activity carried on for a customer</u>			
<u>Advising</u>	<u>25.</u>	<u>Regulated sale and rent back agreements</u>	<u>No</u>
<u>Overseeing non-advised sales on a day-to-day basis</u>	<u>26.</u>	<u>Regulated sale and rent back agreements</u>	<u>No</u>

Notes

...

2. Thus, for example, paragraph 24, under the final heading, consistent with the heading above it, refers only to advice on *non-investment insurance contracts* given to a consumer.

Annex G

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

TP 1 Transitional provisions

TP 1.1 Transitional provisions applying to the Supervision manual only

...

TP 1.2

(1) ...	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
15C	The <u>Supervision manual</u> (SUP)		<p><u>A regulated sale and rent back firm need not comply with the rules in this sourcebook to the extent that they carry on regulated sale and rent back activity, provided that within a period of 3 months after submitting an application for interim authorisation in accordance with article 32 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342), and every 6 months after such date until 30 June 2010, they provide to the FSA for the relevant period the following information:</u></p> <p class="list-item-l1">(a) management accounts for the <u>firm</u>, including a balance sheet, profit/loss statement and management report;</p> <p class="list-item-l1">(b) details of the <u>firm's funding arrangements</u>; and</p> <p class="list-item-l1">(c) where the <u>firm</u> is a <u>SRB agreement provider</u>, the number of <u>regulated sale and rent back agreements</u> it has entered into in that period, distinguishing between direct sales</p>	<u>1 July 2009 to 30 June 2010</u>	<u>1 July 2009</u>

			(both advised and non-advised) and <u>indirect sales (advised and non-advised).</u>		
--	--	--	--	--	--

Annex H

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

3.3.4 R The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:

...

(16A) it is a *complaint* about a pure landlord and tenant issue arising out of a regulated sale and rent back agreement; or

...

HANDBOOK ADMINISTRATION (NO 14) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary powers);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 213 (The compensation scheme); and
 - (f) section 214 (General); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. DTR 4.1.7R(4) is made under the powers cited in the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008 (FSA 2008/32) and additionally under section 89A (Transparency rules) of the Act.
- C. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- D. This instrument comes into force as follows:
- (1) Annex E (DISP) comes into force on 1 August 2009; and
 - (2) the remainder of this instrument comes into force on 6 August 2009.

Amendments to the Handbook and related material

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
General Provisions (GEN)	Annex C
Supervision manual (SUP)	Annex D
Dispute Resolution: Complaints sourcebook (DISP)	Annex E
Compensation sourcebook (COMP)	Annex F
Collective Investment Schemes sourcebook (COLL)	Annex G
Professional Firms sourcebook (PROF)	Annex H
Listing Rules sourcebook (LR)	Annex I

Notes

F. 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

G. This instrument may be cited as the Handbook Administration (No 14) Instrument 2009.

By order of the Board
23 July 2009

Annex A

Amendments to the Glossary of definitions

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

close links

...

- (3) ~~(except where (1) applies, in SUP 3 (Auditors) and SUP 4 (Actuaries))~~ (in accordance with section 343(8) (Information given by auditor or actuary to the Authority: persons with close links))the relationship in (1) (2), disregarding (e) and (f).

scheme

...

- (d) ~~(in COBS 19.5 18.5)~~ in addition to (a), (b) and (c), an *unregulated collective investment scheme.*

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

5.1.12 R ...

[**Note:** article 5(1)(d) 5(1)(b) of the *MiFID implementing Directive*]

...

6.1.4A R ...

(2) In SYSC 6.1.4AR(1) “compliance” means compliance with the rules in:

...

(b) ... ; ~~and~~

(c) ... ; and

(d) *ICOBS (Insurance: Conduct of Business sourcebook).*

...

In the following SYSC provisions, the reference to “SYSC 1 Annex 1.3.3R” should in each case be amended to “SYSC 1 Annex 1.3.3G”:

4.1.2AG

4.1.4AG

4.1.7AG

4.1.10AG

4.2.1AG

4.3.2AG

5.1.7AG

5.1.12AG

5.1.15AG

6.1.2AG

6.1.3AG(1)

6.1.6G

6.2.1AG
7.1.2AG
7.1.4AG
7.1.7AG
8.1.1AG
8.1.5AG
8.1.11AG
10.1.4AG
10.1.6AG
10.1.11AG

Annex C

Amendments to the General Provisions (GEN)

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

4 Annex 1R Statutory status disclosure

...
<p>Note 5 = Any <i>firm</i> listed in this table is permitted to add words to the relevant required disclosure statement but only if the <i>firm</i> has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, remain <u>be</u> fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received. For example, an <i>authorised professional firm</i> may wish to make it clear that it is also regulated by its professional body.</p>

Annex D

Amendments to the Supervision manual (SUP)

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

- 16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

...	
Note 4	<p>...</p> <p>The threshold is exceeded where <i>data element</i> 93A in <i>data item</i> FSA003 is greater than £10 £50 million, or its currency equivalent, at the relevant reporting date for the <i>firm</i>.</p>
...	

- 16.12.6 R The applicable reporting frequencies for submission of *data items* and periods referred to in SUP 16.12.5R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<u>Data item</u>	Unconsolidated UK banks and <i>building societies</i>	Solo consolidated UK banks and <i>building societies</i>	Report on a UK <i>consolidation group</i> basis by UK banks and <i>building societies</i>	Other members of <i>RAG 1</i>
...				

- 16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

...	
Note 3	<p>...</p> <p>The threshold is exceeded where <i>data element</i> 77A in <i>data item</i> FSA003 is greater than £10 million, or its currency equivalent, at the relevant reporting date <u>for the firm</u>.</p>
...	

Annex E

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1.10 Complaints reporting rules

...

Joint reports Forwarded complaints

1.10.1A R ...

1.10.1B G ...

Joint reports

1.10.1C R ...

1.10.1D G ...

Information requirements

1.10.2 R ...

Annex F

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

INTRO 1 Foreword

...

The Sourcebook is divided into 14 16 Chapters covering all aspects of the scheme:

...

Chapter 15 Deposit payout

This chapter provides for the FSCS to have powers to accelerate the payment of compensation for protected deposits, providing that certain conditions are met. These powers include the ability to make payments without having first received an application form from claimants, the power to pay compensation directly into a claimant's account with another authorised person, and the power to pay compensation on behalf of another compensation scheme or government and to recover the sums paid.

Chapter 16 Disclosure requirements for firms that accept deposits

This chapter sets out the format, frequency and method of communication that deposit-taking firms must use in informing eligible customers that their deposits are covered by the FSCS. It also requires deposit-taking firms to inform their customers if their deposits are not covered by the FSCS.

Sch 1 Record-keeping requirements

...

1.2	G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		...				
		<u><i>COMP</i></u> <u><i>10.2.11R</i></u>	<u>Potential claimants for whom the separate limit under COMP 10.2.11R(2) applies</u>	<u>Sufficient details to enable the identification of claimants for whom the separate limit under COMP</u>	<u>As implicit from the rules in COMP</u>	<u>As implicit from the rules in COMP</u>

		<u>10.2.11R(2)</u> <u>applies</u>		
--	--	--------------------------------------	--	--

Annex G

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

6.9.9 R A UCITS *management company* must not engage in any activities other than:

...

(4) *managing investments* where the relevant portfolio includes one or more ~~ISD instruments~~ financial instruments;

(5) *advising on investments* where:

(a) the *firm* has a *permission* for the activity in (4); and

(b) each of the instruments are ~~ISD instruments~~ financial instruments; and

...

8 Annex 1R ~~This Annex belongs to COLL 8.1.3R (Qualified Investor Schemes: eligible investors)~~

~~Qualified investor schemes: eligible investors~~ This Annex belongs to COLL 8.1.3R

...

Annex H

Amendments to the Professional Firms sourcebook (PROF)

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

- 5.3.8 G *MCOB 1.2.4G 1.2.10R* provides that *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for *MCOB* 2.2 (Clear, fair and not misleading communication), *MCOB* 3 (Financial promotion) and to a limited extent *MCOB* 4.4 (Initial disclosure requirements).

Annex I

Amendments to the Listing Rules sourcebook (LR)

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

- 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~~ *FSA* will consider the application.

...

- 3.3.6 R An *applicant* must keep copies of the following for six years after the ~~admission to listing~~ *admission to listing*:

...

Appendix 1.1 Relevant Definitions

Insert the following definition in the appropriate alphabetical position.

<i>trading plan</i>	<p><u>a written plan between a restricted person and an independent third party which sets out a strategy for the acquisition and/or disposal of securities by a specified person and:</u></p> <ul style="list-style-type: none"> (a) <u>specifies the amount of securities to be dealt in and the price at which and the date on which the securities are to be dealt in; or</u> (b) <u>gives discretion to that independent third party to make trading decisions about the amount of securities to be dealt in and the price at which and the date on which the securities are to be dealt in; or</u> (c) <u>includes a written formula or algorithm, or computer program, for determining the amount of securities to be dealt in and the price at which and the date on which the securities are to be dealt in.</u>
---------------------	--

DORMANT BANK AND BUILDING SOCIETY ACCOUNTS INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 213 (The compensation scheme); and
 - (f) paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 August 2009.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Fees manual (FEES)	Annex D
Supervision manual (SUP)	Annex E
Dispute Resolution: Complaints sourcebook (DISP)	Annex F
Compensation sourcebook (COMP)	Annex G

Amendment to Handbook-related material

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

Citation

F. This instrument may be cited as the Dormant Bank and Building Society Accounts Instrument 2009.

By order of the Board
23 July 2009

Annex A

Amendments to the Glossary of definitions

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

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

<i>account</i>	(in relation to a <i>dormant account</i>) has the meaning given in section 9 of the Dormant Bank and Building Society Accounts Act 2008, which is in summary:
	(a) an account which has at all times consisted only of <i>money</i> and is provided by a <i>bank</i> or <i>building society</i> as part of its activity of <i>accepting deposits</i> ; and
	(b) in relation to a <i>building society</i> , it includes an <i>account</i> representing <i>shares</i> in the <i>society</i> , other than:
	(i) preferential <i>shares</i> ; or
	(ii) deferred <i>shares</i> within the meaning given in section 119(1) of the Building Societies Act 1986.
<i>balance</i>	(in relation to a <i>person's account</i>) has the meaning given in section 8 of the Dormant Bank and Building Society Accounts Act 2008, which is in summary the amount owing to the <i>person</i> in respect of the <i>account</i> at any particular time, after the appropriate adjustments have been made for such things as interest due and fees and charges payable. In relation to a time after a transfer of the <i>balance</i> to a <i>dormant account fund operator</i> , the adjustments include those that would fall to be made but for the transfer or transfers.
<i>dormant account</i>	has the meaning given in section 10 of the Dormant Bank and Building Society Accounts Act 2008, which is in summary an <i>account</i> that at a particular point in time:
	(a) has been open throughout the period of 15 years ending at that time; and
	(b) during that period no transactions have been carried out in relation to the <i>account</i> by or on the instructions of the holder of the <i>account</i> .
<i>dormant account funds</i>	has the meaning given in section 5(6) of the Dormant Bank and Building Society Accounts Act 2008, which is <i>money</i> paid to a <i>dormant account fund operator</i> by a <i>bank</i> or <i>building society</i> in respect of a <i>dormant account</i> .

<i>dormant account fund operator</i>	a firm with permission for operating a dormant account fund.
<i>managing dormant account funds (including the investment of such funds)</i>	the regulated activity, specified in article 63N(1)(b) of the <i>Regulated Activities Order</i> , which is the acceptance of a transfer by a <i>bank</i> or <i>building society</i> of the <i>balance</i> of a <i>dormant account</i> , or a proportion of such a balance, and the management of those funds (including the investment of such funds) in such a way as to enable the <i>dormant account fund operator</i> to meet whatever <i>repayment claims</i> it is prudent to anticipate.
<i>meeting of repayment claims</i>	the regulated activity, specified in article 63N(1)(a) of the <i>Regulated Activities Order</i> , which is the meeting of <i>repayment claims</i> by a <i>dormant account fund operator</i> .
<i>operating a dormant account fund</i>	any of the <i>regulated activities</i> of:
	(a) <i>meeting of repayment claims</i> ; or
	(b) <i>managing dormant account funds (including the investment of such funds)</i> .
<i>protected dormant account</i>	a <i>dormant account</i> which is covered by the <i>compensation scheme</i> , as defined in <i>COMP 5.3.2R</i> .
<i>repayment claim</i>	(in relation to a <i>dormant account</i>) a claim for repayment made by virtue of sections 1(2)(b) or 2(2)(b) of the <i>Dormant Bank and Building Society Accounts Act 2008</i> , that is, in summary, that the customer has against the <i>dormant account fund operator</i> whatever right to payment of the <i>balance</i> the customer would have against the <i>bank</i> or <i>building society</i> if the transfer (or in the case of section 2(2)(b), transfers) had not happened. In this definition, ‘customer’ is the <i>person</i> who held with a <i>bank</i> or <i>building society</i> the <i>balance</i> of a <i>dormant account</i> transferred to a <i>dormant account fund operator</i> .
Amend the following definitions as shows:	
<i>client</i>	...
	(6) ...
	(7) <u>(in relation to a dormant account transferred to a dormant account fund operator) a person entitled to the balance in the dormant account held with a bank or building society which was transferred to a dormant account fund operator.</u>
<i>common platform firm</i>	...

- (c) a UK *MiFID investment firm* which falls within the definition of 'local firm' in Article 3.1P of the *Capital Adequacy Directive*; or
- (d) a dormant account fund operator.

regulated activity

(in accordance with section 22 of the *Act* (The classes of activity and categories of investment)) any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

...

- (si) meeting of repayment claims (article 63N(1)(a));
- (sj) managing dormant account funds (including the investment of such funds) (article 63N(1)(b));

...

Annex B**Amendments to the Principles for Businesses (PRIN)**

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

- 1.1.3 G The *Principles* apply with respect to *regulated activities* generally, but, in applying the *Principles* with respect to *accepting deposits, and issuing electronic money and operating a dormant account fund*, the FSA will proceed only in a *prudential context*. ...

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Annex 1 Detailed application of SYSC

...				
Part 2	Application of the common platform requirements (SYSC 4 to 10)			
	Who?			
...				
2.11	R	The <i>common platform requirements on financial crime</i> apply as set out in SYSC 1 Annex 1.2.8R, except that they do not apply:		
		...		
	(2)	in relation to the following <i>regulated activities</i> :		
		...		
		(f)	<i>home finance mediation activity and administering a home finance transaction; and</i>	
		(g)	<i>reversion activity; and</i>	
		(h)	<i>meeting of repayment claims and managing dormant account funds (including the investment of such funds).</i>	

Annex D

Amendments to the Fees manual (FEES)

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

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(p) A <i>firm</i> applying for a variation of its <i>Part IV permission</i>	<p>(1) Unless (2) or (3) applies, if the proposed new business of the <i>firm</i> would fall within one or more activity groups specified in Part 1 of <i>FEES</i> 4 Annex 1R not applicable before the application, the fee is 50% of the highest of the tariffs set out in <i>FEES</i> 3 Annex 1R which apply to that application</p> <p>(2) ...</p> <p><u>(3) If the firm is in the A.1 fee-block at the date of the application and the variation involves adding any of the regulated activities of meeting of repayment claims or managing dormant account funds (including the investment of such funds), the fee is 50% of the fee in <i>FEES</i> 3 Annex 1R that applies to that application</u></p> <p><u>(3)(4) In all other cases, ...</u></p>	On or before the date the application is made
...		

3 Annex 1 R Authorisation fees payable

...

Part 2 – Complexity Groupings Straightforward Cases

...

Complex Cases R

Complex cases	
Activity grouping	Description
A.1	<i>Deposit acceptors (excluding e-money issuers and credit unions) and dormant account fund operators</i>
...	

4 Annex 1 R Activity groups, tariff bases and valuation dates applicable

Part 1

This table shows how the *regulated activities* for which a *firm* has *permission* are linked to activity groups ('fee-blocks'). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

Activity group	Fee payer falls in the activity group if
A.1 Deposit acceptors	its <i>permission</i> includes <i>accepting deposits, operating a dormant account fund or issuing e-money; BUT DOES NOT include either of the following:</i> <ul style="list-style-type: none"> • <i>effecting contracts of insurance;</i> • <i>carrying out contracts of insurance.</i>
...	

Part 2

...

Activity group	Tariff-base Tariff base
A.1	...
	Note:

	All references in the definition for building society MELs are to entries in the MFS1 which is submitted <i>monthly</i> by all <i>building societies</i> to the FSA. <u>For a <i>dormant account fund operator</i> the tariff base is not relevant and the flat fee in FEES 4 Annex 2R is payable.</u>
A.2	...
...	

...

4 Annex 2 R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 July 2009 to 1 July 2010

Part 1

This table shows the tariff rates applicable to each fee block

...	
Activity group	Fee payable
A.1	...
	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%.
	<u>The tariff rates in A.1 are not relevant for the <i>permissions</i> relating to <i>operating a dormant account fund</i>. Instead a flat fee of £6,000 is payable in respect of these <i>permissions</i>.</u>
...	

...

5 Annex 1 R Annual Fees Payable in Relation to 2009/10

Part 2: Fee tariffs for general levy

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> , and <i>home finance</i>	Number of accounts relevant to the activities in DISP 2.6.1R as at 31	£0.027 per relevant account, subject to a minimum levy of £100

<i>administrators</i> (excluding firms in block 14) <u>and</u> <u>dormant account fund</u> <u>operators</u>	December For an <i>e-money firm</i> , the tariff base includes the number of e-money accounts multiplied by 0.15 (7) <u>In the case of dormant</u> <u>account fund operators,</u> <u>the tariff base is the</u> <u>number of eligible</u> <u>activated accounts (8).</u>	
...		
Notes		
...		
8	<u>Eligible activated accounts are the number of <i>repayment claims</i> met by the <i>dormant account fund operator</i> as at the 31 December.</u>	

- ...
- 6.5.15 R Where a *participant firm* can identify that a protected deposit or a protected dormant account was made by or belonged to a *person* who is not an *eligible claimant*, it may exclude the amount of that deposit or that account from the tariff base, provided that it notifies the *FSCS* of the amount of the deposit or the account so excluded and provides the *FSCS* with such information about the deposit or account as the *FSCS* may reasonably require.
- ...

6 Annex 3 R Financial Services Compensation Scheme – classes and sub-classes

This table belongs to *FEES 6.5.7R* and *FEES TP 2.5.2R*

Class A	Deposit
Legal basis for activity in class A	<i>accepting deposits and/or operating a dormant account fund.</i> BUT does not include any fee payer who either effects or carries out <i>contracts of insurance</i> .
Tariff base	<u>(1) Protected deposits and/or</u> <u>(2) Protected dormant accounts multiplied by 0.2 as at 31 December</u>

...

Annex E

Amendments to the Supervision manual (SUP)

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

...

3.1.2 R Applicable sections (see SUP 3.1.1R)

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...			
(4)	<i>Bank, or building society or <u>dormant account fund operator</u> which in either each case carries on designated investment business (Note 2A)</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(5)	<i>Bank, or building society or <u>a dormant account fund operator</u> which in either each case does not carry on designated investment business (Note 2A)</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
...			

...

Firms with long term liabilities to customers

- 6.2.8 G Discussions with the FSA are particularly relevant where the *firm* has to discharge obligations to its *customers* or policyholders before it can cease carrying on a *regulated activity*. This may be the case, for example, where the *firm* is an *insurer*, a *bank*, a dormant account fund operator, or, as is often the case, holding *client money* or *customer assets*.
- 6.2.9 G If an *insurer* or, a *bank*, or a dormant account fund operator wishes to cease carrying on all *regulated activities* for which it has *Part IV permission*, it will usually be necessary to wind down the business over a long term period which is normally more than six months. This may also be the case for a *firm* holding *client money* or *customer assets*. In these circumstances, it will usually be appropriate for the *firm* to apply for variation of its *Part IV permission* before commencing the wind-down. A *firm* should only make an application for cancellation of *permission* when it expects to complete its

wind-down (run-off) within six months.

- ...
- 6.4.4 G Additional guidance for a *firm* carrying on *insurance business, accepting deposits, operating a dormant account fund* or which holds *client money* or *customer's assets* is given in SUP 6 Annex 4. As noted in SUP 6.2.9G, it will usually be appropriate for a *firm* to apply for variation of its *Part IV permission* while winding down (running off) its *regulated activities* and before applying to cancel its *Part IV permission*.

...

6 Annex 4.1 G Additional guidance for a firm winding down (running off) its business

1.	<i>If a firm has Part IV permission which enables it to hold client money or to carry on regulated activities including:</i>	
(a)	...	
(b)	<i>accepting deposits; or</i>	
(c)	<i>safeguarding and administration of assets; or</i>	
(d)	<i>meeting of repayment claims or managing dormant account funds (including the investment of such funds);</i>	
...	...	
...	...	

- ...
- 15.3.8 G Compliance with *Principle 11* includes, but is not limited to, giving the *FSA* notice of:

- (1) any proposed restructuring, reorganisation or business expansion which could have a significant impact on the *firm's risk profile or resources*, including, but not limited to:
- ...
- (e) entering into, or significantly changing, a *material outsourcing arrangement* (*a bank, and a building society and a dormant account fund operator* should also see SYSC 3.2.4G and SYSC 8, and an *insurer* should also see SYSC 13.9 for further details); or
- ...
- (h) ...; or

- (i) in relation to a *dormant account fund operator*, notify the FSA when the operator intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities in connection with *operating a dormant account fund* on a continuous and satisfactory basis;
- ...
- ...

16.1.3 R Application of different sections of SUP 16

(1) Section(s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
...			
SUP 16.10	All categories of <i>firm</i> except:		Entire section
	...		
	(b)	a <i>UCITS qualifier</i> ; <u>and</u>	
	(c)	a <i>credit union</i> ; <u>and</u>	
	(d)	<u>a <i>dormant account fund operator</i>.</u>	

...

Application

16.10.1 G The effect of SUP 16.1.1R is that this section applies to every *firm* except:

...

- (3) a *credit union*; or
- (4) a *dormant account fund operator*.

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)	(2)	(3)	(4)

RAG number	Regulated activities	Provisions containing:		
		applicable data items	reporting/frequency period	Due date
RAG I	<ul style="list-style-type: none"> • accepting deposits • issuing electronic money • <u>meeting of repayment claims</u> • <u>managing dormant account funds (including the investment of such funds)</u>	...	...	...
...				

16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to *firm type* in the table below:

Description of data item	Prudential category of firm, applicable <i>data items</i> and reporting format (Note 1)							
	Credit union	Dormant account fund operator (note 15)
Annual report and accounts								No standard format
...								
Note 1	...							

...	
<u>Note 15</u>	<u>Only applies to a <i>dormant account fund operator</i> that does not fall into any of the other prudential categories in this table.</u>

...

- 16.12.7 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.6R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual report and accounts				80 <i>business days</i> (note 1) 7 months (note 2)
...				
Note 1	Applicable to <i>UK banks, dormant account fund operators</i> and electronic money institutions.			
...				

Annex F

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

- (13) the complainant is a beneficiary under a trust or estate of which the *respondent* is trustee or personal representative;
- (14) (where the respondent is a dormant account fund operator) the complainant is (or was) a customer of a bank or building society which transferred any balance from a dormant account to the respondent.

Annex G

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

1.3.3 G Areas of particular interest to claimants (see *COMP* 1.1.3G).

This Table belongs to *COMP* 1.1.3G

...		
Q2	How much compensation will I be offered?	
A2	This depends on whether your <i>protected claim</i> is:	
(1)	a <i>claim for a protected deposit or a protected dormant account</i> ; or	<i>COMP</i> 5.3
...		
...		
Q3	Different limits apply to different types of <i>claim</i> .	<i>COMP</i> 10.2.3R
A3	How will the FSCS calculate the compensation that is offered to me?	
Again, this will depend on whether your <i>protected claim</i> is:		
(1)	a <i>claim for a protected deposit or a protected dormant account</i> ; or	<i>COMP</i> 12.2.1R, <i>COMP</i> 12.3.1R and <i>COMP</i> 12.4.1R
(2)	...; or	...
...		
(4)	... ; or	...
...		
...		

Deposits and balances in dormant accounts

- 4.3.1 R A person is eligible to claim compensation in respect of a *protected deposit* or a *protected dormant account* if, at the date on which the relevant person is determined to be *in default*:
- (1) he came within category (14) of COMP 4.2.2R; or
 - (2) he came within any of categories (1)-(3) of COMP 4.2.2R, and was not a *large company*, *large mutual association*, or a *credit institution*.
- ...

- 5.2.1 R A *protected claim* is:
- (1) a *claim* for a *protected deposit* or a *protected dormant account* (see COMP 5.3); or
- ...
- ...

5.3 Protected deposits and protected dormant accounts

...

- 5.3.2 R If not a *protected deposit*, a *dormant account* is a *protected dormant account* only if, immediately prior to transfer, it consisted of a *protected deposit*, the liability for which has been transferred to a *dormant account fund operator*.
- ...

- 10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
<i>Protected deposit or protected dormant account</i>	100% of <i>claim</i>	£50,000 or €50,000 whichever is the greater on the date ...
...		

...

Claims in respect of protected dormant accounts

- 10.2.12 R In the event of a default of a *dormant account fund operator*, the FSCS will pay compensation in accordance with COMP 10.2.3R on the basis of the authorisation of the relevant person who was liable for the *protected deposit* immediately prior to the liability being transferred to the *dormant*

account fund operator (and the relevant authorisation of the relevant person is the authorisation that was in place at the time that the liability was transferred).

- 10.2.13 G The purpose of COMP 10.2.12R is to ensure that persons whose balances in a dormant account have been transferred to a dormant account fund operator do not have their entitlement to compensation reduced in the event of default of the dormant account fund operator. So, a person who held dormant accounts with two different relevant persons, the liability for which were then automatically transferred to the dormant account fund operator, could still be compensated by the FSCS on the basis of accounts with two separate relevant persons (and so could receive up to 2 x £50,000 in compensation) rather than just one account with one relevant person.

Annex H

Amendments to the Perimeter Guidance manual (PERG)

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

2.3 The business element

...

2.3.2 G ...

- (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 a home finance transaction or administering a home finance transaction, and operating a dormant account fund.*

...

Dormant account funds

2.7.20C G There are two *regulated activities* associated with the activities of a *dormant account fund operator* under the *Dormant Bank and Building Society Accounts Act 2008*:

- (1) *the meeting of repayment claims; and*
- (2) *managing dormant account funds (including the investment of such funds).*

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, operating a multilateral trading facility, managing dormant account funds, the meeting of repayment claims or carrying on any of the activities that are regulated in relation to collective investment schemes, stakeholder pension schemes or personal 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 Annex 2 G Regulated activities and the permission regime

1 Table

...

2 Table

Table 1: Regulated Activities [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
Issuing electronic money	
(aa) <i>issuing electronic money</i> (article 9B)	<i>electronic money</i> (article 74A)
Activities of a dormant account fund operator	
<u>(ab) the meeting of repayment claims and managing dormant account funds (including the investment of such funds)</u> (article 63N)	See Note 8 to Table 1
...	
Notes to Table 1	
Note 1:	
<p>In addition to the <i>regulated activities</i> listed in Table 1, article 64 of the <i>Regulated Activities Order</i> specifies that <i>agreeing to carry on a regulated activity</i> is itself a <i>regulated activity</i> in certain cases. This applies in relation to all the <i>regulated activities</i> listed in Table 1 apart from:</p> <p>...</p> <ul style="list-style-type: none"> • <i>acting as the sole depositary or sole director of an open-ended investment company</i> (article 51(1)(c)); and • <i>establishing, operating or winding up a stakeholder pension scheme or establishing operating or winding up a personal pension scheme</i> (article 52); and • <i>the meeting of repayment claims and/or managing dormant account funds (including the investment of such funds)</i> (article 63N). 	

...

Note 8:

Article 4(2) of the *Regulated Activities Order* specifies the activity at (ab) 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 related to a *specified investment*.

THRESHOLD CONDITIONS (BANKING ACT 2009) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 6 September 2009.

Amendments to the Handbook

- C. The Threshold Conditions (COND) are amended in accordance with the Annex to this Instrument.

Citation

- D. This instrument may be cited as the Threshold Conditions (Banking Act 2009) Instrument 2009.

By order of the Board
23 July 2009

Annex

Amendments to the Threshold Conditions (COND)

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

1.1.1 G COND applies to every *firm*, except that:

...

- (3) *threshold conditions 3, 4 and 5 do not apply to a Swiss General Insurance Company; and*
- (4) *COND 2.6 (Additional conditions) is only relevant to non-EEA insurers; and*
- (5) *COND 3.1 is only relevant to firms falling within the scope of the Banking Act 2009 (see COND 3.1.1G).*

...

After COND 2 insert the following new chapter. The text is not underlined.

3 Banking Act 2009

3.1 Assessing Condition 2 under section 7(3) of the Banking Act 2009

Introduction

- 3.1.1 G The Banking Act 2009 (the Banking Act) introduces new powers for HM Treasury, the Bank of England and the FSA to deal with failing banks. The powers, which are set out in Parts 1 to 3 of that Act, can be used to deal with UK incorporated *firms* with a *Part IV permission* to carry on the *regulated activity* of *accepting deposits*, other than *credit unions* and any other class of institution specified in secondary legislation. In relation to *building societies*, the main tools in the Act are applied with modifications. In this section the term “bank” is used to refer to those *firms* that are potentially subject to the powers in Parts 1 to 3 of the Banking Act. The powers are defined in the Banking Act, and referred to in this section as the “stabilisation powers”. The Banking Act contains powers to enable HM Treasury to extend the application of the stabilisation powers to *credit unions* by secondary legislation.
- 3.1.2 G Section 7 of the Banking Act sets out the two conditions that must be met before a stabilisation power can be exercised in respect of a bank:

- (1) Condition 1 is that the bank is failing, or is likely to fail, to satisfy the *threshold conditions*.
 - (2) Condition 2 is that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the bank that will enable it to satisfy the *threshold conditions*.
- 3.1.3 G The Banking Act provides that the *FSA* is to treat Conditions 1 and 2 as met if satisfied that they would be met but for financial assistance provided by either HM Treasury or the Bank of England (disregarding ordinary market assistance offered by the Bank on its usual terms).

Assessing Condition 1

- 3.1.4 G The matters the *FSA* will take into account in assessing whether a bank is failing or is likely to fail to satisfy the *threshold conditions* are described in *COND 2.1* to *COND 2.5*. The options available to the *FSA* in the case of a breach of the *threshold conditions* are outlined in Chapter 8 of the *Enforcement Guide* and *SUP 7.2*. These tools are available to the *FSA* at any time, and so may be used before or in conjunction with the stabilisation tools provided by the Banking Act.

Assessing Condition 2

- 3.1.5 G The Banking Act provides that in considering the test in Condition 2, the *FSA* should ignore the stabilisation powers. The purpose of this limitation is to make clear that in making its assessment, the *FSA* is not considering whether the stabilisation powers could successfully resolve the situation, but is considering whether alternative measures might provide for this instead.

Timing

- 3.1.6 G In assessing Condition 2, the *FSA* will consider the timeframe during which any actions taken by or in relation to the bank are likely to be available and to have effect. In the view of the *FSA*, the purpose of the reference to timing in Condition 2 is to require the *FSA* to consider whether a return to full compliance is likely to occur within a reasonable period of time. The following is a non-exhaustive list of factors the *FSA* may consider:
- (1) the extent of any loss, or risk of loss, or other adverse effect on *consumers*. The more serious the loss or potential loss or other adverse effect, the more likely it is that the *FSA* will consider that remedial action will be needed urgently;
 - (2) the seriousness of any suspected breach of the requirements of the *Act* or the *rules* and the steps that need to be taken to correct that breach;
 - (3) the risk that the bank's conduct or business presents to the *financial system* and to confidence in that system;

- (4) the likelihood that remedial action that could be taken by or in relation to the bank will take effect before *consumers* or market confidence suffers significant detriment.
- 3.1.7 G If the *FSA* is satisfied that the breach of *threshold conditions* is likely to be temporary and to be rectified within a reasonable time, the *FSA* is unlikely to conclude that Condition 2 has been met.
- Other relevant circumstances
- 3.1.8 G In general the *FSA* will be concerned to determine whether any remedial action that could be taken by or in relation to the bank will be effective. This will include an assessment of both how likely it is that the action will be taken, and if it is, the impact it will have on the bank's compliance with the *threshold conditions*. Circumstances that the *FSA* may take into account include but are not limited to:
- (1) where the *FSA*'s concerns relate to adequacy of liquidity:
 - (a) the availability of market funding to banks generally and any specific circumstances of the bank that may impact on its ability to access the market on terms which are generally available;
 - (b) whether the bank's current funding structure is adequate and viable; whether the primary sources of funding continue to be available, given current market sentiment, and whether they would still be viable if market sentiment was to change;
 - (c) the maturity profile of the bank's existing funding and the availability of funding from the market to replace maturing funding as the need arises;
 - (d) whether liquidity problems call into question adequacy of capital;
 - (e) the bank's credit rating and the likelihood and impact of any potential downgrade;
 - (f) the availability and terms of liquidity support from group companies, existing funders and central banks;
 - (2) where the *FSA*'s concerns relate to capital:
 - (a) the availability of capital from the market for banks in general and any specific circumstances of the bank that may impact on its ability to access the market on terms which are generally available;
 - (b) potential sources of capital and the nature of and terms on which capital may be obtained;

- (c) the success of any recent attempts by the bank to raise capital on the open market;
 - (d) the willingness of existing significant institutional investors to provide or assist in a strategic solution to the bank;
- (3) where the *FSA*'s concerns relate to the adequacy of non-financial resources or suitability, the *FSA* will take into account the factors identified in *COND 2.4* and *2.5*, and other *Handbook* provisions referred to in those chapters. In assessing Condition 2, the circumstances of each case are likely to be different, but the *FSA* will be concerned to establish the likelihood of achieving a return to full compliance with the *threshold conditions*, and the timescale in which a return to compliance will be effected;
- (4) the prospects of the bank securing a material and relevant transaction with a third party, for example a sale of the bank itself or of all or part of its business. In relation to any transaction, the *FSA* will have regard to factors including but not limited to:
- (a) the status of any ongoing negotiations;
 - (b) the level of interest expressed and the credibility of potential counterparties;
 - (c) practical constraints related to the bank itself, for example, management engagement, availability of relevant information and severability of infrastructure;
 - (d) the sources, availability and firmness of financing for any transaction;
 - (e) the need for shareholder approval, merger clearances or other consents;
 - (f) the suitability of the counterparty and the stability of the relevant parties following completion of any transaction.
- 3.1.9 G When assessing whether the bank will return to compliance with *threshold condition 4* (adequate resources) the *FSA* will also assess the reasons behind the likely or actual failure of compliance. Serious failures of management, systems or internal controls may in themselves call into question the adequacy of the bank's non-financial resources (*threshold condition 4*) or suitability (*threshold condition 5*). Therefore, in assessing whether a bank is reasonably likely to satisfy the *threshold conditions* in the future, the *FSA* will be concerned to ensure that any such failures have been adequately addressed.

RECLASSIFICATION OF AVAILABLE-FOR-SALE DEBT INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
 - (1) the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (a) section 138 (General rule-making power);
 - (b) section 150(2) (Actions for damages); and
 - (c) section 156 (General supplementary powers); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 August 2009.

Amendments to the Handbook

- D. The General Prudential sourcebook (GENPRU) is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Reclassification of Available-For-Sale Debt Instrument 2009.

By order of the Board
23 July 2009

Annex A**Amendments to the General Prudential sourcebook (GENPRU)**

In this Annex, underlining indicates new text.

1.3.36 R Adjustments to accounting values

- (1) ...
- (2) A *BIPRU firm* must not recognise either:
 - (a) the fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost; or
 - (b) any unrealised gains or losses on debt instruments held, or formerly held, in the available-for-sale category.

...

Annex B

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

In this Annex, underlining indicates new text.

- 4.4.2 R Table: Items which are eligible to contribute to the capital resources of a firm

	Item	Additional explanation	
...			
3.	Reserves (Note 1)	...	
		For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:	
		(1)	a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, <u>or formerly held</u> , in the available-for-sale financial assets category;
		...	
...			

**WITH-PROFITS FUNDS: PAYMENTS OF COMPENSATION AND REDRESS
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance); and
 - (2) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 July 2009.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the With-Profits Funds: Payments of Compensation and Redress Instrument 2009.

By order of the Board
23 July 2009

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

20.2 Treating with-profits policyholders fairly

...

Charges to a with-profits fund

- 20.2.23 R A *firm* must only charge costs to a ~~with-profits fund~~ with-profits fund which have been, or will be, incurred in operating the *with-profits fund*. This may include a fair proportion of overheads.
- 20.2.24 R ~~Subject to COBS 20.2.25R, COBS 20.2.25AR and COBS 20.2.25BR, a~~ *A firm* must not pay compensation or redress from a *with-profits fund*, ~~unless the payment is made to a~~ *policyholder*, ~~or former~~ *policyholder*, of that *with-profits fund*.
- 20.2.25 R A proprietary firm may pay compensation or redress due to a *policyholder*, or *former policyholder*:
 - (1) from assets attributable to shareholders, whether or not they are held within a *long-term insurance fund*; or
 - (2) ~~from its inherited estate (if any); or~~
 - (3) ~~from assets that would otherwise be attributable to asset shares, if, in the reasonable opinion of the firm's governing body, that compensation or redress cannot be paid from the assets in (1) or (2), or from any other source.~~
- 20.2.25A R ~~A mutual may pay compensation or redress due to a~~ *policyholder*, ~~or former~~ *policyholder*, ~~from a~~ *with-profits fund*, but may only pay from assets that ~~would otherwise be attributable to asset shares if, in the reasonable opinion of the firm's governing body, the compensation or redress cannot be paid from any other assets in the~~ *with-profits fund*.
- 20.2.25B R ~~A payment or transfer of liabilities made to correct an error and which has the effect of restoring a~~ *policyholder*, ~~or former~~ *policyholder*, ~~and the~~ *with-profits fund* ~~to the position they would have been in if the error had not occurred (a "rectification payment")~~, is not a payment of compensation or redress for the purposes of *COBS 20.2.24R*.
- 20.2.25C G Rectification payments may include, for example, a payment to a *policyholder* or former *policyholder* to correct an erroneous underpayment of policy proceeds, or a reimbursement of premiums overpaid. The effect of

COBS 20.2.25BR is that a firm may make rectification payments using assets in a with-profits fund.

- 20.2.25D G COBS TP 2.14R has the effect that payments of compensation and redress arising out of events which took place before 31 July 2009 are subject to COBS 20.2.23R to COBS 20.2.25R as in force at 30 July 2009.
- 20.2.26 R A proprietary firm must not charge to a with-profits fund any amounts paid or payable to a skilled person in connection with a report under section 166 of the Act (Reports by skilled persons) if the report indicates that the firm has, or may have, materially failed to satisfy its obligations under the regulatory system regulatory system.

Amendments to COBS Transitional Schedules

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
2.9	<u>COBS 20.2.1G – to COBS 20.2.23R; COBS 20.2.26R to COBS 20.2.41G; COBS 20.2.53R - COBS 20.2.60G (Treating with-profits policyholders fairly)</u>	R	The provisions listed in column (2) do not apply to a firm if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the FSA, a previous regulator or a court of competent jurisdiction, on or before 20 January 2005.	From 1 November 2007 indefinitely	1 November 2007
2.9A	<u>COBS 20.2.24R to COBS 20.2.25AR (Charging payments of compensation and redress to a with-profits</u>	R	<u>The provisions listed in column (2) do not apply to a firm if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the FSA, a previous regulator or a court of competent jurisdiction, on or before 31</u>	<u>From 31 July 2009 indefinitely</u>	<u>31 July 2009</u>

	<u>fund)</u>		<u>July 2009.</u>		
...					
2.14	<u>COBS 20.2.24R to COBS 20.2.25AR</u>	R	(1) <u>COBS 20.2.24R to COBS 20.2.25AR have effect in relation to payments of compensation and redress arising out of events occurring on or after 31 July 2009.</u> (2) <u>For payments of compensation and redress arising out of events occurring before 31 July 2009, COBS 20.2.23R to COBS 20.2.25R apply as they were in force on 30 July 2009.</u>	<u>From 31 July 2009 indefinitely</u>	<u>31 July 2009</u>

**SUPERVISION MANUAL (CONTROLLED FUNCTIONS) (AMENDMENT NO 2)
INSTRUMENT 2009**

Powers Exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (1) section 59 (Approval for particular arrangements);
 - (2) section 64 (Conduct: statements and codes);
 - (3) section 138 (General rule-making power);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 August 2009.

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
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Supervision Manual (Controlled Functions) (Amendment No 2) Instrument 2009.

By order of the Board
23 July 2009

Annex A

Amendments to the Glossary of definitions

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

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

<i>proprietary trader</i>	(in <i>SUP 10 (Approved Persons)</i> and <i>APER</i>) a <i>person</i> (A) whose responsibilities include committing another <i>person</i> (B) as part of B's <i>proprietary trading</i> .
<i>proprietary trading</i>	(in <i>SUP 10 (Approved Persons)</i> and <i>APER</i>) <i>dealing in investments as principal</i> as part of a business of trading in <i>specified investments</i> . For these purposes <i>dealing in investments as principal</i> includes any activities that would be included but for the exclusion in Article 15 (Absence of holding out) or Article 16 (Dealing in contractually based investments) of the <i>Regulated Activities Order</i> .

Amend the following as shown.

<i>required function</i>	any of <i>controlled functions 8 to 12B</i> in the <i>table of controlled functions (SUP 10.4.5R)</i> .
--------------------------	---

Annex B

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

4.7 Statement of Principle 7

...

- 4.7.2 E In the opinion of the FSA, conduct of the type described in *APER 4.7.3E, APER 4.7.4E, APER 4.7.5 E, APER 4.7.7E, APER 4.7.9E, or APER 4.7.10E or APER 4.7.11AE* does not comply with *Statement of Principle 7 (APER 2.1.2P)*.

...

- 4.7.11A E Where the approved person is a proprietary trader under SUP 10.9.10R(1A), failing to maintain and comply with appropriate systems and controls in relation to that activity falls within APER 4.7.2E.

...

Annex C

Amendments to the Supervision manual (SUP)

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

10.1 Application

...

Overseas firms: UK establishments

- 10.1.7 R Only the following *controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:
- (1) ~~the *chief executive function* the *director function* where the *person performing that function*:~~
 - (a) has responsibility for the *regulated activities* of a *UK branch* which are likely to enable him to exercise significant influence over that branch; or
 - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that branch.
 - (2) ~~the *required functions* the *non-executive director function* where the *person performing that function*:~~
 - (a) has responsibility for the *regulated activities* of a *UK branch* which is likely to enable him to exercise significant influence over that branch; or
 - (b) is someone whose decisions or actions are regularly taken into account by the *governing body* of that branch.
 - (3) ~~the *significant management function* in so far as the function relates to:~~
 - (a) ~~designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order;~~ or
 - (b) ~~processing confirmations, payments, settlements, insurance claims, client money and similar matters in so far as this relates to designated investment business; and the *chief executive function*;~~
 - (4) ~~{deleted} the *required functions*;~~

- (5) the customer function the systems and controls function;
 - (6) the significant management function in so far as the function relates to:
 - (a) designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or
 - (b) processing confirmations, payments, settlements, insurance claims, client money and similar matters in so far as this relates to designated investment business; and
 - (7) the customer function.
- ...

10.4.5 R Controlled functions

....

Type	CF	Description of controlled function
...		
	28	{to follow}
	29	{to follow}

....

What the governing functions include

- 10.6.2 R Each of the *governing functions* (other than the *non-executive director function* and the function described in SUP 10.6.4R(2)) includes where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R:
-
- 10.6.3 G The effect of SUP 10.6.2R is that a *person* who is *approved* to perform a *governing function* (other than the *non-executive function* and the function described in SUP 10.6.4R(2)) will not have to be specifically approved to perform the *systems and controls function* or the *significant management function*. A *person* who is *approved* to perform a *governing function* will have to be additionally approved before he can perform any of the *required functions* or the *customer function*.
-

Director function (CF1)

- 10.6.4 R If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of either a:
- (1) *director* (other than *non-executive director*) of that *firm*; or
 - (2) a person:
 - (a) who is a director, partner, officer, member (if the parent undertaking or holding company is a limited liability partnership), senior manager, or employee (other than a non-executive director) of a parent undertaking or holding company (except where that parent undertaking or holding company is an EEA firm); and
 - (b) whose decisions or actions are regularly taken into account by the governing body of the firm.
- 10.6.5 G ~~[deleted]~~ Examples of where SUP 10.6.4R(2) would apply include (but are not limited to):
- (1) a chairman of an audit committee of a parent undertaking or holding company of a UK firm where that audit committee is working for that UK firm (that is, functioning as the audit committee for the group); or
 - (2) a director (other than a non-executive director) of a parent undertaking or holding company of a UK firm exercising significant influence by way of his involvement in taking decisions for that UK firm; or
 - (3) an individual (such as a senior manager) of a parent undertaking or holding company of a UK firm who is responsible for and/or has significant influence in setting the objectives for and the remuneration of executive directors of that UK firm; or
 - (4) an individual who is a director (other than a non-executive director) or a senior manager of a parent undertaking or holding company of a UK firm who is accustomed to influencing the operations of that UK firm, and acts in a manner in which it can reasonably be expected that an executive director or senior manager of that UK firm would act; or
 - (5) an individual of an overseas firm which maintains an establishment in the United Kingdom from which regulated activities are carried on where that individual has responsibilities for those regulated activities which are likely to enable him to exercise significant influence over the UK branch.
- ...

Non-executive director function (CF2)

10.6.8 R (1) If a *firm* is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of either a:

- (a) *non-executive director of that firm; or*
- (b) *non-executive director of a parent undertaking or holding company (except where that parent undertaking or holding company is an EEA firm) whose decisions, or actions are regularly taken into account by the governing body of the firm.*

...

10.6.9 G ~~{deleted}~~ Examples of where SUP 10.6.8R(1)(b) would apply include (but are not limited to):

- (1) *an individual who is a non-executive director of a parent undertaking or holding company who takes an active role in the running of the business of a UK firm, for example, as a member of a board or committee (on audit or remuneration) of that firm; or*
- (2) *an individual who is a non-executive director of a parent undertaking or holding company having significant influence in setting and monitoring the business strategy of the UK firm; or*
- (3) *an individual who is a non-executive director of a parent undertaking or holding company of a UK firm involved in carrying out responsibilities such as scrutinising the approach of executive management, performance, or standards of conduct of the UK firm; or*
- (4) *an individual who is a non-executive director of a parent undertaking or holding company of a UK firm who is accustomed to influence the operations of the UK firm, and acts in a way in which it can reasonably be expected that a non-executive director of the UK firm would act; or*
- (5) *an individual who is a non-executive director of an overseas firm which maintains a branch in the United Kingdom from which regulated activities are carried on where that individual has responsibilities for those regulated activities which are likely to enable him to exercise significant influence over the UK branch.*

Guidance on CF1 and CF2

10.6.10 G (1) ~~{deleted}~~ This paragraph explains the basis on which the *director function* and *non-executive director function* are applied to persons who have a position with the *firm's parent undertaking or holding company* under SUP 10.6.4R(2) or SUP 10.6.8R(1)(b).

(2) The basic position is set out in SUP10.3.4G. As is the case with all

controlled functions, SUP 10.6.4R(2) and SUP 10.6.8R(1)(b) are subject to the overriding provisions in SUP 10.3.1R, which sets out the requirements of sections 59(1) and (2) of the Act. This means that unless the firm has an arrangement or a contract permitting the performance of these roles by the persons concerned, these persons will not be performing these controlled functions. Therefore, the FSA accepts that there will be cases in which a person performing these roles will not require approval.

- (3) However the FSA expects that in general a person who performs these roles will perform the director function or the non-executive director function. This is because the FSA would expect that a firm that allows major decisions to be taken by a group decision-making body will do so on the basis of a formal delegation from the firm's governing body. This delegation will amount to an arrangement for the purposes of section 59 of the Act.

...

10.9 Significant management functions

Application

- 10.9.1 R SUP 10.9 applies only to a firm which:
 - (1) under SYSC 2.1.1R or SYSC 4.4.3R, apportions a significant responsibility, within the description of the significant management function, to a senior manager of a significant business unit; or
 - (2) undertakes proprietary trading.
- 10.9.2 G The FSA anticipates that there will be only a few firms needing to seek approval for an individual to perform the significant management function set out in SUP 10.9.1R(1). In most firms, those approved for the governing functions, required functions and, where appropriate, the systems and controls function, are likely to exercise all the significant influence at senior management level.
- 10.9.2A G A proprietary trader undertakes activities with the firm's money and has the ability to commit the firm. By virtue of this role, all proprietary traders have potential to be able to exercise significant influence on the firm for the purposes of section 59(4) and (5) of the Act. It is therefore the FSA's expectation that all firms will assess all their proprietary traders to ascertain the ones for whom approval is required.
- 10.9.3 G However, the The scale, nature and complexity of the firm's business may be such that a firm apportions under SYSC 2.1.1R or SYSC 4.4.3R SUP 10.9.1R(1) a significant responsibility to an individual who is not approved to perform the governing functions, required functions or, where appropriate, the systems and controls function. ...

...

- 10.9.5 G The question may arise whether a manager who is based overseas will be performing the *significant management function* under SUP 10.9.10R(1) and should therefore be an *approved person*. This is especially true where the *firm* operates matrix management. The fact there is a *person* performing the *apportionment and oversight function*, and who has responsibility for activities subject to regulation by the *FSA*, may have a bearing on this. It is a factor to take into account when assessing the likely influence of the overseas manager.
- 10.9.6 G Generally, in relation to a *branch* of a *firm*, or a *firm* which is part of an overseas *group*, where an overseas *manager* is responsible for strategy, he will not need to be an *approved person* under SUP 10.9.10R. However, where he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing a that controlled function.

...

Significant management function (CF29)

- 10.9.10 R (1) The *significant management function* is the function of acting as a *senior manager* with significant responsibility for a significant business unit that:
- (a) carries on *designated investment business* or other activities not falling within (b) - to (d);
 - (b) *effects contracts of insurance* (other than *contractually based investments*);
 - (c) makes material decisions on the commitment of a *firm's* financial resources, its financial commitments, its assets acquisitions, its liability management and its overall cash and capital planning;
 - (d) processes confirmations, payments, settlements, insurance claims, *client money* and similar matters.
- (1A) The *significant management function* also includes the function of acting as a *proprietary trader*.
- (2) This *controlled function* does not include any of the activities described in any other *controlled function*.
- 10.9.10A G A *senior manager* carrying on the *significant management function* under SUP 10.9.10R(1) with significant responsibility for a significant business unit that carries on activities other than *designated investment business* for the purposes of SUP 10.9.10R(1)(a) could, for example, be the head of a unit carrying on the activities of: retail banking, personal lending, corporate

lending, salvage or loan recovery, or proprietary trading; *proprietary trading*, or a member of a committee (that is, a *person* who, together with others, has authority to commit the *firm*) making decisions in these functions. ~~The senior manager could also be a proprietary trader whose trading limits are such that he may put, or potentially put, his firm at significant risk. This function would not extend to every proprietary trader.~~

- 10.9.10B G A proprietary trader also undertakes activities which may have a significant influence on the firm. Such activities may require approval for CF29 under SUP 10.9.10R(1A).

...

Who should make the application?

- 10.12.3 G (1) In accordance with section 60 of the *Act* (Applications for approval), applications must be submitted by, or on behalf of, the *firm* itself, not by the *candidate* or (where the *candidate* works for the *firm's parent undertaking* or *holding company*) by the *firm's parent undertaking* or *holding company*.
- (2) Usually this will be the *firm* that is employing the *candidate* to perform the *controlled function*. Where a *firm* has outsourced the performance of a *controlled function*, the details of the outsourcing determine where responsibility lies and whom the *FSA* anticipates will submit approved persons application forms. *SUP 10.12.4G* describes some common situations. The *firm* which is outsourcing is referred to as "A" and the *person* to whom the performance of the *function controlled function* has been outsourced, or which makes the *arrangement* for the *function controlled function* to be performed, is referred to as "B". In each situation, A must take reasonable care to ensure that, in accordance with section 59(2) of the *Act*, no *person* performs a *controlled function* under an *arrangement* entered into by its contractor in relation to the carrying on by A of a *regulated activity*, without approval from the *FSA*. See also *SYSC 3.2.4G* and *SYSC 8.1.1R*, and for *insurers SYSC 13.9*.

...

Ceasing to perform a controlled function

- 10.13.12 R (1) If a *firm* (A):
- (a) is considering appointing a *person* to perform any of the *customer controlled functions*;
 - (b) requests another *firm* (B), as a current or former employer of that *person*, for a reference or other information in connection with that appointment; and
 - (c) indicates to B the purpose of the request;

B must, as soon as reasonably practicable, give to A all relevant information of which it is aware.

....

- 10.13.12A G The requirement in SUP 10.13.12(1)R for firm (B) to give to firm (A) all relevant information of which it is aware concerning a person firm A is considering appointing to perform any of the controlled functions, also applies where firm A has outsourced the collection of that information to another (unregulated) third party, where firm B has been made aware that the unregulated third party is acting on behalf of firm A.
- ...

TP 1 Transitional provisions

...

TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8E	<u>SUP 10.6.4R(2)</u>	R	<p><u>(1) This rule deals with a person (a "director") who would otherwise have been performing the director function for a firm under SUP 10.6.4R(2) on 6 August 2009 but who was not otherwise performing the director function for that firm at that date. This rule only applies if he was not approved at that date to perform the director function for that firm.</u></p> <p><u>(2) Between the dates in column (5), the functions described in SUP 10.6.4R(2) are not treated as forming part of the director function as respects that firm and that director unless they also fall under SUP 10.6.4.R(1).</u></p>	<u>6 August 2009 to 6 February 2010</u>	<u>6 February 2010</u>

			<p>(3) If this transitional rule has not already expired under column (5), this rule comes to an end as respects that director and that firm if and when an application is made for the director to perform the director function for that firm and that application is granted.</p>		
8F	<u>SUP</u> 10.6.8R(1)(b)	R	<p>(1) This rule deals with a person (a "non-executive director") who would otherwise have been performing the non-executive director function for a firm under SUP 10.6.8R(1)(b) on 6 August 2009 but who was not otherwise performing the non-executive director function for that firm at that date. This rule only applies if he was not approved at that date to perform the non-executive director function for that firm.</p> <p>(2) Between the dates in column (5), the functions described in SUP 10.6.8R(1)(b) are not treated as forming part of the non-executive director function as respects the firm and that non-executive director unless they also fall under SUP 10.6.8.R(1)(a).</p> <p>(3) If this transitional rule has not already expired under column (5), this rule comes to an end as respects that non-executive director and that firm if and when an application is made for the non-executive director to perform the non-executive director function for that firm and that application is granted.</p>	<u>6 August 2009</u> <u>to 6 February</u> <u>2010</u>	<u>6 February</u> <u>2010</u>
8G	<u>SUP</u> 10.9.1R(2)	R	<p>(1) This rule deals with a person (a "proprietary trader") who would otherwise have been performing the significant management function for a firm under SUP 10.9.10R(1A) on 6 August 2009 but who was not otherwise performing the significant management function for that firm at that date. This rule only applies if he was not approved at that date to perform the significant management function for that firm.</p>	<u>6 August 2009</u> <u>to 6 February</u> <u>2010</u>	<u>6 February</u> <u>2010</u>

		<p>(2) Between the dates in column (5), the functions described in SUP 10.9.10R(1A) are not treated as forming part of the <i>significant management function</i> as respects that <i>firm</i> and that <i>proprietary trader</i> unless they also fall under SUP 10.9.10R(1).</p> <p>(3) If this transitional rule has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>proprietary trader</i> and that <i>firm</i> if and when an application is made for the <i>proprietary trader</i> to perform the <i>significant management function</i> for that <i>firm</i> and that application is granted.</p>		
...				

**COMPENSATION SOURCEBOOK (MUTUAL SOCIETY MERGERS AND
PROTECTED DEPOSIT TRANSFERS UNDER THE SPECIAL RESOLUTION
REGIME) (AMENDMENT) INSTRUMENT 2009**

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 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 October 2009.

Amendments to the Handbook

- D. The Compensation sourcebook (COMP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Compensation Sourcebook (Mutual Society Mergers and Protected Deposit Transfers under the Special Resolution Regime) (Amendment) Instrument 2009.

By order of the Board
23 July 2009

Annex

Amendments to the Compensation sourcebook (COMP)

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

- 10.2.10 R (1) This *rule* applies from 1 December 2008 to ~~30 September 2009~~ 30 December 2010.
- (2) In the event of a merger between two *building societies* or a *building society* and the subsidiary of another mutual society (whether or not of the same type), there is a separate and additional £50,000 maximum payment limit for a claimant with respect to *claims for protected deposits* held under the name of the dissolved entity provided the following conditions are met:
- (a) the merger takes effect between 1 December 2008 and ~~30 September 2009~~ 30 December 2010;
- ...
- ...
- 10.2.11 R (1) This *rule* applies from 16:00 on 29 March 2009 to ~~30 September 2009~~ 30 December 2010.
- (2) In the event of a transfer of *protected deposits* from one *deposit-taking firm* to another *deposit-taking firm* pursuant to the property transfer powers under the Banking Act 2009, there is a separate and additional £50,000 maximum payment limit for a claimant with respect to *claims for protected deposits* held under the name of the transferor provided the following conditions are satisfied:
- (a) the transfer takes effect between 16:00 on 29 March 2009 and ~~30 September 2009~~ 30 December 2010;
- ...
- ...

COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (SINGLE SUB-FUND UMBRELLAS) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139(4) (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 247 (Trust scheme rules); and
 - (f) section 248 (Scheme particulars rules);
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 August 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Single Sub-fund Umbrellas) Instrument 2009.

By order of the Board
23 July 2009

Annex A

Amendments to the Glossary of definitions

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

umbrella (in *FEES*, *COLL* and *COBS*) a *collective investment scheme* under which ~~the contributions of the participants in the scheme and the profits or income out of which payments are to be made to them are pooled separately a collective investment scheme whose instrument constituting the scheme provides for such pooling as is mentioned in section 235(3)(a) of the Act (Collective investment schemes)~~ in relation to separate parts of the *scheme property* and whose unitholders are entitled to exchange rights in one part for rights in another.

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Umbrella scheme with only one sub-fund

- 3.2.7 R (1) ~~If, after the first issue of a unit in a scheme which is an umbrella, for a period of 24 consecutive months, units of less than two sub funds are in issue, the authorised fund manager or, for an ICVC, its other directors must take such action as is necessary to reflect the fact that the scheme is no longer an umbrella or cause units of more than one sub fund to be in issue.~~ [deleted]
- (2) ~~If (1) applies or is reasonably expected to become applicable by the authorised fund manager or, for an ICVC, its other directors, the authorised fund manager or, for an ICVC, its other directors, the authorised fund manager or its other directors must notify the unitholders and the FSA of any action to comply with (1).~~ [deleted]
- (3) ~~Paragraph (1) does not apply if before the expiry of the 24 month period, winding up of the scheme has commenced.~~ [deleted]
- ...

Switching rights: umbrella schemes

- 3.3.10 G ...
- (2) To satisfy (1), where any sub-fund in a scheme which is an umbrella has provisions in its prospectus limiting the issue of units in that sub-fund, the authorised fund manager should ensure that at least two sub-funds are able to issue units at any time. In the case of an umbrella consisting of a single sub-fund that limits the issue of units, where the ICVC or the manager of such an umbrella intends to offer additional sub-funds, it should ensure that unitholders will have the right to switch at all times between two or more sub-funds in that umbrella.
- ...

Table: contents of the prospectus

- 4.2.5 R ...

...
Information on the umbrella

24	In the case of a <i>scheme</i> which is an <i>umbrella</i> <u>with two or more sub-funds</u> , the following information:		
	...		
	(e)	what charges, if any, may be made on exchanging <i>units</i> in one <i>sub-fund</i> for <i>units</i> in any other <i>sub-fund</i> ; <u>and</u>	
	(f)	for each <i>sub-fund</i> , the currency in which the <i>scheme property</i> allocated to it will be valued and the <i>price of units</i> calculated and payments made, if this currency is not the <i>base currency</i> of the <i>scheme</i> which is an <i>umbrella</i> ; <u>and</u>	
	(g)	if there are <i>units</i> for less than two <i>sub funds</i> in issue, the effect of COLL 3.2.7R (Umbrella scheme with only one sub-fund). [deleted]	
	...		

...

Schedule 2 Notification requirements

...

Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COLL 3.2.7R(2)</i>	<i>ICVC with only one sub-fund</i>	<i>Action to rectify situation</i>	<i>Umbrella has only one sub-fund</i>	<i>24 months</i>
...				

PERIMETER GUIDANCE (AMENDMENT NO 2) INSTRUMENT 2009

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 6 August 2009.

Amendments to Handbook-related material

- C. The Perimeter Guidance manual (PERG) is amended in accordance with the Annex to this instrument. The general guidance in PERG does not form part of the Handbook.

Citation

- D. This instrument may be cited as the Perimeter Guidance (Amendment No 2) Instrument 2009.

By order of the Board
23 July 2009

Annex

Amendments to the Perimeter Guidance manual (PERG)

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

- 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. concerned with arrangements of an ongoing nature whose purpose is to facilitate the entering into of transactions by other parties. This activity has a potentially broad scope and typically applies in one of two scenarios. These are where a person provides facilities of some kind:~~
- (1) to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or
 - (2) to facilitate the entering into of transactions directly by the parties (such as multilateral trading facilities of any kind other than those excluded under article 25(3) of the *Regulated Activities Order*, exchanges, clearing houses and service companies (for example, persons who provide communication facilities for the routing of orders or the negotiation of transactions)).
- 2.7.7BA G It is of note, however, that the *regulated activity of making arrangements with a view to transactions in investments* is not limited to arrangements that are participated in by investors. It is also not necessary that both the buyer and the seller under the transaction that is being arranged should participate in the arrangements. So, arrangements may come within the activity if they are participated in only by product companies with a view to their issuing investments. A person may be carrying on this *regulated activity* even if he is only providing part of the facilities for bringing about a transaction.

- 2.7.7BB G It is also the FSA's view that certain arrangements may come within the activity even though the parties may have already committed to the transaction using other arrangements. This would typically apply to a clearing house whose clearing and settlement facilities may be seen to be made with a view to the members of the clearing house, as participants in its arrangements, entering into transactions (usually through an investment exchange) which must be cleared through the clearing house to be completed. The clearing house is providing an essential part of the market infrastructure that is necessary to support trading activities. The same principle applies outside the markets context. So for example if a company that wishes to raise capital from private investors tells the potential investors, in order to increase their confidence, that all aspects of paying for and issuing shares will be handled by a particular firm, that firm may come within article 25(2) when it provides those services.
- 2.7.7BC G In the FSA's view, it is generally the case that providers of back office administration services do not carry out the regulated activity of making arrangements with a view to transactions in investments. This is based essentially on the fact that providers of back office administration services aim to assist a broker firm to deal with the aftermath of transactions it has entered into on behalf of its clients. The broker firm has assumed full responsibility to its clients for completing their transactions, thus enabling the view to be taken that the firm to whom it outsources functions is making arrangements to assist the broker to complete transactions rather than with a view to the broker entering into trades as agent for its clients. The provider of back office services does not carry out the regulated activity of making arrangements with a view to transactions in investments because the transaction has already been entered into by the time of its involvement.
- 2.7.7BD G (1) The scope of article 25(2) of the *Regulated Activities Order* (the subject of PERG 2.7.7BG) was considered by the High Court in the case of Watersheds Limited v. David Da Costa and Paul Gentlemen. The judgement suggests that the activity of 'introducing' does not itself constitute a regulated activity for the purposes of article 25(2) of the *Regulated Activities Order*. The FSA has considered whether the judgement necessitates any change to the views expressed in PERG 2.7.7BG and elsewhere in PERG. It appears to the FSA that the judgement should be considered in the light of the case to which it relates.
- (2) Also, the court does not seem to have had the benefit of a relevant argument. The *Regulated Activities Order* provides an exclusion which has the effect of removing certain arrangements for making introductions from the scope of article 25(2) of the *Regulated Activities Order*. These exclusions can be found in article 33 of the *Regulated Activities Order* (guidance on this can be found in PERG 8.33 and PERG 5.6.17G to PERG 5.6.21G). These exclusions would not be necessary if all 'introductions' were outside the scope of article 25(2) of the *Regulated Activities Order*. Support for this can also be found in the fact that article 25A(2) is very similar to article

25(2) and there is an exclusion from it for certain introductions. The exclusion is in article 33A of the *Regulated Activities Order* and guidance on it can be found in PERG 4.5.10G and the following paragraphs. For these reasons, the FSA remains of the view that article 25(2) of the *Regulated Activities Order* includes certain types of arrangements for making introductions whilst recognising that the judgement in the Watersheds case introduces an element of doubt.

- 2.7.7BE G In determining whether particular arrangements fall within the scope of Article 25(2) of the *Regulated Activities Order*, it may be necessary to consider the purpose of the arrangements. Further guidance on this can be found in PERG 8.32.3G. Although this guidance is in relation to the activities of publishers, broadcasters, website operators and telephone marketing services, the principle is not limited to those activities.
- 2.7.7BF G In the FSA's view, a mere passive display of literature advertising investments would not amount to the article 25(2) activity. Further guidance on this point can be found in PERG 5.6.4G. Although this guidance is in relation to contracts of insurance, the principle is not limited to them.
- ...

12.2 Establishing, operating or winding up a personal pension scheme

Q2. What is a personal pension scheme for the purposes of this regulated activity?

...

Although the definition does not expressly say so, it is, in the FSA's view, clear from the context in which the term is applied, that such a scheme will be one the sole or principal purpose of which is to provide benefits to members of the scheme upon their reaching a pensionable age. This will typically include pension schemes that is are intended to be registered with The Pensions Regulator and to be eligible for tax relief relating to pension schemes. It will also include other types of pension schemes such as qualifying recognised overseas pension schemes (QROPSs) that are not occupational pension schemes.

**FINANCIAL SERVICES COMPENSATION SCHEME (BANKING
COMPENSATION REFORM) INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the powers and related provisions in the following sections of the Financial Services and Markets Act 2000 ("the Act"):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 213 (The compensation scheme);
 - (e) section 214 (General); and
 - (f) section 215 (Rights of the scheme in relevant person's insolvency); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex C comes into force on 1 August 2009;
 - (2) Part 2 of Annex C comes into force on 1 January 2010; and
 - (3) the remainder of this instrument comes into force on 31 December 2010.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Compensation sourcebook (COMP)	Annex C

Citation

- E. This instrument may be cited as the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009.

By order of the Board
23 July 2009

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

<i>single customer view</i>	a single, consistent view of an <i>eligible claimant</i> 's aggregate <i>protected deposits</i> with the relevant <i>firm</i> which contains the information required by <i>COMP 17.2.4R</i> , but excluding from that view those accounts where the <i>eligible claimant</i> is a beneficiary rather than the account holder or if the account is not active as defined in <i>COMP 17.2.3R(2)</i> .
-----------------------------	--

Annex B

Amendments to the Fees manual (FEES)

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

6.5 Compensation costs

...

- 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. [deleted]~~

...

6 Annex 3 Financial Services Compensation Scheme – classes and sub-classes

This table belongs to FEES 6.5.7R and FEES TP 2.5.2R

Class A	Deposit
...	
Tariff base	<p><i>Protected deposits as at 31 December. Except where paragraph (4) says otherwise, protected deposits must be adjusted as follows.</i></p> <ul style="list-style-type: none"> (1) <i>Only include a protected deposit to the extent that an eligible claimant would have a claim in respect of it.</i> (2) <i>Exclude any amount in respect of which the FSCS would not pay compensation due to the maximum payment limits in COMP 10.2.</i> (3) <i>The tariff base calculation is made on the basis of the information that the firm would have to include in the single customer views it has to be able to produce under COMP 17 (Systems requirements for firms that accept deposits). The information must be of the extent and standard required if the firm was preparing the single customer views as at the valuation date for the tariff base (31 December).</i> (4) <ul style="list-style-type: none"> (a) <i>If this paragraph applies, the adjustments in (1) to (3) do not apply and the calculation is based on protected deposits.</i> (b) <i>This paragraph applies with respect to a protected deposit to the extent that, under COMP 17, the firm does not have to identify an eligible claimant with respect to that protected deposit because the account is held by the account holder on behalf of others.</i>

...

Notes	
...	
(3)	<p>The question of whether a <i>person</i> is an <i>eligible claimant</i> or not, or whether a <i>contract of insurance</i> is a <i>protected contract</i> or not, or whether business is compensatable business or not, must be judged at whichever of the following dates the <i>firm</i> chooses:</p> <ul style="list-style-type: none"> (a) (for a <i>person</i> who has become a new <i>client</i> during the period by reference to which the <i>firm's</i> tariff base is being calculated) the date on which the person becomes a client; (b) (for a <i>person</i> who has ceased to be a <i>client</i> during that period) the date on which the <i>person</i> ceases to be a <i>client</i>; or (c) (in any other case) the date to which the most recent information supplied by the <i>firm</i> under FEES 6.5.13R is prepared. <p><u>However this does not apply for the purpose of calculating the tariff base for class A (Deposits) so far as it relates to <i>protected deposits</i>.</u></p>

Annex C

Amendments to the Compensation sourcebook (COMP)

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

Part 1: Comes into force on 1 August 2009

- 1.1.4 G *Firms* will be particularly interested in *FEES 6*, which deals with levies and COMP 16 which deals with disclosure requirements for firms that accept deposits.
- ...
- 1.1.8 G *COMP 1* consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of *COMP 2-14 to 16* cover who is eligible, the amount of compensation and how it might be paid, and ~~the ways in which the activities of the FSCS are to be financed~~ disclosure requirements for firms that accept deposits.
- ...
- 4.3.1 R A *person* is eligible to claim compensation in respect of a *protected deposit* if, at the date on which the *relevant person* is determined to be *in default*:
- (1) he came within category (8) or (14) of *COMP 4.2.2R*; or
 - (2) he came within any of categories (1)-(3), (7) or (10)-(12) of *COMP 4.2.2R* and was not a *large company, large mutual association, or a credit institution.*
- ...

Part 2: Comes into force on 1 January 2010

- 16.1.2 G The purpose of this chapter is to set out the information about compensation these *firms* must disclose, how frequently that information should be disclosed and the methods of communication which should be used.
- ...

After *COMP 16.2* insert the following new section. The text is not underlined.

16.3 UK domestic firms, non-EEA firms and incoming EEA firms

UK domestic firms and non-EEA firms

- 16.3.1 R A *firm* that is a *UK domestic firm* or a *non-EEA firm* must disclose the following information to any *protected deposit holder* with that *firm* who is or is likely to be an *eligible claimant*.

“Important information about compensation arrangements”

We are covered by the Financial Services Compensation Scheme (FSCS). The FSCS can pay compensation to depositors if a [bank/building society/credit union – delete as appropriate] is unable to meet its financial obligations. Most depositors – including most individuals and small businesses – are covered by the scheme.

In respect of deposits, an eligible depositor is entitled to claim up to [insert FSCS maximum payment for *protected deposits*]. For joint accounts each account holder is treated as having a claim in respect of their share so, for a joint account held by two eligible depositors, the maximum amount that could be claimed would be [insert FSCS maximum payment for *protected deposits*] each (making a total of [insert FSCS maximum payment for *protected deposits* x 2]). The [insert FSCS maximum payment for *protected deposits*] limit relates to the **combined** amount in all the eligible depositor’s accounts with the [bank/building society/credit union – delete as appropriate], including their share of any joint account, and not to each separate account.

For further information about the scheme (including the amounts covered and eligibility to claim) please ask at your local branch, refer to the FSCS website www.FSCS.org.uk or call [insert FSCS phone number].”

- 16.3.2 G A *UK domestic firm* that discloses the information required to be disclosed by COMP 16.3.1R to *persons* that hold *protected deposits* through an overseas *branch* may do so in the local language.

Incoming EEA firms that accept deposits through UK branches and have not obtained top-up cover

- 16.3.3 R An *incoming EEA firm* that *accepts deposits* through a *UK branch* and has not obtained *top-up cover* must disclose the following information to any *protected deposit holder* with that *branch* who is or is likely to be eligible to claim for compensation from the *firm’s Home State* compensation scheme.

“Important information about compensation arrangements”

We are part of [insert name of *firm*] which is based in [insert name of *Home State*]. Most depositors are covered by [insert name of *Home State* compensation scheme] which is also based in [insert name of *Home State*].

This means that if our bank is unable to meet its financial obligations, our eligible UK depositors would be entitled to claim up to £ [insert *Home State* compensation scheme maximum payment for *protected deposits*] from the [insert name of *Home State* compensation scheme]. [State any significant conditions that compensation is subject to e.g. if paid on a per account or per depositor basis, and if set-off applies].

For further information about the [insert name of *Home State* compensation scheme] (including the amounts covered and eligibility to claim) please contact your branch or refer to [insert contact details of the *Home State* compensation scheme].”

Incoming EEA firms that accept deposits through UK branches and have obtained top-up cover

- 16.3.4 R An *incoming EEA firm* that *accepts deposits* through a *UK branch* and has obtained *top-up cover* must disclose the following information to any *protected deposit holder* with that *firm* who is or is likely to be an *eligible claimant*.

“Important information about compensation arrangements

We are part of [insert name of *firm*] which is based in [insert name of *Home State*]. Most depositors are covered by [insert name of *Home State* compensation scheme] compensation scheme which is also based in [insert name of *Home State*]. In addition, for depositors with our UK branch we have joined the UK compensation scheme, the Financial Services Compensation Scheme (FSCS).

This means that if our bank is unable to meet its financial obligations, eligible depositors with our UK branch could claim up to £ [insert *Home State* compensation scheme maximum payment for *protected deposits*] from the [insert name of *Home State* compensation scheme] and if they have more saved with us, they could also claim for the remainder up to [insert *FSCS* maximum payment for *protected deposits*] from the *FSCS*.

This is because the [insert name of *Home State* compensation scheme] is only responsible for paying the first part of the compensation up to £ [insert *Home State* compensation scheme maximum payment for *protected deposits*] and the *FSCS* is only responsible for paying the second part of compensation – being above £ [insert *Home State* compensation scheme maximum payment for *protected deposits*] and up to [insert *FSCS* maximum payment for *protected deposits*].

The *FSCS* will also try to help depositors with our UK branch, for example, to get in touch with the [insert name of *Home State* compensation scheme] compensation scheme and to understand the

process involved.

For further information on how compensation would apply to you please contact:

- [insert name of *firm*] by dropping into one of our branches, at [insert website link] or by calling [insert phone number].

General information is also available from:

- the FSCS by calling [insert FSCS phone number] or at <http://www.fsics.org.uk/>.
- [insert name of *Home State* compensation scheme] compensation scheme by contacting [insert relevant phone number and website link].

Incoming EEA firms: conversion of home state compensation scheme limit to sterling

- 16.3.5 G When an incoming *EEA firm* inserts the *Home State* compensation scheme maximum payment for *protected deposits* in the disclosure required by this section, that amount should be converted into pounds sterling and the exchange rate noted in a footnote. The exchange rate used should be updated regularly.

Frequency of communication

- 16.3.6 R (1) A *firm* must provide the information required to be disclosed by this section on at least a 6 monthly basis.
- (2) If a *firm* normally communicates with a *protected deposit* holder less frequently than every 6 months (1) does not apply and the *firm* must provide the information required to be disclosed by this section on at least an annual basis.

- 16.3.7 G The *FSA* considers monthly, quarterly or 6 monthly account statements to be a means of communication for these purposes.

Method of communication

- 16.3.8 R (1) If the recipient receives paper statements, the information required to be disclosed by this section must be prominently displayed in the relevant paper statement.
- (2) If the recipient uses internet banking, the information required to be disclosed by this section must be communicated by electronic means in a way that brings it to the attention of the recipient.
- (3) If the recipient does not receive paper statements or use internet banking the information required to be disclosed by this section must be communicated in a way that brings it to the attention of the recipient.

- 16.3.9 G The FSA considers that if information required to be disclosed by this section is communicated by letter/leaflet sent through the post, email or a pop up box on the *firm's* internet website the requirement to communicate in a way that brings the information to the attention of the recipient will have been satisfied.

Trading name disclosure

- 16.3.10 R Where a *firm* operates under more than one trading name, the *firm* must, in any communication to a *protected deposit* holder who is or is likely to be eligible to claim for compensation from the *compensation scheme* or other *Home State* compensation scheme and generally in its *UK branches* and on its website, prominently disclose the trading names under which it operates and explain the impact this has on any *protected deposit* holder's entitlement to compensation from the *compensation scheme* and any relevant *Home State* or *Host State* compensation scheme.

Further disclosure

- 16.3.11 G A *firm* should ensure that all communications to consumers about compensation for *protected deposits* are clear, fair and not misleading.
- 16.2.12 G A *firm* should also consider its obligations under the Credit Institutions (Protection of Depositors) Regulations 1995.

Part 3 Comes into force on 31 December 2010

All references in *COMP* (other than in *COMP* 12.2.1R and the heading in respect of *COMP* 12.2.4R) to "overall net *claim*" are amended to "overall *claim*".

Amend the following as shown.

- 1.1.4 G *Firms* will be particularly interested in *FEES* 6, which deals with levies and, *COMP* 16 which deals with disclosure requirements for *firms* that *accept deposits* and *COMP* 17 which deals with systems and information requirements for *firms* that *accept deposits*.

...

- 1.1.8 G *COMP* 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of *COMP* 2 to ~~16~~ 17 cover who is eligible, the amount of compensation and how it might be paid, and disclosure requirements for *firms* that *accept deposits* and systems and information requirements for *firms* that *accept deposits*.

...

- 12.2.1 R The amount of compensation payable to the claimant in respect of:
- (1) any type of *protected claim other than a claim for a protected deposit* is the amount of his overall net *claim* against the *relevant person* at the *quantification date*; and
 - (2) *any claim for a protected deposit* is the amount of his overall gross *claim* against the *relevant person* at the *quantification date*;
- and any reference in *COMP* to overall *claim* means “overall net *claim*” or “overall gross *claim*” as appropriate.
- ...

Overall gross claim

- 12.2.6A R A claimant’s overall gross *claim* is the sum of the *claims for protected deposits* that he has against a *relevant person in default*.

Payments to the claimant

- 12.2.7 R ...

Time for calculation of compensation due to the claimant

- 12.2.8 R ...

Amounts paid by the Society

- 12.2.9 R ...
- ...

- 12.3.1 R (1) For a *protected deposit claim*, the *quantification date* is the date the *relevant person* is determined to be *in default*, or the date the *protected deposit* was due and payable, if later.
- (2) If a *protected deposit* was not due and payable on or before the date that the *relevant person* was determined to be *in default*, the *FSCS* must nevertheless treat that date as the *quantification date* for that *deposit* and pay compensation comprising:
- (a) the principal sum on the basis that it is due and payable on that date;
 - (b) interest or premium accrued to that date; and
 - (c) unaccrued interest or premium attributable to or arising in respect of the period to that date.
- ...

15.1 Accelerated compensation for depositors

- 15.1.1 G When a *relevant person* is *in default* with *claims* against it for *protected deposits* it ~~may~~ is likely to be desirable for the *FSCS* to make accelerated payments of compensation, for the protection of consumers and to maintain market confidence.
- 15.1.2 G To facilitate an accelerated payment of compensation, this section provides additional and alternative powers for the *FSCS*. These powers include the ability for the *FSCS* to pay compensation to *eligible claimants* without an application, to provide compensation by a variety of means and subject to conditions including by making a payment directly into an account maintained by another *authorised person*, to administer the payment of compensation on behalf of, or to pay compensation and recover from, another scheme or a government ~~and/or~~, to be subrogated automatically to the claimant's rights against the *relevant party* and/or any third party, ~~and/or to settle claims~~.
- ...
- 15.1.4 R ~~Before using any power in this section, the FSCS must determine that using that power:~~
- (1) ~~would be beneficial to the generality of eligible claimants with protected deposits with a relevant person in default in respect of whom the power is to be used; and~~
 - (2) ~~is unlikely to result in any additional cost to the FSCS which would require the imposition of increased levies on participant firms, over and above those required if the power was not exercised, or any additional cost is likely to be justified by the benefits.~~ [deleted]
- ...
- 15.1.12 R ~~If a protected deposit was not due and payable on or before the date that the relevant person was determined to be in default, the FSCS may nevertheless treat that date as the quantification date for that deposit and pay compensation on the basis that the principal sum (including any interest attributable up to that date) is due and payable on that date either (as determined by the FSCS):~~
- (1) ~~with the consent of the eligible claimant (express or implied, including by conduct); or~~
 - (2) ~~without that consent, but in this case the amount that the eligible claimant is entitled to claim from the FSCS is the lesser of:~~
 - (a) ~~the amount which the FSCS quantifies as being the value of that claim as at the quantification date; and~~
 - (b) ~~the amount that would have been payable at the date the deposit was due and payable;~~

and COMP 12.3.1R is modified accordingly. [deleted]

...

Settlement of claims

- 15.1.21 R (1) The FSCS may pay compensation without fully or at all investigating the eligibility and/or amount of that *claim* notwithstanding any provision in this sourcebook or FEES 6 to the contrary, if in the opinion of the FSCS:
- (a) the costs of investigating the merits of the *claim* are reasonably likely to exceed the amount of the *claim*; and
 - (b) it is reasonably in the interests of *participant firms* to do so.
- (2) This rule does not apply with respect to *claims for protected deposits* that are excluded by Article 2 of the *Deposit Guarantee Directive*.

...

After COMP 16 insert the following new chapter. The text is all new and is not underlined.

17 Systems and information requirements for firms that accept deposits

17.1 Application and purpose

- 17.1.1 R (1) This chapter applies to:
- (a) a *UK domestic firm* that *accepts deposits*;
 - (b) a *non-EEA firm* that *accepts deposits* in the *United Kingdom*; and
 - (c) an *incoming EEA firm* that *accepts deposits* through a *UK branch* and has obtained *top-up cover*.
- (2) Notwithstanding (1), this chapter does not apply to a *firm* which does not conduct business that could give rise to a *claim* for a *protected deposit* by an *eligible claimant* and has no reasonable likelihood of doing so.
- 17.1.2 G The purpose of this chapter is to set out the core systems and information requirements these *firms* must have in place to facilitate a fast compensation payout to *eligible claimants* holding *protected deposits* with them.

17.2 Core systems and information requirements

- 17.2.1 R (1) A *firm* must be able to identify which accounts are held by *eligible claimants* and which accounts (including client accounts and trust accounts) are held on behalf of beneficiaries who are or who may be

- eligible claimants.*
- (2) The information required by (1) must be electronically stored.
- 17.2.2 R Where eligibility of a customer to bring a *claim* for compensation from the *compensation scheme* is likely to change from time to time, a *firm* must at least annually take reasonable steps to check whether or not the customer is eligible.
- 17.2.3 R (1) A *firm* must be able to provide to the *FSCS* a *single customer view* for each *eligible claimant*, except where the *eligible claimant* is the beneficiary of an account held on his behalf by another *person* or if the account is not active, within 72 hours of a request by the *FSCS*.
- (2) An account is not active if it:
- (a) is a dormant account as defined in the Dormant Bank and Building Society Accounts Act 2008; or
- (b) is an account for which the *firm* has received formal notice of a legal dispute or competing claims to the proceeds of the account; or
- (c) appears on the ‘Consolidated list of financial sanctions targets in the United Kingdom’ that is maintained by HM Treasury.
- (3) A *firm* must be able to provide the information required by (1) by electronic transmission and in a format which is readily transferable to and compatible with the *FSCS*’s system.
- 17.2.4 R A *firm* must ensure that each *single customer view* contains all the information set out in *COMP 17.2.7R*.
- 17.2.5 R A *firm* must ensure that in relation to accounts which are held by *eligible claimants*, the system which produces the *single customer view* must:
- (1) be capable of automatically identifying the amount of compensation payable to each *eligible claimant*; and
- (2) include a check facility which allows the *firm* to identify if any portion of an *eligible claimant*’s *deposit* is over the maximum payment for a *protected deposit* set out in *COMP 10.2.3R*.
- 17.2.6 R A *firm* must take reasonable steps to ensure the accuracy of the data it holds in order to satisfy the requirements of this section.
- 17.2.7 R (1) If a *firm* operates less than 5,000 accounts held by *eligible claimants*, *COMP 17.2.1R(2)*, *COMP 17.2.3(2)* and *COMP 17.2.5R* do not apply.
- (2) If a *firm* hitherto within (1) operates 5,000 or more accounts held by *eligible claimants* for two consecutive years as at 31 December of each year, the *firm* must immediately give the *FSA* notice of that

event.

- (3) If a *firm* hitherto within (1) operates 5,000 or more accounts held by *eligible claimants* for two consecutive accounts years as at 31 December of each year, *COMP 17.2.1R(2)*, *COMP 17.2.3R(2)* and *COMP 17.2.5R* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.
- (4) If a *firm* operates 5,000 or more accounts held by *eligible claimants* on 31 December 2009 *COMP 17.2.1R(2)*, *COMP 17.2.3R(2)* and *COMP 17.2.5R* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.

Table - Minimum information firms must include in each single customer view

17.2.8 R This table belongs to *COMP 17.2.4R*

Field identifier	Field descriptor
Customer details	
Single customer view record number	Unique customer identifier
Title	Title
Customer 1 st Forename	1 st Forename
Customer 2nd Forename	2 nd Forename
Customer 3rd Forename	3 rd Forename
Customer Surname	Surname
Previous Name	Any former name of account holder
National Insurance number	National Insurance number
Contact details	
Single customer view record number	Unique customer identifier
House number	House number/Premise name
Street	Street
Locality	Locality
County	County
Postcode	Postcode
Country	Country
Details of account(s)	

Single customer view record number	Unique customer identifier
Account title	Surname or company name, first name, any other account initials or middle name identifier
Account number	Unique number for this account
Product type	Type of product or service – instant access/term
Account holder indicator	This field applies to joint or multiple accounts. It must identify whether the customer is the primary account holder or secondary account holder (or other such status).
Account status code	Active accounts only to be included
Account balance	At end of business on date of request from FSCS
Aggregate balance	
Single customer view record number	Unique customer identifier
Aggregate balance across all accounts	At end of business on date of request from FSCS
Compensatable amount	At end of business on date of request from FSCS which shows the amount to be compensated subject to the limit check that must be performed by the <i>firm</i> pursuant to COMP 17.2.5R (this could be lower than the aggregate balance across all accounts if this exceeds the maximum payment for a <i>protected deposit</i> set out in COMP 10.2.3R).

- 17.2.9 R Where an *eligible claimant* holds more than one account, the section of the *single customer view* which sets out “Details of account(s)” must be replicated for each account held.
- 17.2.10 G The amount(s) inserted into each *single customer view* as the account balance(s) and aggregate balances across all accounts should be the total of principal plus any interest or premium attributable up to the *quantification date*.
- ...

Sch 2 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COMP	...			

14.4.6R				
<u>COMP</u> <u>17.2.7R(2)</u>	The <i>firm</i> has operated 5,000 or more accounts held by <i>eligible</i> <i>claimants</i> for two consecutive years, having previously operated less than 5,000	<u>See Matter to</u> <u>be notified</u>	<u>See Matter to</u> <u>be notified</u>	<u>Immediately</u>

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(REMUNERATION CODE) INSTRUMENT 2009**

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 referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 January 2010.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
General Prudential sourcebook (GENPRU)	Annex C
Supervision manual (SUP)	Annex D

Citation

- E. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Code) Instrument 2009.

By order of the Board
11 August 2009

Annex A

Amendments to the Glossary of definitions

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

<i>Remuneration Code</i>	SYSC 19 (Remuneration Code).
<i>Remuneration Code general requirement</i>	SYSC 19.2.1R.
<i>remuneration committee</i>	a committee or other body responsible for a <i>firm's remuneration policy</i> .
<i>remuneration policy</i>	the policy, procedures and practices established, implemented and maintained in accordance with the <i>Remuneration Code general requirement</i> .
<i>third country BIPRU 730k firm</i>	<p>an <i>overseas firm</i> that:</p> <ul style="list-style-type: none"> (a) is not an <i>EEA firm</i>; (b) has its head office outside the <i>EEA</i>; and (c) would be a <i>BIPRU 730k firm</i> if it had been a <i>UK domestic firm</i>, had carried on all its business in the <i>United Kingdom</i> and had obtained whatever authorisations for doing so as are required under the <i>Act</i>.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1.1A Application

- 1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
...	...
Every other <i>firm</i>	Chapters 4 to 12, 18, <u>19</u>

1.4 Application of SYSC 11 to SYSC 1819

What?

- 1.4.1 G The application of each of chapters SYSC 11 to SYSC 1819 is set out in those chapters.

Actions for damages

- 1.4.2 R A contravention of a *rule* in SYSC 11 to SYSC 1819 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).

...

Remuneration policies

- 4.1.12 G Certain banks, building societies and BIPRU 730k firms will need to comply with the Remuneration Code requirement to establish, implement and maintain an effective remuneration policy that is consistent with effective risk management. See SYSC 19.1 for details of the application of the Remuneration Code.

...

- 6.1.4-A G In setting the method of determining the remuneration of relevant persons involved in the compliance function, certain banks, building societies and

BIPRU 730k firms will also need to comply with the Remuneration Code.
See SYSC 19.1 for details of the application of the Remuneration Code.

- ...
- 7.1.7B G In setting the method of determining the remuneration of employees involved in the risk management function, certain banks, building societies and BIPRU 730k firms will also need to comply with the Remuneration Code. See SYSC 19.1 for details of the application of the Remuneration Code.

...

After SYSC 18, insert the following new chapter. The text is not underlined.

19 Remuneration Code

19.1 Application

Who?

- 19.1.1 R (1) The *Remuneration Code* applies to a *firm* that meets at least one of the conditions in this *rule*.
- (2) The first condition is that the *firm* is a *UK bank* or *building society* that had *capital resources* exceeding £1 billion on its last *accounting reference date*.
- (3) The second condition is that the *firm* is a *BIPRU 730k firm* that had *capital resources* exceeding £750 million on its last *accounting reference date*.
- (4) The third condition is that:
- (a) the *firm* is a *full credit institution*, a *BIPRU 730k firm* or a *third country BIPRU 730k firm*;
 - (b) the *firm* is part of a *group*; and
 - (c) on the *firm's* last *accounting reference date* total *capital resources* held within the *group*:
- (i) by *UK banks* or *building societies* exceeded £1 billion; or
 - (ii) by *BIPRU 730k firms* exceeded £750 million.
- 19.1.2 R The *Remuneration Code* does not apply to a *firm* to the extent that it is acting as an *incoming EEA firm*.

What? Where?

- 19.1.3 R (1) If the *Remuneration Code* applies to a *firm*, it applies in the same way as *SYSC 4.1.1R* (General Requirements).
- (2) In relation to an *overseas firm* the *Remuneration Code* applies only in relation to activities carried on from an establishment in the *United Kingdom*.
- 19.1.4 G Part 2 of *SYSC 1 Annex 1* provides for the application of *SYSC 4.1.1R* (General Requirements).

19.2 Remuneration Code: General requirement

Remuneration policies must be consistent with effective risk management

- 19.2.1 R A *firm* must establish, implement and maintain *remuneration policies*, procedures and practices that are consistent with and promote effective risk management.
- 19.2.2 G (1) If a *firm's remuneration policy* is not aligned with effective risk management it is likely that *employees* will have incentives to act in ways that might undermine effective risk management.
- (2) The aim of the *Remuneration Code* is to ensure that *firms* have risk-focused *remuneration policies*, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in *SYSC 4*.
- (3) The *Remuneration Code* covers all aspects of *remuneration* that could have a bearing on effective risk management including wages, bonus, long term-incentive plans, options, hiring bonuses, severance packages and pension arrangements. In applying the *Remuneration Code*, a *firm* should have regard to applicable good practice on *remuneration* and corporate governance, such as guidelines on executive contracts and severance produced by the Association of British Insurers (ABI) and the National Association of Pension Funds (NAPF). In considering the risks arising from its *remuneration policies*, a *firm* will also need to take into account its statutory duties in relation to equal pay and non-discrimination.
- (4) As with other aspects of a *firm's systems and controls*, what a *firm* must do in order to comply with the *Remuneration Code* will vary according to the nature, scale and complexity of the *firm* and its activities. For example, while the *Remuneration Code* refers to a *firm's remuneration committee* and risk management function, it may be appropriate for the *governing body* of a small *firm* to act as the *remuneration committee*, and for the *firm* not to have a separate

risk management function.

- (5) The principles in the *Remuneration Code* will be used by the FSA to assess the quality of a firm's *remuneration policies* and whether they encourage excessive risk-taking by a firm's employees.
- (6) The FSA may also ask *remuneration committees* to provide the FSA with evidence of how well the firm's *remuneration policies* meet the *Remuneration Code's* principles, together with plans for improvement where there is a shortfall. The FSA will also expect relevant firms to use the principles in assessing their exposure to risks arising from their *remuneration policies* as part of the *internal capital adequacy assessment process (ICAAP)*.
- (7) The *Remuneration Code* is concerned with the risks created by the way *remuneration arrangements* are structured, not with the absolute amount of *remuneration*, which is a matter for firms' *remuneration committees*.

19.3 Remuneration Code: Remuneration principles

Remuneration Principle 1: Role of bodies responsible for remuneration policies and their members

- 19.3.1 E (1) A *remuneration committee* should:
 - (a) exercise, and be constituted in a way that enables it to exercise, independent judgment;
 - (b) be able to demonstrate that its decisions are consistent with a reasonable assessment of the firm's financial situation and future prospects;
 - (c) have the skills and experience to reach an independent judgment on the suitability of the policy, including its implications for risk and risk management; and
 - (d) be responsible for approving and periodically reviewing the *remuneration policy* and its adequacy and effectiveness.
- (2) The effect of this *evidential provision* is set out in the evidential status rule (SYSC 19.3.18R).
- 19.3.2 G (1) *Remuneration* is usually the largest cost incurred by firms after funding costs. The risks arising from the way *employees* are recruited and managed, including the risks posed by *remuneration policies*, constitute some of the most important risks faced by firms. *Remuneration committees* should pay specific attention to these risks.

- (2) While industry comparators may be relevant in setting *remuneration* they should not override the need for independent decisions that are consistent with the *firm's* financial situation and prospects.
- (3) *Remuneration committees* should have a majority of *non-executive directors*, one or more of whom should have practical skills and experience of risk management, for example through being a member of a *firm's* risk committee or audit committee.
Remuneration committees should receive regular reports directly from the *firm's* risk management function on the implications of the *remuneration policy* for risk and risk management.
- (4) The *FSA* may ask a *remuneration committee* to prepare a statement on the *firm's remuneration policy*, including the implications of the policy for the *firm*. The *FSA* will expect the statement to include an assessment of the impact of the *firm's* policies on its risk profile and *employee behaviour*. In drawing up this assessment, the *remuneration committee* should exercise its own judgment and should not rely solely on the judgment or opinions of others. The *FSA* may seek a meeting with members of the *remuneration committee* to discuss the statement.
- (5) It is good practice for a *firm's governing body* or the *remuneration committee* to issue a separate public document to inform its shareholders and other stakeholders about its *remuneration policy* and its implications for the *firm's* risk profile and for *employee behaviour*.

Remuneration Principle 2: Procedures and risk and compliance function input

- | | | |
|--------|---|---|
| 19.3.3 | E | <ul style="list-style-type: none"> (1) Procedures for setting <i>remuneration</i> within a <i>firm</i> should be clear and documented, and should include appropriate measures to manage conflicts of interest. (2) A <i>firm's</i> risk management and compliance functions should have appropriate input into setting the <i>remuneration policy</i> for other business areas. The procedures for setting <i>remuneration</i> should allow risk and compliance functions to have significant input into the setting of individual <i>remuneration</i> awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken. (3) The effect of this <i>evidential provision</i> is set out in the evidential status <i>rule</i> (SYSC 19.3.18R). |
| 19.3.4 | G | <ul style="list-style-type: none"> (1) Conflicts of interest can easily arise when <i>employees</i> are involved in the determination of <i>remuneration</i> for their own business area. Where these could arise they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a <i>firm's</i> human resources function when |

setting *remuneration* for other business areas.

- (2) Remuneration Principle 4 stresses the importance of risk-adjustment in measuring performance, and the importance within that process of applying judgment and common sense. It is good practice for a *remuneration committee* to ask the risk management function to validate and assess risk adjustment data, and to attend a meeting of the *remuneration committee* for this purpose.
- (3) Documenting procedures for setting *remuneration* includes documenting all performance appraisal processes and decisions.

Remuneration Principle 3: Remuneration of employees in risk and compliance functions

- | | | |
|--------|---|---|
| 19.3.5 | E | <ul style="list-style-type: none"> (1) <i>Remuneration for employees</i> in risk management and compliance functions should be determined independently of other business areas. (2) Risk and compliance functions should have performance metrics based principally on the achievement of the objectives of those functions. (3) The effect of this <i>evidential provision</i> is set out in the evidential status <i>rule</i> (SYSC 19.3.18R). |
| 19.3.6 | G | <ul style="list-style-type: none"> (1) Remuneration Principle 3 is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the <i>remuneration of employees</i> within control functions. (2) The need to avoid undue influence is particularly important where <i>employees</i> from the control functions are embedded in other business areas. Remuneration Principle 3 does not prevent the views of other business areas being sought as an appropriate part of the assessment process. (3) The FSA would generally expect the ratio of the potential variable component of <i>remuneration</i> to the fixed component of <i>remuneration</i> to be significantly lower for <i>employees</i> in risk management and compliance functions than for <i>employees</i> in other business areas whose potential bonus is a significant proportion of their <i>remuneration</i>. Firms should nevertheless ensure that the total <i>remuneration</i> package offered to those <i>employees</i> is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the <i>remuneration of relevant persons</i> involved in the compliance function must not comprise their objectivity or be likely to do so (see SYSC 6.1.4R(4)) also applies. |

Remuneration Principle 4: Profit-based measurement and risk-adjustment

- 19.3.7 E (1) Assessments of financial performance used to calculate bonus pools should be based principally on profits.
- (2) A bonus pool calculation should include an adjustment for current and future risk, and take into account the cost of capital employed and liquidity required.
- (3) The effect of this *evidential provision* is set out in the evidential status *rule* (SYSC 19.3.18R).
- 19.3.8 G (1) Measuring performance based wholly or mainly on revenues or turnover can provide an incentive for *employees* to pay insufficient regard to the quality of business undertaken or services provided, or their appropriateness for the client.
- (2) Profits are a better measure, but they should be adjusted for risk, including future risks not adequately captured by accounting profits.
- (3) One of the important responsibilities of the *remuneration committee* is to determine the proportion of risk-adjusted profits that should be accrued, and paid out, in the form of variable *remuneration*.
- (4) Management accounts should provide profit data at such levels within the *firm*'s structure as enables a *firm* to see as accurate a picture of an *employee*'s contribution to a *firm*'s performance as is reasonably practicable. If revenue or turnover is used as a component in performance assessment, processes should be in place to ensure that the quality of business undertaken or services provided and their appropriateness for clients are taken into account.
- (5) A number of techniques are available to adjust profits and capital for risk, and a *firm* should choose those most appropriate to its circumstances. Common techniques include those based upon a calculation of economic profit or economic capital. Whichever technique is chosen, the full range of potential risks should be covered. The FSA expects a *firm* to be able to provide it with information relating to the workings of the calculations. The results of risk-adjustment are not foolproof, and accordingly a *firm* should apply judgment and common sense in the final decision about the performance-related component of *remuneration*.

Remuneration Principle 5: Long-term performance measurement

- 19.3.9 E (1) Where the performance-related component of an *employee*'s *remuneration* is a significant part of his total *remuneration*, the assessment process should be designed to ensure assessment is based on longer-term performance.

- 19.3.10 G (1) Profits from a *firm's* activities can be volatile and subject to cycles. The financial performance of *firms* and individual *employees* can be exaggerated as a result and so the performance-related component of *remuneration* should not be assessed solely on the results of the current financial year. Effective adjustment for current and future risks in line with Remuneration Principle 4 may also be relevant to compliance with Remuneration Principle 5.
- (2) Performance assessment on a moving average of results can be a good way of meeting Remuneration Principle 5. However, other techniques such as good quality risk adjustment and deferment of a sufficiently large proportion of *remuneration* may also be useful (see Remuneration Principles 4 and 8).
- (3) In considering whether the performance-related component of an *employee's remuneration* is a significant part of his total *remuneration*, relevant factors include:
- (a) the proportion of total *remuneration* which is performance-related; and
 - (b) the absolute amount of *remuneration* which is performance-related.
- So, for example, it may be consistent with effective risk management to pay a proportionately higher performance-related bonus to a relatively low-paid *employee* without basing the bonus on longer-term performance.
- Remuneration Principle 6: Non-financial performance metrics
- 19.3.11 E (1) Non-financial performance metrics should form a significant part of the performance assessment process.
- (2) Non-financial performance metrics should include adherence to effective risk management and compliance with the *regulatory system* and with relevant overseas regulatory requirements.
- (3) The effect of this *evidential provision* is set out in the evidential status *rule* (SYSC 19.3.18R).
- 19.3.12 G (1) Poor performance in non-financial metrics such as poor risk management or other behaviours contrary to *firm* values can pose significant risks for a *firm* and should, as appropriate, override metrics of financial performance.
- (2) The performance assessment process and the importance of non-financial assessment factors in the process should be clearly

explained to relevant *employees* and implemented. A ‘balanced scorecard’ can be a good way to do this.

Remuneration Principle 7: Measurement of performance for long-term incentive plans

- 19.3.13 E (1) The measurement of performance for long-term incentive plans, including those based on the performance of *shares*, should take account of future risks.
- (2) The effect of this *evidential provision* is set out in the evidential status *rule* (SYSC 19.3.18R).
- 19.3.14 G Many common measures of performance for long-term incentive plans, such as earnings per *share* (EPS), are not adjusted for longer-term risk factors. Total shareholder return (TSR), another common measure, includes in its measurement dividend distributions, which can also be based on unadjusted earnings data. If incentive plans mature within a two to four year period and are based on EPS or TSR, strategies can be devised to boost EPS or TSR during the life of the plan, to the detriment of the true longer-term health of a *firm*. For example, increasing leverage is a technique which can be used to boost EPS and TSR. *Firms* should take account of these factors when developing risk-adjustment methods.

Remuneration Principle 8: Remuneration structures

- 19.3.15 R The *evidential provision* and *guidance* on *remuneration* structures (SYSC 19.3.16E and SYSC 19.3.17G) apply in relation to:
- (1) a *person* who performs a *significant influence function* for a *firm*; and
- (2) an *employee* whose activities have, or could have, a material impact on the *firm*’s risk profile.
- 19.3.16 E (1) A *firm* should ensure that the structure of *remuneration* for a *person* to whom this *evidential provision* applies is consistent with and promotes effective risk management.
- (2) The effect of this *evidential provision* is set out in the evidential status *rule* (SYSC 19.3.18R).
- 19.3.17 G (1) It is good practice for the fixed component of an *employee*’s *remuneration* to be a sufficient proportion of their total *remuneration* to allow a *firm* to operate a fully flexible bonus policy. This means that a *firm* (or a part of it) would have the ability not to pay a bonus in a year in which the *firm* (or part of it) makes a loss. Such a practice need not prevent a *firm* from paying a bonus despite making a loss if the bonus is justified on other grounds, for example incentivising *employees* involved in new business ventures which could be loss-making in their early stages.

- (2) It is good practice for a significant proportion of any bonus to be deferred with a minimum vesting period. Both the proportion of the bonus to be deferred and the vesting period should be appropriate to the nature of the business and its risks. The vesting period of the deferred element should be at least three years. In relation to the proportion to be deferred, if the bonus is significant when compared with the fixed component of an *employee's remuneration*, a reasonable starting point would be to defer at least two-thirds of the bonus.
- (3) It is good practice for a significant proportion of the variable component of *remuneration* to be linked to the future performance of:
 - (a) the *firm* and, where practicable, the *employee's* division or business unit; or
 - (b) the business undertaken by the *employee*.
- (4) Deferred compensation paid in *shares* can meet Remuneration Principle 8 provided that the scheme satisfies appropriate criteria, including risk-adjustment of the performance measure used to determine the initial allocation of shares.
- (5) Deferred *remuneration* paid in cash should also be subject to performance criteria.
- (6) Bonus pools and individual bonuses should be based on *employee*, division, business unit, or *firm* performance during the period under review. Both linkage to the future performance of the *firm* and linkage to the future performance of a division or business unit can deliver important benefits. The former promotes teamwork, while the latter assures that the risks which the *employee* had a role in assuming continue to have a bearing on his *remuneration*. It is good practice for *remuneration* awards to be based on an appropriate combination of all of these factors.
- (7) 'Guaranteed minimum bonuses' which run for a period of more than one year and similar payments in addition to an *employee's* salary that are not based on performance during the performance period under review are likely to be inconsistent with Remuneration Principle 8.

Status of evidential provisions

- 19.3.18 R (1) Compliance with the *evidential provisions* in this section tends to show compliance with the *Remuneration Code general requirement*.
- (2) Non-compliance with an *evidential provision* in this section tends to show non-compliance with the *Remuneration Code general requirement*.

Insert the following new Transitional Provisions after SYSC TP 2. The text is not underlined.

TP 3 Remuneration code

- 1 R TP 3 applies to a *firm* that is unable to comply with the *Remuneration Code general requirement* because of an obligation it owes to an *employee* (the “obligation”) under an agreement entered into on or before 18 March 2009 (the “agreement”).
- 2 R A *firm*’s compliance with the obligation shall not cause it to be in breach of the *Remuneration Code general requirement* provided that the *firm* complies with 3R.
- 3 R
 - (1) Where a *firm* is entitled to amend the agreement in a way that enables it to comply with the *Remuneration Code general requirement* it must do so at the earliest opportunity and no later than 31 March 2010.
 - (2) Otherwise, a *firm* must:
 - (a) take reasonable steps to amend the obligation or terminate the agreement at the earliest opportunity;
 - (b) amend the obligation or terminate the agreement no later than 31 December 2010; and
 - (c) adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the obligation.
 - 4 G By 1 January 2010, a *firm* should have at least initiated a review of the extent to which the measurement of performance for any existing long term incentive plans takes account of future risks. The *FSA* may discuss the timing of that review and any remedial action with the *firm*.

Amend the following as shown.

Sch 4 Powers exercised

The following powers and related provisions in the <i>Act</i> have been exercised by the FSA to make <i>rules</i> in <i>SYSC</i> :	
...	...
(3A)	<u>Section 149 (Evidential provisions)</u>
...	...

Sch 5 Rights of action for damages

5.4	G	Right of action under section 150			
		Chapter/ Appendix	Section/ Annex	Paragraph	For private person?
...
<i>SYSC 11 to <i>SYSC 1819</i></i>				No	Yes <i>SYSC 1.4.2R</i>

Annex C

Amendments to the General Prudential sourcebook (GENPRU)

In this Annex, underlining indicates new text.

1.2.31 R ...

- (4) Business risk means any risk to a *firm* arising from changes in its business, including the risk that the *firm* may not be able to carry out its business plan and its desired strategy. It also includes risks arising from a firm's remuneration policy (see also the Remuneration Code which applies to certain banks, building societies and BIPRU 730k firms and the detailed application of which is set out in SYSC 19.1).

...

Annex D

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

13A Annex 1 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
...
SYSC	<p>...</p> <p>SYSC 18 applies.</p> <p><u>SYSC 19 does not apply to an incoming EEA firm when acting as such.</u></p>	<p>...</p> <p><u>SYSC 19 does not apply.</u></p>
...

HANDBOOK ADMINISTRATION (NO 15) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Act:
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary powers);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 213 (The compensation scheme); and
 - (f) section 214 (General); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex N (COMP) comes into force on 1 October 2009;
 - (2) Part 2 of Annex C (SYSC) comes into force on 1 January 2010;
 - (3) Part 2 of Annex A (Glossary) and Part 2 of Annex N (COMP) come into force on 31 December 2010;
 - (4) the remainder of this instrument comes into force on 6 October 2009.

Amendments to the Handbook and related material

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
General Provisions (GEN)	Annex D
Fees manual (FEES)	Annex E
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex F
Prudential sourcebook for Insurers (INSPRU)	Annex G
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex H
Conduct of Business sourcebook (COBS)	Annex I

Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex J
Market Conduct sourcebook (MAR)	Annex K
Supervision manual (SUP)	Annex L
Dispute Resolution: Complaints sourcebook (DISP)	Annex M
Compensation sourcebook (COMP)	Annex N
Complaints against the FSA sourcebook (COAF)	Annex O
Collective Investment Schemes sourcebook (COLL)	Annex P
Credit Unions sourcebook (CRED)	Annex Q
Regulated Covered Bonds sourcebook (RCB)	Annex R
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex S
Listing Rules sourcebook (LR)	Annex T
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex U
Prospectus Rules sourcebook (PR)	Annex V

Amendments to material outside the Handbook

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

Notes

- F. 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

- G. This instrument may be cited as the Handbook Administration (No 15) Instrument 2009.

By order of the Board
24 September 2009

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 6 October 2009

<i>arranging (bringing about) a regulated sale and rent back agreement</i>	the <i>regulated activity</i> , specified in article 25E(1) of the <i>Regulated Activities Order</i> , which is in summary making arrangements: ...
<i>related party</i>	<p>(1) (in <i>LR</i>) as defined in <i>LR</i> 11.1.4R;</p> <p>(2) (in relation to an agreement seller under a <i>regulated sale and rent back agreement</i> or, where the agreement seller is a trustee, a beneficiary of the trust), means:</p> <ul style="list-style-type: none"> (a) that <i>person</i>'s spouse or civil partner; <u>or</u> (b) a <i>person</i> (whether or not of the opposite sex) whose relationship with that <i>person</i> has the characteristic of the relationship between husband and wife; or (c) that <i>person</i>'s parent, brother, sister, child, grandparent or grandchild.

Part 2: Comes into force on 31 December 2010

<i>deposit</i>	<p>(1) ...</p> <p>(2) (in <i>COMP</i>) the <i>investment</i> within (1), but including a sum of money that would otherwise be excluded:</p> <ul style="list-style-type: none"> (a) ... (b) ...; <u>or</u> (c) <u>by article 6 of the <i>Regulated Activities Order</i>, where the <i>person</i> paying it is an <i>eligible claimant</i>.</u>
----------------	--

Annex B**Amendments to the Principles for Businesses (PRIN)**

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

Sch 4 Powers exercised

...

The following power <u>powers</u> in the <i>Act</i> has <u>have</u> been exercised by the FSA to give the <i>guidance</i> in <i>PRIN</i> :	
	Section 157(1) (Guidance)
	<u>Section 158A (Guidance on outsourcing by investment firms and credit institutions)</u>

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

Part 1: Comes into force on 6 October 2009

Sch 4 Powers exercised

...

<p>The following power <u>powers</u> in the <i>Act</i> has <u>have</u> been exercised by the FSA to give the <i>guidance</i> in SYSC:</p>	
	Section 157(1) (Guidance)
	<u>Section 158A (Guidance on outsourcing by investment firms and credit institutions)</u>

Part 2: Comes into force on 1 January 2010

- 19.2.1 R A *firm* must establish, implement and maintain ~~remuneration policies~~ policies, procedures and practices that are consistent with and promote effective risk management.

Annex D

Amendments to the General Provisions (GEN)

Delete Schedule 4 (Powers Exercised) and replace with the following text. The text is not underlined.

Schedule 4 Powers exercised

4.1	G	In this Schedule, references to <i>GEN</i> include the <i>Glossary</i> .																																
4.2	G	<p>The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>GEN</i>:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td><td>Section 59 (Approval for particular arrangements)</td></tr> <tr> <td></td><td>Section 72 (The competent authority)</td></tr> <tr> <td></td><td>Section 73A (Part 6 Rules)</td></tr> <tr> <td></td><td>Section 74 (The official list)</td></tr> <tr> <td></td><td>Section 75 (Applications for listing)</td></tr> <tr> <td></td><td>Section 77 (Discontinuance and suspension of listing)</td></tr> <tr> <td></td><td>Section 79 (Listing particulars and other documents)</td></tr> <tr> <td></td><td>Section 80 (General duty of disclosure in listing particulars)</td></tr> <tr> <td></td><td>Section 81 (Supplementary listing particulars)</td></tr> <tr> <td></td><td>Section 84 (Matters which may be dealt with by prospectus rules)</td></tr> <tr> <td></td><td>Section 85 (Prohibition of dealing etc in transferable securities without approved prospectus)</td></tr> <tr> <td></td><td>Section 87 (Election to have prospectus)</td></tr> <tr> <td></td><td>Section 87A (Criteria for approval of prospectus by competent authority)</td></tr> <tr> <td></td><td>Section 87G (Supplementary prospectus)</td></tr> <tr> <td></td><td>Section 87R (Register of investors)</td></tr> <tr> <td></td><td>Section 88 (Sponsors)</td></tr> </table>		Section 59 (Approval for particular arrangements)		Section 72 (The competent authority)		Section 73A (Part 6 Rules)		Section 74 (The official list)		Section 75 (Applications for listing)		Section 77 (Discontinuance and suspension of listing)		Section 79 (Listing particulars and other documents)		Section 80 (General duty of disclosure in listing particulars)		Section 81 (Supplementary listing particulars)		Section 84 (Matters which may be dealt with by prospectus rules)		Section 85 (Prohibition of dealing etc in transferable securities without approved prospectus)		Section 87 (Election to have prospectus)		Section 87A (Criteria for approval of prospectus by competent authority)		Section 87G (Supplementary prospectus)		Section 87R (Register of investors)		Section 88 (Sponsors)
	Section 59 (Approval for particular arrangements)																																	
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	Section 87G (Supplementary prospectus)																																	
	Section 87R (Register of investors)																																	
	Section 88 (Sponsors)																																	

	Section 89 (Public censure of sponsor)
	Section 89A (Transparency rules)
	Section 89B (Provision of voteholder information)
	Section 89C (Provision of information by issuers of transferable securities)
	Section 89D (Notification of voting rights held by issuer)
	Section 89E (Notification of proposed amendment of issuer's constitution)
	Section 89F (Transparency rules: interpretation etc)
	Section 89G (Transparency rules: other supplementary provisions)
	Section 89O (Corporate governance rules)
	Section 96 (Obligations of issuers of listed securities)
	Section 96A (Disclosure of information requirements)
	Section 96C (Suspension of trading)
	Section 99 (Fees)
	Section 100 (Penalties)
	Section 101 (Part 6 rules: general provisions)
	Section 118(8) (Market abuse)
	Section 136(2) (Funding of the legal assistance scheme)
	Section 138 (General rule-making power)
	Section 139 (Miscellaneous ancillary matters)
	Section 140 (Restrictions on managers of certain collective investment schemes)
	Section 141 (Insurance business rules)
	Section 142(2) (Insurance business: regulations supplementing Authority's rules)
	Section 144 (Price stabilising rules)
	Section 145 (Financial promotion rules)

	Section 146 (Money laundering rules)
	Section 147 (Control of information rules)
	Section 148(3) (Modification or waiver of rules)
	Section 149 (Evidential provisions)
	Section 150(2) (Actions for damages)
	Section 156 (General supplementary powers)
	Section 158A (Guidance on outsourcing by investment firms and credit institutions)
	Section 178 (Obligation to notify the Authority: acquisitions of control)
	Section 191D (Obligation to notify the Authority: dispositions of control)
	Section 213 (The compensation scheme) (including as referred to in section 216(5) (Continuity of long-term insurance policies) and section 217(7) (Insurers in financial difficulties))
	Section 214 (General)
	Section 215 (Rights of the scheme in relevant person's insolvency)
	Section 216 (Continuity of long-term insurance policies)
	Section 217 (Insurers in financial difficulties)
	Section 218(2)(b) (Annual report)
	Section 223 (Management expenses)
	Section 226 (Compulsory jurisdiction) (including as applied by regulation 125 of the <i>Payment Services Regulations</i>)
	Section 226A(7) (Consumer credit jurisdiction)
	Section 229 (Awards)
	Section 234 (Industry funding)
	Section 238(5) (Restrictions on promotion)
	Section 239 (Single property schemes)
	Section 242 (Applications for authorisation of unit trust schemes)

	Section 247 (Trust scheme rules)
	Section 248 (Scheme particulars rules)
	Section 278 (Rules as to scheme particulars)
	Section 283(1) (Facilities and information in UK)
	Section 293 (Notification requirements)
	Section 295 (Notification: overseas investment exchanges and overseas clearing houses)
	Section 300B (Duty to notify proposal to make regulatory provision)
	Section 322 (Rules applicable to former underwriting members)
	Section 332(1) (Rules in relation to persons to whom the general prohibition does not apply)
	Section 340 (Appointment)
	Section 341 (Access to books etc)
	Paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority)
	Paragraphs 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights)
	Schedule 7 (The Authority as Competent Authority for Part VI)
	Paragraphs 7(3) (Annual reports), 13 (Authority's procedural rules), 16B (Procedure for complaints etc) and 16D (Enforcement of money awards) of Schedule 17 (The Ombudsman Scheme)
	Articles 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the <i>Regulated Activities Order</i>
	Regulation 6(1) (FSA rules) of the <i>OEIC Regulations</i>
	Article 4(1) (Designation of pre-commencement provisions) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) (Order 2001 (SI 2001/1534))
	Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the <i>Ombudsman Transitional Order</i>
	The Financial Services and Markets Act 2000 (Variation of

	Threshold Conditions) Order 2001 (SI 2001/2507)
	Articles 4 (Pending applications), 6 (Post-commencement applications), 9 (Article 9 defaults occurring before commencement), 9A (Contributions in relation to mesothelioma claims), 10 (Applications in respect of compulsory liability insurance), 12 (Applications under the new scheme) and 23 (Record-keeping and reporting requirements relating to pre-commencement) of the <i>compensation transitionals order</i>
	Articles 9 (Designation of existing provisions to take effect as rules) and 10 (Modifications of existing provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501)
	Regulation 3 (Consumer contract requirements: modification of rule-making powers) of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (SI 2002/1775)
	Regulation 2 (Power of the Authority to make rules under section 138 of the Financial Services and Markets Act 2000) of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706)
	Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the <i>Mortgage and General Insurance Complaints Transitional Order</i>

4.3	G	The following additional powers have been exercised by the FSA to make the <i>rules</i> in GEN:
		Regulation 2(3) (Application for permission) of the Capital Requirements Regulations 2006 (SI 2006/3221)
		Regulation 82 (Reporting requirements) of the <i>Payment Services Regulations</i>
		Regulation 92 (Costs of compliance) of the <i>Payment Services Regulations</i>
		Articles 3 (Further power for Authority to make rules concerning mesothelioma claims) and 4 (Modification of FSMA in relation to FSA rules for mesothelioma claims) of the <i>mesothelioma regulations</i>
		Regulations 8 (Applications for registration), 9 (Applications for admission to the register of issuers), 18 (Notification requirements), 20 (Material changes to the regulated covered bond), 24

	(Requirements relating to the asset pool), 25 (Change of owner), 36 (financial penalties policy statement), 46 (Modifications of primary and secondary legislation) of, and paragraph 5 (fees) to the Schedule (Modifications to primary and secondary legislation) to, the <i>RCB Regulations</i>
4.4	G The following powers and related provisions in the <i>Act</i> have been exercised by the FSA to issue the parts of the codes in <i>GEN</i> :
	Section 64(2) (Conduct: statements and codes)
	Section 119 (The code)
	Section 120 (Provisions included in the Authority's code by reference to the City Code)
	Section 121 (Codes: procedure)
4.5	G The following powers and related provisions in the <i>Act</i> have been exercised by the FSA to issue the parts of the statements in <i>GEN</i> :
	Section 64(1) (Conduct: statements and codes)
	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i>)
	Section 93 (Statement of policy)
	Section 124 (Statement of policy)
	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i>)
	Section 210 (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i>)
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i>)
4.6	G The following additional powers and related provisions have been exercised by the FSA to issue the parts of the statements in <i>GEN</i> :
	Regulation 42 (Guidance) of the <i>RCB Regulations</i>

	Regulation 44 (Warning notices and decision notices) of the <i>RCB Regulations</i>
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>

4.7	G	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> in <i>GEN</i> to direct, require or specify:
		Section 51 (Applications under this Part)
		Section 60 (Applications for approval)
		Section 148(3) (Modification or waiver of rules)
		Section 182 (Notification)
		Section 242 (Applications for authorisation of unit trust schemes)
		Sections 250(4) and (5) (Modification or waiver of rules)
		Section 270(6)(b) (Schemes authorised in designated countries or territories)
		Section 274 (Applications for recognition of individual schemes)
		Section 287 (Application by an investment exchange)
		Section 288 (Application by a clearing house)
		Section 294(2) (Modification or waiver of rules)
		Section 316 (Direction by Authority)
		Section 317 (The core provisions)
		Section 318 (Exercise of powers through Council)
		Paragraph 5(4) (Notice to Authority) of Schedule 4 (Treaty Rights)
		Articles 9D (Applications for certificates) and 9F (Revocation of certificate on request) of the <i>Regulated Activities Order</i>
		Regulations 7(3) and (4) (Modification or waiver of FSA rules) and 12 (Application for authorisation) of the <i>OEIC Regulations</i>
4.8	G	The following power in the <i>Act</i> has been exercised by the <i>FSA</i> to make the part of the complaints scheme in <i>GEN</i> :

	Paragraph 7 (Arrangements for the investigation of complaints) of Schedule 1 (The Financial Services Authority)
4.9	G The following powers in or under the <i>Act</i> have been exercised by the <i>FSA</i> to give the other <i>guidance</i> in <i>GEN</i> :
	Section 157(1) (Guidance)
	Section 158A (Guidance on outsourcing by investment firms and credit institutions)
	Article 11(1) (Guidance) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) (Order 2001 (SI 2001/1534))
	Article 14 (Guidance on continued provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501)
4.10	G The following additional powers have been exercised by the <i>FSA</i> to make the other <i>guidance</i> in <i>GEN</i> :
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>

Annex E

Amendments to the Fees manual (FEES)

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

After FEES Transitional Provisions, insert the following.

Schedule 1 [to follow]

Schedule 2 [to follow]

Schedule 3 [to follow]

Schedule 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>FEES</i> :
		Section 72 (The competent authority)
		Section 74 (The official list)
		Section 99(1), (1B) and (2) (Fees)
		Section 101 (Part 6 rules: general provisions)
		Section 138 (General rule-making power)
		Section 156 (General supplementary powers)
		Section 213 (The compensation scheme) (including as referred to in section 216(5) (Continuity of long-term insurance policies) and section 217(7) (Insurers in financial difficulties))
		Section 214 (General)
		Section 223 (Management expenses)
		Section 234 (Industry funding)
		Paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority)
		Paragraphs 1 (General), 4 (Rules) and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI)

4.2	G	The following additional powers have been exercised by the <i>FSA</i> to make the
-----	---	---

<i>rules in FEES:</i>	
	Regulation 82 (Reporting requirements) of the <i>Payment Services Regulations</i>
	Regulation 92 (Costs of compliance) of the <i>Payment Services Regulations</i>

4.3 G The following power in the *Act* has been exercised by the *FSA* to make the *guidance* in *FEES*:

Section 157 (Guidance)

4.4 G The following additional power has been exercised by the *FSA* to make the *guidance* in *FEES*:

Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>

4.5 G The following powers and related provisions in the *Act* have been exercised by the *FOS Ltd* to make the *rules* in *FEES*:

Paragraphs 15 (Fees), 16C (Fees) and 18 (Terms of reference to the scheme) of Schedule 17 (The Ombudsman Scheme)
--

Schedule 5 [to follow]

Schedule 6 [to follow]

Annex F

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text.

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>BIPRU</i> :
		...
4.2	G	<u>The following additional powers have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>BIPRU</i>:</u>
		<u>Regulation 2(3) (Application for permission) of the Capital Requirements Regulations 2006 (SI 2006/3221)</u>

...

Annex G**Amendments to the Prudential sourcebook for Insurers (INSPRU)**

In this Annex, underlining indicates new text.

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in the <i>Act</i> have been exercised by the FSA ... :
		...
		Section 156 ...
		<u>Section 316(1) (Direction by Authority)</u>
		...

Annex H

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>MIPRU</i> :
		...
		Section 149 (Evidential provisions); and
		<u>Section 150(2) (Actions for damages)</u>
		Section 156 (General supplementary powers)

Annex I

Amendments to the Conduct of Business sourcebook (COBS)

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

Obligations on cancellation

- 15.4.4 R The *firm* must, without any undue delay and no later than within 30 calendar days, return to the *consumer* any sums it has received from him in accordance with the ~~*distance contract*~~ contract, except for any amount that the *consumer* may be required to pay under this section. ...

...

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>COBS</i> :
		Section 138 (General rule-making power)
		<u>Section 141 (Insurance business rules)</u>
		...

Annex J

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text.

- 2.6A.18 G ... A *reversion administrator* or *SRB administrator* is under the same obligation in relation to a *reversion occupier* or *SRB agreement seller* under a *home reversion plan* or *regulated sale and rent back agreement* which it administers on behalf of an *unauthorised reversion provider* or *unauthorised SRB agreement provider*.

...

Annex K

Amendments to the Market Conduct sourcebook (MAR)

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

5.7 Pre-trade transparency requirements for shares

- 5.7.1 R (1) Unless (2), (3) or (4) applies, in respect of shares *admitted to trading* on a *regulated market*, a firm operating an *MTF* must make public, on reasonable commercial terms and on a continuous basis during *normal trading hours*:
- (a) the current bid and offer prices which are advertised through its systems; and
 - (b) the depth of trading interests at those prices.
- [**Note:** Article 29(1) of *MiFID*]
- (2) Paragraph (1) does not apply to systems operated by an *MTF* to the extent that those systems satisfy one of the criteria in (a) or (b), subject to (c):
- (a) ...
 - (b) they formalise negotiated transactions, each of which meets one of the criteria in (i) and (ii), subject to the provisions in (iii) and (iv):
 - (i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the *MTF* operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;
 - (ii) it is subject to conditions other than the current market price of the share.
 - (iii) For the purposes of (b), the other conditions specified in the rules of the *MTF* for a transaction of this kind must also have been fulfilled.
 - (iv) Negotiated transaction has the meaning given in Article 19 of the *MiFID Regulation*.

[**Note:** Article 19 of the *MiFID Regulation* is reproduced in

MAR 5.7.9EU.]

...

...

...

5.7.8	EU	<p>1. Waivers in accordance with Article 29(2) and 44(2) of [the <i>MiFID</i>] Directive 2004/39/EC may be granted by the <i>competent authorities</i> for systems operated by an <i>MTF</i> or a <i>regulated market</i>, if those systems satisfy one of the following criteria:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 80%;"> <p>(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;</p> </td></tr> <tr> <td></td><td></td><td> <p>(b) they formalise negotiated transactions, each of which meets <u>one of</u> the following criteria:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 80%;"> <p>(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;</p> </td></tr> <tr> <td></td><td></td><td> <p>(ii) it is subject to conditions other than the current market price of the share.</p> </td></tr> </table> </td></tr> <tr> <td></td><td></td><td colspan="2"> <p>For the purposes of point (b), the other conditions specified in the rules of the regulated market or <i>MTF</i> for a transaction of this kind must also have been fulfilled.</p> <p>In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.</p> </td></tr> <tr> <td></td><td></td><td colspan="2"> <p>...</p> </td></tr> </table>					<p>(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;</p>			<p>(b) they formalise negotiated transactions, each of which meets <u>one of</u> the following criteria:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 80%;"> <p>(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;</p> </td></tr> <tr> <td></td><td></td><td> <p>(ii) it is subject to conditions other than the current market price of the share.</p> </td></tr> </table>			<p>(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;</p>			<p>(ii) it is subject to conditions other than the current market price of the share.</p>			<p>For the purposes of point (b), the other conditions specified in the rules of the regulated market or <i>MTF</i> for a transaction of this kind must also have been fulfilled.</p> <p>In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.</p>				<p>...</p>	
		<p>(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;</p>																						
		<p>(b) they formalise negotiated transactions, each of which meets <u>one of</u> the following criteria:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 80%;"> <p>(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;</p> </td></tr> <tr> <td></td><td></td><td> <p>(ii) it is subject to conditions other than the current market price of the share.</p> </td></tr> </table>			<p>(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;</p>			<p>(ii) it is subject to conditions other than the current market price of the share.</p>																
		<p>(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;</p>																						
		<p>(ii) it is subject to conditions other than the current market price of the share.</p>																						
		<p>For the purposes of point (b), the other conditions specified in the rules of the regulated market or <i>MTF</i> for a transaction of this kind must also have been fulfilled.</p> <p>In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.</p>																						
		<p>...</p>																						

...

Publication of results of calculations and estimates made by the FSA

- 7.2.13 G The information relating to ‘minimum qualifying size’ referred to in Article 28 of the *MiFID Regulation* (see MAR 7.2.6EU) and the results of calculations and estimates required to be published as a result of Articles 33 and 34 of the *MiFID Regulation* are available at www.fsa.gov.uk and at www.cesr.eu.org <http://mifiddatabase.cesr.eu/>.

Trade Data Monitors

7.2.14 G The *FSA* considers that a *firm* will satisfy its obligations under MAR 7.2.12EU if:

- (1) in assessing the arrangements, the *firm* follows the guidelines published on the *FSA*'s website at www.fsa.gov.uk/Pages/About/What/International/mifid/documents/index.shtml http://www.fsa.gov.uk/pubs/international/guidelines_tdm.pdf; and

...

A “trade data monitor” is a provider of such arrangements which has been assessed by the *FSA* or an external auditor as having the capability to provide services and facilities to *firms* in accordance with the guidelines published on the *FSA*'s website at

www.fsa.gov.uk/Pages/About/What/International/mifid/documents/index.shtml http://www.fsa.gov.uk/pubs/international/guidelines_tdm.pdf.

...

Sch 4 Powers exercised

...

The following powers in the <i>Act</i> have been exercised by the <i>FSA</i> to give the <i>guidance</i> in MAR (including the <i>guidance</i> comprising of the <i>Code of Market Conduct</i>):

...	
-----	--

	Section 120 ...
--	-----------------

	<u>Section 121 (Codes: procedure)</u>
--	---------------------------------------

...	
-----	--

Annex L

Amendments to the Supervision manual (SUP)

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

Director function (CF1)

- 10.6.4 R If a *firm* is a *body corporate* (other than a *limited liability partnership*), the *director function* is the function of acting in the capacity of either a:
- (1) *director* (other than *non-executive director*) of that *firm*; or
 - (2) *a person*:
 - (a) who is a *director*, partner, officer, member (if the *parent undertaking* or *holding company* is a *limited liability partnership*), *senior manager*, or employee (other than a *non-executive director*) of a *parent undertaking* or *holding company* (except where that *parent undertaking* or *holding company* ~~is an EEA firm has a Part IV permission or is regulated by an EEA regulator~~); and
 - (b) whose decisions or actions are regularly taken into account by the *governing body* of the *firm*.
- ...

Non-executive director function (CF2)

- 10.6.8 R (1) If a *firm* is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of either a:
- (a) *non-executive director* of that *firm*; or
 - (b) *non-executive director* of a *parent undertaking* or *holding company* (except where that *parent undertaking* or *holding company* ~~is an EEA firm has a Part IV permission or is regulated by an EEA regulator~~) whose decisions, or actions are regularly taken into account by the *governing body* of the *firm*.
- ...

10.12 Application for approval and withdrawing an application for approval

...

Who should make the application?

- 10.12.3 G (1) In accordance with section 60 of the *Act* (Applications for approval), applications must be submitted by, or on behalf of, the *firm* itself, not by:
- (a) the *candidate*; or
 - (b) (where the *candidate* works for the *firm's parent undertaking* or *holding company*) by the *firm's parent undertaking* or *holding company*).
- ...
- ...

SUP TP 1 Transitional provisions

...

TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8H	<u>SUP 10.1.7R(1)</u>	R	<p>(1) This rule deals with the application of the <i>director function</i> under SUP 10.1.7R(1) to a person (a "director") who would otherwise have been performing the <i>director function</i> on 6 August 2009 in an <i>overseas firm</i> which maintains an establishment in the <i>United Kingdom</i> from which <i>regulated activities</i> are carried on (or would have been doing so but for a <i>waiver</i>).</p> <p>(2) Between the dates in column (5), the functions described in SUP 10.1.7R(1) are not treated as forming part of the <i>director function</i> as respects that establishment in the <i>United Kingdom</i>, and that director.</p>	<u>6 October 2009 to 6 February 2010</u>	<u>6 February 2010</u>

			(3) If this transitional rule has not already expired under column (5), this rule comes to an end as respects that director and that establishment in the United Kingdom, if and when an application is made for the director to perform the <i>director function</i> for that establishment in the United Kingdom and that application is granted.		
8I	<u>SUP</u> <u>10.1.7R(2)</u>	R	(1) This rule deals with the application of the <i>non-executive director function</i> under SUP 10.1.7R(2) to a person (a “non-executive director”) who would otherwise have been performing the <i>non-executive director function</i> on 6 August 2009 in an <i>overseas firm</i> which maintains an establishment in the United Kingdom from which <i>regulated activities</i> are carried on (or would have been doing so but for a <i>waiver</i>).	<u>6 October 2009 to 6 February 2010</u>	<u>6 February 2010</u>
			(2) Between the dates in column (5), the functions described in SUP 10.1.7R(2) are not treated as forming part of the <i>non-executive director function</i> as respects that establishment in the United Kingdom, and that non-executive director. (3) If this transitional rule has not already expired under column (5), this rule comes to an end as respects that non-executive director and that establishment in the United Kingdom, if and when an application is made for the non-executive director to perform the <i>non-executive director function</i> for that establishment in the United Kingdom and that application is granted.		

<u>8J</u>	<u>SUP</u> <u>10.1.7R(5)</u>	R	<p>(1) This rule deals with the application of the <i>systems and controls function</i> under SUP 10.1.7R(5) to persons who would otherwise have been performing the <i>systems and controls function</i> on 6 August 2009 in an <i>overseas firm</i> which maintains an establishment in the <i>United Kingdom</i> from which <i>regulated activities</i> are carried on (or would have been doing so but for a waiver).</p>	<u>6 October 2009 to 6 February 2010</u>	<u>6 February 2010</u>
			<p>(2) Between the dates in column (5), the functions described in SUP 10.1.7R(5) are not treated as forming part of the <i>systems and controls function</i> as respects that establishment in the <i>United Kingdom</i> and that person.</p> <p>(3) If this transitional rule has not already expired under column (5), this rule comes to an end as respects that person and that establishment in the <i>United Kingdom</i>, if and when an application is made for that person to perform the <i>systems and controls function</i> for that establishment in the <i>United Kingdom</i> and that application is granted.</p>		
...					

...

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the FSA to make the rules in SUP:
-----	---	---

	...
	Section 247 ...
	<u>Section 293 (Notification requirements)</u>

	Section 318(1) ...
	...
	Regulation <u>Regulations</u> 6(1) (<u>FSA rules</u>) and 12 (<u>Applications for authorisation</u>) of the OEIC <u>Regulations</u> <i>OEIC Regulations</i> (FSA rules)
	Article 4(1) of The <u>the</u> Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) Order 2001 (<u>SI 2001/1534</u>) The <u>Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) Order 2001</u>

4.2 G The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to give the *guidance* in *SUP*:

	Section 157(1) (Guidance)
	Article 11(1) of The <u>the</u> Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) Order 2001 (<u>SI 2001/1534</u>)

4.3 G The following powers and related provisions in or under the *Act* have been exercised by the *FSA* in *SUP* to direct or require:

...	
	Section 317 <u>316</u> (Direction by Authority)
...	

Annex M

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Appendix 1 Introduction

...

- 1.1.4 G This appendix is relevant both to the obligations arising under the complaints handling *rules* contained in *DISP 4.2* 1 and to the *FSA*'s approach to the supervision of *firms*.

Annex N

Amendments to the Compensation sourcebook (COMP)

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

Part 1: Comes into force on 1 October 2009

10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
<i>Protected deposit or protected dormant account</i>	100% of <i>claim</i>	<p>£50,000 or €50,000 whichever is the greater on the date the <i>relevant person</i> is determined to be <i>in default</i> or the date the <i>protected deposit</i> was due and payable, if later.</p> <p>[Note: article 7(1) of the <i>Deposit Guarantee Directive</i>]</p> <p>(see also below for building society and other mutual society mergers <u>and transfers</u> (COMP 10.2.10R) and protected deposit transfers under the special resolution regime (COMP 10.2.11R))</p>
...		

...

Building society and other mutual society mergers and transfers

10.2.10 R (1) ...

- (2) In the event of a merger between two *building societies* or a transfer of the business of a building society and the to a subsidiary of another mutual society (whether or not of the same type), there is a separate and additional £50,000 maximum payment limit for a claimant with respect to *claims for protected deposits* held under the name of the dissolved entity (or such part of the name as is permitted

by law) provided the following conditions are satisfied:

- (a) the merger or transfer takes effect between 1 December 2008 and 30 December 2010;
 - (b) the successor entity has notified the FSA before the merger or transfer takes effect that it wishes this *rule* to apply;
 - (c) before the merger or transfer took effect, the claimant had a *protected deposit* with each of the ~~merging~~ relevant entities; and
 - (d) the successor entity continues to operate the business of the dissolved entity under the name of the latter (or such part of the name as is permitted by law).
- ...
- ...

10.2.11 R (1) ...

- (2) In the event of a transfer of *protected deposits* from one *deposit-taking firm* to another *deposit-taking firm* pursuant to the property transfer powers under the Banking Act 2009, there is a separate and additional £50,000 maximum payment limit for a claimant with respect to *claims for protected deposits* held under the name of the transferor (or such part of the name as is permitted by law) provided the following conditions are satisfied:
- ...
- ...

TP 1.1 Transitional provision table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook Provisions; coming into force
...					
<u>20</u>	<u>COMP</u> <u>4.3.1R</u>	<u>R</u>	<u>The change to the eligibility requirements for claimants for protected deposits made by the Financial Services Compensation Scheme</u>	<u>From 1 August 2009 indefinitely</u>	<u>1 August 2009</u>

			(Banking Compensation Reform) Instrument 2009 does not apply in relation to a <i>claim against a relevant person that was in default before 1 August 2009.</i>		
--	--	--	--	--	--

Part 2: **Comes into force on 31 December 2010**

INTRO 1 Foreword

...

The Sourcebook is divided into ~~16~~ 17 Chapters covering all aspects of the scheme:

...

Chapter 17 Systems and information requirements for firms that accept deposits

This chapter sets out the information required by the FSCS to make deposit compensation payments to eligible depositors. This chapter also sets out the electronic requirements connected to the information contained within each Single Customer View, including the requirement to flag eligible depositor accounts, aggregate accounts held by each eligible depositor to provide a consistent view of each eligible depositor, perform a limit check on each aggregated Single Customer View and enable the electronic submission of the Single Customer View to the FSCS. This chapter also outlines a threshold below which the electronic requirements connected to the Single Customer View are not mandatory.

...

17.2.4 R A *firm* must ensure that each *single customer view* contains all the information set out in *COMP 17.2.7R* *17.2.8R*.

...

17.2.7 R (1) If a *firm* operates less than 5,000 accounts held by *eligible claimants*, *COMP 17.2.1R(2)*, *COMP 17.2.3R(2)* *17.2.3R(3)* and *COMP 17.2.5R* do not apply.

(2) ...

(3) If a *firm* hitherto within (1) operates 5,000 or more accounts held by *eligible claimants* for two consecutive accounts years as at 31 December of each year, *COMP 17.2.1R(2)*, *COMP 17.2.3R(2)* *17.2.3R(3)* and *COMP 17.2.5R* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.

- (4) If a *firm* operates 5,000 or more accounts held by *eligible claimants* on 31 December 2009 COMP 17.2.1R(2), COMP ~~17.2.3R(2)~~
17.2.3R(3) and COMP 17.2.5R apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.

17.2.8 R This table belongs to COMP 17.2.4R

Field identifier	Field descriptor
...	...
National Insurance number	National Insurance number, <u>where held by the firm</u>
...	...

Annex O**Amendments to the Complaints against the FSA Scheme sourcebook (COAF)**

In this Annex, underlining indicates new text.

Sch 4 Powers exercised

4.1	G	The following powers ... have been exercised by the FSA to make the Complaints against the FSA Scheme:
		<u>Section 157(1) (Guidance)</u>
		...

Annex P**Amendments to the Collective Investment Schemes sourcebook (COLL)**

In this Annex, underlining indicates new text.

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the FSA to make the <i>rules</i> in <i>COLL</i> :
		Section 138 (General rule-making power)
		<u>Section 139 (Miscellaneous ancillary powers)</u>
		...
		Section 156 (General supplementary powers)
		<u>Section 238(5) (Restrictions on promotion)</u>
		...

Annex Q

Amendments to the Credit Unions sourcebook (CRED)

In this Annex, underlining indicates new text.

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>CRED</i> :
		Section 138 ...
		<u>Section 146 (Money laundering rules);</u>
		...

Annex R

Amendments to the Regulated Covered Bonds sourcebook (RCB)

Delete Schedule 4 (Powers exercised) and replace with the following. The text is not underlined.

Sch 4 Powers exercised

4.1	<p>G The following powers and related provisions in the <i>RCB Regulations</i> have been exercised by the <i>FSA</i> to make the rules and directions in <i>RCB</i>:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"> </td><td>Regulation 8 (Applications for registration)</td></tr> <tr> <td> </td><td>Regulation 9 (Applications for admission to the register of issuers)</td></tr> <tr> <td> </td><td>Regulation 18 (Notification requirements)</td></tr> <tr> <td> </td><td>Regulation 20 (Material changes to the regulated covered bond)</td></tr> <tr> <td> </td><td>Regulation 24 (Requirements relating to the asset pool)</td></tr> <tr> <td> </td><td>Regulation 25 (Change of owner)</td></tr> <tr> <td> </td><td>Regulation 36 (financial penalties policy statement)</td></tr> <tr> <td> </td><td>Regulation 46, and paragraph 5 (fees) of the Schedule (Modifications to primary and secondary legislation)</td></tr> </table>		Regulation 8 (Applications for registration)		Regulation 9 (Applications for admission to the register of issuers)		Regulation 18 (Notification requirements)		Regulation 20 (Material changes to the regulated covered bond)		Regulation 24 (Requirements relating to the asset pool)		Regulation 25 (Change of owner)		Regulation 36 (financial penalties policy statement)		Regulation 46, and paragraph 5 (fees) of the Schedule (Modifications to primary and secondary legislation)
	Regulation 8 (Applications for registration)																
	Regulation 9 (Applications for admission to the register of issuers)																
	Regulation 18 (Notification requirements)																
	Regulation 20 (Material changes to the regulated covered bond)																
	Regulation 24 (Requirements relating to the asset pool)																
	Regulation 25 (Change of owner)																
	Regulation 36 (financial penalties policy statement)																
	Regulation 46, and paragraph 5 (fees) of the Schedule (Modifications to primary and secondary legislation)																
4.2	<p>G The following power under the <i>Act</i> has been exercised by the <i>FSA</i> to make the rules in <i>RCB</i>:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"> </td><td>Section 138 (General rule-making power)</td></tr> </table>		Section 138 (General rule-making power)														
	Section 138 (General rule-making power)																
4.3	<p>G The following power in the <i>RCB Regulations</i> has been exercised by the <i>FSA</i> to give the <i>guidance</i> in <i>RCB</i>:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"> </td><td>Regulation 42 (Guidance)</td></tr> </table>		Regulation 42 (Guidance)														
	Regulation 42 (Guidance)																

Annex S

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in the <i>Act</i> have been exercised by the FSA to make the <i>rules</i> in REC:
		<u>Section 138 (General rule-making power)</u>
		Section 156 ...
		...

Annex T

Amendments to the Listing Rules sourcebook (LR)

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

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:

...

(5) is required to do so by the *FSA* because it appears to the *FSA* that there is, or may be, a breach of the *listing rules* or the *disclosure rules and and transparency rules* by the *listed company*.

Other transaction where a listed company must obtain a sponsor's guidance

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 the *listing rules and disclosure rules and and transparency rules*.

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 the *listing rules and disclosure rules and and transparency rules*.

...

8.3.1 R A *sponsor* must in relation to a *sponsor service*:

...

(2) referred to in *LR 8.2.1R*, *LR 8.2.2R* or *LR 8.2.3R*, guide the *listed company* or *applicant* in understanding and meeting its responsibilities under the *listing rules and disclosure rules and and transparency rules*.

...

8.3.4R R Where, in relation to a *sponsor service*, a *sponsor* gives any guidance or advice to a *listed company* or *applicant* on the application or interpretation of the *listing rules or disclosure rules and and transparency rules*, the *sponsor* must take reasonable steps to satisfy itself that the *director* or *directors* of the *listed company* understand their responsibilities and obligations under the *listing rules and disclosure rules and and transparency rules*.

...

- 8.3.5A R A *sponsor* must in relation to a *sponsor service* 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 concerns non-compliance with the *listing rules* or *disclosure rules* ~~and~~ and *transparency rules*.
- ...
- 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:
- ...
- (3) the *directors* of the *applicant* have established procedures which enable the *applicant* to comply with the *listing rules* and the *disclosure rules* ~~and~~ and *transparency rules* on an ongoing basis;
- ...
- ...
- 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:
- ...
- (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~~ and *transparency rules*; and
- ...
- ...
- 8.6.9B G In assessing whether a *person* is competent to provide, or to continue to provide, *sponsor services*, the *FSA* may also take into account, where relevant, the quality of any guidance or advice on the *listing rules* or *disclosure rules* ~~and~~ and *transparency rules* the *person* has given in circumstances other than in providing *sponsor services*.
- ...

After LR Transitional Provisions, insert the following. The text is new and is not underlined.

Schedule 1 [to follow]

Schedule 2 [to follow]

Schedule 3 [to follow]**Schedule 4 Powers exercised**

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>LR</i> :
		Section 73A (Part 6 Rules)
		Section 75 (Applications for listing)
		Section 77 (Discontinuance and suspension of listing)
		Section 79 (Listing particulars and other documents)
		Section 80 (General duty of disclosure in listing particulars)
		Section 81 (Supplementary listing particulars)
		Section 88 (Sponsors)
		Section 89 (Public censure of sponsor)
		Section 96 (Obligations of issuers of listed securities)
		Section 99 (Fees)
		Section 100 (Penalties)
		Section 101 (Part 6 rules: general provisions)
		Section 138 (General rule-making power)
		Section 156 (General supplementary powers)
		Schedule 7 (The Authority as Competent Authority for Part VI)
4.2	G	The following power in the <i>Act</i> has been exercised by the <i>FSA</i> to give the <i>guidance</i> in <i>LR</i> :
	(1)	Section 157(1) (Guidance)

Schedule 5 [to follow]**Schedule 6** [to follow]

Annex U

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

After DTR Transitional Provisions, insert the following. The text is new and is not underlined.

Schedule 1 [to follow]

Schedule 2 [to follow]

Schedule 3 [to follow]

Schedule 4 Powers exercised

4.1	<p>G The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>DTR</i>:</p> <ul style="list-style-type: none"> Section 73A (Part 6 Rules) Section 89A (Transparency rules) Section 89B (Provision of voteholder information) Section 89C (Provision of information by issuers of transferable securities) Section 89D (Notification of voting rights held by issuer) Section 89E (Notification of proposed amendment of issuer's constitution) Section 89F (Transparency rules: interpretation etc) Section 89G (Transparency rules: other supplementary provisions) Section 89O (Corporate governance rules) Section 96 (Obligations of issuers of listed securities) Section 96A (Disclosure of information requirements) Section 96C (Suspension of trading) Section 99 (Fees) Section 101 (Part 6 rules: general provisions) Section 138 (General rule-making power) Section 156 (General supplementary powers)
-----	---

	Schedule 7 (The Authority as Competent Authority for Part VI)
--	---

4.2	G	The following power in the <i>Act</i> has been exercised by the <i>FSA</i> to give the <i>guidance</i> in <i>DTR</i> :
		Section 157(1) (Guidance)

Schedule 5 [to follow]

Schedule 6 [to follow]

Annex V

Amendments to the Prospectus Rules sourcebook (PR)

After PR Transitional Provisions, insert the following. The text is new and is not underlined.

Schedule 1 [to follow]

Schedule 2 [to follow]

Schedule 3 [to follow]

Schedule 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>PR</i> :
		Section 73A (Part 6 Rules)
		Section 84 (Matters which may be dealt with by prospectus rules)
		Sections 85 (Prohibition of dealing etc in transferable securities without approved prospectus)
		Section 87 (Election to have prospectus)
		Section 87A (Criteria for approval of prospectus by competent authority)
		Section 87G (Supplementary prospectus)
		Section 87R (Register of investors)
		Section 96 (Obligations of issuers of listed securities)
		Section 99 (Fees)
		Section 101 (Part 6 rules: general provisions)
		Schedule 7 (The Authority as Competent Authority for Part VI)

4.2	G	The following power in the <i>Act</i> has been exercised by the <i>FSA</i> to give the <i>guidance</i> in <i>PR</i> :
		Section 157(1) (Guidance)

Schedule 5 [to follow]

Schedule 6 [to follow]

Annex W

Amendments to the Perimeter Guidance manual (PERG)

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

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. These documents, and the URL on which they may be accessed, include:
- (1) [deleted]
 - (2) [deleted]
 - (3) [deleted]
 - (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/small_firms/insurance/faq/property.shtml; [deleted]
 - (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/small_firms/insurance/faq/exclusion.shtml;) [deleted]
 - (6) *guidance on passporting for insurers and insurance intermediaries -* http://www.fsa.gov.uk/pages/Doing/small_firms/insurance/faq/insurers.shtml; [deleted]
 - (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_ppfforum.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/small_firms/insurance/library/imd.shtml; http://www.fsa.gov.uk/smallfirms/your_firm_type/gi/library/imd.shtml ; 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>.
- ...

- 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~~ *COBS 4 (Communicating with clients, including financial promotions)* apply to *e-money*.
 ...
- 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 the *financial promotion rules* apply 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)).~~
 ...
- 8.2.5 G If the answer to PERG 8.2.4G(8) is yes then the appropriate *financial promotion rules* will potentially apply (subject to ~~additional exemptions in, for example, COB 3.2.5R the application provisions in COBS 1 and COBS 4~~). 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 COBS 4.10.4R~~). PERG 8.36.1G contains a flowchart explaining these steps.
 ...
- 8.4.34 G ... 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 COBS 4.10.4R~~). In such cases, an exemption would need to apply. ...
 ...
- 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 COBS 4 or MCOB 3~~ (as relevant). ...
 ...

8.19.1 G ...

~~COB 3.13.1R COBS 4.9.4R~~ imposes a similar restriction on *authorised persons* concerning their *communicating or approving financial promotions* in the precluded circumstances.

...
 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 Annex 5R and referred to in COB 3.11 COBS 4.12.1R~~. ...

...
10.5 Employers and affinity groups (such as trade unions)

...
Q 48 What are the exemptions that are available to employers?

Where an employer is obliged by law to offer its employees a *stakeholder pension scheme*, any *financial promotion* made for that purpose will be exempt under article 29 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (“the *Financial Promotion Order*”).

There is also a specific exemption for employers who make financial promotions to their staff in article 71 72 of the ~~Financial Promotion Order~~ Financial Promotion Order. This applies, broadly speaking, where:

- the promotion is about a *group personal pension* or a *stakeholder pension scheme*;
- the employer contributes to the pension scheme and discloses details of its contribution to the employee;
- the employer does not obtain any direct commercial benefit from promoting the scheme to its employees; and
- the employer informs the employee in any written promotion of his right to seek independent financial advice from a regulated person.

Q49 Are there any other exemptions available to employers or any that apply to affinity groups?

There are a few exemptions that may be relevant. For example:

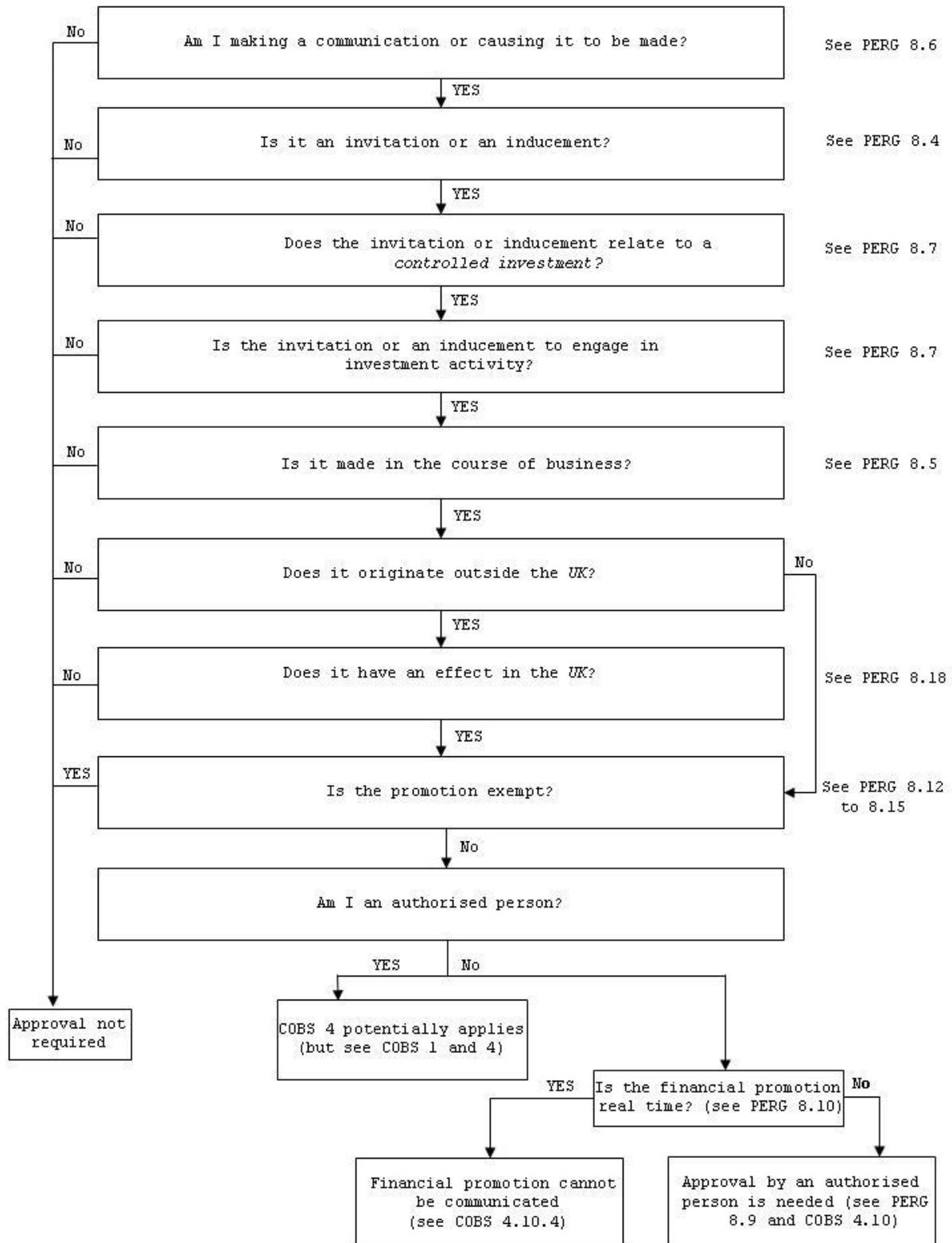
- follow-up promotions, such as may be made after the employer has made a promotion under article 71 72 of the ~~Financial Promotion Order~~ Financial

Promotion Order - see article 14 of the ~~Financial Promotion Order~~
Financial Promotion Order; and

- one-off promotions (that is, promotions that take account of the personal circumstances of the recipient) - see articles 28 and 28A of the ~~Financial Promotion Order~~ Financial Promotion Order.

continued

- 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.



...

- 9.10.3 G Promotions made by *authorised persons* in the *United Kingdom* are generally subject to the controls in ~~COB 3 (Financial Promotion)~~ COBS 4 (Communicating with clients, including financial promotions). ...

...

- 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 Annex 5R (which is introduced by COB 3.11)~~ COBS 4.12.1R.

**COMPANIES ACT 2006 (CONSEQUENTIAL HANDBOOK AMENDMENTS NO 3)
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 Rules);
 - (b) section 138 (General rule-making power);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance); and
 - (e) section 247 (Trust scheme rules);
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

Commencement

- C. This instrument comes into force on 1 October 2009.

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
Threshold Conditions (COND)	Annex B
General Provisions (GEN)	Annex C
General Prudential sourcebook (GENPRU)	Annex D
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex E
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex F
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex G
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex H
Market Conduct sourcebook (MAR)	Annex I
Supervision manual (SUP)	Annex J
Collective Investment Schemes sourcebook (COLL)	Annex K
Credit Unions sourcebook (CRED)	Annex L

Listing Rules sourcebook (LR)	Annex M
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex N

Amendments to material outside the Handbook

- E. The Building Societies Regulatory Guide (BSOG) is amended in accordance with Annex O to this instrument.
- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex P to this instrument.

Citation

- G. This instrument may be cited as the Companies Act 2006 (Consequential Handbook Amendments No 3) Instrument 2009.

By order of the Board
24 September 2009

Annex A

Amendments to the Glossary of definitions

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

employees' share scheme has the same meaning as in section 743 1166 of the Companies Act 1985 2006.

- issuer*
- (1) ...
 - (2B) (in chapter 5 of *DTR*):
 - (a) ...
 - (b) a public company within the meaning of section 1(3) 4(2) of the Companies Act 1985 2006 and any other body corporate incorporated in and having a principal place of business in the United Kingdom, whose *shares* are admitted to trading on a market which (not being a *regulated market*) is a *prescribed market*.
- ...

OEIC Regulations the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228) ~~or for an ICVC established in Northern Ireland, the Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (SR 2004/335)~~.

participation (for the purposes of *ELM*, *UPRU* and *GENPRU* and for the purposes of *BIPRU* and *INSPRU* as they apply on a consolidated basis):

- (a) a participating interest may be defined according to:
 - (i) section 260 421A of the *Companies Act 1985* Act where applicable; or
- ...
- ...

relevant security ...

- (3) ~~(in *LR*) has the same meaning as in section 80 of the Companies Act 1985 . [deleted]~~

share ...

- (3) (in *DTR* and *LR*, and in *FEES* where relevant to *DTR* or *LR*;) (in accordance with section 744 540(1) of the Companies Act 1985 2006) 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);
- (b) *preference shares*; and
- (c) in chapters 4, 5 , 6 and 7 of *DTR* a convertible share.

...

*subsidiary
undertaking*

...

- (3) in *LR*) as defined in section 258 1162 of the Companies Act 1985 2006.

treasury shares

~~qualifying shares to which sections 162A to 162G of the Companies Act 1985 apply shares which meet the conditions set out in paragraphs (a) and (b) of subsection 724(5) of the Companies Act 2006.~~

Annex B

Amendments to the Threshold Conditions (COND)

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

- 2.3.6 G (1) Section 420(1) of the *Act* (Parent and subsidiary undertaking) states that, except in relation to an *incorporated friendly society*, '*parent undertaking*' and '*subsidiary undertaking*' have the same meaning as in ~~Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986~~ the Companies Acts (see section 1162 of, and schedule 7 to, the Companies Act 2006). These are the cases referred to in *COND 2.3.7G(1)(a) to (f)*.
- ...
- 2.3.7 G (1) For the purposes of *threshold condition 3* (Close links) and except in relation to an *incorporated friendly society*, an undertaking is a *parent undertaking* of another *undertaking* (*a subsidiary undertaking*) if any of the following apply to it:
- ...
- (e) it has a participating interest (as defined in ~~section 260 of the Companies Act 1985~~ section 421A of the Act (Participating interests Meaning of “participating interest”)) in the *subsidiary undertaking* and:
- (i) actually exercises a dominant influence over it; or
 - (ii) it and the *subsidiary undertaking* are managed on a unified basis; or
- ...
- 2.3.8 G ...
- (3) Section ~~260(4) of the Companies Act 1985~~ 421A of the Act states that an interest held on behalf of an *undertaking* is treated as held by it. Thus, if the chain of ownership includes a trust, the FSA will treat the trustees as legal owners when determining whether it considers there to be a *close link*. The beneficiaries or settlors of a trust (or both) may also come within the scope of these provisions, depending on the terms of the trust. However, the FSA will consider each case on its merits.
- 2.3.9 G The provisions of Schedule ~~10A~~ 7 to the Companies Act ~~1985~~ 2006 (Parent and subsidiary undertakings; supplementary provisions) explain and supplement the provisions of section ~~258 in Part VII~~ 1162 of the Companies Act ~~1985~~ 2006

(outlined in *COND 2.3.7G(1)(a) to (f)*).

...

- 2.3.12 G The *guidance* in *COND 2.3* is not comprehensive and is not a substitute for consulting the relevant legislation, for example the Companies Act 1985 2006, ~~the Companies (Northern Ireland) Order 1986~~, the Friendly Societies Act 1992 and the *Seventh Company Law Directive*, or obtaining appropriate professional advice.

Annex C

Amendments to the General Provisions (GEN)

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

GEN TP 1 Transitional provisions

...

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
...					
25	References in the <i>Handbook and Regulatory Guides</i> (except those in <i>LR</i> , <i>PR</i> and <i>DTR</i>) to Companies Act 1985 and Companies (Northern Ireland) Order 1986 provisions which have been repealed, in whole or in part, by the Companies Act 2006.	R	Each reference is to be read as a reference to the corresponding provision of the Companies Act 2006 and related provisions taking into account any relevant commencement, <u>consequential</u> , transitional or savings provisions made under that Act or related provisions.	From 6 April 2008 until 1 November <u>2009</u> <u>2010</u>	various

26	Paragraph 25	G	<p>(1) The purpose of the transitional provision in paragraph 25 is to ensure the effectiveness of provisions which have been, or will be, repealed by the Companies Act 2006 until each cross reference or dependency in the <i>Handbook</i> is reviewed and updated as appropriate.</p>	From 6 April 2008 until 1 November 2009 <u>2010</u>	various
27	<u>References in the Handbook and Regulatory Guides (except those in LR, PR and DTR) to the Companies Act 2006.</u>	R	<p>(1) This provision applies where any provision of the Companies Act 2006 re-enacts (with or without modification) an enactment repealed by that Act.</p> <p>(2) The repeal and re-enactment does not affect the continuity of the law.</p> <p>(3) Anything done (including subordinate legislation made), or having effect as if done, under or for the purposes of the repealed provision that could have been done under or for the purposes of the corresponding provision of the Companies Act 2006, if in force or effective immediately before the commencement of that corresponding provision, has effect thereafter as if done under or for the purposes of that</p>	From 1 October 2009	various

			<p><u>corresponding provision.</u></p> <p><u>(4) Any reference (express or implied) in this Handbook to a provision of the Companies Act 2006 shall be construed (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.</u></p> <p><u>(5) References in this section to the Companies Act 2006 include subordinate legislation made under that Act.</u></p> <p><u>(6) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978.</u></p>		
28	<u>Paragraph 27</u>	G	<p><u>The purpose of the transitional provision in paragraph 27 is to ensure continuity of law as regards the Companies Acts, so that things done under the provisions of the 1985 Act that are repealed and replaced by the 2006 Act will continue to be effective.</u></p>	<u>From 1 October 2009</u>	<u>Various</u>

Annex D

Amendments to the General Prudential sourcebook (GENPRU)

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

2.2 Capital resources

...

General conditions for eligibility as tier one capital

- 2.2.64 R The conditions that an item of capital of a *firm* must comply with under *GENPRU 2.2.62R(2)* are as follows:

...

- (9) it ranks for repayment upon winding up, administration or any other similar process no higher than a *share* of a company incorporated under the Companies Act ~~1985 2006 or the Companies (Northern Ireland) Order 1986~~ (whether or not it is such a *share*); and

...

...

Meaning of redemption

- 2.2.78 R (1) A *share* is not redeemable for the purposes of this section merely because the Companies Act 1985, ~~or the Companies (Northern Ireland) Order 1986 or the Companies Act 2006~~ allows the *firm* that issued it to purchase it.

...

...

Loss absorption

- 2.2.80 R A *firm* may not include a *share* in its *tier one capital resources* unless (in addition to complying with the other relevant *rules* in *GENPRU 2.2*):

- (1) (in the case of a *firm* that is a company as defined in the Companies Act ~~1985 2006 or the Companies (Northern Ireland) Order 1986~~ it is “called-up *share capital*” within the meaning given to that term in that Act ~~or, as the case may be, that Order~~; or

- ...
- ...
- Core tier one capital: permanent share capital
- 2.2.83 R *Permanent share capital* means an item of capital which (in addition to satisfying GENPRU 2.2.64R) meets the following conditions:
- ...
- (3) the terms upon which it is issued do not permit redemption and it is otherwise incapable of being redeemed to at least the same degree as an ordinary *share* issued by a company incorporated under the Companies Act 1985 2006 or the Companies (Northern Ireland) Order 1986 (whether or not it is such a *share*).
- ...
- Core tier one capital: Other capital items for limited liability partnerships and partnerships (BIPRU firm only)
- ...
- 2.2.98 R Without prejudice to GENPRU 2.2.62R (Tier one capital: General), the item other reserves (which forms part of the item profit and loss and other reserves) applies to a *BIPRU firm* that is a partnership or a *limited liability partnership* to the extent the reserves correspond to reserves that are eligible for inclusion as other reserves in the case of a *BIPRU firm* that is incorporated under the Companies Act 1985 2006 or the Companies (Northern Ireland) Order 1986.
- ...
- Core tier one capital: Share premium account
- 2.2.101 R ...
- (3) A *firm* that is incorporated under the Companies Act 1985 2006 or the Companies (Northern Ireland) Order 1986 may include its *share* premium account as *core tier one capital* notwithstanding (2) to the extent that the terms of issue of the *share* concerned provide that any premium is not repayable on redemption.
- (4) Paragraph (3) applies to a *firm* that is not incorporated under the Companies Act 1985 2006 or the Companies (Northern Ireland) Order 1986 if its *share* premium account is subject to substantially the same or greater restraints on use than a *share* premium account falling into (3).

Annex E

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

Chapter 7

DEFINITIONS

Part I Definitions

- 7.1 In this Part of the *IPRU(FSOC)*, unless the contrary intention appears, the following definitions apply –

<i>Accounts Regulations...</i>
...
<i>share</i> has the meaning given in Part VII section 1161(2) of the Companies Act 2006 or Part VIII of the Companies (Northern Ireland) Order 1986;
...

Annex F

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

Chapter 9

FINANCIAL REPORTING

Part I

ACCOUNTS AND STATEMENTS

...

Information on the actuary who has been appointed to perform the with-profits actuary function

- 9.36 (1) Subject to the provisions of this rule, there must be annexed to the documents referred to in rules 9.12, 9.13 and 9.14, with respect to every person who, at any time during the *financial year in question*, was the *actuary* who has been appointed to perform the *with-profits actuary function* for the *insurer*, a statement of the following information -
- ...
- (c) the aggregate amount of -
- (i) any remuneration and the value of any other benefits (other than a pension or other future or contingent benefit) under any contract of service of ‘the actuary’ with, or contract for services by ‘the actuary’ to, ‘the insurer’, and
 - (ii) any emoluments, pensions or compensation as *director* of the *insurer* which are required by ~~Part I of Schedule 6 to the Companies Act or Part I of Schedule 6 to the 1986 Order regulation 8 of and schedule 5 to the Large and Medium Sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410)~~ to be included in a note to the accounts of ‘the insurer’ ~~under section 232 of the Companies Act and Article 239 of the 1986 Order,~~ receivable by ‘the actuary’ in respect of any period in that year; and
- (d) ...
- ...

Chapter 11

DEFINITIONS

Part I

DEFINITIONS

- 11.1 For the purposes of *IPRU (INS)*, the term or phrase in the first column has the meaning given to it in the second column unless the context otherwise requires.

Term or phrase	Definition
...	
<i>share</i>	has the meaning given in <u>Part VII section 1161(2) of the Companies Act or Part VIII of the Companies (Northern Ireland) Order 1986 2006</u>
...	

APPENDIX 9.1 (rules 9.12 and 9.13)

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

...

Instructions for completion of Form 16

...

- 1a Unrealised gains and losses on investments (other than for investments in the long term fund) must be included in their entirety at lines 15 and 18, even if a different accounting treatment is adopted in the Companies Act Companies Act accounts. Unrealised gains and losses must be measured by reference to the value included for the investment at line 102 on Form 13, i.e. the Companies Act Companies Act accounts value.

...

Appendix 9.15 (rule IPRU (INS) 9.58(3))

Auditor's report

- 1 The certificate required by *IPRU (INS)* 9.58 (2) must, in addition to any statement required by section ~~237(2) and (3)~~ 498 of the Companies Act 2006, state:

...

Annex G

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

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

Annex A: LIMITED LIABILITY PARTNERSHIPS: ELIGIBLE MEMBERS' CAPITAL

...

2. CONDITIONS FOR USE OF MEMBERS' CAPITAL

...

General conditions for eligibility

2.3 R The general conditions in respect of the members' capital are that:

...

(7) it ranks for repayment on a winding up of the *firm* no higher than a *share* of a company incorporated under the Companies Act 1985 2006 or the Companies (Northern Ireland) Order 1986 (whether or not it is such a *share*); and

...

Annex D

Interim Prudential Sourcebook for Investment Business: Required Forms

...

3 Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms

...

3.5 Guidance Notes on Completion of Agreements

...

F Execution

30. In the case of English, Welsh and Northern Irish companies, reference is made to sections 36 section 43 and 36A of the Companies Act 1985 2006 under which a

company may contract:

- by writing under its common seal, or
- through any person acting under its authority, express or implied,
~~and a document signed by a director and the secretary of the company or by two directors and expressed to be executed by the company as a deed has the same effect as if executed under the common seal of the company. Section 44 of the Companies Act 2006 governs the execution of documents by English, Welsh, and Northern Irish companies.~~

...

5 Investment Management Firms (former IMRO Firms)

...

5.2 Notes for Prescribed Subordinated Loan Agreement

...

5 Execution

The date of the Agreement is the date on which execution of the Agreement by all parties is completed. Execution must accord with the laws and regulations governing the execution of documents in the jurisdiction of the Firm's principal place of business (e.g. a company whose principal place of business is in ~~the UK England, Wales and Northern Ireland~~ must observe the requirements of ~~Section 130 of the Companies Act 1989 Part 4 of the Companies Act 2006~~).

...

9 Exempt CAD Firms

...

9.8 Guidance Notes on Completion of Agreements

...

F Execution

34. In the case of English, Welsh and Northern Irish companies, reference is made to sections ~~36 section 43 and 36A~~ of the Companies Act ~~1985 2006~~ under which a company may contract:

- by writing under its common seal, or
- through any person acting under its authority, express or implied,
~~and a document signed by a director and the secretary of the company or by two directors and expressed to be executed by the company as a deed has the same effect as if executed under the common seal of the company. Section 44 of the Companies Act 2006 governs the execution of documents by English, Welsh, and Northern Irish companies.~~

~~and a document signed by a director and the secretary of the company or by two directors and expressed to be executed by the company as a deed has the same effect as if executed under the common seal of the company. Section 44 of the Companies Act 2006 governs the execution of documents by English, Welsh, and Northern Irish companies.~~

Annex H

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

- 3.6.2 G (1) For the purposes of *MCOB* 3.6.1R, the name may be a trading name or shortened version of the legal name of the *firm* (although other legislation, for example, the Companies Act 1985 2006, may require a *firm* to include information not required by this *rule*).

...

Annex I

Amendments to the Market Conduct sourcebook (MAR)

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

1 Annex 1

Provisions of the Buy-back and Stabilisation Regulation relating to buy-back programmes

...

- 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~~ 2006 and the *Part 6 rules* for the shareholder protection requirements applying to a proposed buy-back.

...

- 1.1.7 G Article 19(1) of the *PLC Safeguards Directive* is implemented in Great Britain by section ~~166~~ 701 of the Companies Act ~~1985~~ 2006.

Annex J

Amendments to the Supervision manual (SUP)

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

18.2 Insurance business transfers

...

FSA assessment of scheme

...

- 18.2.53 G The FSA is likely to object to a scheme if it concludes that it is unfair to a class of *policyholders*, unless the *policyholders* of that class have approved the scheme on the basis of information the FSA considers clear and accurate. *Policyholders* are not required to vote on a scheme but would, for instance, normally vote on a demutualisation or on a scheme of arrangement under the Companies Act ~~1985~~ 2006.

Annex K

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Table: contents of the instrument constituting the scheme

- 3.2.6 R This table belongs to *COLL 3.2.4R* (Matters which must be included in the instrument constituting the scheme)

...	
	ICVCs: unit transfers
21	A statement that the <i>person</i> designated for the purposes of paragraph 4 of Schedule 4 to the <i>OEIC Regulations</i> (Share transfers) or for an ICVC established in Northern Ireland, paragraph 3 of Schedule 4 to the Open Ended Investment Companies Regulations (Northern Ireland) 2004 (SR 2004/335) is the <i>person</i> who, for the time being, is the <i>ACD</i> of the <i>ICVC</i> .
...	

Annex L

Amendments to the Credit Unions sourcebook (CRED)

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

14 Annex 1G Accounts and audit - Friendly and Industrial and Provident Societies Act 1968

	Introduction
...	
Qualified auditors	
8.	Section 7 of the Friendly and Industrial and Provident Societies Act 1968 provides that no person is a qualified auditor unless he is eligible for appointment as a <u>company statutory</u> auditor under section 25 of the Companies Act 1989 Part 42 of the Companies Act 2006 , that is to say a person who is registered with one of the five supervisory bodies recognised under the Companies Act 1989 or the Companies Act 2006, as appropriate :
	...
...	

Annex M

Amendments to the Listing Rules sourcebook (LR)

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

Cancellation as a result of schemes of arrangement etc

5.2.12 R *LR 5.2.5R, LR 5.2.5AR and LR 5.2.8R do not apply to the cancellation of ordinary equity shares of an issuer as a result of:*

- (1) a takeover or restructuring of the *issuer* effected by a scheme of arrangement under Part ~~43~~ 26 of the Companies Act ~~1985~~ 2006; or
- ...
- ...

5.3.2 R The *issuer* must also include with a request to cancel the *listing* of its *securities* the following:

- ...
- (3) if a cancellation is to take place after a scheme of arrangement becomes effective under section ~~425~~ 899 of the Companies Act ~~1985~~ 2006 and a new *company* is to be *listed* as a result of that scheme, either:
- ...
- ...

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)~~ 570 (Disapplication of pre-emption rights: directors acting under general authorisation) or section ~~571 (Disapplication of pre-emption rights by special resolution)~~ 571 (Disapplication of pre-emption rights by special resolution) of the Companies Act 2006 and the issue of *equity securities* or sale of *treasury shares* that are *equity shares* by the *listed company* is within the terms of the authority; or
- ...
- ...

Discounts not to exceed 10%

9.5.10 R (1) If a *listed company* makes an *open offer, placing, vendor consideration placing, offer for subscription of equity shares* or an issue out of treasury (other than in respect of an employees' share scheme) of a *class*

already *listed*, the price must not be at a discount of more than 10% to the middle market price of those *shares* at the time of announcing the terms of the offer or at the time of agreeing the placing (as the case may be).

- (2) ...
 - (3) Paragraph (1) does not apply to an offer or placing at a discount of more than 10% if:
 - (a) ...
 - (b) it is an issue of *shares* for cash or the sale of *treasury shares* for cash under a pre-existing general authority to disapply section 89 561 of the Companies Act 1985 2006 (~~Offers to shareholders to be on a pre-emptive basis Existing shareholders' rights of pre-emption~~).
- ...
- ...

Additional information

- 9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

- ...
 - (4) a statement setting out:
 - ...
 - (c) in the case of any purchases made otherwise than through the market or by tender or partial offer 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 H 2 of Schedule 7 to the Companies Act 1985 (Disclosure required by company acquiring its own shares, etc) Large & Medium Sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) (Disclosure required by company acquiring its own shares etc); and
- ...
- ...

Summary financial statements

- 9.8.13 R Any summary financial statement issued by a *listed company* as permitted

under the Companies Act 1985 2006, must disclose:

- (1) earnings per share; and
 - (2) the information required for summary financial statements set out in or under the Companies Act 1985 2006.
- ...

Disapplying pre-emption rights

- 13.8.2 R A *circular* relating to a resolution proposing to disapply the statutory pre-emption rights under section 89 561 of the Companies Act 1985 2006 (Existing shareholders' right of pre-emption) must include:
- ...
- ...

Appendix 1

Relevant definitions

1.1 Relevant definitions

- 1.1.1 **Note:** The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

<i>employees' share scheme</i>	has the same meaning as in section 743 <u>1166</u> of the Companies Act 1985 <u>2006</u> .	
<i>parent undertaking</i>	as defined in section 258 <u>1162</u> of the Companies Act 1985 <u>2006</u> .	
<i>relevant securities</i>	has the same meaning as in section 80 of the Companies Act 1985. [deleted]	
<i>share</i>	(in accordance with section 744 <u>540</u> (1) of the Companies Act 1985 <u>2006</u>) 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>subsidiary undertaking</i>	as defined in section 258 <u>1162</u> of the Companies Act 1985 <u>2006</u> .	
<i>treasury shares</i>	qualifying shares to which sections 162A to 162G of the Companies Act 1985 apply shares which meet the conditions set out in paragraphs (a) and (b) of subsection 724(5) of the Companies Act 2006 .	

Annex N

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

5.1.1 R In this chapter:

...

(2) references to a “non-UK issuer” are to an *issuer* whose *shares* are admitted to trading on a *regulated market* and whose *Home State* is the United Kingdom other than:

(a) a public company within the meaning of section 4(3) 4(2) of the Companies Act ~~1985~~ 2006; and

...

...

Annex O

Amendments to the Building Societies Regulatory Guide (BSOG)

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

Frequently used terms

- 1.1.3 G The following terms are used in this Guide and have the meaning described here:

...	
“existing company”	A company which is a company within the meaning of the Companies Act 1985 2006 or the Companies (Northern Ireland) Order 1986 and is a public company limited by shares, or is incorporated in an EEA State other than the United Kingdom and has power to offer its shares and debentures to the public, and which is carrying on business as a going concern on the date of the Transfer Agreement
...	
“specially formed company”	a company formed by a society (and by no other than its nominees) for the purpose of assuming and conducting the society's business in its place, which is a company within the meaning of the Companies Act 1985 2006 or the Companies (Northern Ireland) Order 1986 and is a public company limited by shares, or is incorporated in an EEA State other than the United Kingdom and has power to offer its shares or debentures to the public
...	

...

The Successor Company

- 3.3.19 G In a conversion, the successor company must be specially formed by the society (and by no others than its nominees) wholly or partly for the purpose of assuming and conducting the society's business in its place and must be a company within the meaning of the ~~Companies Act 1985 2006 or the Companies (Northern Ireland) Order 1986~~ which is a public company limited by shares (Section 97(12) of the 1986 Act) or a body corporate incorporated in another EEA State with power to offer its shares or debentures to the public (Section (97(13)). ...

...

- 3.3.22 G For a takeover, an existing company, which is to assume and conduct the

society's business in its place, is defined in Section 97(12) and (13) of the 1986 Act as a company ~~within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 as defined in section 1(1) of the Companies Act 2006~~, which is a public company limited by shares, or a body corporate incorporated in another EEA State with power to offer shares or debentures to the public, "carrying on business as a going concern on the date of the transfer agreement".

...

Annex P

Amendments to the Perimeter Guidance manual (PERG)

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

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) ~~contain~~ contains *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).~~

...

9.6.5 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 Chapters 3 to 7 of Part V 18 of the Companies Act 1985 2006; or~~
- (2) ~~Chapter VII of Part VI of the Companies (Northern Ireland) Order 1986; or [deleted]~~

...

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)).

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 9.1.4 G (Other guidance that may be relevant)).

**BANKING: CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT) AND
CONSEQUENTIAL AMENDMENTS INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (1) section 138 (General rule-making power);
 - (2) section 139(4) (Miscellaneous ancillary matters);
 - (3) section 145 (Financial promotion rules);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:

- (1) Part 2 of Annex C comes into force on 1 January 2010;
- (2) the remainder of this instrument comes into force on 1 November 2009.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Banking: Conduct of Business sourcebook (BCOBS)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Credit Unions sourcebook (CRED)	Annex E
Electronic Money sourcebook (ELM)	Annex F

Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are intended for the convenience of readers but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Banking: Conduct of Business Sourcebook (Amendment) and Consequential Amendments Instrument 2009.

By order of the Board
24 September 2009

Annex A

Amendments to the Glossary of definitions

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

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

<i>distance selling contract</i>	(in <i>BCOBS</i>) has the same meaning as “distance contract” in the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334).
<i>excepted contract</i>	(in <i>BCOBS</i>) has the same meaning as in the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334).
<i>payment instrument</i>	(in <i>BCOBS</i>) any personalised device or personalised set of procedures agreed between the <i>banking customer</i> and the <i>firm</i> used by the <i>banking customer</i> to initiate an instruction or request by the <i>banking customer</i> to the <i>firm</i> to make a payment.
<i>payment routing information</i>	a combination of letters, numbers or symbols specified by a <i>firm</i> to be provided when instructing or requesting the <i>firm</i> to make a payment from an account of a <i>banking customer</i> for the purpose of routing the payment to the correct destination and intended recipient.

Amend the following definitions as shown:

- | | |
|----------------|--|
| <i>deposit</i> | (1) (except in <i>COMP</i>) the <i>investment</i> , specified in article 74 and defined in articles 5(2) and 5(3) of the <i>Regulated Activities Order</i> , which is in summary: a sum of money (other than one excluded by any of articles 6 to 9 <u>AB</u> of the <i>Regulated Activities Order</i>) paid on terms: |
|----------------|--|
- ...
- ...

Annex B

Amendments to the General Provisions (GEN)

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

- 4.2.1A G ~~PRIN 1.1.3G, states that in applying the *Principles* with respect to *accepting deposits and issuing electronic money*, the FSA will proceed only in a *prudential context*. That limitation does not apply to this chapter. [deleted]~~

Annex C

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

Part 1: Comes into force on 1 November 2009

Modifications to Limitations on the general application rule

- 1.1.2 R The general application *rule* is modified in the chapters of this sourcebook for particular purposes.
- 1.1.3 R Except as provided for in *BCOBS* 1.1.4R, this sourcebook does not apply to:
 - (1) *payment services where Parts 5 and 6 of the Payment Services Regulations apply; or*
...
 - (2) Chapter 3 of *BCOBS* applies to *payment services where Parts 5 and 6 of the Payment Services Regulations apply* with the modifications set out in *BCOBS* 3.1.2R(2).
 - (3) A *firm* will not be subject to *BCOBS* to the extent that it would be contrary to the *United Kingdom's* obligations under the *Payment Services Directive* a European Community instrument.
- 1.1.5 R *BCOBS* 5.1.13R does not apply to a *credit union*.
- Exclusion of liability**
- 1.1.6 R *A firm must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a banking customer unless it is reasonable for it to do so and the duty or liability arises other than under the regulatory system.*
- 1.1.7 G *The general law, including the Unfair Terms Regulations, also limits the scope for a firm to exclude or restrict any duty or liability to a consumer.*
...
- 2.3.8 R ~~If any information refers to a particular tax treatment or rate of interest payable, a firm must ensure that it prominently states that the tax treatment or the rate of interest payable depends on the individual circumstances of each banking~~

customer and may be subject to change in the future. If a communication or a financial promotion in relation to a retail banking service refers to a particular tax treatment or rate of interest payable, a firm must ensure that a prominent statement that the tax treatment or the rate of interest payable:

- (1) depends on the individual circumstances of each banking customer; and
- (2) may be subject to change in the future;

is either included in that communication or financial promotion, or provided to the banking customer on paper or in another durable medium in good time before the banking customer is bound by the contract for that retail banking service.

...

4.1.2 G ...

- (3) Where a firm proposes to make a change to the terms and conditions or charges that apply to a retail banking service that will be to the disadvantage of a banking customer, it should provide reasonable notice to the banking customer before the change takes effect, taking into account the period of notice required by the banking customer to cancel the contract for the retail banking service.

Where a firm proposes to exercise a power to make:

- (a) a change to any term or condition of the agreement;
- (b) a change to any charge; or
- (c) a material change to any rate of interest;

that applies to the retail banking service and that will be to the disadvantage of a banking customer, the firm should provide reasonable notice to the banking customer on paper or in another durable medium before the change takes effect, taking into account the period of notice required by the banking customer to terminate the contract for the retail banking service. Whether a change to a rate of interest is “material” should be determined having regard to the size of the balance of the account and the size of the change in the rate.

- (4) Where a firm notifies a banking customer of a material change to a rate of interest that applies to a retail banking service and that will be to the disadvantage of a banking customer, this notification should, where applicable:

- (a) refer to the fact that the firm offers a comparable retail banking service for which the banking customer is eligible;
- (b) indicate that the banking customer may move to that retail banking service or a retail banking service provided by another

firm; and

- (c) indicate that the firm will assist the banking customer to move to another retail banking service if he wishes to do so.
- (5) Where, under a contract for a retail banking service, an introductory, promotional or preferential rate of interest applies to the retail banking service until a specified future date or the end of a fixed period, a firm should, where appropriate, provide notice of the expiry of the application of that rate of interest to the banking customer on paper or in another durable medium within a reasonable period before that rate of interest ceases to apply.
- (6) In determining whether it is appropriate to provide the notice referred to in (5), a firm should consider:
 - (a) whether there is a material difference between the introductory or promotional rate of interest and the rate of interest that will apply to the retail banking service following the expiry of the introductory or promotional rate of interest;
 - (b) the size of the balance of the account; and
 - (c) the period of time that has elapsed since the firm last provided information to the banking customer in relation to the period for which the introductory or promotional rate of interest is applicable and the effect of its expiry.
- (7) The general law, including the Unfair Terms Regulations, also limits the scope for a firm to use or rely on a variation clause in a contract with a consumer.

4.1.3 R Where a *rule* in this chapter requires information to be provided on paper or in another *durable medium* before a *banking customer* is bound by the terms and conditions of the contract, a *firm* may instead provide that information in accordance with the distance communication *timing* requirements (see *BCOBS 3.1 3.1.11R and BCOBS 3.1.12R*) (if applicable).

4.1.4 G The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:

...

- (5A) the time at which any funds placed with or transferred to the firm for credit to the banking customer's account will be made available to the banking customer;
- (6) a banking customer's rights to cancel ...

...
...
4.2.2 G A firm should consider indicating the rate or rates of interest that apply to a retail banking service in each statement of account provided or made available to a banking customer in respect of that retail banking service in accordance with BCOBS 4.2.1R.

...
Firm's liability for unauthorised payments
5.1.11 R (1) Where a banking customer denies having authorised a payment, it is for the firm to prove that the payment was authorised.
(2) Where a payment from a banking customer's account was not authorised by the banking customer, a firm must, within a reasonable period, refund the amount of the unauthorised payment to the banking customer and, where applicable, restore the banking customer's account to the state it would have been in had the unauthorised payment not taken place.

Banking customer's liability for unauthorised payments
5.1.12 R (1) Subject to (2) and (3), a firm may, in an agreement for a retail banking service, provide for a banking customer to be liable for an amount up to a maximum of £50 for losses in respect of unauthorised payments arising:
(a) from the use of a lost or stolen payment instrument; or
(b) where the banking customer has failed to keep the personalised security features of the payment instrument safe, from the misappropriation of the payment instrument.
(2) A firm may, in an agreement for a retail banking service, provide for a banking customer to be liable for all losses in respect of unauthorised payments:
(a) where a banking customer has acted fraudulently; or
(b) (subject to (3)) where a banking customer has intentionally, or with gross negligence, failed to comply with his or her obligations under the agreement for the retail banking service in relation to the issue or use of the payment instrument or to take all reasonable steps to keep its personalised security features safe.
(3) Except where a banking customer has acted fraudulently, a firm must not, in an agreement for a retail banking service, seek to make a banking customer liable for any losses in respect of unauthorised payments where:
(a) the unauthorised payment arises after the banking customer has notified the firm of the loss, theft, misappropriation or unauthorised

use of the *payment instrument*;

- (b) the *firm* has failed to ensure that appropriate means are available at all times to enable the *banking customer* to notify it of the loss, theft, misappropriation or unauthorised use of a *payment instrument*; or
 - (c) the *payment instrument* has been used in connection with
 - (i) a *distance contract*; or
 - (ii) a *distance selling contract* other than an *excepted contract*.
- (4) Except as provided in (1) to (3), a *firm* must not, in an agreement for a *retail banking service*, seek to make a *banking customer* liable for any consequential loss in respect of an unauthorised payment.

Value date

- 5.1.13 R (1) The reference date used by a *firm* for the purpose of calculating interest on funds credited to an account of a *banking customer* held with it must be no later than:
- (a) the *business day* on which the funds are credited to the account of the *firm*; or
 - (b) in the case of cash placed with a *firm* for credit to a *banking customer*'s account in the same currency as that account, immediately after the *firm* receives the funds.
- (2) Paragraph (1) does not apply to funds credited to a *banking customer*'s account by means of a paper cheque.

Non-execution or defective execution of payments

- 5.1.14 R (1) Where a *banking customer* claims that a payment has not been correctly executed, it is for the *firm* to prove that the payment was authenticated, accurately recorded, entered in the *firm*'s accounts and not affected by a technical breakdown or some other deficiency.
- (2) In paragraph (1) "authenticated" means the use of any procedure by which a *firm* is able to verify the use of a specific *payment instrument*, including its personalised security features.
- 5.1.15 R (1) Where a payment from an account of a *banking customer* is executed in accordance with the *payment routing information* provided in respect of that payment, it shall be treated as correctly executed by each *firm* involved in executing the payment.
- (2) Where incorrect *payment routing information* has been provided to a *firm* in respect of a payment:
- (a) *BCOBS 5.1.16R and BCOBS 5.1.17R do not apply in relation to that payment; and*

- (b) the firm must make reasonable efforts to recover the funds involved in the transaction.
 - (3) A firm and a banking customer may agree on a charge for taking the steps referred to in (2)(b). Any such charge must reasonably correspond to the firm's actual costs.
- 5.1.16 R (1) Where a banking customer instructs or requests a firm to make a payment from his or her account and the payment is not correctly executed, the firm must, without undue delay:
- (a) refund to the banking customer the amount of the non-executed or defective payment; and
 - (b) where applicable, restore the banking customer's account to the state in which it would have been had the defective payment not taken place;
- unless:
- (c) the firm can prove that the amount of the payment was received by another firm (referred to in this rule as "firm B") with which the relevant account of the intended recipient is held.
- (2) Where (1)(c) applies, firm B must:
- (a) immediately make available the amount of the payment to the intended recipient; and
 - (b) where applicable, credit the corresponding amount to the intended recipient's account.

5.1.17 R Where:

- (1) an instruction or request for a payment to be made from a banking customer's account is given by the intended recipient of that payment to a firm;
 - (2) that firm can prove that it correctly transmitted the instruction or request to the firm with which the relevant account of the banking customer is held (in this rule referred to as "firm A"); and
 - (3) the payment is not correctly executed;
- firm A must, as appropriate and without undue delay:
- (4) refund to that banking customer the amount of the payment; and
 - (5) restore that banking customer's account to the state in which it would have been had the defective payment not taken place.

5.1.18 R Where a firm is required to give a refund or take other remedial action under BCOBS 5.1.16R or BCOBS 5.1.17R, it must also refund:

- (1) any charges for which a banking customer is responsible; and
- (2) any interest which a banking customer must pay;

as a consequence of the non-execution or defective execution of the payment.

5.1.19 R Where the non-execution or defective execution of a payment by a firm is due to abnormal and unforeseeable circumstances beyond the firm's control, the consequences of which would have been unavoidable despite all efforts to the contrary, BCOBS 5.1.16R to BCOBS 5.1.18R shall not apply with respect to that incorrectly executed payment.

Immediately before BCOBS Schedule 1, insert the following new transitional provisions

BCOBS TP 1 Transitional Provision

<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>	<u>(6)</u>
	<u>Materials to which the transitional provision applies</u>		<u>Transitional provision</u>	<u>Transitional provisions: dates in force</u>	<u>Handbook provisions: coming into force</u>
1	<u>BCOBS</u>	R	<u>Until midnight on 1 May 2010 a firm may continue to refer to the British Bankers' Association/Building Societies Association/APACS Banking Code and/or Business Banking Code in any of its documentation or literature.</u>	<u>1 November 2009 to 1 May 2010</u>	<u>1 November 2009</u>
2	<u>BCOBS 4.1.1R</u>	R	<u>Until midnight on 1 May 2010, a firm need not have regard to BCOBS 4.1.2G (3)(c) or (4) in interpreting and applying BCOBS 4.1.1R.</u>	<u>1 November 2009 to 1 May 2010</u>	<u>1 November 2009</u>

3	<u>BCOBS 4.1.1R</u>	G	<u>Until midnight on 1 May 2010, a firm may continue to communicate changes to any rate of interest that applies to a retail banking service to a banking customer in accordance with its obligations under the general law and (where a firm subscribed to the British Bankers' Association/ Building Societies Association/APACS Banking Code or Business Banking Code on 1 July 2009) the standards set out in those Codes.</u>	<u>1 November 2009 to 1 May 2010</u>	<u>1 November 2009</u>
4	<u>BCOBS 4.1.1R</u>	R	<u>With respect to an introductory, promotional or preferential rate of interest that expires before midnight on 1 May 2010, a firm need not have regard to BCOBS 4.1.2G (5) or (6) in interpreting and applying BCOBS 4.1.1R.</u>	<u>1 November 2009 to 1 May 2010</u>	<u>1 November 2009</u>
5	<u>BCOBS 5.1.13R</u>	R	<u>With respect to funds credited to an account of a banking customer before midnight on 1 February 2010, a firm need not comply with BCOBS 5.1.13R.</u>	<u>1 November 2009 to 1 February 2010</u>	<u>1 November 2009</u>

Part 2: Comes into force on 1 January 2010

4.1.4 G ...

- (8) the terms of any compensation scheme if the firm cannot meet its obligations in respect of the retail banking service information about compensation arrangements in accordance with COMP 16;

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

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

1.1 The general application rule

1.1.1 R This sourcebook applies to a *firm* with respect to the following activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

(1) ~~accepting deposits; [deleted]~~

....

and activities connected with them.

1.1.1A R ~~This sourcebook does not apply to a firm with respect to the activity of accepting deposits carried on from an establishment maintained by it, or its appointed representative, in the United Kingdom, except for COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1R (Direct offer financial promotions), COBS 4.10 (Systems and controls and approving and communicating financial promotions), COBS 13 (Preparing product information) and COBS 14 (Providing product information to clients) which apply as set out in those provisions, COBS 4.1 and the Banking: Conduct of Business sourcebook (BCOBS).~~

4.2 Fair, clear and not misleading communications

...
Fair, clear and not misleading financial promotions

4.2.5 G ~~A firm designing a financial promotion relating to a deposit may find it helpful to take account of the British Bankers' Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts. [deleted]~~

4.3 Financial promotions to be identifiable as such

4.3.1 R ...

(3) In the case of a *financial promotion* that does not relate to the *firm's MiFID or equivalent third country business*, this *rule* applies to

communicating or approving a financial promotion but does not apply:

...

- (e) to the extent that it relates to a ~~deposit or~~ to a *pure protection contract* that is a *long-term care insurance contract*.

4.4 Compensation information

...

- 4.4.2 G The Credit Institutions (Protection of Deposits) Regulations 1995 may also apply in relation to a communication with a *client*. [deleted]

4.5 Communicating with retail clients

...

Referring to tax

- 4.5.7 R ...

- (2) This *rule* applies in relation to *MiFID or equivalent third country business* or, otherwise, to a *financial promotion*. However, it does not apply to a *financial promotion* to the extent that it relates to:
 - (a) ~~a deposit other than a cash deposit ISA or a cash deposit CTF; or~~ [deleted]
 - (b) a *pure protection contract* that is a *long-term care insurance contract*.

Consistent financial promotions

- 4.5.8 R ...

- (2) This *rule* does not apply to a *financial promotion* to the extent that it relates to:
 - (a) ~~a deposit; or~~ [deleted]
 - (b) a *pure protection contract* that is a *long-term care insurance contract*.
- ...

4.8 Cold calls and other promotions that are not in writing

Application

4.8.1 R This section applies to a *firm* in relation to a *financial promotion* that is not in writing, but it does not apply:

...

(4) ~~to the extent that the financial promotion relates to a deposit; [deleted]~~

...

4.9 Financial promotions with an overseas element

Application

4.9.1 R ...

(3) This section does not apply to a communication by a *firm* other than in relation to its *MiFID or equivalent third country business*:

...

(e) ~~to the extent that it relates to a deposit; [deleted]~~

...

4.11 Record keeping: financial promotion

4.11.1 R ...

(5) This *rule* does not apply in relation to a communication, made by a *firm* other than in relation to *MiFID or equivalent third country business*:

...

(e) ~~to the extent that it relates to a deposit; [deleted]~~

...

5.1 The distance marketing disclosure rules

Exception: successive operations

5.1.10 G In this section:

15.1 Application

- 15.1.1 G This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:
- (1) most providers of retail financial products that are based on *deposits or designated investments*; and
 - (2) *firms* that enter into *distance contracts* with *consumers* that relate to ~~accepting deposits or designated investment business~~.

Annex E

Amendments to the Credit Unions sourcebook (CRED)

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

1.1 The Credit Unions Sourcebook

...

- 1.1.2 G *CRED does not encompass the requirements associated with any regulatory permission other than a Part IV permission to accept deposits. A credit union undertaking deposit-taking activity in relation to retail banking services would need to comply with the requirements in BCOBS.* There are also additional requirements in the Handbook for credit unions that are CTF providers in relation to cash deposit CTFs. Other permissions are covered elsewhere in the Handbook. Thus, for example, a credit union seeking a permission to undertake a regulated mortgage activity would need to comply with the requirements in MCOB, and a credit union seeking a permission to undertake insurance mediation activity in relation to non-investment insurance contracts would need to comply with the requirements in ICOBS.

...

11.1 Introduction

Conduct of business

- 11.1.1 G (1) The Banking Conduct of Business sourcebook (COBS BCOBS) sets out *rules and guidance* for firms on how they should conduct their business with their *customers*.
- (2) In particular there are rules and guidance relating to communications with banking customers and financial promotions (BCOBS 2), distance communications (BCOBS 3), information to be communicated to banking customers (BCOBS 4), post sale requirements (BCOBS 5), and cancellation (BCOBS 6).
- (3) Except as provided for in (4), the Conduct of Business sourcebook (COBS) does not apply to accepting deposits.
- (4) COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1R (Direct offer financial promotions), COBS 4.10 (Systems and controls and approving and communicating financial promotions), COBS 13.1 (Preparing product information) and COBS 14.2 (Providing product information to clients) apply to accepting deposits as set out in those sections.
- (5) BCOBS 5.1.13R does not apply to credit unions (BCOBS 1.1.5R).

- 11.1.2 G (1) ~~The rules and guidance set out in COBS mainly apply to designated investment businesses and have limited application to deposits.~~
~~[deleted]~~
- (2) ~~The only parts of COBS that set out rules and guidance on deposits, other than for a cash deposit ISA or cash deposit CTF, are the financial promotion rules and those relating to distance contracts for accepting deposits in COBS 5 (Distance contracts) and COBS 15 (Cancellation). Guidance on the way in which those requirements apply to credit unions is set out in CRED 11.4 (Entering into a distance contract for accepting deposits).~~
~~[deleted]~~
- ...

Electronic commerce activities

- 11.1.5 G ~~COBS 5.2 BCOBS 3.2~~ (E-Commerce) contains rules applicable to a credit union which carries on an electronic commerce activity; that is, a credit union which accepts deposits, or carries on certain other activities, by way of an information society service.
- ...

11.2 Financial promotion

...

- 11.2.3 G (1) Where a financial promotion relates to a ~~deposit retail banking service~~ ~~BCOBS 2 applies (other than a cash deposit ISA or cash deposit CTF)~~ only certain parts of the financial promotion rules apply. These are ~~COBS 4.2.1R, COBS 4.5.2R, COBS 4.5.7R, COBS 4.6.2R, COBS 4.6.6R, COBS 4.6.7R, COBS 4.7.1R, COBS 4.10.2R, COBS 4.10.4R, COBS 4.10.5R and COBS 4.10.10R~~.
- (2) Except as provided for in (3) the Conduct of Business sourcebook (COBS) does not apply to a firm with respect to the activity of accepting deposits.
- (3) COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1R (Direct offer financial promotions), COBS 4.10 (Systems and controls and approving and communicating financial promotions), COBS 13 (Preparing product information) and COBS 14 (Providing product information to clients) apply to a firm with respect to the activity of accepting deposits as set out in those provisions, COBS 4.1 and BCOBS.
- ...

- 11.2.5 G ~~Despite the limited application of COBS to deposits In addition to the rules and guidance contained in BCOBS and the exemptions mentioned in CRED 11.2.4G, financial promotions (including those which are exempt) may be~~

subject to more general *rules* including *Principle 7* (Communications with clients) and *SYSC 3* (Systems and controls) and the *fair, clear and not misleading rule*.

- 11.2.6 G The requirement on a *firm* under ~~COBS 4.2.1R(1)~~ *BCOBS 2.2* is that it must ensure that a *financial promotion* is fair, clear and not misleading. This is supported by further detailed rules including ~~COBS 4.5.2 R~~ *BCOBS 2.3.1R*:

- (1) A *firm* must ensure that information for a *retail client*:

...

- (b) is accurate and in particular does not emphasise any potential benefits of *relevant business or a relevant investment a retail banking service* without also giving a fair and prominent indication of any relevant risks;

...

11.4 Entering into a distance contract for accepting deposits

- 11.4.1 G Those parts of *COBS BCOBS* that relate to *distance contracts* for *accepting deposits* will have limited application to a *credit union*. This is because the *Distance Marketing Directive* only applies where there is “an organised distance sales or service-provision scheme run by the supplier” (Article 2(a)). If, therefore, the *credit union* normally operates face to face and has not set up facilities to enable *customers* to deal with it at a distance, such as facilities for a *customer* to deal with it purely by post, telephone, fax or the Internet, the provisions will not be relevant. A one-off transaction dealt with by distance means in order to deal with a particular contingency or emergency will not fall under the *COBS BCOBS* provisions.

- 11.4.2 G For those *credit unions* to which the provisions in *COBS BCOBS* will apply, the provisions which are of particular relevance concern the distance communications provisions (~~COBS 5 BCOBS 3~~), pre-contract information (~~COBS 6, COBS 13 and COBS 14 BCOBS 4~~), cancellation rights (~~COBS 15 BCOBS 6~~) and the *financial promotion rules* (CRED 11.2). If the *credit union* provides *cash deposit ISAs* or *cash deposit CTFs* further *rules* may apply.

Pre-contract disclosure requirements

- 11.4.3 G *COBS 5.1 BCOBS 3.1* sets out the basic *requirement requirements* that *apply* before a *credit union* enters into a *distance contract* for *accepting deposits*. The *credit union* has to ensure that the terms on which it will conduct business, including, in particular, certain required information, is provided to a *consumer* (~~which means an individual, acting for purposes which are outside his trade, business or profession~~) in good time (~~that is, in sufficient time to enable a customer to consider properly the services on offer~~) in a *durable medium*, before the *retail customer* is bound by the

distance contract or offer, unless certain exemptions apply.

- 11.4.4 G The required information is the contractual terms and conditions and the other information set out in ~~COBS 5 Annex 1R~~ BCOBS 3 Annex 1R, and covers basic information about the *credit union*, the main characteristics of the service on offer, the price, details about any distance contract such as its duration, cancellation rights and any other early termination rights and penalties, and information about out-of-court complaints and compensation arrangements.

Exemptions

- 11.4.5 G The exemptions referred to in *CRED* 11.4.3G are set out in ~~COBS 5.1~~ BCOBS 3.1. They are relevant:
- (1) where the contract is concluded by telephone and the *consumer* gives explicit consent to receiving a more limited range of information- ~~COBS 5.1.12R~~ BCOBS 3.1.11R sets out the information to be provided in such cases. ~~Full information has to be provided, in a durable medium, immediately after conclusion of the distance contract (COBS 5.1.13R)~~;
 - (2) where a means of communication (~~other than telephone~~) is used at the consumer's request which does not enable provision of required information in a *durable medium* before ~~conclusion of the contract~~ ~~the consumer is bound by any distance contract or offer~~; in this case full information must also be provided in a *durable medium* immediately after conclusion of the *distance contract* (~~COBS 5.1.13R~~ BCOBS 3.1.12R);
 - (3) where there is an initial service agreement and the contract is in relation to a successive or separate operation of the same nature under that agreement (BCOBS 3.1.9R to BCOBS 3.1.10R), ~~or there is no initial service agreement and the contract is in relation to a successive or separate operation of the same nature and is being performed no more than one year from the date of performance of the last operation (COBS 5.1.8R, COBS 5.1.9R and COBS 5.1.10G)~~.
- ...

Cancellation

- 11.4.7 G A *consumer* has a right to cancel a *distance contract* for ~~accepting deposits a retail banking service~~ without giving any reasons and without penalty. The right to cancel has to be exercised within 14 days of the day of the conclusion of the contract or the day on which he received the contractual terms and conditions, if later (~~COBS 15.2.1R~~ BCOBS 6.1.1R).
- 11.4.8 G The only exemptions from the right to cancel are when:
- (1) ~~the price of the service depends on fluctuations in the financial market outside the credit union's control which may occur during the~~

~~cancellation period a contract (other than a cash deposit ISA) where the rate or rates of interest payable on the deposit are fixed for a period of time following conclusion of the contract; or~~

- (2) ~~the contract has already been fully performed with the consumer consent before he exercises his right to cancel a contract whose price depends on fluctuations in the financial market outside the firm's control that may occur during the cancellation period; or~~
- (3) ~~the credit union has an initial service agreement with the consumer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COBS 15.2.1R) a cash deposit CTF (other than a distance contract).~~

- 11.4.9 G The effects of cancellation are set out in *COBS 15.4 BCOBS 6.3* (Effects of cancellation). Unless the contract relates to *a cash deposit ISA or a cash deposit CTF*, the *credit union* has to return, no later than 30 days after the date it received notice of cancellation, any sums paid by the customer in connection with the contract. The *customer* can be required to pay for any services provided up to the date of cancellation, provided that the sums are in proportion to the extent of the services actually provided and could not be construed as a penalty. No payment can be required if the *credit union* cannot prove that a *customer* was told the amount that would be payable as part of the pre contract information or if the *credit union* starts performance of the contract *before expiry of the cancellation period without the customer's prior consent*.
- 11.4.10 G ~~If there are other ancillary distance contracts related to the first, those ancillary contracts may also be cancelled automatically when a consumer exercises a right to cancel (see COBS 15). [deleted]~~
- 11.4.11 G This *guidance* is not a substitute for, and should be read in conjunction with, the requirements contained in the relevant parts of *COBS BCOBS*.

Annex F

Amendments to the Electronic Money sourcebook (ELM)

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

1.1 Application

...

Distance marketing activities

1.1.5 G ...

- (2) ~~As set out in ELM 6.8, COBS 15 applies to e-money firms as if references to ‘accepting deposits’ and ‘deposits’ were references to ‘issuing e-money’ and ‘e-money’ respectively. [deleted]~~

...

1.4A Distance contracts: cancellation

...

Exercising the right to cancel

...

1.4A.5 R ~~The following rules also apply as if issuing e-money were accepting deposits: COBS 15.3.4R (Record keeping), COBS 15.3.1R (Notice of exercise) and COBS 15.4 (Effects of cancellation) also apply to issuing e-money.~~

1.5 Application of other parts of the Handbook to ELMIs

...

1.5.2 G Application of other parts of the Handbook to ELMIs

Block	Module	Application
High level standards	Principles for businesses (<i>PRIN</i>)	Applies to every <i>ELMI</i> . As explained in <i>PRIN</i> 4.1.3G, the <i>Principles</i> apply with respect to regulated activities generally, but, in applying the <i>Principles</i> with respect to issuing e-money, the FSA will proceed only in a prudential context.
...		

PAYMENT SERVICES (TRANSITIONING FIRMS) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following provisions of the Financial Services and Markets Act 2000 ("the Act"):
 - (a) section 157(1) (Guidance);
 - (b) section 226 (Compulsory Jurisdiction) as applied by regulation 125 (Transitional provisions: the ombudsman scheme) of the Payment Services Regulations 2009 (SI 2009/209) ("the Regulations");
 - (c) paragraph 13(4) (Authority's procedural rules) of Schedule 17 (The Ombudsman Scheme);
 - (2) regulation 93 (Guidance) of the Regulations; and
 - (3) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2009.

Amendments to the Handbook

- D. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Payment Services (Transitioning Firms) Instrument 2009.

By order of the Board
24 September 2009

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

TP 1 Transitional provisions

...

TP 1.4 Payment Services Regulations 2009 transitioning payment institutions

- 1 R This TP applies in relation to a *person* who falls within regulation 122(1) (Transitional provisions: requirement to be authorised as a payment institution) or regulation 123(1) (Transitional provisions: requirement to be registered as a small payment institution) of the *Payment Services Regulations* (a “transitioning payment institution”).
- 2 R This TP applies from 1 November 2009 until 30 April 2011.
- 3 R *DISP 1 (Treating complainants fairly)* applies in relation to a transitioning payment institution as if the transitioning payment institution were a *payment institution*.
- 4 R The *Ombudsman* can consider a *complaint* that relates to an act or omission by a transitioning payment institution under the *Compulsory Jurisdiction* if:
 - (1) it could consider that *complaint* under the *Compulsory Jurisdiction* if it related to a *payment institution*; and
 - (2) (where the transitioning payment institution is a *licensee*) the *complaint* relates to an act or omission in providing *payment services*.
- 5 G The effect of this transitional provision is to:
 - (1) apply to transitioning payment institutions as though they were *payment institutions* the complaints-handling requirements in *DISP 1.1* to *DISP 1.8*; and
 - (2) to bring them within the scope of the *Compulsory Jurisdiction* to the same extent as *payment institutions*.
- 6 G *Complaints* relating to *payment services*, *consumer credit activities* or a combination of both can be considered under the *Compulsory Jurisdiction*. However, transitioning payment institutions that are *licensees* will remain subject to the *Consumer Credit Jurisdiction* for *complaints* that relate only to *consumer credit activities*.

LISTING RULES SOURCEBOOK (AMENDMENT NO 3) INSTRUMENT 2009

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 73A (Part 6 rules);
 - (2) section 75 (Applications for listing);
 - (3) section 77 (Discontinuance and suspension of listing);
 - (4) section 79 (Listing particulars and other documents);
 - (5) section 88 (Sponsors);
 - (6) section 89 (Public censure of sponsor);
 - (7) section 96 (Obligations of issuers of listed securities);
 - (8) section 101 (Part 6 rules: general provisions);
 - (9) section 138 (General rule-making power);
 - (10) section 156 (General supplementary powers);
 - (11) section 157(1) (Guidance); and
 - (12) schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. This instrument comes into force as follows:
- (1) Part 1 of Annex B comes into force on 6 October 2009; and
 - (2) the remainder of this instrument comes into force on 6 April 2010.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Notes

- E. 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

- F. This instrument may be cited as the Listing Rules Sourcebook (Amendment No 3) Instrument 2009.

By order of the Board
24 September 2009

Annex A

Amendments to the Glossary of definitions

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

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

<i>premium listing</i>	(a) in relation to <i>equity securities</i> (other than those of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i>), means a <i>listing</i> where the <i>issuer</i> is required to comply with those requirements in <i>LR 6</i> and other requirements in the <i>listing rules</i> that are expressed to apply to such <i>securities</i> with a <i>premium listing</i> ;
	(b) in relation to <i>equity securities</i> of a <i>closed-ended investment fund</i> , means a <i>listing</i> where the <i>issuer</i> is required to comply with those requirements in <i>LR 15</i> and other requirements in the <i>listing rules</i> that are expressed to apply to such <i>securities</i> with a <i>premium listing</i> ;
	(c) in relation to <i>equity securities</i> of an <i>open-ended investment company</i> , means a <i>listing</i> where the <i>issuer</i> is required to comply with <i>LR 16</i> and other requirements in the <i>listing rules</i> that are expressed to apply to such <i>securities</i> with a <i>premium listing</i> .
<i>premium listing (commercial company)</i>	a <i>premium listing</i> of <i>equity securities</i> (other than those of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i>).
<i>premium listing (investment company)</i>	a <i>premium listing</i> of <i>equity securities</i> of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i> .
<i>standard listing</i>	in relation to <i>securities</i> , means a <i>listing</i> that is not a <i>premium listing</i> .
<i>standard listing (commercial company)</i>	a <i>standard listing</i> of <i>equity securities</i> .

Amend the following definitions as shown:

<i>corporate governance rules</i>	(in accordance with section <u>sections 73A(1) and 89O(1)</u> of the <i>Act</i>) <i>rules</i> for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of <i>issuers</i> who have requested or approved <i>admission to trading</i> of their securities and about corporate
-----------------------------------	--

governance in relation to such *issuers* for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation. The *corporate governance rules* are located in chapters 1B, 4 and 7 of *DTR*.

Disclosure Rules and Transparency Rules disclosure rules

(in accordance with ~~section sections 73A(1) and 73A(3)~~ of the *Act*) *rules* relating to the disclosure of information in respect of *financial instruments* which have been admitted to trading on a *regulated market* or for which a request for *admission to trading* on such a market has been made.

DTR

the *Disclosure Rules and Transparency Rules Disclosure Rules and Transparency Rules* sourcebook containing the *disclosure rules, transparency rules and corporate governance rules*.

listing rules

(in accordance with ~~section sections 73A(1) and 73A(2)~~ of the *Act*) *rules* relating to admission to the *official list*.

Transparency rules transparency rules

(in accordance with ~~section 73A(6)~~ ~~sections 73A(1) and 89A~~ of the *Act*) *rules* relating to the notification and dissemination of information in respect of *issuers of transferable securities* and relating to major shareholdings.

Delete the following definitions as shown.

<u>primary listed issuer</u>	(in <i>LR</i>) an issuer with a primary listing of its securities .
<u>primary listing</u>	(in <i>LR</i>) a listing by the FSA by virtue of which the issuer is subject to the full requirements of the listing rules .
<u>secondary listed issuer</u>	(in <i>LR</i>) an issuer with a secondary listing of its equity securities .
<u>secondary listing</u>	(in <i>LR</i>) a listing by the FSA of equity securities of an overseas company which is not a primary listing .

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

Part 1: Comes into force on 6 October 2009

14 Secondary listing of overseas companies

...

14.1 Application

- 14.1.1 R This chapter applies to ~~an overseas~~ a company with, or applying for, a *secondary listing* of *equity securities* other than ~~an overseas~~ a company that is an *investment entity*.

...

14.2 Requirements for listing

...

Listing applications

- 14.2.5 G ~~An overseas issuer~~ A company applying for a *secondary listing* of *equity securities* will need to comply with *LR 3* (Listing applications).

...

14.3 Continuing obligations

Admission to trading

- 14.3.1 R The *listed equity securities* of ~~an overseas~~ a 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~~ A company must comply with *LR 14.2.2R* at all times.
- (2) ~~An overseas~~ A 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~~ A company should consider *LR 5.2.2G(2)* in relation to its compliance with *LR 14.2.2R*.

...

Copies of documents

- 14.3.6 R ~~An overseas~~ A 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 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~~ A 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~~ A 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* and *transparency rules*, as applicable.

Temporary documents of title (including renounceable documents)

- 14.3.9 R ~~An overseas~~ A company must ensure that any temporary document of title (other than one issued in global form) for an *equity security*:
- ...
- (3) if renounceable:
- ...
- (e) includes provision for splitting (without fee) and for split documents to be certified by an official of the *overseas company* or authorised agent;
- ...

Definitive documents of title

- 14.3.10 R ~~An overseas~~ A 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);
- ...

Disclosure and Transparency Rules

- 14.3.11 G *An overseas A company*, whose *securities* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider its obligations under the *disclosure rules* and *transparency rules*.
- ...

Notifications relating to capital

- 14.3.17 R *An overseas A company* must notify a *RIS* as soon as possible (unless otherwise indicated in this *rule*) of the following information relating to its capital:
- ...

- 14.3.18 R Where the *equity securities* are subject to an underwriting agreement ~~an overseas a company~~ may, at its discretion and subject to *DTR 2* (Disclosure and control of inside information by issuers), delay notifying a *RIS* as required by *LR 14.3.17R(7)* for up to two *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.
- ...

Compliance with the transparency rules

- 14.3.22 G *An overseas A company*, whose *securities* are admitted to trading on a *regulated market*, should consider its obligations under *DTR 4* (Periodic financial reporting), *DTR 5* (Vote holder and issuer notification rules) and *DTR 6* (Access to information).

Part 2: Comes into force on 6 April 2010

1 Preliminary: All securities

...

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* or the *disclosure rules and transparency rules* by an *issuer* with a *primary premium listing*, the FSA may in writing require the *issuer* to appoint a *sponsor* to advise the *issuer* on the application of the *listing rules*, the *disclosure rules* and the *transparency 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*, the *disclosure rules* and the *transparency rules*.

[**Note:** LR 8.2 sets out the various circumstances in which an *issuer* must appoint, or obtain guidance from, a *sponsor*.]

...

After LR 1.4 insert the following new section. The text is not underlined.

1.5 Standard and Premium Listing

Standard and premium listing explained

- 1.5.1 G (1) Under the *listing rules* each *issuer* must satisfy the requirements in the rules that are specified to apply to it and its relevant *securities*. In some cases a *listing* is described as being either a *standard listing* or a *premium listing*.
- (2) A *listing* that is described as a *standard listing* sets requirements that are based on the minimum EU directive standards. A *listing* that is described as a *premium listing* will include requirements that exceed those required under relevant EU directives.
- (3) *Premium listing* exists for *equity securities* of commercial companies, *closed-ended investment funds* and *open-ended investment companies*. Any other *listing* will be a *standard listing*.
- (4) In one case, for *equity securities* of a commercial company, an *issuer* will have a choice under the *listing rules* as to whether it has a *standard listing* or a *premium listing*. The type of *listing* it applies for will therefore determine the requirements it must comply with.
- (5) LR 5.4A provides a process for the transfer of the category of *listing* of *equity securities*.

Misleading statements about status

- 1.5.2 R An *issuer* that is not an issuer with a *premium listing* of its *securities* must not describe itself or hold itself out (in whatever terms) as having a *premium listing* or make any representation which suggests, or which is reasonably likely to be understood as suggesting, that it has a *premium listing* or complies or is required to comply with the requirements that

apply to a *premium listing*.

Amend the following as shown.

2 Requirements for listing: All securities

...

3 Listing applications: All securities

...

3.3 Equity securities

Application

3.3.1 R *LR 3.3.2R to LR 3.3.7R apply to an applicant which is applying for: a listing of its equity securities or other shares.*

- (1) *a primary listing of its equity shares;*
- (2) *a primary listing of its preference shares;*
- (3) *a primary listing of its securities that are convertible into equity shares; or*
- (4) *a secondary listing of its equity shares.*

...

4 Listing particulars for professional securities market and certain other securities: All securities

...

5 Suspending, cancelling and restoring listing: All securities

Cancellation of listing of ordinary shares

5.2.5 R Subject to *LR 5.2.6R, LR 5.2.7R, LR 5.2.10R and LR 5.2.12R*, an *issuer with a premium listing* that wishes the *FSA* to cancel the *listing* of any of its *ordinary equity shares* with a *primary premium listing* must:

...

5.2.5A R *An issuer that wishes to cancel the secondary listing of its ordinary equity shares must also comply with the requirements in LR 5.2.5R if:*

- (1) ~~the shares have previously been converted from being primary listed to secondary listed; and~~
 - (2) ~~the conversion has taken place within 2 years before the proposed cancellation of the secondary listing of the shares. [deleted]~~
- 5.2.6 R ~~An issuer is not required to seek the prior approval of the holders of the ordinary equity shares for which a cancellation is being sought in accordance with LR 5.2.5R(2) or LR 5.2.5AR if the shares are admitted to trading on a regulated market in an EEA State when the cancellation takes effect. [deleted]~~
- 5.2.7 R ~~LR 5.2.5R(2) and LR 5.2.5AR will also not apply where an issuer of ordinary equity shares notifies a RIS:~~
- ...

Requirements for cancellation of other securities

- 5.2.8 R An issuer that wishes the FSA to cancel the listing of listed securities (other than ordinary equity shares with a ~~primary premium listing or ordinary equity shares to which LR 5.2.5AR apply~~) must notify a RIS, giving at least 20 business days notice of the intended cancellation but is not required to obtain the approval of the holders of those securities contemplated in LR 5.2.5R(2).
- ...

Cancellation in relation to takeover offers

- 5.2.10 R ~~LR 5.2.5R and LR 5.2.5AR do does not apply to the cancellation of ordinary equity shares of an issuer when, in the case of a takeover offer:~~
- ...
- ...

Cancellation as a result of schemes of arrangement etc

- 5.2.12 R ~~LR 5.2.5R, LR 5.2.5AR and LR 5.2.8R do not apply to the cancellation of ordinary equity shares of an issuer as a result of:~~
- ...
- ...

After LR 5.4 insert the following new section. The text is not underlined.

5.4A Transfer between listing categories: Equity securities

Application

- 5.4A.1 R This section applies to an *issuer* that wishes to transfer its category of *equity securities listing* from:
- (1) a *standard listing (commercial company)* to a *premium listing (commercial company)*; or
 - (2) a *standard listing (commercial company)* to a *premium listing (investment company)*; or
 - (3) a *premium listing (commercial company)* to a *standard listing (commercial company)*; or
 - (4) a *premium listing (investment company)* to a *premium listing (commercial company)*; or
 - (5) a *premium listing (commercial company)* to a *premium listing (investment company)*; or
 - (6) a *premium listing (investment company)* to a *standard listing (commercial company)*.

- 5.4A.2 G An *issuer* will only be able to transfer a *listing* of its *equity securities* from a *premium listing (investment company)* to a *standard listing (commercial company)* if it has ceased to be an *investment entity* (for example if it has become a commercial company). This is because LR 14.1.1R provides that LR 14 does not apply to an *investment entity*.

Initial notification to FSA

- 5.4A.3 R (1) If an *issuer* wishes to transfer its category of *equity securities listing* it must notify the *FSA* of the proposal.
- (2) The notification must be made as early as possible and in any event not less than 20 business days before it sends the *circular* required under LR 5.4A.4R(2)(a) or publishes the announcement required under LR 5.4A.5R(2).
- (3) The notification must include:
- (a) an explanation of why the *issuer* is seeking the transfer;
 - (b) if a *sponsor's* letter is not required under LR 8.4.14R(1), an eligibility letter setting out how the *issuer* satisfies each *listing rule* requirement relevant to the category of *listing*

to which it wishes to transfer;

- (c) a proposed timetable for the transfer; and
- (d) if an announcement is required to be published under *LR 5.4A.5R(2)*, a draft of that announcement.

Shareholder approval required in certain cases

- 5.4A.4 R (1) This rule applies to a transfer of the *listing of equity securities* into or out of the category of *premium listing (investment company)* or a transfer of the *listing of equity securities* out of the category of *premium listing (commercial company)*.
- (2) The *issuer* must:
- (a) send a *circular* to the holders of the *equity securities*;
 - (b) notify a *RIS*, at the same time as the circular is despatched to the relevant holders of the *equity securities*, of the intended transfer and of the notice period and meeting date;
 - (c) obtain at a general meeting, the prior approval of a resolution for the transfer from not less than 75% of the holders of the *equity securities* as (being entitled to do so) vote in person or, where proxies are allowed, by proxy; and
 - (d) notify a *RIS* of the passing of the resolution.

Announcement required in other cases

- 5.4A.5 R (1) This rule applies to any transfer of a *listing of equity securities* other than a transfer referred to in *LR 5.4A.4R(1)*.
- (2) The *issuer* must publish an announcement on a *RIS* giving notice of its intention to transfer its listing category.

Approval and contents of circular

- 5.4A.6 R The *circular* referred to in *LR 5.4A.4R* must:
- (1) comply with the requirements of *LR 13.1*, *LR 13.2* and *LR 13.3*;
 - (2) be approved by the *FSA* before it is circulated or published; and
 - (3) include the anticipated transfer date (which must be not less than 20 business days after the passing of the resolution under *LR 5.4A.4R*).

Approval and contents of announcement

- 5.4A.7 R The announcement referred to in *LR 5.4A.5R(2)* must:

- (1) contain the same substantive information as would be required under *LR 13.1* and *LR 13.3* if it were a *circular* but modified as necessary so it is clear that no shareholder vote is required; and
- (2) include the anticipated transfer date (which must be not less than 20 business days after the date the announcement is published).

5.4A.8 R The announcement must be approved by the *FSA* before it is published.

Specific information required in circular or announcement

- 5.4A.9 G Information required under *LR 13.3.1R(1)* (Contents of all circulars) to be included in the *circular* or announcement should include an explanation of:
- (1) the background and reasons for the proposed transfer;
 - (2) any changes to the *issuer*'s business that have been made or are proposed to be made in connection with the proposal;
 - (3) the effect of the transfer on the *issuer*'s obligations under the *listing rules*;
 - (4) how the *issuer* will meet any new eligibility requirements, for example working capital requirements, that the *FSA* must be satisfied of under *LR 5.4A.12R(3)*; and
 - (5) any other matter that the *FSA* may reasonably require.

Applying for the transfer

- 5.4A.10 R If an *issuer* has initially notified the *FSA* under *LR 5.4A.3R* it may apply to the *FSA* to transfer the *listing* of its *equity securities* from one category to another. The application must include:
- (1) the *issuer*'s name;
 - (2) details of the *equity securities* to which the transfer relates;
 - (3) the date on which the *issuer* wishes the transfer to take effect;
 - (4) a copy of any *circular*, announcement or other document on which the *issuer* is relying;
 - (5) if relevant, evidence of any resolution required under *LR 5.4A.4R*;
 - (6) if an agent is making the application on the *issuer*'s behalf, confirmation that the agent has the *issuer*'s authority to do so;
 - (7) 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 application; and

- (8) a copy of any announcement the *issuer* proposes to notify to a *RIS* informing the market that the transfer has taken place.

Issuer must comply with eligibility requirements

- 5.4A.11 R (1) An *issuer* applying for a transfer of its *equity securities* must comply with all eligibility requirements that would apply if the *issuer* was seeking admission to *listing* of the *securities* to the category of *listing* to which it wishes to transfer.
- (2) For the purposes of applying the eligibility requirements referred to in (1) to a transfer then, unless the context otherwise requires, a reference in such a requirement:
- (a) to the admission of *securities* is to be taken to be a reference to the transfer of the *securities*; and
 - (b) to a *prospectus* or *listing particulars* is to be taken to be a reference to the *circular* or announcement.

Approval of transfer

- 5.4A.12 R If an *issuer* applies under LR 5.4A.10R, the *FSA* may approve the transfer if it is satisfied that:
- (1) the *issuer* has complied with LR 5.4A.4R or LR 5.4A.5R (whichever is relevant);
 - (2) the 20 business day period referred to in LR 5.4A.6R or LR 5.4A.7R (whichever is relevant) has elapsed; and
 - (3) the *issuer* and the *equity securities* will comply with all eligibility requirements that would apply if the *issuer* was seeking admission to *listing* of the *securities* to the category of *listing* to which it wishes to transfer.

- 5.4A.13 G The *FSA* will not generally reassess compliance with eligibility requirements (for example LR 6.1.16R (Working capital) if the *issuer* has previously been assessed by the *FSA* as meeting those requirements under its existing *listing* category when its *equity securities* were *listed*.

When transfer takes effect

- 5.4A.14 R (1) If the *FSA* approves a transfer of a *listing* then it must announce its decision on a *RIS*.
- (2) The transfer becomes effective when the *FSA*'s decision to approve is announced on the *RIS*.
- (3) The *issuer* must continue to comply with the requirements of its existing category of *listing* until the decision is announced on the

RIS.

- (4) After the decision is announced the *issuer* must comply with the requirements of the category of *listing* to which it has transferred.

Directive obligations

- 5.4A.15 G An *issuer* may take steps, in connection with a transfer, which require it to consider whether a *prospectus* is necessary, for example, if the *company* or its capital is reconstituted in a way that could amount to an *offer of transferable securities to the public*. The *issuer* and its advisers should consider whether directive obligations may be triggered.

Transfer as an alternative to cancellation

- 5.4A.16 G There may be situations in which an *issuer*'s business has changed over a period of time so that it no longer meets the requirements of the applicable *listing* category against which it was initially assessed for *listing*. In those situations, the *FSA* may consider cancelling the *listing* of the *securities* or suggest to the *issuer* that, as an alternative, it applies for a transfer of its *listing* category.

Amend the following as shown.

6 Additional requirements for premium listing for equity securities

6.1 Application

- 6.1.1 R This chapter applies to an *applicant* for the *admission of equity securities* to primary premium listing.

...

7 Listing Principles: Premium listing

7.1 Application and purpose

Application

- 7.1.1 R The Listing Principles apply to every *listed company* with a primary premium listing of *equity securities* in respect of all its obligations arising from the *listing rules* and the *disclosure rules* and *transparency rules*.

...

- 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 premium 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* and *transparency 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: Premium listing

8.1 Application

...

Listed companies and applicants

- 8.1.2 R A *company* with, or applying for, a *primary premium listing of its equity securities* must comply with *LR 8.2* (When a sponsor must be appointed or its guidance obtained) and *LR 8.5* (Responsibilities of listed companies).

8.2 When a sponsor must be appointed or its guidance obtained

...

- 8.2.1 R A *company* with, or applying for, a *primary premium listing of its equity securities* must appoint a *sponsor* on each occasion that it:
- (1) makes an application for *admission of equity securities* which:
 - (a) requires the production of a *prospectus* or *equivalent document*; or
 - (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 and and transparency rules* by the *listed company*.

8.2.1A R A company must appoint a sponsor where it applies to transfer its category of equity securities listing from:

- (1) a standard listing (commercial company) to a premium listing (commercial company); or
- (2) a standard listing (commercial company) to a premium listing (investment company); or
- (3) a premium listing (investment company) to a premium listing (commercial company); or
- (4) a premium listing (commercial company) to a premium listing (investment company).

...

8.4 Role of a sponsor: transactions

...

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 premium listing that:

- (1) is required to produce a *class 1 circular*; or
- (2) is producing a *circular* that proposes a reconstruction or a re-financing 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.

...

Applying for transfer between listing categories

8.4.14 R In relation to a proposed transfer under LR 5.4A, a sponsor appointed in accordance with LR 8.2.1AR must:

- (1) submit a letter to the FSA setting out how the *issuer* satisfies each *listing rule* requirement relevant to the category of *listing* to which it

wishes to transfer, by no later than when the first draft of the circular or announcement required under LR 5.4A is submitted;

- (2) submit a completed Sponsor's Declaration to the FSA for the proposed transfer on the day the circular or announcement is to be approved by the FSA and before it is approved; 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 transfer between listing categories have been disclosed with sufficient prominence in the circular or announcement referred to in LR 5.4A or otherwise in writing to the FSA.

[Note: The Sponsor's Declaration for a transfer can be found on the UKLA section of the FSA website.]

- 8.4.15 R A sponsor must not submit to the FSA on behalf of an issuer a final circular or announcement for approval or a Sponsor's Declaration for a transfer, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:
- (1) the issuer satisfies all eligibility requirements of the listing rules that are relevant to the new category to which it is seeking to transfer;
 - (2) the issuer has satisfied all requirements relevant to the production of the circular required under LR 5.4A.4R or the announcement required under LR 5.4A.5R (whichever is relevant);
 - (3) the directors of the issuer have established procedures which enable the issuer to comply with the listing rules, the disclosure rules and the transparency rules on an ongoing basis;
 - (4) the directors of the issuer 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 issuer and its group; and
 - (5) the directors of the issuer have a reasonable basis on which to make the working capital statement (if any) required in connection with the transfer.
- 8.4.16 R LR 8.4.15R(3), (4) and (5) do not apply in relation to an issuer that was required to meet these requirements under its existing listing category.
- ...
- 8.7.13 R If, after submitting a Conflicts Declaration but prior to the day of approval of the prospectus, listing particulars, or circular or announcement, a sponsor becomes aware that it is no longer able to comply with LR 8.3.9R or LR 8.3.11R, it must notify the FSA immediately. Details must be confirmed promptly to the FSA in writing.

- 8.7.14 R On the day of approval of the *prospectus, listing particulars, or circular or announcement:*
- (1) a written confirmation that there has been no material change to the Conflicts Declaration; or
 - (2) an updated Conflicts Declaration reflecting any and all changes; must be submitted to the FSA.
- ...

9 Continuing obligations

9.1 Preliminary

Application: equity shares

- 9.1.1 R A company that has a *primary premium 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 9.2.6BR (other than LR 9.2.2AR);*
 - (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 9.7A; and*
 - (11) *LR 9.8, but not:*
 - (a) *LR 9.8.4R(3);*
 - (b) [deleted]

- (c) [deleted]
- (d) *LR 9.8.6R(5), (6) and (7)*
- (e) *LR 9.8.8R.*
- (12) [deleted]
-
- 9.1.3 R A company that has a *primary premium listing* of securities convertible into *equity shares* must comply with:
 - (1) *LR 9.2.1R to LR 9.2.6BR;*
 - (2) *LR 9.2.11R;*
 - (3) *LR 9.2.13G;*
 - (4) [deleted]
 - (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; and*
 - (11) *LR 9.8 but not:*
 - (a) *LR 9.8.4R(3);*
 - (b) [deleted]
 - (c) [deleted]
 - (d) *LR 9.8.6R(6) and LR 9.8.6R(7); and*
 - (e) *LR 9.8.8R.*
- 9.1.4 R A company that has a *primary premium 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*.
- ...

9.3 Continuing obligations: - holders

- ...
- 9.3.10 G An *overseas company* with a *primary premium listing* is not required to comply with *LR 9.3.9R*.
- ...
- 9.8.7 R An *overseas company* with a *primary premium listing* must disclose include in its annual reports and accounts: the information in *LR 9.8.6R(5), LR 9.8.6R(6) and LR 9.8.8R(9)*.
- (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.~~
- 9.8.7A R (1) An *overseas company* with a *premium listing* that is not required to comply with requirements imposed by another *EEA Member State* that correspond to *DTR 7.2 (Corporate governance statements)* must comply with *DTR 7.2* as if it were an *issuer* to which that section applies.
- (2) An *overseas company* with a *premium listing* which complies with *LR 9.8.7R* will be taken to satisfy the requirements of *DTR 7.2.2R* and *DTR 7.2.3R*, but (unless it is required to comply with requirements imposed by another *EEA Member State* that correspond to *DTR 7.2*) must comply with all of the other requirements of *DTR 7.2* as if it were an *issuer* to which that section applies.
- ...

10 Significant transactions: Premium listing

- ...
- Application
- 10.1.1 R This chapter applies to a *company* that has a *primary premium listing* of *equity securities*.
- ...

11 Related party transactions: Premium listing

...

Application

- 11.1.1 R This chapter applies to a *company* that has a *primary premium listing* of *equity securities*.

...

12 Dealing in own securities and treasury shares: Premium listing

...

Application

- 12.1.1 R This chapter applies to a *company* that has a *primary premium listing* of *equity securities* or *preference shares*.

...

13 Contents of circulars: Premium listing

...

Application

- 13.1.1 R This chapter applies to a *company* that has a *primary premium listing* of *equity securities*.

...

14 Secondary listing of companies Equity securities: Standard listing

...

14.1 Application

- 14.1.1 R This chapter applies to a *company* with, or applying for, a *secondary standard listing* of *equity securities* other than a *company* that is an *investment entity*.

...

14.2 Requirements for listing

- 14.2.1 R An *applicant* which is applying for a *secondary standard listing* of *equity securities* must comply with all of *LR 2 (Requirements for listing —all: All securities)*.

...

Listing applications

- 14.2.5 G A company applying for a secondary standard listing of equity securities will need to comply with LR 3 (Listing applications - : All securities).
- 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.~~ [deleted]
- ...

Compliance with the transparency rules

...

- 14.3.24 R A listed company that is not already required to comply with DTR 7.2 (Corporate governance statements), or with corresponding requirements imposed by another EEA Member State, must comply with DTR 7.2 as if it were an issuer to which that section applies.
- ...

15 Closed-Ended Investment Funds: Premium listing

15.1 Application

- 15.1.1 R This chapter applies to a *closed-ended investment fund* applying for, or with, a primary premium listing of equity securities.
- ...

16 Open-ended investment companies: Premium listing

16.1 Application

- 16.1.1 R This chapter applies to an *open-ended investment company* applying for, or with, a primary premium listing of equity securities which is:
- (1) an ICVC that has been granted an *authorisation order* by the FSA; or
 - (2) an *overseas collective investment scheme* that is a *recognised scheme*.
- ...

- 16.4.1 R An *open-ended investment company* must comply with:
- (1) LR 9 (Continuing obligations) except LR 9.2.6BR and LR 9.2.15R;
 - (2) LR 15.5.1R; and

- (3) *LR 15.6.1R; and*
 - (4) *the condition set out in LR 16.1.1R(1) or (2).*
- ...

17 Debt and specialist securities: Standard listing

...

18 Certificates representing certain securities: Standard listing

...

19 Securitised derivatives: Standard listing

...

Appendix 1

1.1 Relevant Definitions

<i>disclosure rules and transparency rules</i>	(in accordance with section <u>sections 73A(1) and 73A(3)</u> of the Act) 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.
<i>DTR</i>	the sourcebook containing the <i>disclosure rules, and transparency rules and corporate governance rules</i> .
<i>listing rules</i>	(in accordance with section <u>sections 73A(1) and 73A(2)</u> of the Act) <u>rules</u> relating to admission to the <i>official list</i> .
<i>premium listing</i>	<ul style="list-style-type: none"> (a) <u>in relation to <i>equity securities</i> (other those of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i>), means a <i>listing</i> where the <i>issuer</i> is required to comply with those requirements in <i>LR 6 (Additional requirements for premium listing)</i> and other requirements in the <i>listing rules</i> that are expressed to apply to such <i>securities</i> with a <i>premium listing</i>;</u> (b) <u>in relation to <i>equity securities</i> of a <i>closed-ended investment fund</i>, means a <i>listing</i> where the <i>issuer</i> is required to comply with the requirements in <i>LR 15 (Closed-Ended Investment Funds: Premium listing)</i> and other requirements in the <i>listing rules</i> that are expressed</u>

to apply to such securities with a premium listing;

- (c) in relation to equity securities of an open-ended investment company, means a listing where the issuer is required to comply with LR 16 (Open-ended investment companies: Premium listing) and other requirements in the listing rules that are expressed to apply to such securities with a premium listing.

premium listing
(commercial company)

a premium listing of equity securities (other than those of a closed-ended investment fund or of an open-ended investment company).

premium listing
(investment company)

a premium listing of equity securities of a closed-ended investment fund or of an open-ended investment company.

primary listed issuer

an issuer with a primary listing of its securities.

primary listing

a listing by the FSA by virtue of which the issuer is subject to the full requirements of the listing rules.

secondary listed issuer

an issuer with a secondary listing of its equity securities.

secondary listing

a listing by the FSA of equity securities of an overseas company which is not a primary listing.

standard listing

in relation to securities, means a listing that is not a premium listing.

standard listing
(commercial company)

a standard listing of equity securities.

After LR TR 3 insert the following new Transitional Provision. The text is not underlined.

LR TR 4

Transitional Provision for Issuers with a Premium Listing that are Overseas Companies

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	LR 9.8.7R	R	An <i>overseas company with securities</i> that have a <i>premium listing</i> on 5 April 2010 is only required to comply with <i>LR 9.8.7R</i> in financial years beginning after 31 December 2009.	From 6 April 2010	6 April 2010

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND
INVESTMENT FIRMS (LIQUIDITY) INSTRUMENT 2009**

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 150(2) (Actions for damages);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 December 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with Annex B to this instrument.
- F. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex C to this instrument.

Notes

- G. 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

- H. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Liquidity) Instrument 2009.

By order of the Board
30 September 2009

Annex A

Amendments to the Glossary of definitions

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

<i>buffer securities restriction</i>	<i>BIPRU 12.6.16R.</i>
<i>designated money market fund</i>	(in <i>BIPRU 12</i>) a <i>collective investment scheme</i> authorised under the <i>UCITS Directive</i> or which is subject to supervision and, if applicable, authorised by an authority under the national law of an <i>EEA State</i> , and which satisfies the following conditions: <ul style="list-style-type: none"> (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings; (b) it must, with a view to achieving that primary investment objective, invest exclusively in either or both assets (i) of the kind mentioned in <i>BIPRU 12.7.2R(1)</i> and (2), or (ii) sight deposits with <i>credit institutions</i> that are at all times fully secured against assets of the kind mentioned in <i>BIPRU 12.7.2R(1)</i> and (2); (c) it must, for the purpose of condition (b), only count assets with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days; (d) it must, for the purpose of condition (b), ensure that if it invests in sight deposits with <i>credit institutions</i> of the kind mentioned in (b)(ii), no more than 20% of those deposits are held with any one body; and (e) it must provide liquidity through same day settlement in respect of any request for redemption made at or before 1500 hours GMT or, as the case may be, BST.
<i>designated multilateral development bank</i>	Any of the following: <ul style="list-style-type: none"> (a) African Development Bank; (b) Asian Development Bank; (c) Council of Europe Development Bank; (d) European Bank for Reconstruction and Development; (e) European Investment Bank;

	(f) Inter-American Development Bank;
	(g) International Bank for Reconstruction and Development;
	(h) International Finance Corporation;
	(i) Islamic Development Bank; and
	(j) Nordic Investment Bank.
<i>exempt full scope BIPRU investment firm</i>	a <i>full scope BIPRU investment firm</i> falling into <i>BIPRU 12.1.4R</i> .
<i>ILAA</i>	<i>Individual Liquidity Adequacy Assessment</i> .
<i>ILAS</i>	<i>Individual Liquidity Adequacy Standards</i> .
<i>ILAS BIPRU firm</i>	a <i>firm</i> falling into <i>BIPRU 12.1.1R</i> , but excluding a <i>firm</i> that is:
	(a) an <i>exempt full scope BIPRU investment firm</i> ; or
	(b) a <i>BIPRU limited licence firm</i> ; or
	(c) a <i>BIPRU limited activity firm</i> ; or
	(d) an <i>exempt BIPRU commodities firm</i> .
<i>ILSA</i>	<i>Individual Liquidity Systems Assessment</i> .
<i>Individual Liquidity Adequacy Assessment</i>	a <i>standard ILAS BIPRU firm's</i> assessment of the adequacy of its liquidity resources and systems and controls as required by the <i>rules</i> in <i>BIPRU 12.5</i> .
<i>Individual Liquidity Adequacy Standards</i>	the regime of liquidity assessment set out in the <i>rules</i> and <i>guidance</i> in <i>BIPRU 12.5</i> .
<i>individual liquidity guidance</i>	<i>guidance</i> given to a <i>firm</i> about the amount, quality and funding profile of liquidity resources that the <i>FSA</i> has asked the <i>firm</i> to maintain.
<i>Individual Liquidity Systems Assessment</i>	a <i>simplified ILAS BIPRU firm's</i> assessment of the adequacy of its systems and controls as required by the <i>rules</i> in <i>BIPRU 12.6</i> .
<i>intra-group liquidity modification</i>	a modification to the <i>overall liquidity adequacy rule</i> of the kind described in <i>BIPRU 12.8.7G</i> .
<i>non-ILAS BIPRU firm</i>	a <i>firm</i> falling into <i>BIPRU 12.1.1R</i> which is not an <i>ILAS BIPRU firm</i> .
<i>overall liquidity adequacy rule</i>	<i>BIPRU 12.2.1R</i> .
<i>simplified ILAS</i>	the approach to the calculation of the liquid assets buffer of a

	<i>simplified ILAS BIPRU firm</i> described in <i>BIPRU 12.6.</i>
<i>simplified ILAS waiver</i>	a <i>waiver</i> permitting an <i>ILAS BIPRU firm</i> to operate <i>simplified ILAS</i> .
<i>SLRP</i>	the <i>Supervisory Liquidity Review Process</i> .
<i>simplified buffer requirement</i>	<i>BIPRU 12.6.9R.</i>
<i>Supervisory Liquidity Review Process</i>	the <i>FSA's</i> assessment of the adequacy of certain <i>firms'</i> liquidity resources as described in <i>BIPRU 12.2</i> and <i>BIPRU 12.5.</i>
<i>UK ILAS BIPRU firm</i>	an <i>ILAS BIPRU firm</i> which has its registered office (or, if it does not have a registered office, its head office) in the <i>United Kingdom</i> .
<i>whole-firm liquidity modification</i>	a modification to the <i>overall liquidity adequacy rule</i> of the kind described in <i>BIPRU 12.8.22G.</i>

Annex B

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

After BIPRU 11, insert the following new chapter.

12 Liquidity standards

12.1 Application

- 12.1.1 R Subject to *BIPRU 12.1.2R*, *BIPRU 12* applies to:
- (1) a *BIPRU firm*;
 - (2) an *incoming EEA firm* which:
 - (a) is a *full BCD credit institution*; and
 - (b) has a *branch* in the *United Kingdom*; and
 - (3) a *third country BIPRU firm* which:
 - (a) is a *bank*; and
 - (b) has a *branch* in the *United Kingdom*.
- 12.1.2 R *BIPRU 12.5* (Individual Liquidity Adequacy Standards), *BIPRU 12.6* (Simplified ILAS), *BIPRU 12.7* (Liquid assets buffer) and *BIPRU 12.9* (Individual liquidity guidance and regulatory intervention points) apply only to an *ILAS BIPRU firm*.
- 12.1.3 G A *firm* that is an *exempt full scope BIPRU investment firm* is not an *ILAS BIPRU firm*.
- 12.1.4 R (1) An *exempt full scope BIPRU investment firm* is a *full scope BIPRU investment firm* that at all times has total net assets which are less than or equal to £50 million.
- (2) In this *rule*, total net assets are the sum of a *firm's* total *trading book* assets and its total *non-trading book* assets, less the sum of its called up share capital, reserves and minority interests.
- (3) For the purpose of (2), the value attributed to each of the specified balance sheet items must be that which is reported to the FSA in the *firm's* most recent FSA001 *data item*.

- 12.1.5 G The effect of *BIPRU 12.1.4R* is therefore to require the *firm* to sum the values of cell entries 20A and 20B in *data item* FSA001 and deduct from that total the sum of the values of cell entries 42, 43 and 44 in the same *data item*.
- 12.1.6 G There are some provisions in other sections of *BIPRU 12* which apply only to an *ILAS BIPRU firm*. Where this is the case, the provision in question says so.
- 12.1.7 R In relation to an *incoming EEA firm* or a *third country BIPRU firm*, this chapter applies only with respect to the activities of the *firm's UK branch*.

12.2 Adequacy of liquidity resources

The overall liquidity adequacy rule

- 12.2.1 R (1) A *firm* must at all times maintain liquidity resources which are adequate, both as to amount and quality, to ensure that there is no significant risk that its liabilities cannot be met as they fall due.
- (2) For the purpose of (1):
- (a) a *firm* may not include liquidity resources that can be made available by other members of its *group*;
 - (b) an *incoming EEA firm* or a *third country BIPRU firm* may not, in relation to its *UK branch*, include liquidity resources other than those which satisfy the conditions in *BIPRU 12.2.3R*;
 - (c) a *firm* may not include liquidity resources that may be made available through emergency liquidity assistance from a central bank (including the European Central Bank).

- 12.2.2 G *BIPRU 12.2.1R* is the *overall liquidity adequacy rule*.

Branch liquidity resources

- 12.2.3 R The conditions to which *BIPRU 12.2.1R(2)(b)* refers are that the *firm's* liquidity resources are:
- (1) under the day-to-day control of the *UK branch's* senior management;
 - (2) held in an account with one or more *custodians* in the sole name of the *UK branch*;

- (3) unencumbered; and
 - (4) for the purpose of the *overall liquidity adequacy rule* only, attributed to the balance sheet of the *UK branch*.
- 12.2.4 G The effect of *BIPRU 12.2.1R(2)(b)* and *BIPRU 12.2.3R* is to require an *incoming EEA firm* or a *third country BIPRU firm* to maintain a local operational liquidity reserve in relation to the activities of its *UK branch*. *BIPRU 12.9* contains further *guidance* on this point.
- Liquidity resources: general
- 12.2.5 G For the purposes of the *overall liquidity adequacy rule*, liquidity resources are not confined to the amount or value of a *firm's* marketable, or otherwise realisable, assets. Rather, in assessing the adequacy of those resources, a *firm* should have regard to the overall character of the resources available to it which enable it to meet its liabilities as they fall due. Therefore, for the purposes of that *rule*, a *firm* should ensure that:
- (1) it holds sufficient assets which are marketable, or otherwise realisable;
 - (2) it is able to generate funds from those assets in a timely manner;
 - (3) it maintains a prudent funding profile in which its assets are of appropriate maturities, taking account of the expected timing of that *firm's* liabilities; and
 - (4) it is able to generate unsecured funding of appropriate tenor in a timely manner.
- 12.2.6 G The *overall liquidity adequacy rule* is expressed to apply to each *firm* on a solo basis. Each *firm* must be able to satisfy that *rule* relying solely on its own liquidity resources. Where the *firm* is an *incoming EEA firm* or a *third country BIPRU firm*, compliance with the *overall liquidity adequacy rule* with respect to the *UK branch* must be achieved relying solely on liquidity resources that satisfy the conditions in *BIPRU 12.2.3R*.
- 12.2.7 G The starting point, therefore, is that each *firm*, or where relevant its *UK branch*, must be self-sufficient in terms of its own liquidity adequacy. The *FSA* does, however, recognise that there are circumstances in which it may be appropriate for a *firm* or *branch* to rely on liquidity support provided by other entities in its *group* or from elsewhere within the *firm*. A *firm* wishing to rely on support of this kind, whether for itself or for its *UK branch*, may only do so with the consent of the *FSA*, given by way of a *waiver* under section 148 (Modification or waiver of rules) of the *Act* to the *overall liquidity adequacy rule*.

Liquid assets buffer and funding profile

- 12.2.8 R For the purposes of the *overall liquidity adequacy rule*, an *ILAS BIPRU firm* must also ensure that:
- (1) its liquidity resources contain an adequate buffer of high quality, unencumbered assets; and
 - (2) it maintains a prudent funding profile.
- 12.2.9 G The purpose of *BIPRU 12.2.8R* is to ensure that an *ILAS BIPRU firm* has a buffer of liquid assets which are available to meet those liabilities which fall due in periods of stress experienced by that *firm*. Those periods of stress may be both market-wide and idiosyncratic in nature. The *FSA* acknowledges that in periods of stress a *firm's* liquid assets buffer may be eroded.
- 12.2.10 G The *FSA* recognises, however, that it may take time for a *firm* to build a buffer which is of a sufficient size and quality to help reduce the effect of periods of stress on the *firm*. In particular, the *FSA* recognises that the transition from the *FSA*'s liquidity regime in force immediately prior to the *BIPRU 12* regime is likely to be a gradual one for many *firms*. The *FSA* will seek to agree with a *firm* an appropriate period of time over which its liquid assets buffer ought to be built. The *FSA* will, in any event, incorporate into the *individual liquidity guidance* which it gives to the *firm* details of the steps that it expects the *firm* to take so that it may establish an appropriately robust liquid assets buffer.
- 12.2.11 R In complying with *BIPRU 12.2.8R*, a *simplified ILAS BIPRU firm* must ensure that its liquid assets buffer is at least equal to the amount of liquidity resources required by the *simplified buffer requirement*.
- 12.2.12 G The *FSA* is likely to regard a *simplified ILAS BIPRU firm* whose liquid assets buffer accords with the *simplified buffer requirement* as having an adequate buffer of assets and a prudent funding profile for the purpose of *BIPRU 12.2.8R*. Further *guidance* on this matter is provided in *BIPRU 12.6.5G*.
- 12.2.13 G *BIPRU 12.7* contains more detailed *rules* and *guidance* about the type of assets that an *ILAS BIPRU firm* is permitted to hold in order to satisfy *BIPRU 12.2.8R*.

Individual assessments of liquidity adequacy

- 12.2.14 G The adequacy of an *ILAS BIPRU firm's* liquidity resources needs to be assessed both by that *firm* and by the *FSA*. This process involves:
- (1) in the case of a *standard ILAS BIPRU firm*, an *Individual Liquidity Adequacy Assessment (ILAA)* which such a *firm* is obliged to carry out in accordance with *BIPRU 12.5*;
 - (2) in the case of a *simplified ILAS BIPRU firm*, an *Individual Liquidity Systems Assessment (ILSA)* which such a *firm* is obliged

- to carry out in accordance with *BIPRU 12.6*; and
- (3) a *Supervisory Liquidity Review Process (SLRP)*, which is conducted by the *FSA*.
- 12.2.15 G *BIPRU 12.5* sets out the *ILAS* framework. That section describes some of the stress tests that a *standard ILAS BIPRU firm* must carry out in conducting its *ILAA* and identifies a number of sources of *liquidity risk* in relation to which a *firm* is required to assess the impact of those stresses. For a *standard ILAS BIPRU firm*, the requirements in *BIPRU 12.5* are in addition to the stress testing requirements in *BIPRU 12.4*. The *rules* in *BIPRU 12.5* require a *standard ILAS BIPRU firm* to report the results of both sets of stress tests in its *ILAA*, while the *rules* in *BIPRU 12.6* require a *simplified ILAS BIPRU firm* to report those results in its *ILSA*.
- 12.2.16 G As part of its *SLRP*, the *FSA* will, having regard to the *liquidity risk* profile of the *firm*, consider:
- (1) the adequacy, both as to amount and quality, of the liquidity resources (including the liquid assets buffer) held by the *firm*; and
 - (2) the degree of prudence reflected in the *firm's* funding profile.
- 12.2.17 G In assessing the adequacy of those resources, the *FSA* will consider a *firm's* overall ability to generate funding in a way that ensures that it can meet its liabilities as they fall due both in stressed and in ordinary business conditions.
- 12.2.18 G After completing a review of the *ILAA* as part of the *SLRP*, the *FSA* will give a *standard ILAS BIPRU firm individual liquidity guidance*, advising it of the amount and quality of liquidity resources which the *FSA* considers are appropriate having regard to the *liquidity risk* profile of the *firm*. In giving *individual liquidity guidance*, the *FSA* will also advise the *firm* of what it considers to be a prudent funding profile for the *firm*. In giving the *firm individual liquidity guidance* as to its funding profile, the *FSA* will consider the extent to which the *firm's* liabilities are adequately matched by assets of appropriate maturities. Although the *FSA* may have given a *firm individual liquidity guidance*, this does not remove the need for the *firm* to monitor its *liquidity risk* profile on an ongoing basis and to consider whether it should be holding liquidity resources that are greater in amount or higher in quality, or maintaining a more prudent funding profile, than those advised in its *individual liquidity guidance*.
- 12.2.19 G *BIPRU 12.5* sets out in greater detail the *FSA's ILAS regime*. *BIPRU 12.9* sets out in greater detail the *FSA's process for issuing an ILAS BIPRU firm with individual liquidity guidance* and its approach to monitoring a *firm's* adherence to that *guidance* or, as the case may be, to the *simplified buffer requirement*.

12.3 Liquidity risk management

- 12.3.1 G The approach taken in *BIPRU* 12.3 is to set out:
- (1) overarching systems and controls provisions in relation to a *firm's* management of its *liquidity risk*;
 - (2) provisions outlining the responsibilities of that *firm's governing body* and *senior managers* for the oversight of *liquidity risk*;
 - (3) more detailed provisions covering a number of specific areas, including:
 - (a) pricing *liquidity risk*;
 - (b) intra-day management of liquidity;
 - (c) management of collateral;
 - (d) management of liquidity across legal entities, business lines and currencies; and
 - (e) funding diversification and market access.
- 12.3.2 G *BIPRU* 12.4 contains further *rules* and *guidance* on stress testing and *contingency funding plans*. These are both extensions of the overarching systems and controls provisions in *BIPRU* 12.3. In formulating the *rules* and *guidance* in these two sections, the FSA has taken account of the "Principles for Sound Liquidity Management and Supervision" dated September 2008 issued by the Basel Committee on Banking Supervision. It is intended that the content of *BIPRU* 12.3 and *BIPRU* 12.4 be consistent with those Principles.
- 12.3.3 G *BIPRU* 12.5.4R provides that, in relation to a *standard ILAS BIPRU firm*, it must include in its *ILAA* an assessment of its compliance with the standards set out in *BIPRU* 12.3 and *BIPRU* 12.4, including the results of the stress tests required by the *rules* in *BIPRU* 12.4. A *simplified ILAS BIPRU firm* is not subject to *BIPRU* 12.5 and consequently it is not required to prepare an *ILAA*. Instead, the *rules* in *BIPRU* 12.6 provide that such a *firm* is to carry out an *ILSA*, being alone an assessment of that *firm's* compliance with the standards set out in *BIPRU* 12.3 and *BIPRU* 12.4.

Overarching liquidity systems and controls requirements

- 12.3.4 R A *firm* must have in place robust strategies, policies, processes and systems that enable it to identify, measure, manage and monitor *liquidity risk*, including those which enable it to assess and maintain on an ongoing basis the amounts, types and distribution of liquidity resources that it considers adequate to cover:

- (1) the nature and level of the *liquidity risk* to which it is or might be exposed;
 - (2) the risk that the *firm* cannot meet its liabilities as they fall due; and
 - (3) in the case of an *ILAS BIPRU firm*, the risk that its liquidity resources might in the future fall below the level, or differ from the quality and funding profile, of those resources advised as appropriate by the *FSA* in that *firm's individual liquidity guidance* or, as the case may, its *simplified buffer requirement*.
- 12.3.5 R The strategies, policies, processes and systems required by *BIPRU 12.3.4R* must be comprehensive and proportionate to the nature, scale and complexity of a *firm's* activities.
- 12.3.6 E (1) A *firm* should ensure that it has in place a robust framework to project fully over an appropriate set of time horizons cash flows arising from assets, liabilities and off-balance sheet items.
- (2) A *firm* should ensure that its strategies, policies, processes and systems in relation to *liquidity risk* support the *liquidity risk tolerance* established by its *governing body* in accordance with *BIPRU 12.3.8R*.
- (3) A *firm* should ensure that its strategies, policies, processes and systems in relation to *liquidity risk* enable it to identify, measure, manage and monitor its *liquidity risk* positions for:
- (a) all sources of contingent liquidity demand (including those arising from off-balance sheet activities);
 - (b) all currencies in which that *firm* is active; and
 - (c) correspondent, custody and settlement activities.
- (4) A *firm* should ensure that it sets limits to control its *liquidity risk* exposure within and across lines of business and legal entities.
- (5) A *firm* should ensure that it has in place early warning indicators to identify immediately the emergence of increased *liquidity risk* or vulnerabilities, including indicators that signal whether embedded triggers in funding or security arrangements such as warranties, covenants, events of default, conditions precedent or terms having similar effect are likely to, or will, be breached, occur or fail to be satisfied, or contingent risks will or are likely to crystallise, in either case with the result that access to liquidity resources may be impaired.
- (6) A *firm* should ensure that it has in place reliable management information systems to provide its *governing body, senior*

managers and other appropriate personnel with timely and forward-looking information on the liquidity position of the *firm*.

- (7) Contravention of any of (1) to (6) may be relied upon as tending to establish contravention of *BIPRU 12.3.4R*.
- 12.3.7 G As well as the *rules* in *BIPRU 12.3* requiring a *firm* to have robust systems to enable it to identify, measure, manage and monitor *liquidity risk*, an *ILAS BIPRU firm* is also subject to obligations in *SUP 16* (Reporting requirements) requiring it to report quantitative data about its liquidity position to the *FSA*. That chapter of *SUP* sets out the applicable *data items* and the *rules* governing the frequency of their submission to the *FSA*. Absent a *firm-specific liquidity stress* or a *market liquidity stress*, the *rules* in *SUP 16* do not require daily reporting of *data items*. An *ILAS BIPRU firm* should, however, note that those *rules* do require that it has systems in place to ensure that it is able at all times to meet the requirements for daily reporting of applicable *data items* even if there is no *firm-specific liquidity stress* or *market liquidity stress* and none is expected.
- Governing body and senior management oversight: liquidity risk tolerance
- 12.3.8 R A *firm* must ensure that:
- (1) its *governing body* establishes that *firm's liquidity risk tolerance* and that this is appropriately documented; and
 - (2) its *liquidity risk tolerance* is appropriate for its business strategy and reflects its financial condition and funding capacity.
- 12.3.9 G As part of the *SLRP*, the *FSA* will assess the appropriateness of the *liquidity risk tolerance* adopted by an *ILAS BIPRU firm* to ensure that this risk tolerance is consistent with maintenance by the *firm* of adequate liquidity resources for the purpose of the *overall liquidity adequacy rule*. The *FSA* will expect a *firm* to provide it with an adequately reasoned explanation for the level of *liquidity risk* which that *firm's governing body* has decided it should assume. In assessing the appropriateness of the *liquidity risk tolerance* adopted by a *firm*, the *FSA* will consider whether the tolerance adopted is consistent with the *firm's* satisfaction of *threshold condition 5 (COND 2.5.7G(6))*. Consistent with the *FSA's* statutory objectives under the *Act*, in assessing the appropriateness of a *firm's* adopted *liquidity risk tolerance* the *FSA* will also have regard to the role and importance of a *firm* in the *financial system*.
- Governing body and senior management oversight: approval and review of arrangements
- 12.3.10 R A *firm* must ensure that its *governing body* approves the *firm's* strategies, policies, processes and systems relating to the management of *liquidity risk*, including those described in *BIPRU 12.3.4R*.

- 12.3.11 R A *firm* must ensure that its *governing body* reviews regularly (and not less frequently than annually):
- (1) the continued adequacy of any strategies, policies, processes and systems approved in accordance with *BIPRU 12.3.10R*; and
 - (2) the *firm's liquidity risk tolerance*.
- 12.3.12 R A *firm* must ensure that its *senior managers*:
- (1) continuously review that *firm's liquidity position*, including its compliance with the *overall liquidity adequacy rule*; and
 - (2) report to its *governing body* on a regular basis adequate information as to that *firm's liquidity position* and its compliance with the *overall liquidity adequacy rule* and with *BIPRU 12.3.4R*.
- 12.3.13 G Although a *firm's senior managers* are likely to develop strategies, policies and practices for the management of that *firm's liquidity risk*, it is the responsibility of a *firm's governing body* to approve those strategies, policies and practices as adequate. In determining the adequacy of those strategies, policies and practices, a *firm's governing body* should have regard to that *firm's liquidity risk tolerance* established in accordance with *BIPRU 12.3.8R*.
- 12.3.14 G The *FSA* will assess the adequacy of an *ILAS BIPRU firm's liquidity risk management framework* as part of the *SLRP*.
- Pricing liquidity risk
- 12.3.15 E (1) In relation to all significant business activities, a *firm* should ensure that it accurately quantifies liquidity costs, benefits and risks and fully incorporates them into:
- (a) product pricing;
 - (b) performance measurement and incentives; and
 - (c) the approval process for new products.
- (2) For the purposes of (1), a *firm* should ensure that:
- (a) includes significant business activities whether or not they are accounted for on-balance sheet; and
 - (b) carries out the exercise of quantification and incorporation both in normal financial conditions and under the stresses required by *BIPRU 12.4.1R*.
- (3) A *firm* should ensure that the liquidity costs, benefits and risks are clearly and transparently attributed to business lines and are

understood by business line management.

- (4) Contravention of any of (1), (2) or (3) may be relied upon as tending to establish contravention of *BIPRU* 12.3.4R.
- 12.3.16 G The incorporation of liquidity pricing into a *firm's* processes assists in aligning the risk-taking incentives of individual business lines within that *firm* with the *liquidity risk* to which the *firm* as a whole is exposed as a result of their activities. It is important that all significant business activities are addressed, including activities which involve the creation of contingent exposures which may not have an immediate balance sheet impact.
- Intra-day management of liquidity
- 12.3.17 R A *firm* must actively manage its intra-day liquidity positions and any related risks so that it is able to meet its payment and settlement obligations on a timely basis.
- 12.3.18 G In complying with *BIPRU* 12.3.17R, a *firm* should take into account all obligations arising from its acting as a custodian, a correspondent bank or a settlement agent.
- 12.3.19 R For the purposes of *BIPRU* 12.3.17R, a *firm* must ensure that:
- (1) it is able to meet its payment and settlement obligations on a timely basis under both normal financial conditions and under the stresses required by *BIPRU* 12.4.1R; and
 - (2) its arrangements for the management of intra-day liquidity enable it to identify and prioritise the most time-critical payment and settlement obligations.
- 12.3.20 G The FSA considers that a *firm's* ability to meet its payment and settlement obligations on an intra-day basis is important not just for that *firm*, but also for the liquidity position of that *firm's* counterparties and for the smooth functioning of payment and settlement systems as a whole.
- 12.3.21 E (1) A *firm* should ensure that its intra-day liquidity management arrangements enable it, in relation to the markets in which it is active and the currencies in which it has significant positions, to:
- (a) measure expected daily gross liquidity inflows and outflows, anticipate the intra-day timing of these flows where possible, and forecast the range of potential net funding shortfalls that might arise at different points during the day;
 - (b) monitor its intra-day liquidity positions against expected activities and available resources;

- (c) identify gross liquidity inflows and outflows attributable to any correspondent, custodian or settlement agency services provided by that *firm*;
 - (d) manage the timing of its liquidity outflows such that priority is given to that *firm's* most time-critical obligations;
 - (e) deal with unexpected disruptions to its intra-day liquidity flows;
 - (f) acquire sufficient intra-day funding such that it is able to meet its most time-critical obligations when expected and other less time-critical obligations as soon as possible thereafter; and
 - (g) manage and mobilise collateral as necessary for the purposes of achieving the aim in (f).
- (2) Contravention of any of (1)(a) to (g) may be relied upon as tending to establish contravention of *BIPRU* 12.3.4R.

Management of collateral

- 12.3.22 R A *firm* must actively manage its collateral positions.
- 12.3.23 R For the purposes of *BIPRU* 12.3.22R, a *firm* must, in relation to all currencies in which it has significant positions and all jurisdictions in which it carries on significant business activities, ensure that it:
- (1) can calculate all of its collateral positions, including assets currently provided as collateral, relative to the total amount of security required;
 - (2) can calculate the amount of unencumbered assets available to it to be provided as collateral;
 - (3) can mobilise collateral in a timely manner;
 - (4) monitors the location of available collateral;
 - (5) takes into account the extent to which counterparties with which it has deposited collateral may have re-hypothecated that collateral;
 - (6) has access to adequately diversified sources of collateral;
 - (7) assesses the eligibility of each major asset class that it holds for use as collateral with central banks;
 - (8) assesses on an ongoing basis the acceptability of its assets to major counterparties and providers of funds in secured funding

- markets; and
- (9) monitors and manages the impact that the terms of existing funding or security arrangements, such as warranties, covenants, events of default, negative pledges and cross default clauses could have on its ability to mobilise collateral including for use in borrowing under any central bank facility (in particular, emergency liquidity assistance on a secured basis).
- 12.3.24 G For the purposes of *BIPRU 12.3.23R(8)* and (9), a *firm* should take into account the impact of the stresses that it conducts under *BIPRU 12.4.1R* on the requirements which may be imposed on the provision of its assets as collateral (for example, haircuts) and also the availability of funds from private counterparties during such periods of stress.
- 12.3.25 E (1) A *firm* should ensure that its arrangements for the management of *liquidity risk*:
- (a) enable it to monitor shifts between intra-day and overnight or term collateral usage;
 - (b) enable it to appropriately adjust its calculation of available collateral to account for assets that are part of a “tied hedge”;
 - (c) include adequate consideration of the potential for uncertainty around, or disruption to, intra-day asset flows; and
 - (d) take into account the potential for additional collateral requirements under the terms of contracts governing existing collateral positions (for example, as a result of a deterioration in its own credit rating).
- (2) Contravention of any of (1)(a) to (d) may be relied upon as tending to establish contravention of *BIPRU 12.3.4R*.

Managing liquidity across legal entities, business lines and currencies

- 12.3.26 R In complying with *BIPRU 12.3.4R*, a *firm* must ensure that:
- (1) it actively manages its *liquidity risk* exposures and related funding needs; and
 - (2) it takes into account:
 - (a) the impact on its own liquidity position of its forming part of a *group*;
 - (b) the need to manage the liquidity position of individual business lines in addition to that of the *firm* as a whole;

and

- (c) the *liquidity risk* arising from its taking positions in foreign currencies; and
 - (3) where it forms part of a *group*, it understands and has regard to any legal, regulatory, operational or other constraints on the transferability to it of funds and collateral by other entities in that *group*.
- 12.3.27 R A *firm* must have policies and processes for the measurement and management of its net funding position and requirements on an ongoing and forward looking basis. Alternative scenarios must be considered and the assumptions underpinning decisions concerning the net funding position must be reviewed regularly.
- [**Note:** annex V paragraph 14 of the *Banking Consolidation Directive*]
- 12.3.28 G In its *liquidity risk* management plans, a *firm* should identify clearly its assumptions regarding the transferability of funds and collateral. A *firm* should expect that the *FSA* will scrutinise those assumptions.
- Funding diversification and market access
- 12.3.29 R In complying with *BIPRU 12.3.4R*, a *firm* must ensure that it has access to funding which is adequately diversified, both as to source and tenor.
- 12.3.30 R A *firm* must ensure that its *governing body*:
- (1) is aware of the composition, characteristics and degree of diversification of its assets and funding sources; and
 - (2) regularly reviews its funding strategy in the light of any changes in the environment in which it operates.
- 12.3.31 G Funding diversification should not be considered an end in its own right. Rather, the purpose of diversification is to ensure that a *firm* has in place alternative sources of funding that strengthen its capacity to withstand a variety of severe yet plausible institution-specific and market-wide liquidity shocks.
- 12.3.32 E
- (1) A *firm* should ensure that funding diversification is taken into account in that *firm*'s business planning process.
 - (2) A *firm* should ensure that its funding arrangements take into account correlations between market conditions and the ability to access funds from different sources.
 - (3) A *firm* should ensure that in establishing adequate diversification it sets limits on its funding according to the following variables:
- (a) maturity;

- (b) nature of depositor or counterparty;
 - (c) levels of secured and unsecured funding;
 - (d) instrument type;
 - (e) securitisation vehicle;
 - (f) currency; and
 - (g) geographic market.
- (4) A *firm* should ensure that it maintains an ongoing presence in its chosen funding markets and strong relationships with its chosen providers of funds.
- (5) A *firm* should regularly test its capacity to raise funds quickly from its chosen funding sources to provide short, medium and long-term liquidity.
- (6) A *firm* should ensure that its *senior managers* identify the main factors that affect its ability to raise funds and should monitor those factors closely to ensure that their estimates of fund raising capacity remain valid.
- (7) Contravention of any of (1) to (6) may be relied upon as tending to establish contravention of *BIPRU* 12.3.4R.

12.4 Stress testing and contingency funding

Stress testing

- 12.4.1 R In order to ensure compliance with the *overall liquidity adequacy rule* and with *BIPRU* 12.3.4R, a *firm* must:
- (1) conduct on a regular basis appropriate stress tests so as to:
 - (a) identify sources of potential liquidity strain;
 - (b) ensure that current liquidity exposures continue to conform to the *liquidity risk* tolerance established by that *firm's governing body*; and
 - (c) identify the effects on that *firm's* assumptions about pricing; and
 - (2) analyse the separate and combined impact of possible future liquidity stresses on its:
 - (a) cash flows;

- (b) liquidity position;
 - (c) profitability; and
 - (d) solvency.
- 12.4.2 R In accordance with *BIPRU 12.3.11R*, a *firm* must ensure that its *governing body* reviews regularly the stresses and scenarios tested to ensure that their nature and severity remain appropriate and relevant to that *firm*.
- 12.4.3 G Consistent with *BIPRU 12.3.5R*, the *FSA* expects that the extent and frequency of such testing, as well as the degree of regularity of *governing body* review under *BIPRU 12.4.2R*, should be proportionate to the nature scale and complexity of a *firm's* activities, as well as to the size of its *liquidity risk* exposures. Consistent with the *FSA*'s statutory objectives under the *Act*, in assessing the adequacy of a *firm*'s stress testing arrangements (including their frequency and the regularity of *governing body* review) the *FSA* will also have regard to the role and importance of that *firm* in the *financial system*. The *FSA* will, however, expect stress testing and *governing body* review to be carried out no less frequently than annually. The *FSA* expects that a *firm* will build into its stress testing arrangements the capability to increase the frequency of those tests in special circumstances, such as in volatile market conditions or where requested by the *FSA*.
- 12.4.4 G For the purposes of *BIPRU 12.4.2R*, a review should take into account:
- (1) changes in market conditions;
 - (2) changes in the nature, scale or complexity of the *firm*'s business model and activities; and
 - (3) the *firm*'s practical experience in periods of stress.
- 12.4.5 E (1) In designing its stress tests, a *firm* should in particular ensure that it considers:
- (a) short-term and protracted stress scenarios;
 - (b) institution-specific and market-wide stress scenarios; and
 - (c) combinations of (a) and (b).
- (2) Contravention of any of (1)(a) to (c) may be relied upon as tending to establish contravention of *BIPRU 12.4.1R*.
- 12.4.6 G The *FSA* expects every *firm*, including a *firm* with an apparently strong liquidity profile, to consider the potential impact of severe stress scenarios.

- 12.4.7 G In conducting its stress testing, a *firm* should also, where relevant, consider the impact of its chosen stresses on the appropriateness of its assumptions relating to:
- (1) correlations between funding markets;
 - (2) the effectiveness of diversification across its chosen sources of funding;
 - (3) additional margin calls and collateral requirements;
 - (4) contingent claims, including potential draws on committed lines extended to third parties or to other entities in that *firm's group*;
 - (5) liquidity absorbed by off-balance sheet vehicles and activities (including conduit financing);
 - (6) the transferability of liquidity resources;
 - (7) access to central bank market operations and liquidity facilities;
 - (8) estimates of future balance sheet growth;
 - (9) the continued availability of market liquidity in a number of currently highly liquid markets;
 - (10) ability to access secured and unsecured funding (including retail *deposits*);
 - (11) currency convertibility; and
 - (12) access to payment or settlement systems on which the *firm* relies.
- 12.4.8 E (1) A *firm* should ensure that the results of its stress tests are:
- (a) reviewed by its *senior managers*;
 - (b) reported to that *firm's governing body*, specifically highlighting any vulnerabilities identified and proposing appropriate remedial action;
 - (c) reflected in the processes, strategies and systems established in accordance with *BIPRU 12.3.4R*;
 - (d) used to develop effective *contingency funding plans*;
 - (e) integrated into that *firm's business planning process* and day-to-day risk management; and
 - (f) taken into account when setting internal limits for the management of that *firm's liquidity risk exposure*.

- (2) Contravention of any of (1)(a) to (f) may be relied upon as tending to establish contravention of *BIPRU* 12.3.4R.
- 12.4.9 R A *firm* must ensure that the results of its stress tests are reported to the FSA in a timely manner.
- Contingency funding plans
- 12.4.10 R A *firm* must have an adequate *contingency funding plan* in place to deal with liquidity crises.
[Note: annex V paragraph 15 of the *Banking Consolidation Directive*]
- 12.4.11 R In complying with *BIPRU* 12.4.10R, a *firm* must ensure that its *contingency funding plan* has been approved by its *governing body*.
- 12.4.12 G A *contingency funding plan* sets out a *firm's* strategies for addressing liquidity shortfalls in emergency situations. Its aim should be to ensure that, in each of the stresses required by *BIPRU* 12.4.1R, it would still have sufficient liquidity resources to ensure that it can meet its liabilities as they fall due.
- 12.4.13 R A *firm* must ensure that its *contingency funding plan*:
- (1) outlines strategies, policies and plans to manage a range of stresses;
 - (2) establishes a clear allocation of roles and clear lines of management responsibility;
 - (3) is formally documented;
 - (4) includes clear invocation and escalation procedures;
 - (5) is regularly tested and updated to ensure that it remains operationally robust;
 - (6) outlines how that *firm* will meet time-critical payments on an intra-day basis in circumstances where intra-day liquidity resources become scarce;
 - (7) outlines that *firm's* operational arrangements for managing a retail funding run;
 - (8) in relation to each of the sources of funding identified for use in emergency situations, is based on a sufficiently accurate assessment of:
 - (a) the amount of funding that can be raised from that source; and
 - (b) the time needed to raise funding from that source;

- (9) is sufficiently robust to withstand simultaneous disruptions in a range of payment and settlement systems;
 - (10) outlines how that *firm* will manage both internal communications and those with its external stakeholders; and
 - (11) establishes mechanisms to ensure that the *firm's governing body* and *senior managers* receive management information that is both relevant and timely.
- 12.4.14 E (1) In designing a *contingency funding plan* a *firm* should ensure that it takes into account:
- (a) the impact of stressed market conditions on its ability to sell or securitise assets;
 - (b) the impact of extensive or complete loss of typically available market funding options;
 - (c) the financial, reputational and any other additional consequences for that *firm* arising from the execution of the *contingency funding plan* itself;
 - (d) its ability to transfer liquid assets having regard to any legal, regulatory or operational constraints; and
 - (e) its ability to raise additional funding from central bank market operations and liquidity facilities.
- (2) Contravention of any of (1)(a) to (e) may be relied upon as tending to establish contravention of *BIPRU 12.3.4R*.
- 12.4.15 G A *firm* should ensure that its *contingency funding plan* takes into account the terms and conditions of any central bank liquidity facilities to which it has access, including both facilities that form part of normal liquidity management operations and emergency liquidity assistance on a secured basis. Where a *firm* includes in its *contingency funding plan* the use of central bank liquidity facilities it should consider the nature of those facilities, collateral eligibility, haircuts to which its collateral might be subject, terms in its existing or available funding arrangements which might impact its ability to access central bank facilities, operational arrangements for accessing those facilities and the potential reputational consequences for that *firm* in accessing them. In formulating its *contingency funding plan*, a *firm* should not rely on expectations it may have about future changes to central bank facilities, either in relation to their normal liquidity management operations or in relation to the availability of specific liquidity facilities in exceptional circumstances.

12.5 Individual Liquidity Adequacy Standards

Individual Liquidity Adequacy Assessment

- 12.5.1 R This section applies to a *standard ILAS BIPRU firm*.
- 12.5.2 R A *firm* must carry out an individual liquidity adequacy assessment (*ILAA*) in accordance with this section.
- 12.5.3 G In conducting its *ILAA*, a *firm* is obliged to comply with the stress testing and related requirements which appear in this section. The *rules* in this section also provide that in its *ILAA* a *firm* must include an assessment of the *firm's* compliance with the standards set out in *BIPRU 12.3* and *BIPRU 12.4*.
- 12.5.4 R A *firm* must ensure that:
- (1) it regularly carries out an *ILAA*;
 - (2) it makes a written record of its *ILAA*;
 - (3) its *ILAA* is proportionate to the nature, scale and complexity of its activities;
 - (4) its *ILAA* takes into account whole-*firm* and *group*-wide liquidity resources only to the extent that reliance on these is permitted by the *FSA*;
 - (5) its *ILAA* includes an assessment of the results of the stress tests required by *BIPRU 12.5.6R*; and
 - (6) its *ILAA* includes an assessment of the *firm's* compliance with *BIPRU 12.3* and *BIPRU 12.4*, including the results of the stress tests required by the *rules* in *BIPRU 12.4*.
- 12.5.5 G A *firm* should carry out an *ILAA* at least annually, or more frequently if changes in its business or strategy or the nature, scale or complexity of its activities or the operational environment suggest that the current level of liquidity resources is no longer adequate. A *firm* should expect that its usual supervisory contact at the *FSA* will ask for the *ILAA* to be submitted as part of the ongoing supervisory process.
- 12.5.6 R A *firm* must ensure that in carrying out its *ILAA* it considers how that *firm's* liquidity resources change as a result of:
- (1) the stress in *BIPRU 12.5.8R* (the “first liquidity stress”);
 - (2) the stress in *BIPRU 12.5.11R* (the “second liquidity stress”); and
 - (3) the first and second liquidity stresses occurring simultaneously.

ILAA stresses

- 12.5.7 G The FSA will review the results of a *firm's ILAA*, including the results of the stress tests required by *BIPRU 12.5.6R*, as part of its *Supervisory Liquidity Review Process (SLRP)*. The FSA's review of the stress test results will assist it assessing the adequacy of a *firm's liquidity resources relative to other ILAS BIPRU firms* and, consequently, in calibrating the *individual liquidity guidance* that it gives to that *firm*. *BIPRU 12.9.2G* sets out the FSA's approach to assessing the adequacy of a *firm's liquidity resources* and indicates that, among other factors, it will have regard to the *firm's ILAA*. It is not, therefore, the case that the amount of liquidity resources advised to the *firm* as being adequate in its *individual liquidity guidance* will necessarily equate to the amount needed to meet its liabilities as they fall due in the stresses required by *BIPRU 12.5.6R*. The FSA will assess the adequacy of a *firm's liquidity resources* on a case-by-case basis and, accordingly, the amount of liquidity resources judged as adequate in the *firm's individual liquidity guidance* might be either above or below the amount needed to survive the stresses required by *BIPRU 12.5.6R*.

First liquidity stress

- 12.5.8 R The first liquidity stress to which *BIPRU 12.5.6R* refers is an unforeseen, name-specific, liquidity stress in which:
- (1) financial market participants and retail depositors consider that in the short-term the *firm* will be or is likely to be unable to meet its liabilities as they fall due;
 - (2) the *firm's counterparties* reduce the amount of intra-day credit which they are willing to extend to it;
 - (3) the *firm* ceases to have access to foreign currency spot and *swap* markets; and
 - (4) over the longer-term the *firm's obligations* linked to its credit rating crystallise as a result of a reduction in that credit rating.
- 12.5.9 R For the purpose of *BIPRU 12.5.8R(1)* to (3), a *firm* must assume that the initial, short-term, period of stress lasts for at least two weeks.
- 12.5.10 G For the purpose of *BIPRU 12.5.8R(4)*, a *firm* should consider the effect of credit rating downgrades of varying degrees of severity. In doing so, it should also consider the cumulative effect of successive credit rating downgrades to its long-term credit rating.

Second liquidity stress

- 12.5.11 R The second liquidity stress to which *BIPRU 12.5.6R* refers is an unforeseen, market-wide liquidity stress of three *months' duration*.
- 12.5.12 R For the purpose of *BIPRU 12.5.11R*, a *firm* must assume that the second liquidity stress is characterised by:

- (1) uncertainty as to the accuracy of the valuation attributed to that *firm's* assets and those of its counterparties;
- (2) inability to realise, or ability to realise only at excessive cost, particular classes of assets, including those which represent claims on other participants in the financial markets or which were originated by them;
- (3) uncertainty as to the ability of a significant number of *firms* to ensure that they can meet their liabilities as they fall due; and
- (4) risk aversion among participants in the markets on which the *firm* relies for funding.

ILAA methodology

- 12.5.13 R In carrying out the liquidity stresses required by *BIPRU 12.5.6R*, a *firm* must:
- (1) analyse each of the sources of risk identified in *BIPRU 12.5.14R*;
 - (2) record the evidence which supports any behavioural assumptions that it makes in carrying out those stress tests;
 - (3) record the evidence which supports its assessment of the adequacy of its liquid assets buffer; and
 - (4) identify those of the measures set out in its *contingency funding plan* that it would implement.
- 12.5.14 R The sources of risk referred to in *BIPRU 12.5.13R* are:
- (1) wholesale secured and unsecured funding risk;
 - (2) retail funding risk;
 - (3) intra-day *liquidity risk*;
 - (4) intra-group *liquidity risk*;
 - (5) cross-currency *liquidity risk*;
 - (6) off-balance sheet *liquidity risk*;
 - (7) franchise-viability risk;
 - (8) marketable assets risk;
 - (9) non-marketable assets risk; and
 - (10) funding concentration risk.

Wholesale secured and unsecured funding risk

- 12.5.15 R For the purpose of assessing its wholesale funding risk, a *firm* must estimate the gross wholesale outflows that could occur under the liquidity stresses required by *BIPRU* 12.5.6R.
- 12.5.16 R In assessing its wholesale funding risk, a *firm* must:
- (1) identify its wholesale liabilities;
 - (2) determine how those liabilities behave under normal financial conditions;
 - (3) assess how they will behave under the stresses required by *BIPRU* 12.5.6R; and
 - (4) divide its wholesale liabilities into funding which the *firm* assesses as having a higher than average likelihood of withdrawal in response to actual or perceived changes in the *firm's* credit-worthiness (“Type A” wholesale funding) and other funding (“Type B” wholesale funding).
- 12.5.17 G In assessing how its liabilities behave under stress, the *firm* should categorise its liabilities according to value, maturity and estimated speed of outflow. The *firm* should bear in mind that wholesale funding risk may crystallise as an acute loss of funds in the short term, or as a longer-term gradual leakage of funds, or as both.
- 12.5.18 G In the *FSA*'s view, Type A wholesale funding is likely to include at least funding which:
- (1) is accepted from a *credit institution*, local authority, *insurance undertaking*, pension fund, money market fund, asset manager (including a hedge fund manager), government-sponsored agency, sovereign government, or sophisticated non-financial corporation; or
 - (2) is accepted through the treasury function of a sophisticated non-financial corporation which may be assumed to respond swiftly to negative news about a *firm's* credit-worthiness; or
 - (3) is accepted on wholesale market terms as a part of a *firm's* money market operations; or
 - (4) is accepted from a depositor with whom a *firm* does not have a long-established relationship or to whom a *firm* does not supply a range of services; or
 - (5) is accepted from overseas counterparties (other than those in the country or territory of incorporation of a *firm's* *parent undertaking* or, in the case of a *UK branch*, of the *firm* of which it

- forms part); or
- (6) is obtained through unsecured debt instruments (such as certificates of deposit, medium-term notes and commercial paper); or
 - (7) is not obtained through *repo* against assets of the type described in *BIPRU* 12.7.2R(1) or (2); or
 - (8) is obtained from counterparties with a relatively low creditor seniority on the liquidation of the *firm*.
- 12.5.19 R For the purpose of *BIPRU* 12.5.15R, a *firm* must assume that it is unable to roll any of its Type A wholesale funding in the first two weeks of the stresses.
- Retail funding risk
- 12.5.20 R In this part of *BIPRU* 12.5, “retail funding” is funding that is accepted from a *consumer*.
- 12.5.21 R For the purpose of assessing its retail funding risk, a *firm* must:
- (1) estimate the gross retail outflows that could occur under the liquidity stresses required by *BIPRU* 12.5.6R;
 - (2) identify the stress, or combination of stresses, to which it considers its retail funding to be most vulnerable and estimate the gross retail outflows that could occur under that stress or combination of stresses; and
 - (3) divide its retail funding into funding which the *firm* assesses as having a higher than average likelihood of withdrawal in response to actual or perceived changes in the *firm*’s credit-worthiness (“Type A” retail funding) and other funding (“Type B” retail funding).
- 12.5.22 G In general, the *FSA* expects a *firm*’s retail funding to be less responsive than its wholesale funding to actual or perceived changes in the *firm*’s credit-worthiness. However, a *firm* should nevertheless make its own assessment of the relative responsiveness of its wholesale and retail funding.
- 12.5.23 G For the purposes of assessing behaviour under stress, a *firm* should categorise its retail liabilities according to: value, maturity, estimated speed of outflow, product type, interest rate applied and any other factor that it considers relevant to its retail *deposit* structure.
- 12.5.24 G A *firm* should also be mindful that its retail funding profile is unlikely to be constant. In carrying out its *ILAA*, a *firm* should have regard to any changes to its retail funding profile since the previous *ILAA* and also to the possible impact of any future changes on its ability to maintain retail

funding during periods of stress. In its *ILAA* submission to the *FSA*, a *firm* should include an analysis of:

- (1) its retail funding profile as at the date of its *ILAA*;
 - (2) its retail funding profile over the twelve *months* preceding its *ILAA*;
 - (3) its projected retail funding profile over the twelve *months* following the date of its *ILAA*; and
 - (4) its approach to assessing which of its retail funding it has classed as Type A retail funding and which as Type B retail funding.
- 12.5.25 G In the *FSA*'s view Type A retail funding is likely to include at least funding which:
- (1) has been accepted through the internet; or
 - (2) is considered to have a more than average sensitivity to interest rate changes (such as a *deposit* whose acceptance can reasonably be attributed to the use of price-focused advertising by the *firm* accepting the *deposit*); or
 - (3) in relation to any individual depositor exceeds to a significant extent the amount of that individual's *deposits* with the accepting *firm* that are covered by a national deposit guarantee scheme; or
 - (4) is not accepted from a depositor with whom the *firm* has had a long relationship; or
 - (5) is accepted from retail depositors who can access their *deposits* before their residual contractual maturity subject to a loss of interest or payment of another form of early access charge (as a general proposition, the behaviour of liabilities to retail depositors is likely to depend in part on the contractual terms and conditions which give rise to those liabilities); or
 - (6) is not held in an account which is maintained for transactional purposes.

Intra-day liquidity risk

- 12.5.26 R For the purpose of assessing its intra-day *liquidity risk* arising from its direct participation in a payment or settlement system, a *firm* must in relation to each such system in which it participates:
- (1) calculate on an intra-day basis the net amounts of collateral and cash required by that *firm* to fund participation in that system; and
 - (2) estimate how the amounts in (1) could change under the liquidity stresses required by *BIPRU* 12.5.6R.

- 12.5.27 G For the purpose of calculating the net amounts of collateral and cash under *BIPRU 12.5.26R*, a *firm* should separately analyse:
- (1) the amounts of collateral and cash needed in relation to both its own payments and those of its customers; and
 - (2) the intra-day timing of the payment of cash and the posting of the collateral, including the time at which the demand for its collateral and cash is greatest.
- 12.5.28 G For the purpose of *BIPRU 12.5.26R*, a *firm* should ensure that it takes into account, in both normal financial conditions and in periods of stress, the effect of:
- (1) other participants in a payment system withholding some or all of the payments expected from them; and
 - (2) its customers increasing either or both the volume and value of their payments.
- 12.5.29 R At the same time as it carries out the calculation and estimation in *BIPRU 12.5.26R*, a *firm* which participates directly in one or more payment or settlement systems must also estimate the impact on its liquidity position of the customer to which it has the largest intra-day credit exposure defaulting on its payment obligations to the *firm*:
- (1) under normal financial conditions; and
 - (2) under the stresses required by *BIPRU 12.5.6R*.
- 12.5.30 G For the purpose of *BIPRU 12.5.29R*, a *firm* should assume that the effect of that default is that the exposure is rolled overnight.
- 12.5.31 R A *firm* must, as part of its *ILAA* submission to the *FSA*:
- (1) identify those payment and settlement systems in which it is a direct participant; and
 - (2) provide details of the intra-day credit policies that it applies, including the criteria against which it sets credit limits, when extending credit to a customer which is not a direct participant in the payment or settlement system in question.
- 12.5.32 G For the purpose of *BIPRU 12.5.31R*, the *FSA* would expect a *firm*, in relation to each payment or settlement system in which it participates directly, to provide details of:
- (1) that *firm*'s charges for providing intra-day credit;
 - (2) any collateral requirements which it applies to its customers;

- (3) the credit limits that it imposes (and the circumstances, if any, in which credit may be provided notwithstanding a limit breach);
 - (4) the extent to which the customers of that *firm* make use of the credit extended to them; and
 - (5) where relevant, the points during the day at which a customer is required to settle, or provide assets as collateral to cover, that *firm's* credit exposure to it.
- 12.5.33 R *BIPRU 12.5.34R* applies to a *firm* which:
- (1) is not a direct participant in a given payment or settlement system;
 - (2) is a customer of a *firm* that is a direct participant in such a system for the purposes of gaining access to that system; and
 - (3) receives intra-day credit from that participant *firm* or prefunds its account with such a *firm*.
- 12.5.34 R For the purpose of assessing its intra-day *liquidity risk* a *firm* to which *BIPRU 12.5.33R* applies must assess the effect on its own position of a participant *firm* from which it receives intra-day credit or with which it has a prefunded account being unable to perform its obligations to that *firm*:
- (1) under normal financial conditions; and
 - (2) under the stresses required by *BIPRU 12.5.6R*.
- 12.5.35 G As part of its *ILAA* submission to the *FSA*, a *firm* to which *BIPRU 12.5.33R* applies should include:
- (1) details of any alternative arrangements that it has in place to ensure that it continues to be able to meet its liabilities as they fall due in the circumstances set out in *BIPRU 12.5.34R*; and
 - (2) details of the policies governing the use of intra-day credit provided to it by a *firm* which is a direct participant in a given payment or settlement system, including details of the criteria against which that participant will decide whether to reduce or cease the provision of intra-day credit.
- Intra-group liquidity risk
- 12.5.36 R Where a *firm* has an *intra-group liquidity modification* permitting it to rely on liquidity from other members of its *group* in order to satisfy the *overall liquidity adequacy rule*, or may be exposed to calls on its own liquidity resources from others in its *group*, then in assessing its *intra-group liquidity risk* it must:

- (1) take into account:
 - (a) the extent to which it and other entities in its *group* have access to central bank funding;
 - (b) in relation to any *group* entity on which a *firm* relies for liquidity support, the legal and regulatory regime to which that entity is subject, in particular that covering liquidity regulation; and
 - (c) the contractual arrangements governing any agreed forms of intra-*group* liquidity support (including committed funding lines); and
 - (2) assume that in periods of stress, *group* entities will not repay loans or *deposits* made by the *firm* to them, but that the *firm* will meet its liabilities that fall due to other *group* entities during the period of the relevant stress.
- 12.5.37 G For the purpose of *BIPRU* 12.5.36R, a *firm* should consider the full range of legal and regulatory restrictions on the availability to it of liquidity support from other members of its *group*. A *firm* should ensure that it understands restrictions in force in other jurisdictions, as well as the potential for such restrictions to be imposed in the future, as to the allowable size of intra-*group* exposures. A *firm* should also consider the circumstances in which it may find itself obliged to transfer liquidity resources to other entities in its *group*.
- 12.5.38 R In relation to an *incoming EEA firm* or *third country BIPRU firm* which does not have a *whole-firm liquidity modification*, that *firm* must assess the risk that its *UK branch* may be exposed to calls on liquidity under its control from its head office:
- (1) in normal financial conditions; and
 - (2) under the liquidity stresses required by *BIPRU* 12.5.6R.
- 12.5.39 G In complying with *BIPRU* 12.5.38R a *firm* is therefore assessing its exposure to inter-office *liquidity risk*, rather than intra-*group liquidity risk*. It is the *FSA's* assessment of the *firm's* inter-office *liquidity risk* that is one of the factors that will inform the *FSA's* decision as to the appropriate size for the *firm's* local operational liquidity reserve (as described in *BIPRU* 12.2).
- Cross-currency liquidity risk
- 12.5.40 R For the purpose of assessing its cross-currency *liquidity risk*, a *firm* must:
- (1) in relation to each currency in which it has significant positions, calculate its gross outflows and gross inflows having regard to their respective maturities;

- (2) where it identifies a net outflow in (1), assess how it will fund that outflow; and
- (3) estimate how the amounts in (1) and the assessment in (2) could change under the liquidity stresses required by *BIPRU 12.5.6R*.
- 12.5.41 R A *firm* must, as part of its *ILAA* submission to the *FSA*, in relation to each currency in which it has significant positions:
- (1) identify the type of financial instruments which that *firm* uses to raise funding in that currency;
 - (2) identify the main counterparties which provide funding to that *firm* in that currency; and
 - (3) describe the arrangements that it has in place to fund net outflows in that currency on a timely basis.
- Off-balance sheet liquidity risk
- 12.5.42 R For the purpose of assessing its off-balance sheet *liquidity risk*, a *firm* must:
- (1) identify all off-balance sheet activities that might affect its cash flows;
 - (2) calculate the effect on its cash flows of those activities in normal financial conditions; and
 - (3) estimate the effect on its cash flows of those activities under the liquidity stresses required by *BIPRU 12.5.6R*.
- 12.5.43 R For the purpose of *BIPRU 12.5.42R*, a *firm* must take into account the circumstances in which it may choose to provide liquidity support in respect of its off-balance sheet activities beyond its contractual obligations (if any) to do so.
- 12.5.44 R For the purpose of *BIPRU 12.5.42R*, a *firm* must in particular consider the impact on its cash flows of:
- (1) *derivatives* positions;
 - (2) contingent liabilities;
 - (3) commitments given; and
 - (4) liquidity facilities to support securitisation programmes.
- 12.5.45 G In relation to *derivatives* positions, a *firm* should:
- (1) assess the effect on its cash flows arising from the maturity, exercise and repricing of *derivatives* in which it holds a position,

including the impact of counterparties:

- (a) who may require the posting of additional margin or collateral in the event of a decline in that *firm's* credit rating;
 - (b) who may require the posting of additional margin or collateral (or the return to them of margin or collateral) in the event of a change in the value of a *derivative* or of the posted collateral;
 - (c) who (in the case of those that are any of a *recognised investment exchange*, a *designated investment exchange* or a *recognised clearing house*) may require the posting of additional margin in volatile market conditions;
 - (d) who may choose to terminate an *OTC derivative* which they have entered into with the *firm* rather than post additional margin or collateral;
 - (e) who, in periods of name-specific liquidity stress experienced by the *firm*, may choose to terminate out of the money *derivatives* which they have entered into with that *firm*; and
 - (f) who, in periods of stress, may choose to post less liquid collateral than would likely be the case in normal financial conditions; and
- (2) assume that under the stresses required by *BIPRU 12.5.6R* there may be uncertainty as to the accuracy of the valuation attributed to a *derivative* contract.
- 12.5.46 G In relation to its contingent liabilities, a *firm* should:
- (1) calculate the impact on its cash flows of those of its contingent obligations that will be triggered in normal financial conditions; and
 - (2) estimate the impact on its cash flows of those of its contingent obligations that may be triggered under the liquidity stresses required by *BIPRU 12.5.6R*.
- 12.5.47 G For the purpose of *BIPRU 12.5.46G*, a *firm* should therefore assess the impact on its cash flows of the triggering of contingent obligations contained in all contractual documentation to which it is party, including: acceptances, endorsements, guarantees, underwriting agreements, standby letters of credit, documentary credits, warrants, indemnities, undrawn note issuance facilities and other revolving credit facilities. A *firm* should also assess the degree of concentration in its total contingent liabilities as respects obligations arising from particular types of contract,

counterparty and market sector.

12.5.48 G In relation to its commitments (other than liquidity facilities to support securitisation programmes), a *firm* should:

- (1) calculate its maximum contractual exposure arising from those commitments;
- (2) calculate the effect on its cash flows of the drawing of those commitments in normal financial conditions; and
- (3) estimate the effect on its cash flows of the drawing of those commitments under the liquidity stresses required by *BIPRU* 12.5.6R.

12.5.49 G For the purpose of *BIPRU* 12.5.48G, a *firm* should:

- (1) consider its contractual exposure to the following types of commitment: committed funding facilities, undrawn loans and advances to wholesale counterparties, mortgages that have been agreed but not yet been drawn down, credit cards, overdrafts (and other retail lending facilities);
- (2) ensure that its analysis of each type of commitment is sufficiently granular to enable that *firm* to:
 - (a) assess the circumstances in which counterparties will draw down;
 - (b) identify the extent of any correlations as between counterparties in deciding whether or not to draw down;
 - (c) identify the extent to which decisions by the *firm's* counterparties to draw down may be correlated to a decline in the *firm's* own liquidity resources; and
 - (d) assess the proportion of its total commitments attributable to particular counterparties; and
- (3) assess the extent to which draw down requires the counterparty in question to deliver to the *firm* collateral in the form of marketable assets, while also assessing the anticipated effect of such a requirement on:
 - (a) the likelihood that the counterparty in question will draw down; and
 - (b) the *firm's* liquidity position if the counterparty in question delivers collateral on draw down; and
- (4) assess the impact on its cash flows of its commitment counterparties experiencing liquidity stress at the same time as

that *firm* is subject to the stresses required by *BIPRU 12.5.6R*.

- 12.5.50 G In relation to liquidity facilities to support securitisation programmes, a *firm* should:
- (1) assess the extent of its contractual obligations to provide liquidity support to sponsored and third-party structured vehicles;
 - (2) identify the circumstances in which support will, or is likely to, be called; and
 - (3) assess the impact on that *firm*'s cash flows of such support being called:
 - (a) in normal financial conditions; and
 - (b) under the liquidity stresses required by *BIPRU 12.5.6R*.

- 12.5.51 G For the purpose of *BIPRU 12.5.50G(2)*, a *firm* should consider the impact of the following events on the likelihood of a call for liquidity support: inability of a vehicle to roll over commercial paper (due either to disruption in the CP market or to concern as to the quality of the assets securitised) and, in relation to sponsored vehicles, concern as to the solvency of that *firm* as sponsor and, separately, the possibility of draw down of undrawn commitments entered into by the sponsored vehicle in its own right.

Franchise-viability risk

- 12.5.52 R For the purposes of assessing its franchise-viability risk, a *firm* must assess, under the liquidity stresses required by *BIPRU 12.5.6R*, the liquidity resources required to maintain its core business franchise and reputation.
- 12.5.53 G Franchise-viability risk is the risk that in the stresses required by *BIPRU 12.5.6R* a *firm* may not have sufficient liquidity resources to maintain its core business franchise and reputation.
- 12.5.54 G In complying with *BIPRU 12.5.52R*, a *firm* should assess the extent to which it can and realistically will:
- (1) restrict new retail lines without significantly damaging customer relationships;
 - (2) restrict new wholesale lending without significantly damaging its ability to resume such lending following the period of stress in question;
 - (3) cease to provide liquidity support to its sponsored vehicles;
 - (4) decline to exercise call *options* whose effect if not exercised might be to cause market participants to question the *firm*'s

- ability to continue to meet its liabilities as they fall due; and
- (5) continue any regular programme of buying back its issued debt.
- 12.5.55 G For the purpose of *BIPRU 12.5.54G(5)*, a *firm* may wish to continue repurchasing its debt to help demonstrate that a two-way market continues to be made in its paper and, more generally, in order to maintain the long-term viability of its debt issuance programme. Equally, a *firm* may wish to continue repaying retail depositors before the contractual maturity of those *deposits* in order to maintain confidence in its ability to continue to meet its liabilities as they fall due.
- Marketable assets risk**
- 12.5.56 R For the purpose of assessing its exposure to marketable assets risk, a *firm* must assess how the marketable assets comprised in its liquidity resources will behave:
- (1) under normal financial conditions; and
 - (2) under the liquidity stresses identified in *BIPRU 12.5.6R*, including an assessment of the effect of these stresses on:
 - (a) its ability to derive funding from its marketable assets in a timely fashion;
 - (b) the potential for using those assets as collateral to raise secured funding and the size of the haircut likely to be required by a counterparty;
 - (c) the likelihood and extent of forced-sale loss; and
 - (d) the effect on its business activities of any changes in (a) to (c) identified as likely to result from those liquidity stresses.
- 12.5.57 G In complying with *BIPRU 12.5.56R*, a *firm* should consider all marketable assets which count towards its liquidity resources for the purposes of meeting the *overall liquidity adequacy rule*. A *firm* should therefore include in this assessment any assets that it holds in its liquid assets buffer.
- 12.5.58 G The *FSA* regards as marketable those of a *firm*'s assets that it is able to sell outright or *repo*. For liquidity management purposes, a *firm* would ordinarily expect to hold a stock of assets of this kind in order to reduce the likelihood that it may need to borrow unsecured at short notice. To the extent that these assets may behave differently under stress conditions than under normal financial conditions, a *firm* is subject to marketable assets risk.
- 12.5.59 G As a general proposition, the speed with which a *firm* may be able to realise a marketable asset, and the price impact of doing so, will depend

to a significant extent on the volume of those assets which that *firm* wishes to realise and the market conditions prevailing at the time.

- 12.5.60 G The behaviour of a *firm's* marketable assets under conditions of stress is likely to depend on a number of different factors, including:
- (1) the depth and competitiveness of the market for the marketable asset in question, the size of the bid-offer spread, the presence of committed market-makers, the nature of the information available to potential counterparties, the degree of structural complexity of the assets in question and the asset's eligibility in central bank market operations and liquidity facilities; and
 - (2) that *firm's* operational capability to generate funding from those assets in a timely manner.
- 12.5.61 G In considering its operational capability to generate funding from assets, a *firm* should be aware that its capability in this regard is likely to depend on:
- (1) whether it has in place arrangements for *repo*;
 - (2) the extent to which that *firm* already holds a significant proportion of the market for the marketable asset in question;
 - (3) the extent to which that *firm* periodically realises some or all of its holdings of that asset; and
 - (4) that *firm's* accounting treatment and valuation of that asset.
- 12.5.62 R For the purpose of its *ILAA* submission to the *FSA*, a *firm* must provide the *FSA* with an analysis of the profile of its marketable assets as at the date of submission in a way that:
- (1) separately identifies its marketable assets according to asset class, maturity, currency, their eligibility for use in central bank monetary operations and liquidity facilities and any other characteristic that it uses in its liquidity management; and
 - (2) assesses the degree of diversification achieved across its marketable assets.

Non-marketable assets risk

- 12.5.63 R For the purpose of assessing its exposure to non-marketable assets risk, a *firm* must assess how the non-marketable assets in its liquidity resources will behave:
- (1) under normal financial conditions; and
 - (2) under the liquidity stresses required by *BIPRU 12.5.6R*, including an assessment of the effect of these stresses on:

- (a) the *firm's* ability to derive funding from its non-marketable assets; and
 - (b) the impact on the *firm's* liquidity position of any consequences for its funding ability identified in (a).
- 12.5.64 G In complying with *BIPRU 12.5.63R*, a *firm* should consider all non-marketable assets which count towards its liquidity resources for the purposes of meeting the *overall liquidity adequacy rule*.
- 12.5.65 G *BIPRU 12.2.5G* notes that a *firm* should include in its liquidity resources sufficient assets which are marketable or otherwise realisable. The *FSA* considers those assets which are capable of realisation, but other than through *repo* or outright sale, as “non-marketable assets”. To the extent that these assets may behave differently under stress conditions than under normal financial conditions, a *firm* is subject to non-marketable assets risk. Different forms of non-marketable assets risk arise, particularly in relation to:
 - (1) retail loans; and
 - (2) unsecured wholesale assets.
- 12.5.66 G In addition to realising a *firm's* marketable assets, a *firm* can meet its outflows in part by expected inflows from maturing non-marketable assets such as retail loans. Inflows from these assets (principal and interest) may in stressed conditions be affected by counterparty behaviour, exposing that *firm* to non-marketable assets risk.
- 12.5.67 R For the purpose of assessing its exposure to non-marketable assets risk a *firm* must assess the extent to which the behaviour of inflows from retail loans under the liquidity stresses required by *BIPRU 12.5.6R* may differ from that suggested by their contractual terms.
- 12.5.68 G For the purpose of the assessment in *BIPRU 12.5.67R*, a *firm* should ensure that it assesses repayment behaviour at a level of granularity sufficient to enable it to draw informed conclusions about its liquidity exposure. The *FSA* would expect a *firm's* assessment to analyse separately the non-marketable assets risk associated with each of its relevant products and with each type of counterparty from whom it is expecting repayments.
- 12.5.69 G For the purpose of the assessment in *BIPRU 12.5.67R*, a *firm* should in particular have regard to the risk associated with:
 - (1) repayment defaults; and
 - (2) exercise by its counterparties of contractual rights to repay before the expected maturity date or to delay repayment beyond that date.

- 12.5.70 G A *firm* may also use its unsecured wholesale assets to generate liquidity, otherwise than by outright sale or *repo*. A *firm* may, for example, choose to generate funding from some of the assets included in its liquidity resources by using them in securitisation or covered bond programmes. Assets that are typically used to raise liquidity in this manner include residential mortgage loans; commercial mortgage and other loans; credit card and automobile receivables, which have been packaged for the wholesale markets. To the extent that the ability to fund from these non-marketable assets may be limited under stressed conditions, a *firm* may be exposed to non-marketable assets risk.
- 12.5.71 G The assessment required by *BIPRU 12.5.63R* is particularly important for a *firm* which:
- (1) ordinarily does not raise funding from its non-marketable assets in this way; or
 - (2) places proportionately greater reliance on securitisation programmes as compared to other funding strategies to generate liquidity.
- 12.5.72 R In complying with *BIPRU 12.5.63R*, a *firm* must in particular assess the non-marketable assets risk associated with asset securitisations, having regard to:
- (1) the existence of early amortisation triggers and the consequences of their operation; and
 - (2) its financing of assets which are warehoused prior to their securitisation.
- 12.5.73 G A *firm* which chooses to warehouse assets in the way described in *BIPRU 12.5.72R* should consider the particular risks that arise from the method of financing that it uses to pre-fund those assets. For example, financing of warehoused assets by means of short-term (rather than long-term) funding is more likely to put that *firm* under liquidity pressure in the event that its proposed securitisation is not completed (either at all, or at the expected date).

Funding concentration risk

- 12.5.74 G A *firm* with a sufficiently flexible funding strategy should be able to reduce its *liquidity risk* by diversifying its liquidity resources.
- 12.5.75 R As part of its *ILAA*, a *firm* must assess the impact on the degree of diversification in its liquidity resources of the stresses required by *BIPRU 12.5.6R*.
- 12.5.76 G For the purpose of *BIPRU 12.5.75R*, a *firm* should take into account the extent to which its liquidity resources are diversified according to:

- (1) type of instrument and product;
 - (2) currency;
 - (3) counterparty;
 - (4) liability term structure; and
 - (5) market for their realisation (provided that such market is open to the *firm* as counterparty).
- 12.5.77 G A *firm* should be aware that the degree of diversification in its liquidity resources can be compromised, particularly in periods of stress, by a number of factors, including:
- (1) reduced or terminated funding provision from some counterparties as a result of that *firm's* credit-rating being downgraded or its financial condition deteriorating;
 - (2) disputes over the terms of legally binding commitments to lend which delay the provision of funding;
 - (3) markets previously used by the *firm* for raising funding ceasing to be open or operating but at reduced capacity;
 - (4) reliance on a small number of brokers to access funding sources; and
 - (5) positive correlations in the behaviour of different instruments and products.

12.6 Simplified ILAS

- 12.6.1 G The *FSA* recognises that it may not always be appropriate to apply *BIPRU 12.5* (Individual Liquidity Adequacy Standards) to every *ILAS BIPRU firm*. For a *firm* which operates a relatively simple business model, it may instead be appropriate to allow the *firm* to calculate the size and content of its liquid assets buffer according to a simplified approach prescribed in the *Handbook* in advance of any review of that *firm's liquidity risk* conducted by the *FSA*. This section sets out the *simplified ILAS* approach to maintaining a liquid assets buffer and a *firm* that operates that approach is a *simplified ILAS BIPRU firm*.
- 12.6.2 R An *ILAS BIPRU firm* that wishes to operate the *simplified ILAS* approach must:
- (1) satisfy the conditions in *BIPRU 12.6.6R* to *BIPRU 12.6.8R*; and
 - (2) obtain a *simplified ILAS waiver* from the *FSA*.

- 12.6.3 G A *firm* will therefore lose the benefit of its *simplified ILAS waiver* if it ceases to satisfy the conditions in *BIPRU 12.6.6R* to *BIPRU 12.6.8R*. Consistent with *Principle 11* (Relations with regulators), if a *firm* anticipates that it may breach those conditions, it should notify the *FSA* promptly.
- 12.6.4 R A *simplified ILAS BIPRU firm* must calculate the size of its *simplified buffer requirement* in accordance with *BIPRU 12.6.9R* to *BIPRU 12.6.18R*.
- 12.6.5 G The *FSA* is likely to regard a *simplified ILAS BIPRU firm* whose liquid assets buffer accords with the *simplified buffer requirement* as having an adequate buffer of assets and a prudent funding profile for the purpose of *BIPRU 12.2.8R*. However, the *simplified ILAS* approach does not relieve a *simplified ILAS BIPRU firm* from the obligation to hold liquidity resources which are adequate for the purpose of meeting the *overall liquidity adequacy rule* or from the obligation in *BIPRU 12.3.4R* to assess and maintain on an ongoing basis the adequacy of its liquidity resources. Consequently, where a *firm's* own assessment of the adequacy of its liquidity resources indicates that its liquid assets buffer should be larger in size than that produced by the application of the *simplified buffer requirement*, the *FSA* will expect that *firm* to maintain a liquid assets buffer which is consistent with the results of its own assessment. Equally, following any review by the *FSA* of the *liquidity risk* to which a *simplified ILAS BIPRU firm* is exposed, the *FSA* may give that *firm individual liquidity guidance* advising it that its liquid assets buffer should be bigger than that which is produced by the application of the *simplified buffer requirement*.

Simplified ILAS conditions

- 12.6.6 R The first condition is that:
- (1) no less than 75% of the *firm's* total liabilities are accounted for by retail *deposits* and no less than 70% of its total assets are accounted for by retail loans; or
 - (2) no less than 75% of the *firm's* total liabilities are accounted for by retail *deposits* and no less than 70% of the *firm's* total assets are accounted for by:
 - (a) *money market instruments* with a residual contractual maturity of three *months* or less; or
 - (b) sight *deposits* held with a *credit institution*; or
 - (c) term *deposits* with a residual contractual maturity of three *months* or less held with a *credit institution*; or
 - (3) no less than 80% of the *firm's* total liabilities are accounted for by liabilities owed to its *parent undertaking* and the amount of the

firm's total assets does not exceed £1 billion.

12.6.7 R In this section:

- (1) a “retail deposit” is a *deposit* accepted from a *consumer*; and
- (2) a “retail loan” is a loan to a *consumer*.

12.6.8 R The second condition is that no less than 99.5% of the *firm's* total assets and no less than 99.5% of its total liabilities are denominated in sterling, euros or United States dollars.

Size of the simplified buffer requirement

12.6.9 R (1) A *simplified ILAS BIPRU firm* must ensure that the size of its liquid assets buffer is at all times greater than or equal to the amount produced by adding:

- (a) the wholesale net cash outflow component;
- (b) the retail deposit component; and
- (c) the credit pipeline component.

(2) This is the *simplified buffer requirement*.

The wholesale net cash outflow component

12.6.10 R (1) The wholesale net cash outflow component is a *firm's* peak cumulative wholesale net cash outflow over the next three *months* where the peak is established by:

- (a) calculating the daily wholesale net cash flow by reference to a *firm's* wholesale assets maturing that day and its wholesale liabilities falling due on that day;
- (b) for each of the *business days* in the next three *months*, calculating the cumulative total of such daily net cash flows as at the *business day* in question; and
- (c) identifying the minimum cumulative total figure out of all of the cumulative total figures calculated in accordance with (b).

(2) The figure identified in (1)(c) is the peak cumulative wholesale net cash outflow.

(3) For the purpose of calculating the peak cumulative wholesale net cash outflow, a *firm* must:

- (a) exclude from the calculation in (1)(a) cash flows attributable to *repo* and reverse *repo* entered into by the

firm where the security leg of the transaction in question is in respect of securities of the type described in *BIPRU* 12.7.2R(1) and (2);

- (b) include wholesale cash outflows in that calculation according to their earliest contractual maturity; and
- (c) exclude wholesale cash flows attributable to reserves in the form of sight deposits with a central bank and *designated money market funds* that it includes in its liquid assets buffer in accordance with the *rules* on asset eligibility in *BIPRU* 12.7.

The retail deposit component

- 12.6.11 R (1) The retail deposit component is the sum represented by:
- (a) 20% of a *firm's* Type A retail *deposits*; and
 - (b) 10% of a *firm's* Type B retail *deposits*.
- (2) A *firm* must:
- (a) assess the likelihood that retail *deposits* that it holds will be withdrawn in response to actual or perceived changes in the *firm's* credit-worthiness;
 - (b) calculate the amount of retail *deposits* that it assesses as having a higher than average likelihood of withdrawal in the circumstances described in (a) ("Type A" retail *deposits*); and
 - (c) class all other of its retail *deposits* as "Type B" retail *deposits*.
- 12.6.12 G In the *FSA's* view, a Type A retail *deposit* is likely to include one which:
- (1) has been accepted through the internet; or
 - (2) is considered to have a more than average sensitivity to interest rate changes (such as a deposit whose acceptance can reasonably be attributed to the use of price-focused advertising by the *firm* accepting the *deposit*); or
 - (3) in relation to any individual depositor exceeds to a significant extent the amount of that individual's *deposits* with the accepting *firm* that are covered by a national deposit guarantee scheme; or
 - (4) is not accepted from a depositor with whom the *firm* has had a long relationship; or
 - (5) is accepted from retail depositors who can access their *deposits*

- before their residual contractual maturity subject to a loss of interest or payment of another form of early access charge (as a general proposition, the behaviour of liabilities to retail depositors is likely to depend in part on the contractual terms and conditions which give rise to those liabilities); or
- (6) is not held in an account which is maintained for transactional purposes.
- 12.6.13 R Before applying for a *simplified ILAS waiver*, a *firm* must prepare a written policy statement recording its approach to assessing the likelihood of withdrawal of its retail *deposits* in the circumstances described in *BIPRU 12.6.11R(2)(a)* and ensure that:
- (1) the *firm's governing body* approves and conducts appropriate reviews of the policy statement; and
 - (2) the *firm* submits a copy of the policy statement to its usual supervisory contact at the *FSA*.
- 12.6.14 G In considering a *firm's* application for a *simplified ILAS waiver*, the *FSA* will take into account the *firm's* policy statement submitted to it under *BIPRU 12.6.13R* and form a view about the appropriateness of the assumptions on which the policy statement is based. Where a policy statement submitted after the grant of a *simplified ILAS waiver* reflects a materially different assessment to that set out in the policy statement considered as part of a *firm's* *waiver* application, a *firm* should expect that the *FSA* will wish to review the continued appropriateness of the *firm's simplified ILAS waiver* and in so doing will re-examine afresh all matters to which it had regard when the *waiver* in question was granted. The *FSA* expects a *firm* to review the appropriateness of its policy statement as often as is necessary and in any event no less frequently than annually. A *firm* should always review the continued appropriateness of its policy statement following a material change to the nature of the *firm's* business. Where a *firm* updates or otherwise changes its policy statement it should submit promptly to the *FSA* the new document.

The credit pipeline component

- 12.6.15 R The credit pipeline component is the sum represented by 25% of a *firm's* credit facilities offered to its retail *customers* but which are yet to be drawn down, including:
- (1) offers to make loans secured on residential property;
 - (2) overdraft facilities; and
 - (3) credit card facilities.

Buffer securities restriction

- 12.6.16 R (1) A *simplified ILAS BIPRU firm* may only include in its liquid assets buffer eligible government and *designated multilateral development bank* debt securities up to the value of the *buffer securities restriction*.
- (2) For the purpose of calculating the *buffer securities restriction*, a *firm* must:
- (a) calculate its daily net flow in government and *designated multilateral development bank* debt securities eligible as classes of assets for inclusion in the *firm's* liquid assets buffer;
 - (b) for each of the *business days* in the next three *months* calculate the cumulative total of such daily securities flows, including the opening balance, as at the *business day* in question; and
 - (c) identify the minimum cumulative total figure out of all of the cumulative total figures calculated in accordance with (b).
- (3) For the purpose of (2)(a), a *firm* must include all contractual inflows and outflows of eligible debt securities arising from *repo*, reverse *repo*, forward sales, redemptions and any other transactions involving those securities.
- 12.6.17 G In mathematical terms the calculation in *BIPRU 12.6.9R* and *BIPRU 12.6.16R* may be represented as follows:

Liquid assets buffer \geq Wholesale net cash outflow component + Retail component + Credit pipeline component	
Liquid assets buffer	$FSA048_{18,1} + FSA048_{19,1} + FSA048_{6,1} + FSA048_{6,2} + \inf\{f(x) : x = 1, 2, 3, \dots, y\}$ <p>where :</p> $f(x) = \sum_{m=1}^x FSA047_{6,m}$
Retail component	$\left(0.1 \times \sum_{m=1}^{10} FSA048_{54,m} \right) + \left(0.2 \times \sum_{m=1}^{10} FSA048_{55,m} \right)$
Credit component	$0.25 \times \left(\sum_{n=59}^{69} FSA048_{n,1} \right)$
Wholesale net cash outflow component	$\left| \min \left( 0, \left(\sum_{n=44}^{51} FSA048_{n,1} \right) + \left(\sum_{n=52}^{53} \sum_{m=1}^5 FSA048_{n,m} \right) + FSA048_{56,1} + \inf\{g(x) : x = 1, 2, 3, \dots, y\} \right) \right|$ <p>where :</p> $g(x) = \sum_{m=1}^y \left[\left(\sum_{n=20}^{22} FSA047_{n,m} \right) + \left(\sum_{n=26}^{30} FSA047_{n,m} \right) + \left(\sum_{n=35}^{51} FSA047_{n,m} \right) + FSA047_{57,m} \right]$
<p>Where :</p> <p>y = number of business days in three months</p> <p>$FSAXXX_{i,j}$ = The entry in FSAXXX row i column j</p> <p>$\inf\{f(x) : x = 1, 2, 3\}$ represents the greatest lower bound of the function f(x) over the range x = 1,2,3</p>	

Foreign currency positions

- 12.6.18 R (1) Subject to (3), a *simplified ILAS BIPRU firm* that has assets or liabilities denominated in either or both euros and United States dollars must carry out separate calculations under *BIPRU* 12.6.9R in relation to its positions in each of those currencies, in addition to that which it carries out in relation to its sterling positions (if any).
- (2) A *firm* to which (1) applies must ensure that, for the purpose of meeting the *simplified buffer requirement*, it holds in its liquid assets buffer assets denominated in either or both euros and United States dollars (as relevant) greater than or equal to the amount produced by the calculation in the corresponding currency required under (1), in addition to any sterling liquid assets that it is required to hold in its buffer in respect of its sterling positions.
- (3) Paragraph (1) does not apply to a *simplified ILAS BIPRU firm* that hedges fully its positions in either or both euros and United States dollars such that the *firm* is not exposed to any cross-currency *liquidity risk* in respect of those positions.

Content of the simplified ILAS liquid assets buffer

- 12.6.19 G The *rules* in *BIPRU 12.7* set out the sorts of assets that are eligible for the liquid assets buffer of an *ILAS BIPRU firm*. Every *ILAS BIPRU firm* may include in its buffer reserves in the form of sight deposits at a central bank and high quality debt securities issued by governments and *designated multilateral development banks* subject to the eligibility rules in *BIPRU 12.7*. *BIPRU 12.7* provides that a *simplified ILAS BIPRU firm* may also include in its buffer investments in a *designated money market fund*.
- 12.6.20 G A *simplified ILAS BIPRU firm* may include in the liquid assets buffer any combination of the eligible assets permitted by the *rules* in *BIPRU 12.7*.

ILSA

- 12.6.21 R (1) A *simplified ILAS BIPRU firm* must regularly carry out an *ILSA* which contains an assessment of the *firm's* compliance with the standards set out in *BIPRU 12.3* and *BIPRU 12.4*, including the results of the stress tests required by the *rules* in *BIPRU 12.4*.
- (2) The *firm* must make a written record of its *ILSA*.
- (3) The *ILSA* must be proportionate to the nature, scale and complexity of that *firm's* activities.
- (4) The *ILSA* must take into account *group-wide* liquidity resources only to the extent that reliance on these is permitted by the *FSA*.
- 12.6.22 G For the purpose of *BIPRU 12.6.21R*, a *firm* should carry out an *ILSA* at least annually, or more frequently if changes in its business or strategy or the nature, scale or complexity of its activities or the operational environment suggest that the current level of liquidity resources is no longer adequate. A *firm* should expect that the *firm's* usual supervisory contact at the *FSA* will ask for the *ILSA* to be submitted as part of the ongoing supervisory process.

12.7 Liquid assets buffer

- 12.7.1 G *BIPRU 12.2.8R* provides that an *ILAS BIPRU firm* must ensure that its liquidity resources contain an adequate buffer of high quality, unencumbered assets. *BIPRU 12.7* describes in more detail the nature of the assets that are eligible for inclusion in that buffer. The *rules* in this section provide that some types of assets are eligible for use only by a *simplified ILAS BIPRU firm*.
- 12.7.2 R For the purpose of satisfying *BIPRU 12.2.8R*, a *firm* to which this section applies may only include in its liquid assets buffer:
- (1) high quality debt securities issued by a government or central bank;

- (2) securities issued by a *designated multilateral development bank*;
 - (3) reserves in the form of sight deposits with a central bank of the kind specified in *BIPRU 12.7.5R* and *BIPRU 12.7.6R*; and
 - (4) in the case of a *simplified ILAS BIPRU firm* only, investments in a *designated money market fund*.
- 12.7.3 R Subject to *BIPRU 12.7.4R*, for the purpose of *BIPRU 12.7.2R(1)*, a *firm* may include a debt security which is:
- (1) issued by the central government or central bank of an *EEA State*; or
 - (2) issued by the central government or central bank of Canada, the Commonwealth of Australia, Japan, Switzerland or the United States of America.
- 12.7.4 R For the purpose of *BIPRU 12.7.3R*, a *firm* may not include a debt security unless:
- (1) the central government or central bank in question has been assessed by at least two *eligible ECAIs* as having a credit rating associated with *credit quality step 1* in the *credit quality assessment scale* published by the *FSA* for the purpose of *BIPRU 3* (The Standardised Approach: mapping of the ECAIs' credit assessments to credit quality steps (Long term mapping)); and
 - (2) that debt security is either:
 - (a) denominated in the domestic currency of the country in question; or
 - (b) denominated in a currency other than the domestic currency, provided it is denominated in any of Canadian dollars, euros, Japanese yen, sterling, Swiss francs or United States dollars.
- 12.7.5 R Subject to *BIPRU 12.7.6R*, for the purpose of *BIPRU 12.7.2R(3)* a *firm* may include reserves in the form of sight deposits held by the *firm* with the central bank of:
- (1) an *EEA State*; or
 - (2) Canada, the Commonwealth of Australia, Japan, Switzerland or the United States of America.
- 12.7.6 R For the purpose of *BIPRU 12.7.5R*, a *firm* may not include reserves held at a central bank unless:
- (1) the central bank in question has been assessed by at least two *eligible ECAIs* as having a credit rating associated with *credit*

quality step 1 in the *credit quality assessment scale* published by the FSA for the purpose of *BIPRU 3* (The Standardised Approach: mapping of the ECAIs' credit assessments to credit quality steps (Long term mapping)); and

- (2) those reserves are denominated in the domestic currency of the central bank in question.
- 12.7.7 G It is important that a *firm* identifies and understands the range of central bank facilities in which it is eligible to participate. A *firm* may be eligible to participate in some facilities of this kind by virtue of its having a *branch* in a particular country. In addition to identifying the central bank facilities to which it has access, a *firm* should ensure that it has in place appropriate legal and administrative arrangements to enable it to draw on those facilities in a timely manner.
- 12.7.8 G In deciding on the precise composition of its liquid assets buffer, a *firm* should ensure that it tailors the contents of the buffer to the needs of its business and the *liquidity risk* that it faces. In particular, a *firm* should ensure that it holds assets in its buffer which can be realised with the speed necessary to meet its liabilities as they fall due. In doing so, a *firm* should have regard to the currencies in which its liabilities are denominated and should take into account the potential effect of stressed conditions on its ability to access spot and *swap* foreign exchange markets in a manner consistent with the settlement cycles of foreign exchange settlement systems. A *firm* should have regard to the results of its *ILAA* or, as the case may be, its *ILSA*, in assessing the speed with which its liabilities fall due in stressed and non-stressed conditions.
- 12.7.9 R For the purposes of *BIPRU 12.7.2R(1)* and (2), a *firm* must only count securities:
 - (1) which are unencumbered;
 - (2) to which it has legal title; and
 - (3) which that *firm* realises on a regular basis.
- 12.7.10 G The FSA regards as encumbered any asset which the *firm* in question has provided as collateral. Therefore, where assets have been used as collateral in this way (for example, in a *repo*), they should not be included in the *firm*'s liquid assets buffer.
- 12.7.11 R (1) For the purpose of *BIPRU 12.7.9R(3)*, a *firm* must periodically realise a proportion of the assets in its liquid assets buffer through *repo* or outright sale to the market.
- (2) A *firm* must also ensure that it periodically realises, through the use of central bank liquidity facilities, a proportion of those of its assets which do not fall into *BIPRU 12.7.2R(1)* or (2).

- (3) A *firm* must ensure that in carrying out such periodic realisation:
- (a) it does so without reference to the *firm's* day-to-day liquidity needs;
 - (b) it realises in varying amounts the assets in its liquid assets buffer;
 - (c) the cumulative effect of its periodic realisation over any twelve *month* period is that a significant proportion of the assets in its liquid assets buffer is realised; and
 - (d) in *repo* to the market and central bank or in collateral *swap* transactions with a central bank, it enters into transactions of varying durations.
- (4) A *firm* must establish and maintain a written policy setting out its approach to periodic realisation of its assets.
- 12.7.12 G The *FSA* will, as part of its review of a *firm's* *ILAA* or, as the case may be, its *ILSA*, assess the adequacy of a *firm's* periodic realisation policy and its implementation in practice.

12.8 Cross-border and intra-group management of liquidity

- 12.8.1 G Every *firm* subject to *BIPRU 12* is subject to the *overall liquidity adequacy rule*. The effect of that *rule* is that every *firm* is required to be self-sufficient in terms of liquidity adequacy and to be able to satisfy that *rule* relying on its own liquidity resources. Where the *firm* is an *incoming EEA firm* or *third country BIPRU firm* compliance with the *overall liquidity adequacy rule* with respect to the *UK branch* must be achieved relying solely on liquidity resources that satisfy the conditions in *BIPRU 12.2.3R*.
- 12.8.2 G However, the *FSA* recognises that there may be circumstances in which it would be appropriate for a *firm* to rely on liquidity resources which can be made available to it by other members of its *group*, or for a *firm* to rely on liquidity resources elsewhere in the *firm* for the purposes of ensuring that its *UK branch* has adequate liquidity resources in respect of the activities carried on from the *branch*. Where the *FSA* is satisfied that the statutory tests in section 148 (Modification or waiver of rules) of the *Act* are met, the *FSA* will consider modifying the *overall liquidity adequacy rule* to permit reliance on liquidity support of this kind.
- 12.8.3 G *BIPRU 12.8* provides *guidance* on two types of modification to the *overall liquidity adequacy rule* and to other *rules* in *BIPRU 12* for which the *FSA* considers a *firm* may wish to apply, namely:
- (1) an *intra-group liquidity modification*; and

- (2) a *whole-firm liquidity modification*.
- 12.8.4 G In considering whether the statutory tests in section 148 of the *Act* have been met, the *FSA* will, amongst others, have regard to the factors detailed below in relation to an *intra-group liquidity modification* (of the kind permitting the inclusion in a *firm's* liquidity resources of *parent undertaking* liquidity support) and a *whole-firm liquidity modification*. In practice it is likely that the *FSA* will view these as preconditions to the grant of an *intra-group liquidity modification* of that type or a *whole-firm liquidity modification* and will therefore ordinarily need to be satisfied fully that each has been adequately addressed. They include matters on which the *FSA* will need to reach agreement with the *Home State regulator, third country competent authority*, or other relevant supervisor, and also matters which it will need to agree directly with a *firm* or the *parent undertaking* of a *firm*. It is likely that a number of these matters will be reflected as requirements or conditions in the modification.
- 12.8.5 G This section represents merely an indication of the matters to which the *FSA* will have regard in considering an application for a *whole-firm liquidity modification* or an *intra-group liquidity modification*. In considering such an application, the *FSA* will always take into account anything that it reasonably considers to be relevant for the purposes of assessing whether the statutory tests in section 148 of the *Act* are met. In doing so, it will have regard to the role and importance of a *firm* or *UK branch* in the *financial system*.
- 12.8.6 G The *FSA* anticipates that an application to modify the *overall liquidity adequacy rule* may be accompanied by an application to waive or modify other rules in *BIPRU 12* (for example, the stress testing and *contingency funding plan rules* in *BIPRU 12.4*). The *FSA* offers some *guidance* in this section on applications of this type.

Intra-group liquidity modification: general

- 12.8.7 G The *FSA* recognises that a *firm* may be part of a wider *group* which manages its liquidity on a *group-wide* basis. A *firm* which considers that the statutory tests in section 148 of the *Act* are met may apply for an *intra-group liquidity modification* permitting it to rely on liquidity support from elsewhere in its *group*. Until a *firm* has such a modification it will need to meet the *overall liquidity adequacy rule* from its own liquidity resources. The effect of an *intra-group liquidity modification* is to modify the *overall liquidity adequacy rule* to recognise the extent to which the *FSA* is prepared to accept liquidity resources from other entities in a *firm's group* for the purposes of the *firm's* own compliance with the *overall liquidity adequacy rule*. *BIPRU 12.8.11G* offers additional *guidance* on the likely extent of this recognition.
- 12.8.8 G *BIPRU 12.8.14G* to *BIPRU 12.8.20G* set out the *FSA*'s likely approach in considering an application for an *intra-group liquidity modification* in

which a *firm* seeks to rely on support from a *parent undertaking* which is constituted under the law of a country or territory outside the *United Kingdom*.

- 12.8.9 G The *FSA* may also consider an application for an *intra-group liquidity modification* where a *firm* wishes to rely on liquidity resources from an entity in its *group* other than an *overseas parent undertaking*. The *FSA* recognises that a *firm* incorporated in the *United Kingdom* and to which *BIPRU 12* applies may wish to rely on liquidity support from another such *firm*. In practice, the *FSA* anticipates that a *firm* applying for an *intra-group liquidity modification* in these circumstances will be asking for permission to rely on support from its *parent undertaking* in the *United Kingdom*. In any event, the *FSA* will consider such applications on a case-by-case basis and will apply the approach outlined in *BIPRU 12.8.14G* to *BIPRU 12.8.20G* where relevant and by analogy.
- 12.8.10 G The *FSA* also recognises that a *firm* incorporated in the *United Kingdom* and to which *BIPRU 12* applies may wish to rely on liquidity support from a *subsidiary undertaking* of that *firm* which is incorporated in a country or territory outside the *United Kingdom*. The *FSA* is, however, likely to consider that an application for an *intra-group liquidity modification* that contemplates reliance for liquidity support on only, or mostly, an applicant *firm*'s overseas *subsidiary undertakings* is unlikely to satisfy the tests in section 148 of the *Act*. As a general principle, and unless persuaded otherwise by an applicant *firm*'s arguments in support of its application for an *intra-group liquidity modification*, the *FSA* is likely to take the view that a *firm*'s overseas *subsidiary undertakings* are likely to be constrained in their ability to provide meaningful levels of liquidity support to their *parent undertaking*.
- 12.8.11 G In each application for an *intra-group liquidity modification*, the *FSA* will consider the extent to which it is appropriate to modify the *overall liquidity adequacy rule* to allow reliance by an applicant *firm* on liquidity resources elsewhere in a *firm*'s *group*. However, it is unlikely that the *FSA* would consider the conditions in section 148 of the *Act* to be met in circumstances in which the *overall liquidity adequacy rule* was modified to allow unlimited reliance on liquidity resources that are not the applicant *firm*'s own. As a general principle, the *FSA* is likely to wish to ensure that, having regard to the results of an applicant *firm*'s *ILAA*:
- (1) once modified, the *overall liquidity adequacy rule* still requires the *firm* to have adequate liquidity resources to enable it to wind down its business in an orderly and controlled manner in circumstances in which its business ceases to be viable; and
 - (2) the amount of liquidity support permitted in the modification is a reasonable one having regard to the total liquidity resources of the *group* entity on which it is proposed that reliance should be placed.

- 12.8.12 G In determining the appropriate duration of an *intra-group liquidity modification*, the FSA will have regard to the role and importance of the *firm* in question in the *financial system*. In some cases, the FSA may take the view that an *intra-group liquidity modification* covering a *firm* whose role and importance in the *financial system* are significant ought to be reviewed more regularly than one granted in respect of a less systemically significant *firm*. The FSA will consider this issue in determining the appropriate duration of such a modification.
- 12.8.13 G In modifying the *overall liquidity adequacy rule* by means of an *intra-group liquidity modification*, the FSA may also modify the stress testing and *contingency funding plan rules* in BIPRU 12.4 such that an applicant *firm* may achieve compliance with those *rules* by its *parent undertaking* conducting *group-wide stress testing* and preparing a *group-wide contingency funding plan* which gives adequate recognition to the position of the applicant *firm*.

Consideration of an application for an intra-group liquidity modification

- 12.8.14 G BIPRU 12.8.15G to BIPRU 12.8.20G set out some of the matters on which the FSA will expect to be satisfied before granting an *intra-group liquidity modification* where permission is sought to rely on support from an *overseas parent undertaking* which is itself subject to a regime of liquidity regulation.
- 12.8.15 G In relation to the regime of liquidity regulation imposed by the authority that regulates for liquidity purposes an applicant *firm's parent undertaking* which is constituted under the law of a country or territory outside the *United Kingdom*, the FSA will ordinarily expect to be satisfied that:
- (1) the regime of liquidity regulation to which that *undertaking* is subject delivers outcomes as regards the regulation of that *undertaking's liquidity risk* that are broadly equivalent to those intended by BIPRU 12; and
 - (2) there is clarity as to any legal constraints imposed by the authority which regulates that *undertaking* for liquidity purposes on the provision of liquidity from that *undertaking* to the applicant *firm*.
- 12.8.16 G It will not always be the case that an applicant *firm* wishes to rely on a *parent undertaking*, or other *group* entity, that is itself subject to a regime of liquidity regulation, whether or not equivalent to the FSA's. In assessing a *firm's* application for an *intra-group liquidity modification*, the FSA will always have regard to the regulatory framework to which the entity on which it is proposed to rely for liquidity support is subject. Other things being equal, however, the FSA is more likely to be persuaded that the tests in section 148 of the *Act* are met in circumstances in which the entity on which it is proposed to rely for liquidity support is itself subject to an appropriate degree of regulation. Even where the

parent undertaking, or other *group* entity, in question is subject to a regime of liquidity regulation, the *FSA* will in principle be more likely to grant an *intra-group liquidity modification* in circumstances in which the applicant *firm* does not accept a significant amount of retail *deposits*.

- 12.8.17 G In relation to an applicant *firm* wishing to rely on liquidity support from a *parent undertaking* constituted under the law of a country or territory outside the *United Kingdom*, the *FSA* will ordinarily expect to reach agreement with the authority that regulates that *undertaking* for liquidity purposes in a number of areas, including agreement that:
- (1) it will notify the *FSA* of any material or persistent breaches by that *undertaking* of that authority's liquidity rules, or of risks that such breaches are imminent;
 - (2) it is satisfied with the adequacy of the *parent undertaking's* arrangements for *liquidity risk* management;
 - (3) it is satisfied as to the adequacy of the *parent undertaking's* liquidity resources including:
 - (a) the size and quality of its liquid assets buffer; and
 - (b) the size and quality of any liquidity resources that are held in the *United Kingdom* for the purpose of meeting the liabilities of an applicant *firm* as they fall due;
 - (4) it does not object to any undertakings given by that *parent undertaking* in respect of an applicant *firm* to ensure that the *firm* has adequate liquidity resources; and
 - (5) it will have due regard to the views of the *FSA* in its supervision of the liquidity position of that *parent undertaking*.
- 12.8.18 G In relation to an applicant *firm* wishing to rely on liquidity support from a *parent undertaking* constituted under the law of a country or territory outside the *United Kingdom*, the *FSA* will, before granting an *intra-group liquidity modification*, ordinarily expect to have reached agreement with that *parent undertaking* that:
- (1) it will make available liquidity resources at all times to that applicant *firm* if needed;
 - (2) it will enter into an undertaking in a suitable form with an applicant *firm* committing it to provide liquidity support to that *firm* on the occurrence of certain defined events;
 - (3) it will ensure that the applicant *firm* maintains liquidity resources of appropriate size and quality in the *United Kingdom* for the purposes of meeting the liquidity needs of that *firm*;

- (4) it will maintain arrangements, including having adequate liquidity resources, to ensure that it, the applicant *firm* and any other entities in its *group* to which it provides liquidity support are able to wind down their businesses in an orderly and controlled manner in circumstances where its, or their, businesses cease to be viable;
 - (5) it will make available to the *FSA* information in an appropriate format on *group* liquidity; and
 - (6) it will participate in the *FSA*'s thematic supervisory work in relation to liquidity when requested to do so by the *FSA*.
- 12.8.19 G The *FSA* will wish to ensure that it has adequate data at the time of consideration of the *intra-group liquidity modification* application and, if the application is granted, on a continuing basis thereafter, about the liquidity position of any *group* entity on which the applicant *firm* proposes to rely for liquidity purposes. It is therefore likely that an applicant *firm* will be asked to provide as part of its application relevant liquidity *data items* populated by the entities on which the applicant *firm* proposes to rely. It is also likely that an applicant *firm* will be asked to ensure as a condition of the modification, if granted, that the entities on which it is given permission to rely for the purpose of meeting the *overall liquidity adequacy rule* provide completed relevant *data items* to the *FSA* on a continuing basis. The frequency of *data item* submission will be determined as part of the *FSA*'s consideration of the applicant *firm*'s case but is in any event likely to be reflective of the *FSA*'s assessment of the *liquidity risk* profile of the entities on which liquidity support is permitted.
- 12.8.20 G In addition, the *FSA* will also wish to understand in relation to any *group* entity on which an applicant *firm* proposes to rely for liquidity support the legal structure of the *group* and the extent to which that structure, or any relevant legal principles, may restrict the provision of timely liquidity support in appropriate amounts to the applicant *firm* when required.

Ongoing requirements

- 12.8.21 G The *FSA* also anticipates that an *intra-group liquidity modification* would be made subject to a number of ongoing conditions and requirements. These are likely to include:
- (1) the *FSA* receiving annual confirmation from the authority that regulates an applicant *firm*'s *parent undertaking* for liquidity purposes that it remains satisfied with the arrangements in respect of that *undertaking* for liquidity supervision and their operation; and
 - (2) an annual meeting with the same authority to discuss liquidity

supervision of that *undertaking*.

Whole-firm liquidity modification: general

- 12.8.22 G In relation to an *incoming EEA firm or third country BIPRU firm*, the *overall liquidity adequacy rule* provides that, for the purpose of complying with that *rule*, a *firm* may not, in relation to its *UK branch*, include liquidity resources other than those which satisfy the conditions in *BIPRU 12.2.3R*. Those conditions seek to ensure that a *firm* of this kind has a reserve of liquidity for operational purposes that is under the control of, and available for use by, that *firm's UK branch*. Further *guidance* is given in *BIPRU 12.5.39G* in relation to the local operational liquidity reserve. In addition, *BIPRU 12.9.10G* explains how the *FSA* will approach the giving of *individual liquidity guidance* to an *incoming EEA firm or third country BIPRU firm*. The *FSA* does, however, recognise that there are circumstances in which it may be appropriate for a *UK branch* to rely on the availability of liquidity resources from elsewhere within the *firm*. A *firm* wishing to rely on support of this kind for its *UK branch* may apply for a modification to the *overall liquidity adequacy rule* where it considers that the statutory tests in section 148 of the *Act* are met.
- 12.8.23 G Although an *incoming EEA firm or third country BIPRU firm* may apply to modify the *overall liquidity adequacy rule* and other *rules* in *BIPRU 12*, in relation to its *UK branch*, the *FSA* anticipates that many such *firms* will wish to apply for a modification in the form which the *FSA* defines as a *whole-firm liquidity modification*. In the *FSA's view*, a modification to the *overall liquidity adequacy rule* for a *firm* of this kind will tend to be appropriate where an applicant *firm* manages its liquidity on an integrated, *whole-firm* basis. Where that is the case, and having regard to the matters outlined in the *guidance* in this section, the *FSA* is likely to consider it more appropriate for the *UK branch* to be subject, in large part, to the same regulatory liquidity regime which applies to the rest of the *firm*. In granting a *whole-firm liquidity modification* the *FSA* therefore recognises that in certain circumstances a *UK branch* can have adequate liquidity resources in circumstances where the liquidity resources upon which the *firm* seeks to rely do not meet the criteria set out in *BIPRU 12.2.3R*.
- 12.8.24 G Accordingly, a *whole-firm liquidity modification* envisages:
- (1) a modification to the *overall liquidity adequacy rule* so as to permit reliance by the *firm*, in relation to its *UK branch*, on liquidity resources wherever held in the *firm* for the purposes of meeting that *rule*; and

- (2) a waiver of the remainder of the substantive rules in BIPRU 12, with the effect that the UK branch of the applicant firm becomes subject for the purpose of day-to-day liquidity supervision to the liquidity regime of the Home State regulator or third country competent authority in question.
- 12.8.25 G The effect of a whole-firm liquidity modification is that the FSA will in its supervision of the liquidity of the UK branch place reliance on the liquidity regime of the Home State regulator or third country competent authority in question. The FSA will wish to ensure that it has adequate data at the time of consideration of the whole-firm liquidity modification application and, if the application is granted, on a continuing basis thereafter, about the liquidity position of the firm as a whole. It is therefore likely that an applicant firm will be asked to provide as part of its application relevant liquidity data items covering the liquidity position of the firm as a whole. It is also likely that an applicant firm will be asked, as part of its application, to provide an appropriately detailed account as to the activities conducted by its UK branch as at the date of the application. In addition, the FSA anticipates that an applicant firm will be asked to ensure as a condition of the modification, if granted, that it provides relevant data items, covering the whole-firm liquidity position, to the FSA on a continuing basis at a frequency to be determined as part of the FSA's consideration of the applicant firm's case but in any event likely to be reflective of the FSA's assessment of the liquidity risk profile of the firm.
- Consideration of an application for a whole-firm liquidity modification
- 12.8.26 G In relation to the Home State regulator's or third country competent authority's regime of liquidity regulation, the FSA will, before granting a whole-firm liquidity modification, ordinarily expect to be satisfied that:
- (1) the regime in question delivers outcomes as regards the regulation of the applicant firm's liquidity risk that are broadly equivalent to those intended by this chapter; and
 - (2) there is clarity as to any legal constraints imposed by the Home State regulator or third country competent authority on the provision of liquidity by a firm to its UK branch, as well as the potential for such restrictions to be imposed in the future.
- 12.8.27 G In relation to the applicant firm in question, the FSA will, before granting a whole-firm liquidity modification, ordinarily expect to have reached agreement with the Home State regulator or third country competent authority in a number of areas, including agreement that:
- (1) it will notify the FSA promptly of any material or persistent breaches by that firm of its liquidity rules, or of risks that such breaches are imminent;

- (2) it is satisfied with the adequacy of the arrangements in place for *firm-wide liquidity risk management*;
 - (3) it is satisfied as to the adequacy of that *firm's* liquidity resources including the size and quality of its liquid assets buffer;
 - (4) it does not object to any undertakings given by that *firm* in respect of its *UK branch* to ensure that the *branch* has adequate liquidity resources; and
 - (5) it will have due regard to the views of the *FSA* in its supervision of that *firm's* liquidity position.
- 12.8.28 G In relation to the applicant *firm* in question, the *FSA* will, before granting a *whole-firm liquidity modification*, ordinarily expect to have reached agreement with that *firm* in a number of areas, including agreement that:
- (1) it will make available liquidity resources at all times to its *UK branch* if needed;
 - (2) it will make available to the *FSA* information in an appropriate format on *firm-wide liquidity*;
 - (3) it will notify the *FSA* at the same time as it notifies the *Home State regulator* or *third country competent authority* of any issues relevant to the liquidity position of its *UK branch* or compliance with the rules to which it is subject in respect of its liquidity (including with the terms of its *whole-firm liquidity modification*);
 - (4) its *UK branch* will continue to be fully integrated with the rest of the *firm* for *liquidity risk management* purposes; and
 - (5) it will participate in the *FSA's* thematic supervisory work in relation to liquidity when requested to do so by the *FSA*.

Ongoing requirements

- 12.8.29 G The *FSA* also anticipates that a *whole-firm liquidity modification* would be made subject to a number of ongoing conditions and requirements. These are likely to include:
- (1) the *FSA* receiving annual confirmation from the *Home State regulator* or *third country competent authority* that it remains satisfied with the arrangements in respect of that *firm* for liquidity supervision and their operation;
 - (2) an annual meeting with the *Home State regulator* or *third country competent authority* to discuss liquidity supervision of that *firm*;
 - (3) the *FSA* receiving annual confirmation from the *firm*, approved

by its *governing body*, that it remains in full compliance with the terms of its *whole-firm liquidity modification*; and

- (4) as at the first anniversary of the grant of the *whole-firm liquidity modification* and on each anniversary thereafter, the *FSA* receiving from the *firm*:
 - (a) an appropriate account of the activities conducted by the *UK branch* over the previous year; and
 - (b) a copy of the *firm's* latest business plan where this differs from that previously sent to the *FSA* after grant of its *whole-firm liquidity modification*.

- 12.8.30 G In determining the appropriate duration of a *whole-firm liquidity modification*, the *FSA* will have regard to the role and importance of the *UK branch* in question in the *financial system*. In some cases, the *FSA* may take the view that a *whole-firm liquidity modification*, covering a *UK branch* whose role and importance in the *financial system* are significant, ought to be reviewed more regularly than one granted in respect of a less systemically significant *branch*. The *FSA* will consider this issue in determining the appropriate duration of such a modification. The *FSA* is also likely to consider it appropriate in modifications other than those of short duration to reflect in the terms of the modification representations made either in an applicant *firm's* business plan or direct to the *FSA* as part of the application process, but in either case as to the expected nature and size of the *UK branch's* activities over the course of the duration of the modification. Where requirements are included in a modification in relation to these matters, a *firm* that anticipates that it will breach those requirements will need to apply in advance of any such event for a variation to its then existing *whole-firm liquidity modification*. In considering an application to vary, the *FSA* will consider afresh whether the tests in section 148 of the *Act* continue to be met for the grant of a *whole-firm liquidity modification* to the *firm* in question.

12.9 Individual liquidity guidance and regulatory intervention points

FSA assessment process

- 12.9.1 G The *FSA* will give *individual liquidity guidance* to a *standard ILAS BIPRU firm*. Ordinarily, the *FSA* will give *individual liquidity guidance* after a review of a *standard ILAS BIPRU firm's* *ILAA*. The *FSA* will, however, issue *individual liquidity guidance* to such a *firm* whenever it is considered appropriate.
- 12.9.2 G In assessing the adequacy of an *ILAS BIPRU firm's* liquidity resources, the *FSA* draws on more than just a review of the submitted *ILAA*, or in the case of a *simplified ILAS BIPRU firm*, the submitted *ILSA*. Use is made of wider supervisory knowledge of a *firm* and of wider market

developments and practices. When forming a view of the *individual liquidity guidance* to be given to an *ILAS BIPRU firm*, the *FSA* will also consider the *firm's* ARROW risk assessment and any other issues arising from day-to-day supervision.

- 12.9.3 G The *FSA* will take a risk-based and proportionate approach to the review of a *firm's* *ILAA* or *ILSA*, focusing where appropriate on that *firm's* approach to dealing with the risks it faces.
- 12.9.4 G As part of the *SLRP*, the *FSA* will give a *standard ILAS BIPRU firm individual liquidity guidance* advising it of the amount and quality of liquidity resources which the *FSA* considers are appropriate, having regard to the *liquidity risk* profile of that *firm*. In giving *individual liquidity guidance*, the *FSA* will also advise the *firm* of what it considers to be a prudent funding profile for the *firm*. In giving the *firm individual liquidity guidance* as to its funding profile, the *FSA* will consider the extent to which the *firm's* liabilities are adequately matched by assets of appropriate maturities. In both cases, the *FSA* will have regard to the adequacy of a *firm's* systems and controls in relation to *liquidity risk* when judged against the standard described in the *rules and guidance* in *BIPRU 12.3* and *BIPRU 12.4*. *Individual liquidity guidance* will therefore have two components:
 - (1) *guidance* about the *firm's* liquid assets buffer; and
 - (2) *guidance* about the *firm's* funding profile.
- 12.9.5 G The *FSA* will ordinarily not expect to give *individual liquidity guidance* to a *simplified ILAS BIPRU firm*. However, if after review of such a *firm's* *ILSA*, the *FSA* is not satisfied that the *simplified buffer requirement* delivers an adequate amount and quality of liquidity resources for that *firm*, having regard to its *liquidity risk* profile, the *FSA* will issue the *firm* with *individual liquidity guidance* and may also consider revoking the *firm's* *simplified ILAS waiver*.
- 12.9.6 G In giving *individual liquidity guidance*, the *FSA* seeks a balance between delivering consistent outcomes across the *individual liquidity guidance* that it gives to every *ILAS BIPRU firm* and recognising that such *guidance* should reflect the individual features of a *firm*. Comparison with the assumptions used by other *firms* will be used to trigger further enquiry.
- 12.9.7 G Following an internal validation process, the *FSA* will write to the *standard ILAS BIPRU firm* whose *ILAA* it has reviewed, providing both quantitative and qualitative feedback on the results of the *FSA's* assessment. This letter will notify that *firm* of the *individual liquidity guidance* that the *FSA* considers appropriate together with its reasons for concluding that such *guidance* is appropriate. The *FSA* will adopt the same process where it chooses to give *individual liquidity guidance* to a *simplified ILAS BIPRU* following a review of that *firm's* *ILSA*.

- 12.9.8 G Where the amount and quality of liquidity resources which the *FSA* considers a *firm* needs having regard to its *liquidity risk* profile are not the same as the *firm's* own assessment of those resources under its *ILAA*, the *FSA* expects to discuss any such difference with the *firm*.
- 12.9.9 G Consistent with *Principle 11* (Relations with regulators), the *FSA* will expect a *firm* to notify it if the *firm* does not propose to follow its *individual liquidity guidance*. The *FSA* will expect any such notification to be accompanied by a clear account of the *firm's* reasons for considering the *individual liquidity guidance* to be inappropriate. The *FSA* will expect to receive any such notification within one *month* from the date on which it gives *individual liquidity guidance* to the *firm*. If agreement through further analysis and discussion cannot be reached (including through use of the *FSA*'s powers under section 166 (Reports by skilled persons) of the *Act*), then the *FSA* will consider using its powers under the *Act* (for example, its power under section 45 to vary, on its own initiative, a *firm's* *Part IV permission* or its *power of intervention* under section 196) so as to require a *firm* to hold such liquidity resources as the *FSA* considers are adequate having regard to the *liquidity risk* profile of the *firm*.

Additional guidance for branches

- 12.9.10 G In relation to an *incoming EEA firm* or *third country BIPRU firm*, where the *FSA* gives that *firm individual liquidity guidance* in relation to its *UK branch*, it will have regard to the *liquidity risk* profile of the *branch*. In the absence of a *whole-firm liquidity modification*, the effect of *BIPRU 12.2.1R(2)(b)* and *BIPRU 12.2.3R* is to require the *firm* to hold a liquid assets buffer of the amount identified as appropriate in its *individual liquidity guidance* (or in the case of a *simplified ILAS BIPRU firm*, the amount of its *simplified buffer requirement* unless this has been superseded by the *FSA* issuing *individual liquidity guidance* to the *firm* in question) in the form of a local operational liquidity reserve. Further *guidance* is given in *BIPRU 12.5.39G* in relation to the local operational liquidity reserve. In determining the appropriate size of such a *firm's* liquid assets buffer the *FSA* will have regard to all relevant factors, including the extent to which the *FSA* has adequate data to enable it to assess accurately the *liquidity risk* elsewhere in the *firm* beyond its *UK branch*.

Regulatory intervention points for ILAS BIPRU firms

- 12.9.11 G *BIPRU 12.2.9G* records the *FSA*'s recognition that in periods of stress a *firm's* liquid assets buffer may be eroded. It may also be the case that in such periods a *firm's* funding profile deteriorates such that it no longer conforms to the prudent liquidity profile described in the *individual liquidity guidance* given to the *firm*. Deviation by a *firm* from the terms of the *individual liquidity guidance* given to it by the *FSA* or, as the case may be, from the *simplified buffer requirement*, does not automatically mean that the *FSA* will consider that the *firm* is in breach of, or likely to

- breach, *threshold conditions*.
- 12.9.12 G The FSA will examine any deviation on its own facts and will always want to understand clearly the reasons for that deviation and the *firm's* plans for remedying it. Deviation is, however, likely to prompt a re-examination by the FSA of the *firm's* compliance, and likely future compliance, with *threshold conditions*. The FSA will have regard to the information provided by the *firm* and to any other relevant factors in assessing the *firm's* continuing ability to satisfy *threshold conditions*. *BIPRU 12.9.13R to BIPRU 12.9.18R* set out a number of requirements which apply to an *ILAS BIPRU firm* that deviates from its *individual liquidity guidance*, or as the case may be, from the *simplified buffer requirement*.
- 12.9.13 R On the occurrence of any of the events identified in *BIPRU 12.9.14R*, a *firm* must as soon as it becomes aware of the event in question:
- (1) notify the FSA in writing;
 - (2) provide the FSA with an adequately reasoned explanation for the deviation; and
 - (3) implement its *contingency funding plan*.
- 12.9.14 R For the purpose of *BIPRU 12.9.13R*, the events in question are:
- (1) in the case of a *simplified ILAS BIPRU firm* only, breach, or expected breach, of the *simplified buffer requirement* unless this has been superseded by *individual liquidity guidance* that it has accepted;
 - (2) in the case of a *standard ILAS BIPRU firm* or a *simplified ILAS BIPRU firm*, being a *firm* which in either case has accepted *individual liquidity guidance* given to it by the FSA:
 - (a) its liquid assets buffer falling, or being expected to fall below, the level advised in the *guidance*; or
 - (b) its funding profile ceasing, or being expected to cease, to conform to that advised in the *guidance*.
- 12.9.15 G As part of the FSA's enquiry into the reasons for a *firm's* deviation, or expected deviation, from its *individual liquidity guidance* or, as the case may be, its *simplified buffer requirement*, the FSA may ask for further assessments and analyses of a *firm's* liquidity resources and the risks faced by the *firm*. The FSA may consider the use of its powers under section 166 of the Act to assist in such circumstances.
- 12.9.16 G Consistent with *Principle 11* of the FSA's *Principles for Businesses* (Relations with regulators), if a *firm* has not accepted *individual liquidity guidance* given by the FSA it should, nevertheless, notify the FSA as soon as it becomes aware of either of the events identified in *BIPRU*

- 12.9.14R(2)(a) or (b).
- 12.9.17 R No later than two *days* after the *day* on which a *firm* notifies the *FSA* under *BIPRU 12.9.13R(1)*, the *firm* must submit a liquidity remediation plan to the *FSA*.
- 12.9.18 R For the purposes of *BIPRU 12.9.17R*, a *firm's* liquidity remediation plan must:
- (1) be communicated in writing;
 - (2) detail the *firm's* forward estimates of the evolution of the size of the *firm's* liquid assets buffer and of its funding profile;
 - (3) in relation to any of the events identified in *BIPRU 12.9.14R* that has occurred, detail the actions that the *firm* intends to take to remedy the relevant deviation, or avoid the expected deviation, including information about:
 - (a) the amount of funding that it is intended to raise;
 - (b) the intended funding providers; and
 - (c) the maturity profile of the intended funding;
 - (4) identify clear timescales for achieving each of the actions that it details in accordance with *BIPRU 12.9.18R(3)*; and
 - (5) include an adequately reasoned assessment of the likelihood of the timely achievement of the actions that it details in accordance with *BIPRU 12.9.18R(3)*.
- 12.9.19 G The *FSA* will assess the adequacy of the liquidity remediation plan submitted by a *firm*, including the likelihood of its success. A *firm* should expect that the *FSA* will want to discuss the terms of the liquidity remediation plan submitted to it under *BIPRU 12.9.18R*. In its re-examination of the *firm's* compliance, and likely future compliance, with *threshold conditions* taken as a whole, the *FSA* will have regard to the adequacy of the *firm's* liquidity remediation plan.
- 12.9.20 G Other things being equal, the *FSA* will expect a *firm* which is not experiencing a period of stress to restore its liquidity resources more rapidly than one which is under stress at the time that it deviates from its *individual liquidity guidance* or, as the case may be, from its *simplified buffer requirement*.
- 12.9.21 G If agreement through discussion with the *FSA* cannot be reached as to the necessary actions and timescales to remedy deviation from that *guidance*, the *FSA* will consider using its powers under the *Act* (for example, its power under section 45 to vary, on its own initiative, a *firm's Part IV permission* or its *power of intervention* under section 196) so as to require the *firm* to take such actions as the *FSA* considers are necessary

to return the *firm* to conformity with the terms of its *individual liquidity guidance* or, as the case may be, with its *simplified buffer requirement*.

- 12.9.22 G Although *BIPRU* 12.9.17R to *BIPRU* 12.9.21G set out the *FSA*'s likely approach, the *FSA* will take whatever action it considers appropriate in the particular circumstances of a given case.
- 12.9.23 G A *firm* that deviates from current *individual liquidity guidance* that it has accepted or, as the case may be, from its *simplified buffer requirement*, will be experiencing a *firm-specific liquidity stress* for the purpose of the reporting *rules* in *SUP* 16 (Reporting requirements). Those *rules* require the *firm* to report specified *data items* more frequently than would otherwise be the case. Additionally, a *firm* that is implementing a liquidity remediation plan should expect that the *FSA* will wish to monitor its implementation of that plan. The *firm*'s progress in achieving the remedial actions identified in its plan is a matter to which the *FSA* will have regard in considering the *firm*'s compliance, and likely future compliance, with *threshold conditions*.

Monitoring requirement

- 12.9.24 R An *ILAS BIPRU firm* must monitor on each *business day* whether it is in conformity with *individual liquidity guidance* that it has accepted or, as the case may be, with the *simplified buffer requirement*.

Mode of notification

- 12.9.25 R Notification to the *FSA* under *BIPRU* 12.9.13R(1) and submission to the *FSA* under *BIPRU* 12.9.17R must be made to the following *FSA* email address: data_collection@fsa.gov.uk
- 12.9.26 G Although *BIPRU* 12.9.25R requires notification and submission in the way prescribed in that *rule*, the *FSA* expects that a *firm* would also bring to the attention of its usual supervisory contact at the *FSA* the fact that it had made such a notification or submission.
- 12.9.27 G For the purpose of the notification expected under *BIPRU* 12.9.26G, the *FSA* would expect any such notification to be made in the way envisaged in *BIPRU* 12.9.25R.

After BIPRU TP 25, insert the following new transitional rules.

TP 26 Quantitative aspects of BIPRU 12: all firms to which BIPRU 12 applies

Application

- 26.1 R *BIPRU* TP 26 applies to a *firm* which as at 1 December 2009 falls into *BIPRU* 12.1.1R.

Transitional provisions

26.2

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook provisions: coming into force
1	<i>BIPRU</i> 12.2 and <i>BIPRU</i> 12.5 to <i>BIPRU</i> 12.9	R	In relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LS of <i>IPRU(BANK)</i> , the sections listed in column (2) do not apply.	1 December 2009 until 31 May 2010	1 December 2009
2	<i>BIPRU</i> 12.2 and <i>BIPRU</i> 12.5 to <i>BIPRU</i> 12.9	R	Subject to (3), in relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with <i>IPRU(BSOC)</i> , the sections listed in column (2) do not apply.	1 December 2009 until 31 May 2010	1 December 2009
3	<i>BIPRU</i> 12.2 and <i>BIPRU</i> 12.5 to <i>BIPRU</i> 12.9	R	In relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with <i>IPRU(BSOC)</i> and which as at 1 June 2010 has a <i>simplified ILAS waiver</i> ,	1 December 2009 until 30 September 2010	1 December 2009

			the sections listed in column (2) do not apply.		
4	<i>BIPRU 12.2 and BIPRU 12.5 to BIPRU 12.9</i>	R	In relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LM of <i>IPRU(BANK)</i> and which is not an <i>incoming EEA firm</i> or a <i>third country BIPRU firm</i> , the sections listed in column (2) do not apply.	1 December 2009 until 30 September 2010	1 December 2009
5	<i>BIPRU 12.2 and BIPRU 12.5 to BIPRU 12.9</i>	R	In relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LM of <i>IPRU(BANK)</i> and which is an <i>incoming EEA firm</i> or a <i>third country BIPRU firm</i> , the sections listed in column (2) do not apply.	1 December 2009 until 31 October 2010	1 December 2009
6	<i>BIPRU 12.2 and BIPRU 12.5 to BIPRU 12.9</i>	R	In relation to an <i>incoming EEA firm</i> or a <i>third country BIPRU firm</i> which as at 30 November 2009 has a Global Liquidity Concession (as described in <i>IPRU(BANK)</i> Chapter LM 4(2)), the sections listed in column (2) do not apply.	1 December until 31 October 2010 or, if earlier, the date on which the <i>firm</i> ceases to have a Global Liquidity Concession	1 December 2009
7	<i>BIPRU 12.2 and BIPRU 12.5 to BIPRU 12.9</i>	R	In relation to a <i>firm</i> which as at 1 December 2009 is a <i>full scope BIPRU investment firm</i> and which is also an <i>ILAS BIPRU firm</i> , the sections listed in column (2) do not apply.	1 December 2009 until 31 October 2010	1 December 2009
8	<i>BIPRU 12.2 and BIPRU 12.8</i>	R	In relation to a <i>firm</i> which as at 1 December 2009 is a <i>non-ILAS BIPRU firm</i> , the sections listed in column (2) do not apply.	1 December 2009 until 31 October 2010	1 December 2009

Guidance for a firm which becomes an ILAS BIPRU firm or non-ILAS BIPRU firm after 1 December 2009

- 26.3 G *BIPRU TP 26 applies to a firm which becomes either an ILAS BIPRU firm or a non-ILAS BIPRU firm (as the case may be) on 1 December 2009. A firm which becomes an ILAS BIPRU firm or non-ILAS BIPRU firm after that date and before the end of the transitional period which would otherwise have applied will not therefore have the benefit of those rules and will be expected to comply with the rules and guidance in BIPRU 12 from the date on which it becomes either an ILAS BIPRU firm or a non-ILAS BIPRU firm (as the case may be).*

TP 27 Application of GENPRU 1.2, BIPRU 12.3 and BIPRU 12.4: all firms to which BIPRU 12 applies

Application

- 27.1 R *BIPRU TP 27 applies to a firm which as at 1 December 2009 falls into BIPRU 12.1.1R.*

Transitional provisions

27.2

(1)	(2)	(3)	(4)	(5)
	Material to which the transitional provision applies		Transitional Provision	Handbook provisions: coming into force
1	<i>BIPRU 12.3 and BIPRU 12.4</i>	R	References to the <i>overall liquidity adequacy rule</i> contained in the <i>rules and guidance</i> in the sections of the Handbook listed in column (2) are replaced by ones to the <i>overall financial adequacy rule</i> .	1 December 2009
2	<i>GENPRU 1.2.26R</i>	R	For the purposes of complying with <i>GENPRU 1.2.26R</i> as regards the adequacy of liquidity resources, a firm must apply the <i>rules and guidance</i> in <i>BIPRU 12.3 and BIPRU 12.4</i> instead of applying the <i>ICAAP rules</i> .	1 December 2009

Duration and application of BIPRU TP 27.2

27.3 R In relation to each *firm* falling into *BIPRU* 12.1.1R, *BIPRU* TP 27.2 applies in the way described in *BIPRU* TP 27.4.

27.4

(1)	(2)	(3)	(4)
		Transitional provision: dates in force	Transitional provision: application
1	R	1 December 2009 until 31 May 2010	A <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LS of <i>IPRU(BANK)</i> .
2	R	1 December 2009 until 31 May 2010	Subject to (3), a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with <i>IPRU(BSOC)</i> .
3	R	1 December 2009 until 30 September 2010	A <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with <i>IPRU(BSOC)</i> and which as at 1 June 2010 has a <i>simplified ILAS waiver</i> .
4	R	1 December 2009 until 30 September 2010	A <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LM of <i>IPRU(BANK)</i> and which is not an <i>incoming EEA firm</i> or a <i>third country BIPRU firm</i> .
5	R	1 December 2009 until 31 October 2010	A <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LM of <i>IPRU(BANK)</i> and which is an <i>incoming EEA firm</i> or a <i>third country BIPRU firm</i> .
6	R	1 December 2009 until 31 October 2010	A <i>firm</i> which as at 1 December 2009 is a <i>full scope BIPRU investment firm</i> and which is also an <i>ILAS BIPRU firm</i> .
7	R	1 December 2009 until 31 October 2010	A <i>firm</i> which as at 1 December 2009 is a <i>non-ILAS BIPRU firm</i> .

Guidance for a firm which becomes an *ILAS BIPRU firm* or *non-ILAS BIPRU firm* on 1 December 2009

27.5 G *BIPRU* TP 27 applies to a *firm* which becomes either an *ILAS BIPRU firm* or a *non-ILAS BIPRU firm* (as the case may be) on 1 December 2009. A *firm* which becomes an *ILAS BIPRU firm* or *non-ILAS BIPRU firm* after that date and before the end of the transitional period which would otherwise have applied will not therefore have the benefit of those *rules* and will be expected to comply with the *rules* and *guidance* in

BIPRU 12 from the date on which it becomes either an *ILAS BIPRU firm* or a *non-ILAS BIPRU firm* (as the case may be).

TP 28 BIPRU 12.3 and BIPRU 12.4: banks with a Global Liquidity Concession

Application

- 28.1 R *BIPRU* TP 28 applies to an *incoming EEA firm* or *third country BIPRU firm* which as at 30 November 2009 has a Global Liquidity Concession (as described in *IPRU(BANK)* Chapter LM 4(2)).

Duration of transitional provisions

- 28.2 R *BIPRU* TP 28 applies until 31 October 2010 or, if earlier, the date on which the *firm's* Global Liquidity Concession expires.

Transitional provisions

28.3

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook provisions: coming into force
1	<i>BIPRU</i> 12.3 and <i>BIPRU</i> 12.4	R	The <i>rules and guidance</i> in the sections listed in column (2) do not apply.	1 December 2009 until 31 October 2010	1 December 2009

TP 29 Liquid assets buffer scalar: simplified ILAS BIPRU firms

Application

- 29.1 R *BIPRU* TP 29 applies to a *firm* which on 1 June 2010 is a *simplified ILAS BIPRU firm*.

Duration of transitional provisions

- 29.2 R *BIPRU* TP 29 applies from 1 December 2009 until 30 September 2013.

Transitional provisions

- 29.3 R A *simplified ILAS BIPRU firm* falling into *BIPRU* TP 29.1 must ensure that:

- (1) at all times between 1 October 2010 and 30 September 2011, its liquid assets buffer is no less than 30% of the amount of its *simplified buffer requirement*;
 - (2) at all times between 1 October 2011 and 30 September 2012, its liquid assets buffer is no less than 50% of its *simplified buffer requirement*; and
 - (3) at all times between 1 October 2012 and 30 September 2013, its liquid assets buffer is no less than 70% of its *simplified buffer requirement*.
- 29.4 G The effect of *BIPRU TP 29.3* is that a *firm* that is a *simplified ILAS BIPRU firm* as at 1 December 2009 has a transitional period of three years within which to build up its liquid assets buffer so that at the end of that period it holds in its buffer assets equal to 100% of its *simplified buffer requirement*.
- 29.5 G In relation to a *firm* which becomes a *simplified ILAS BIPRU firm* after 1 December 2009 and before 1 October 2010 the *FSA* will consider as part of that *firm's simplified ILAS waiver* application whether it is appropriate to apply the scalar approach described in *BIPRU TP 29.3* to the *firm* in question and if so from what date that approach should apply. Where the *FSA* agrees that the scalar approach is appropriate, it will incorporate the scalar into the terms of the *firm's simplified ILAS waiver*.

TP 30 Liquidity floor for certain banks

Application

- 30.1 R *BIPRU TP 30* applies to a *firm* which as at 1 December 2009 is a *standard ILAS BIPRU firm* and which as at 30 November 2009 calculated its liquidity resources in accordance with Chapter LM of *IPRU(BANK)*.

Duration of transitional provisions

- 30.2 R *BIPRU TP 30* applies:
- (1) in the case of an *incoming EEA firm* or a *third country BIPRU firm*, from 1 November 2010 until the earlier of the date on which the *firm* receives *individual liquidity guidance* from the *FSA* and 30 November 2011; and
 - (2) in the case of any other *firm*, from 1 October 2010 until the earlier of the date on which the *firm* receives *individual liquidity guidance* from the *FSA* and 30 November 2011.

Transitional provisions

- 30.3 R A *standard ILAS BIPRU firm* falling into *BIPRU TP 30.1* must ensure that at all times between 1 October 2010 or 1 November 2010 (as relevant) and the expiry of *BIPRU TP 30* it maintains liquidity resources which are no less in amount than the higher of:
- (1) the amount its assesses as adequate in its *ILAA*; and
 - (2) the amount that it would have maintained during that period had it calculated its liquidity resources solely in accordance with Chapter LM of *IPRU(BANK)* in the form in which it appeared on 30 September 2010 or 31 October 2010 (as relevant).
- 30.4 R (1) For the purpose of *BIPRU 12.9.14R* (Regulatory intervention points for ILAS BIPRU firms) and for the duration of *BIPRU TP 30*, there is added one further event which is to constitute a regulatory intervention point for a *standard ILAS BIPRU firm*.
- (2) The further event to which (1) refers is the amount of the *firm's* liquid assets falling below, or being expected to fall below, the level required in *BIPRU TP 30.3*.

Annex C

Amendments to Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

BIPRU firms and other firms to which BIPRU 8 applies

12.1.13 R If this *rule* applies under SYSC 12.1.14R to a *firm*, the *firm* must:

...

(2) ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or *non-EEA sub-group* of which it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:

...

(e) ~~SYSC 11.1.11R and SYSC 11.1.12R; BIPRU 12.3.27R and BIPRU 12.4.10R;~~

...

SUPERVISION MANUAL (INTEGRATED REGULATORY REPORTING OF LIQUIDITY FOR BANKS, BUILDING SOCIETIES AND INVESTMENT FIRMS) INSTRUMENT 2009

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) Part 3 of Annex B comes into force on 1 October 2010;
 - (2) the remainder of the instrument comes into force on 1 December 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Supervision Manual (Integrated Regulatory Reporting of Liquidity for Banks, Building Societies and Investment Firms) Instrument 2009.

By order of the Board
30 September 2009

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text unless otherwise stated.

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

<i>defined liquidity group</i>	a <i>DLG by default</i> or <i>DLG by modification</i> .
<i>DLG by default</i>	(in relation to a <i>UK ILAS BIPRU firm</i> (a <i>group liquidity reporting firm</i>) and any reporting period under <i>SUP 16</i> (Reporting requirements)) the <i>firm</i> and each <i>person</i> identified in accordance with the following:
(a)	(in a case in which the <i>firm</i> is the only <i>UK ILAS BIPRU firm</i> in its <i>group</i>) that <i>person</i> meets any of the following conditions for any part of that period:
(i)	that <i>person</i> provides material support to the <i>firm</i> against <i>liquidity risk</i> ; or
(ii)	that <i>person</i> is committed to provide such support or would be committed to do so if that <i>person</i> were able to provide it; or
(iii)	the <i>firm</i> has reasonable grounds to believe that that <i>person</i> would supply such support if asked or would do so if it were able to provide it; or
(iv)	the <i>firm</i> provides material support to that <i>person</i> against <i>liquidity risk</i> ; or
(v)	the <i>firm</i> is committed to provide such support to that <i>person</i> or would be committed to do so if the <i>firm</i> were able to provide it; or
(vi)	the <i>firm</i> has reasonable grounds to believe that that <i>person</i> would expect the <i>firm</i> to supply such support if asked or that the <i>firm</i> would do so if it were able to provide it; or
(b)	(in a case in which the <i>firm</i> is not the only <i>UK ILAS BIPRU firm</i> in its <i>group</i>):
(i)	each of those other <i>UK ILAS BIPRU firm</i> ; and

- (ii) each *person* identified by applying the tests in (a) separately to the *firm* and to each of those other *UK ILAS BIPRU firms*, so that applying (b) to the *firm* and to each of those *UK ILAS BIPRU firms* results in their having the same *defined liquidity group*.

The following provisions also apply for the purpose of this definition.

- (c) A *person* is not a member of a *firm's DLG* by default unless it also satisfies one of the following conditions:
 - (i) it is a member of the *firm's group*; or
 - (ii) it is a *securitisation special purpose entity* or a *special purpose vehicle*; or
 - (iii) it is an *undertaking* whose main purpose is to raise funds for the *firm* or for a *group* to which that *firm* belongs.
- (d) *Group* has the meaning in paragraph (1) of the definition in the *Glossary* (the definition in section 421 of the *Act*).
- (e) The conditions in (a) are satisfied even if the *firm* or *person* in question provides or is committed or expected to provide support for only part of the period.
- (f) In deciding for the purpose of (a) or (b) whether the *firm* is the only *UK ILAS BIPRU firm* in its *group* and identifying which are the other *UK ILAS BIPRU firms* in its *group*, any *group* member that is a member of the group through no more than a *participation* is ignored.
- (g) A *firm* has a *DLG by default* for a period even if it only has one during part of that period.
- (h) Liquidity support may be supplied by or to the *firm* directly or indirectly.
 - (i) Support is material if it is material either by reference to the *person* giving it or by reference to the *person* receiving it.

(*Guidance* about this definition, and its inter-relation with other related definitions, is set out in *SUP 16 Annex 26G* (*Guidance on designated liquidity groups in SUP 16.12*).)

DLG by modification

either of the following:

- (a) a *DLG by modification (firm level)*; or
- (b) a *non-UK DLG by modification (DLG level)*.

(*Guidance* about this definition, and its inter-relation with other related definitions, is set out in SUP 16 Annex 26G (Guidance on designated liquidity groups in SUP 16.12).)

DLG by modification (firm level)

(in relation to any reporting period under SUP 16 (Reporting requirements) and a UK ILAS BIPRU firm that has an *intra-group liquidity modification* during any part of that period (a *group liquidity reporting firm*)) the *firm* and each *person* on whose liquidity support the *firm* can rely, under that *intra-group liquidity modification*, for any part of that period for the purpose of the *overall liquidity adequacy rule* (as the *overall liquidity adequacy rule* applies to the *firm* on a solo basis). A *firm* has a ‘DLG by modification (firm level)’ for a period even if it only has one during part of that period.

(*Guidance* about this definition, and its inter-relation with other related definitions, is set out in SUP 16 Annex 26G (Guidance on designated liquidity groups in SUP 16.12).)

firm-specific liquidity stress

(in relation to a *firm* and any reporting obligations under SUP 16 (Reporting requirements)):

- (a) (in the case of reporting obligations on a solo basis (including on the basis of the *firm's UK branch*) the *firm* failing to meet, not complying with or being in breach of:
 - (i) the liquidity resources requirement calculated by that *firm* as adequate in its current *Individual Liquidity Adequacy Assessment* or *Individual Liquidity Systems Assessment*; or
 - (ii) the level of its liquid assets buffer advised in any current *individual liquidity guidance* that the *firm* has accepted; or
 - (iii) its funding profile advised in any current *individual liquidity guidance* that the *firm* has accepted; or
 - (iv) the *overall liquidity adequacy rule*; or
 - (v) BIPRU 12.2.8R (*ILAS BIPRU firm* adequate buffer of high quality, unencumbered assets) or BIPRU 12.2.11R (liquid assets buffer is at least equal to the *simplified buffer requirement*); or
 - (vi) the *simplified buffer requirement* (taking into account BIPRU TP 29 (Liquid assets buffer scalar: simplified ILAS BIPRU firms) unless this has been superseded by *individual liquidity guidance* that it has accepted; or
 - (vii) any requirement imposed by or under the *regulatory system* under which the *firm* must hold a specified level of liquidity resources;

or it being likely that the *firm* will do so;

	(b) (in the case of reporting obligations with respect to the <i>firm</i> and a group of other <i>persons</i>) has the same meaning as in (a) except that references to any <i>rule</i> or other requirement, <i>Individual Liquidity Adequacy Assessment</i> , <i>Individual Liquidity Systems Assessment</i> or <i>individual liquidity guidance</i> are to any such thing so far as it applies to the <i>firm</i> and that group considered together.
<i>group liquidity low frequency reporting conditions</i>	(in relation to a <i>group liquidity reporting firm</i> and its <i>defined liquidity group</i>) the <i>defined liquidity group</i> meets the group liquidity low frequency reporting conditions if the <i>defined liquidity group</i> meets the following conditions:
	(a) the <i>firm</i> or any other member is a <i>low frequency liquidity reporting firm</i> ; and
	(b) no member of that group is a <i>standard frequency liquidity reporting firm</i> .
	For the purpose of deciding whether these conditions are met in relation to a <i>DLG by default</i> , any group member (other than the <i>group liquidity reporting firm</i> itself) that is a member of the group through no more than a <i>participation</i> is ignored.
<i>group liquidity reporting firm</i>	see the definitions of <i>DLG by default</i> , <i>DLG by modification (firm level)</i> , and <i>non-UK DLG by modification (DLG level)</i> .
	(<i>Guidance</i> about this definition, and its inter-relation with other related definitions, is set out in <i>SUP 16 Annex 26G (Guidance on designated liquidity groups in SUP 16.12)</i> .)
<i>group liquidity standard frequency reporting conditions</i>	(in relation to a <i>group liquidity reporting firm</i> and its <i>defined liquidity group</i>) the <i>defined liquidity group</i> meets the group liquidity standard frequency reporting conditions if the group does not meet the <i>group liquidity low frequency reporting conditions</i> .
<i>low frequency liquidity reporting firm</i>	any of the following:
	(a) a <i>simplified ILAS BIPRU firm</i> ; or
	(b) a <i>standard ILAS BIPRU firm</i> whose most recent <i>annual report and accounts</i> show balance sheet assets of less than £1 billion (or its equivalent in foreign currency translated into sterling at the balance sheet date); or
	(c) a <i>standard ILAS BIPRU firm</i> that meets the following conditions:

- (i) it does not have any *annual report and accounts* and it has been too recently established to be required to have produced any;
- (ii) it has submitted a projected balance sheet to the *FSA* as part of an application for a *Part IV permission* or a variation of one; and
- (iii) the most recent such balance sheet shows that the *firm* will meet the size condition set out in (b) in all periods covered by those projections.

Paragraphs (b) and (c) apply at the level of the *firm* rather than of the *branch* in the case of any *firm* reporting on the basis of the activities of its branch operation in the *United Kingdom*.

market liquidity stress (in relation to a *firm* and any reporting obligations under SUP 16 (Reporting requirements)):

- (a) (in the case of reporting obligations on a solo basis) any market that is of material significance to the *firm* being materially adversely affected by crystallised *liquidity risk* or a substantial number of participants in any such market being materially adversely affected by crystallised *liquidity risk*, whether or not the *firm* itself is so affected;
- (b) (in the case of reporting obligations with respect to the *firm* and a group of other persons) has the same meaning as in (a) except that references to the *firm* are to the *firm* and that group considered together;
- (c) (in the case of reporting obligations with respect to a *firm's UK branch*) has the same meaning as in (a) except that references to the *firm* are to that *branch*.

material currency

- (a) *Material currencies*, in respect of a *firm* at any time, are currencies determined in accordance with the following.
- (b) First, the amount of its assets and the amount of its liabilities in each currency (ignoring the sign) are separately calculated. The figures are as shown in the most recent *data item* FSA054 submitted to the *FSA*.
- (c) Then, each such amount is converted into the reporting currency for the *data item* referred to in (b).
- (d) Each currency (which may include the reporting currency) that represents 20% or more of the total asset figure or 20% or more of the total liabilities figure is a *material currency*.

(e) A currency is also a *material currency* if it is identified by the *firm's current*:

- (i) *Individual Liquidity Adequacy Assessment*; or
- (ii) *Individual Liquidity Systems Assessment*; or
- (iii) *ILG* that has been accepted by the *firm*;

as being significant in the context of cross-currency *liquidity risk* (as referred to in *BIPRU 12.5* (Individual Liquidity Adequacy Standards)).

(f) The conversion rate for a currency into the reporting currency is the exchange rate on the date as of which the calculation is being made.

(g) The reporting currency means the currency in which the most recent *data item FSA054* (as referred to in (b)) is reported.

(h) A currency is a *material currency* in relation to a *firm's branch* or a *defined liquidity group* of which it is a *group liquidity reporting firm* if it is identified as such in accordance with the procedures in the previous paragraphs of this definition except that the identification is carried out by reference to that *branch* or *defined liquidity group*. For these purposes, *data item FSA054* for the *reporting level* concerned is used.

(i) If the *firm* has not delivered *data item FSA054* to the *FSA* at the *reporting level* concerned or is currently not required to do so at the *reporting level* concerned, the calculation is carried out using the methods for drawing up *data item FSA054*.

non-UK DLG by modification either of the following:

- (a) a *non-UK DLG by modification (firm level)*; or
- (b) a *non-UK DLG by modification (DLG level)*.

non-UK DLG by modification (firm level) (in relation to a *group liquidity reporting firm*) a *DLG by modification (firm level)* that is not a *UK DLG by modification*. A *firm* with a *non-UK DLG by modification (firm level)* cannot also have a *UK DLG by modification*.

(*Guidance* about this definition, and its inter-relation with other related definitions, is set out in *SUP 16 Annex 26G* (Guidance on designated liquidity groups in *SUP 16.12*).)

<i>non-UK DLG by modification (DLG level)</i>	(in relation to any reporting period under SUP 16 (Reporting requirements) and in relation to a <i>firm</i> that meets the following conditions (a group liquidity reporting firm):
	(a) it is a <i>UK ILAS BIPRU firm</i> with an <i>intra-group liquidity modification</i> ;
	(b) it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i> created by that <i>intra-group liquidity modification</i> ;
	(c) the <i>overall liquidity adequacy rule</i> applies under that <i>intra-group liquidity modification</i> to that <i>UK DLG by modification</i> ; and
	(d) that <i>UK DLG by modification</i> can rely, under that <i>intra-group liquidity modification</i> , for any part of that period, on a group of other <i>persons</i> for the purpose of the <i>overall liquidity adequacy rule</i> as applied to that <i>UK DLG by modification</i>);
	means the group made up of the following:
	(e) that <i>ILAS BIPRU firm</i> ;
	(f) the other members of that <i>UK DLG by modification</i> ; and
	(g) the group of other <i>persons</i> mentioned in (d).
	A <i>firm</i> has a ‘non-UK DLG by modification (DLG level)’ for a period even if it only has one during part of that period.
	(<i>Guidance</i> about this definition, and its inter-relation with other new definitions, is set out in SUP 16 Annex 26G (Guidance on designated liquidity groups in SUP 16.12).)
<i>non UK lead regulated firm</i>	a <i>firm</i> that is not a <i>UK lead regulated firm</i> . This definition is not related to the defined term <i>lead regulated firm</i> .
<i>reporting level</i>	(in SUP 16 (Reporting requirements) and in relation to a <i>data item</i>) refers to whether that <i>data item</i> is prepared on a solo basis or on the basis of a group such as a <i>UK DLG by modification</i> and, if it is prepared on the basis of a group, refers to the type of group (such as a <i>UK DLG by modification</i> or a <i>non-UK DLG by modification (firm level)</i>).
<i>simplified ILAS BIPRU firm</i>	an <i>ILAS BIPRU firm</i> that, in accordance with the procedures in <i>BIPRU 12 (Liquidity)</i> , is using the <i>simplified ILAS</i> .
<i>standard frequency liquidity reporting firm</i>	a <i>standard ILAS BIPRU firm</i> that is not a <i>low frequency liquidity reporting firm</i> .

<i>standard ILAS BIPRU firm</i>	an <i>ILAS BIPRU firm</i> that is not a <i>simplified ILAS BIPRU firm</i> .
<i>UK DLG by modification</i>	a <i>DLG by modification (firm level)</i> in which each member is a <i>UK ILAS BIPRU firm</i> . A firm with a <i>UK DLG by modification</i> cannot also have a <i>non-UK DLG by modification (firm level)</i> .
<i>UK lead regulated firm</i>	<p>a <i>UK firm</i> that:</p> <ul style="list-style-type: none"> (a) is not part of a group that is subject to consolidated supervision by the <i>FSA</i> or any other <i>regulatory body</i>; or (b) is part of a group that is subject to consolidated supervision by the <i>FSA</i> and that group is not part of a wider group that is subject to consolidated supervision by a <i>regulatory body</i> other than the <i>FSA</i>.
	For the purposes of this definition:

- (c) Consolidated supervision of a group of *persons* means supervision of the adequacy of financial and other resources of that group on a consolidated basis. For example, this includes supervision under *BIPRU 8* (Group risk consolidation).
- (d) It is not relevant whether or not any supervision by another *regulatory body* has been assessed as equivalent under the *CRD* or the *Financial Groups Directive*.
- (e) If the group is a *UK consolidation group* or *financial conglomerate* of which the *FSA* is lead regulator that is headed by an *undertaking* that is not itself the *subsidiary undertaking* of another *undertaking* the *firm* is a ‘*UK lead regulated firm*’.

This definition is not related to the defined term *lead regulated firm*.

Amend the following as shown.

<i>lead regulated firm</i>	a <i>firm</i> which is the subject of the financial supervision requirements of an <i>overseas regulator</i> in accordance with an agreement between the <i>FSA</i> and that regulator relating to the financial supervision of <i>firms</i> whose head office is within the country of that regulator.
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This definition is not related to the defined terms *UK lead regulated firm* or *non UK lead regulated firm*.

Annex B

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 1 December 2009

Insert the following new text in the Transitional Provisions. The text is not underlined.

SUP TP 1 Transitional provisions

...

SUP TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
12T	<i>SUP</i> 16.12.5R to <i>SUP</i> 16.12.7R; <i>SUP</i> 16.12.10R to <i>SUP</i> 16.12.17R; <i>SUP</i> 16.12.22R to <i>SUP</i> 16.12.27R	R	<p>(1) This <i>rule</i> deals with:</p> <ul style="list-style-type: none"> (a) the date (the “start date”) on which the requirements (the “new requirements”) relating to <i>data items</i> FSA047 to FSA055 (inclusive) (the “new <i>data items</i>”) made by the Supervision Manual (Integrated Regulatory Reporting of Liquidity for Banks, Building Societies and Investment Firms) Instrument 2009 (the “instrument”) begin; (b) the date on which the requirements relating to <i>data items</i> FSA010 and FSA013 end; and (c) the date on which the changes in the requirements relating to <i>data item</i> FSA011 made by the instrument take effect. <p>(2) The start date for reporting on a solo basis for a <i>firm</i> that as at 30 November 2009 or, as the case may be, 1 December 2009, or as the case may be, 30 November 2009 and 1 June 2010, falls into one of the classes covered by <i>BIPRU</i> TP 26.2 (Transitional rules for quantitative aspects of <i>BIPRU</i> 12 that apply to all <i>firms</i> to which <i>BIPRU</i> 12 applies) is the day immediately following the last day on which that transitional provision is in force as specified in column (5) of <i>BIPRU</i> TP 26.2.</p>	As set out in column (4)	As set out in column (4)

- (3) The start date for reporting on a solo basis for other firms (other than a *non-ILAS BIPRU firm*) is 1 December 2009.
- (4) The reporting period for the first report on a solo basis for *non-ILAS BIPRU firms* ends on 31 December 2010.
- (5) Reporting on the basis of a *defined liquidity group* applies for all reporting periods beginning on or after 1 November 2010.
- (6) For a *firm* falling into paragraph (2), the following start dates apply to the following *data items*.
- (a) The date for *data items* FSA047, FSA048 and FSA052 is 1 June 2010.
 - (b) The date for *data items* FSA050, FSA051, FSA053 and FSA054 is 1 November 2010.
- (7) For a *firm* falling into paragraph (3), the following start dates apply to the following *data items*.
- (a) The date for *data items* FSA047 and FSA048 is 1 December 2009.
 - (b) The date for *data item* FSA052 is 1 June 2010.
 - (c) The date for *data items* FSA050, FSA051, FSA053 and FSA054 is 1 November 2010.
- (8) If the start date under paragraphs (6) or (7) (taking into account paragraph (9)) falls before the start date in paragraphs (2) or (3), the dates in paragraphs (2) or (3) apply. However if the start date in paragraphs (6) or (7) (taking into account paragraph (9)) fall after the dates in paragraphs (2) or (3), the start dates in paragraphs (6) or (7) apply.
- (9) If the start date for a new *data item* occurs part of the way through what would have been a reporting period for that *data item* under SUP 16.12 if the relevant part of SUP 16.12 had been in force, the first reporting period for that *data item* begins on the first day ("the first day") of what would have been that reporting period (as specified in SUP 16.12), even though the first day falls before the start date. The time for submission of the *data item* and the length of the reporting period are calculated as if the new requirements relating to that *data item* had been in force from the first day.
- (10) (a) The requirements relating to *data items* FSA010 and FSA013 are as follows.
- (b) If a *firm* does not fall into *RAG 1* as at 30 November 2009, it does not have to submit these *data items*.

			<p>(c) Otherwise, the last reporting period for the <i>data item</i> concerned ends on the first date when the start date for that <i>firm</i> in relation to both <i>data item</i> FSA047 and FSA048 has occurred. That last reporting period for <i>data item</i> FSA010 or FSA013 is shortened accordingly if necessary.</p> <p>(d) Any notes in <i>SUP</i> 16.12 relating to those <i>data items</i> continue in force as long as required by (a) to (c).</p> <p>(11) The changes to <i>data item</i> FSA011 only take effect with respect reporting periods beginning on or after the commencement date for those changes as specified in the instrument (1 October 2010).</p>		
12U	<i>SUP</i> 16.12.5R to <i>SUP</i> 16.12.7R; <i>SUP</i> 16.12.10R to <i>SUP</i> 16.12.17R; <i>SUP</i> 16.12.22R to <i>SUP</i> 16.12.27R	G	The effect of paragraph 12T is that a <i>firm</i> which becomes an <i>ILAS BIPRU firm</i> or <i>non-ILAS BIPRU firm</i> after 1 December 2009 and before the end of the transitional period which would otherwise have applied will be expected to comply with the requirements listed in column (2) from the date on which it becomes either an <i>ILAS BIPRU firm</i> or a <i>non-ILAS BIPRU firm</i> (as the case may be). However such a <i>firm</i> does have the benefit of the delayed start dates as specified in paragraphs (4), (5) and (7) of paragraph 12T.		
12V	<i>SUP</i> 16.12.5R to <i>SUP</i> 16.12.7R; <i>SUP</i> 16.12.10R to <i>SUP</i> 16.12.17R; <i>SUP</i> 16.12.22R to <i>SUP</i> 16.12.27R	G	An example of how paragraph 12T(6) and (9) work is as follows. Say that the start date for a <i>firm</i> under paragraph 12T(2) is 1 June 2010. If the <i>firm</i> reports <i>data item</i> FSA047 weekly, the first reporting period for that <i>data item</i> starts on Saturday 29 May 2010 and ends on Friday 4 June 2010. It has to be submitted to the FSA by 2200 on Monday 7 June.		
12W	<i>SUP</i> 16.12.5R to <i>SUP</i> 16.12.7R	R	If <i>BIPRU</i> TP 30.4R (Liquidity floor for certain banks) applies to a <i>firm</i> the regulatory intervention point mentioned in that rule is added to the list in paragraph (a) of the definition of <i>firm-specific liquidity stress</i> in the case of that <i>firm</i> for as long as <i>BIPRU</i> TP 30.4R applies to it.	For as long as <i>BIPRU</i> TP 30.4R applies to the <i>firm</i>	At the end of period set out in column (5)

...

Part 2: Comes into force on 1 December 2009**16 Reporting requirements****16.3 General provisions on reporting**

...

16.3.26 G Examples of reports covering a *group* are:

...

(5) consolidated reporting statements required from *securities and futures firms* under SUP 16.7.24R₂(6) reporting in relation to *defined liquidity groups* under SUP 16.12.**16.12 Integrated Regulatory Reporting**

...

16.12.3A G The following is designed to assist *firms* to understand how the reporting requirements set out in this chapter operate when the circumstances set out in SUP 16.12.3 R (1)(a)(ii) apply.

(1) Example 1

A *BIPRU 730K firm* that undertakes activities in both *RAG 3* and *RAG 7*Overlaying the requirements of *RAG 3* (data items) with the requirements of *RAG 7* shows the following:

RAG 3 (SUP 16.12.11R) data items	RAG 7 (SUP 16.12.22AR) data items
...	
Securitisation	Securitisation
<u>Daily Flows (if it is an <i>ILAS BIPRU firm</i>)</u>	
<u>Enhanced Mismatch Report (if it is an <i>ILAS BIPRU firm</i>)</u>	
<u>Liquidity Buffer Qualifying Securities (if it is an <i>ILAS BIPRU firm</i>)</u>	

<u>Funding Concentration (if it is an ILAS BIPRU firm)</u>	
<u>Pricing data (if it is an ILAS BIPRU firm)</u>	
<u>Retail and corporate funding (if it is an ILAS BIPRU firm)</u>	
<u>Currency Analysis (if it is a ILAS BIPRU firm)</u>	
<u>Systems and Controls Questionnaire (if it is a non-ILAS BIPRU firm)</u>	

...

(2) Example 2

A UK bank in RAG 1 that also carries on activities in RAG 5

Again, overlaying the RAG 1 reporting requirements with the requirements for a RAG 5 firm gives the following :

RAG 1 requirements (SUP 16.12.5R)	RAG 5 requirements (SUP 16.12.18AR)
...	
<u>Securitisation</u>	
<u>Daily Flows (if it is an ILAS BIPRU firm)</u>	
<u>Enhanced Mismatch Report (if it is an ILAS BIPRU firm)</u>	
<u>Liquidity Buffer Qualifying Securities (if it is an ILAS BIPRU firm)</u>	
<u>Funding Concentration (if it is an ILAS BIPRU firm)</u>	

<u>Pricing data (if it is an <i>ILAS BIPRU firm</i>)</u>	
<u>Retail and corporate funding (if it is an <i>ILAS BIPRU firm</i>)</u>	
<u>Currency Analysis (if it is an <i>ILAS BIPRU firm</i>)</u>	
	Lending - Business flow and rates
	...

...

16.12.4A G ...

Group liquidity reporting

16.12.4B G Reporting at group level for liquidity purposes by firms falling within BIPRU 12 (Liquidity) is by reference to *defined liquidity groups*. Guidance about the different types of *defined liquidity groups* and related material is set out in SUP 16 Annex 26 (Guidance on designated liquidity groups in SUP 16.12).

Regulated Activity Group 1: Applicable data items

16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to *firm type* in the table below:

Description of data item	Prudential category of firm and applicable data items (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	Electronic money institutions	Credit union	Dormant account fund operator (note 15)
...								
Liquidity (other than stock)	FSA010 (note 3)	FSA011	FSA010	FSA010	FSA012	FSA025		CQ; CY
Liquidity stock	FSA013 (note 3)							
...								
Securitisation	...							
<u>Daily Flows</u>	<u>FSA047</u> <u>(Notes 16, 20 and 22)</u>	<u>FSA047</u> <u>(Notes 16, 20 and 22)</u>	<u>FSA047</u> <u>(Notes 16, 18, 20 and 22)</u>	<u>FSA047</u> <u>(Notes 16, 18, 20 and 22)</u>	<u>FSA047</u> <u>(Notes 16, 18, 20 and 22)</u>			

<u>Enhanced Mismatch Report</u>	FSA04 8 (Notes 16, 20 and 22)	FSA04 8 (Notes 16, 20 and 22)	FSA04 8 (Notes 16, 18, 20 and 22)	FSA04 8 (Notes 16, 18, 20 and 22)	FSA04 8 (Notes 16, 18, 20 and 22)			
<u>Liquidity Buffer Qualifying Securities</u>	FSA05 0 (Notes 17, 21 and 22)	FSA05 0 (Notes 17, 21 and 22)	FSA05 0 (Notes 17, 19, 21 and 22)	FSA05 0 (Notes 17, 19, 21 and 22)	FSA05 0 (Notes 17, 19, 21 and 22)			
<u>Funding Concentration</u>	FSA05 1 (Notes 17, 21 and 22)	FSA05 1 (Notes 17, 21 and 22)	FSA05 1 (Notes 17, 19, 21 and 22)	FSA05 1 (Notes 17, 19, 21 and 22)	FSA05 1 (Notes 17, 19, 21 and 22)			
Pricing data	FSA05 2 (Notes 17, 21 and 22)	FSA05 2 (Notes 17, 21 and 22)	FSA05 2 (Notes 17, 19, 21 and 22)	FSA05 2 (Notes 17, 19, 21 and 22)	FSA05 2 (Notes 17, 19, 21 and 22)			
<u>Retail and corporate funding</u>	FSA05 3 (Notes 17, 21 and 22)	FSA05 3 (Notes 17, 21 and 22)	FSA05 3 (Notes 17, 19, 21 and 22)	FSA05 3 (Notes 17, 19, 21 and 22)	FSA05 3 (Notes 17, 19, 21 and 22)			
<u>Currency Analysis</u>	FSA05 4 (Notes 17, 21 and 22)	FSA05 4 (Notes 17, 21 and 22)	FSA05 4 (Notes 17, 19, 21 and 22)	FSA05 4 (Notes 17, 19, 21 and 22)	FSA05 4 (Notes 17, 19, 21 and 22)			
...								

Note 3	A UK bank is not required to submit both FSA010 and FSA013. A UK bank which monitors its liquidity according to the maturity mismatch approach as set out in IPRU(BANK) LM must submit FSA010. A UK bank which monitors its liquidity according to the sterling stock liquidity approach as set out in IPRU(BANK) LS must submit FSA013. FSA013 will generally be provided on a consolidated basis and members of the consolidated group will not be required to report individually. [deleted]
...	...
Note 15	...
Note 16	<p><u>A firm must complete this item separately on each of the following bases that are applicable.</u></p> <ul style="list-style-type: none"> (1) <u>It must complete it on a solo basis (including on the basis of the firm's UK branch). Therefore even if it has a solo consolidation waiver it must complete the item on an unconsolidated basis by reference to the firm alone.</u> (2) <u>If it is a group liquidity reporting firm in a DLG by default and is a UK lead regulated firm, it must complete the item on the basis of that group.</u> (3) <u>If it is a group liquidity reporting firm in a UK DLG by modification, it must complete the item on the basis of that group.</u> (4) <u>If it is a group liquidity reporting firm in a non-UK DLG by modification, it must complete the item on the basis of that group.</u>
Note 17	<p><u>A firm must complete this item separately on each of the following bases that are applicable.</u></p> <ul style="list-style-type: none"> (1) <u>It must complete it on a solo basis (including on the basis of the firm's UK branch) unless it is a group liquidity reporting firm in a UK DLG by modification. Therefore even if it has a solo consolidation waiver it must complete the item on an unconsolidated basis by reference to the firm alone.</u> (2) <u>If it is a group liquidity reporting firm in a UK DLG by modification, it must complete the item on the basis of that group.</u>
Note 18	<ul style="list-style-type: none"> (1) <u>If the firm has a whole-firm liquidity modification it must complete this item on the basis of the whole firm (or at any other reporting level the whole-firm liquidity modification may require) and not just its UK branch.</u> (2) <u>Otherwise the firm must complete this item by reference to the activities of its branch operation in the United Kingdom in accordance with SUP 16.12.3R(1)(a)(iv).</u>

<u>Note 19</u>	<p>(1) <u>If the firm has a whole-firm liquidity modification there is no obligation to report this item.</u></p> <p>(2) <u>Otherwise the firm must complete this item by reference to the activities of its branch operation in the United Kingdom in accordance with SUP 16.12.3R(1)(a)(iv).</u></p>
<u>Note 20</u>	<p>(1) <u>This item must be reported in the reporting currency.</u></p> <p>(2) <u>If any data element is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.</u></p> <p>(3) <u>In addition, all material currencies (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:</u></p> <ul style="list-style-type: none"> <u>(a) the reporting frequency is (whether under a rule or under a waiver) quarterly or less than quarterly; or</u> <u>(b) the only material currency is the reporting currency;</u> <u>(3) does not apply.</u> <p>(4) <u>If there are more than three material currencies for this data item, (3) only applies to the three largest in amount. A firm must identify the largest in amount in accordance with the following procedure.</u></p> <ul style="list-style-type: none"> <u>(a) For each currency, take the largest of the asset or liability figure as referred to in the definition of material currency.</u> <u>(b) Take the three largest figures from the resulting list of amounts.</u> <p>(5) <u>The date as at which the calculations for the purposes of the definition of material currency are carried out is the last day of the reporting period in question.</u></p> <p>(6) <u>The reporting currency for this data item is whichever of the following currencies the firm chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).</u></p>
<u>Note 21</u>	<p><u>Note 20 applies, except that paragraph (3) does not apply, meaning that material currencies must not be recorded separately.</u></p>

<u>Note 22</u>	<u>Any changes to reporting requirements caused by a firm receiving an <i>intra-group liquidity modification</i> or a <i>whole-firm liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the <i>data item</i> in question if the firm receives that <i>intra-group liquidity modification</i>, <i>whole-firm liquidity modification</i> or variation part of the way through such a period. If the change is that the firm does not have to report a particular <i>data item</i> or does not have to report it at a particular <i>reporting level</i>, the firm must nevertheless report that item or at that <i>reporting level</i> for any reporting period that has already begun. This paragraph is subject to anything that the <i>intra-group liquidity modification</i> or a <i>whole-firm liquidity modification</i> says to the contrary.</u>
----------------	--

- 16.12.6 R The applicable reporting frequencies for submission of *data items* and periods referred to in SUP 16.12.5R are set out in the table below according to *firm type*. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	Unconsolidated UK banks and building societies	Solo consolidated UK banks and building societies	Report on a UK consolidation group or, as applicable, defined liquidity group basis by UK banks and building societies	Other members of RAG 1
...				
FSA010	Quarterly			Quarterly
...				
FSA012				Half yearly
FSA013	Quarterly		Quarterly (note 4)	
FSA046	...			
FSA047	Daily, weekly, monthly or quarterly (Notes 4, 6 and 9)	Daily, weekly, monthly or quarterly (Notes 4, 5, 6 and 9)	Daily, weekly, monthly or quarterly (Notes 4, 8 and 9)	Daily, weekly, monthly or quarterly (Notes 4, 7 and 9)

<u>FSA048</u>	<u>Daily, weekly, monthly or quarterly (Notes 4, 6 and 9)</u>	<u>Daily, weekly, monthly or quarterly (Notes 4,5, 6 and 9)</u>	<u>Daily, weekly, monthly or quarterly (Notes 4, 8 and 9)</u>	<u>Daily, weekly, monthly or quarterly (Notes 4,7 and 9)</u>
<u>FSA050</u>	<u>Monthly (Note 4)</u>	<u>Monthly (Notes 4 and 5)</u>	<u>Monthly (Note 4)</u>	<u>Monthly (Note 4)</u>
<u>FSA051</u>	<u>Monthly (Note 4)</u>	<u>Monthly (Notes 4 and 5)</u>	<u>Monthly (Note 4)</u>	<u>Monthly (Notes 4)</u>
<u>FSA052</u>	<u>Weekly or monthly (Notes 4 and 10)</u>	<u>Weekly or monthly (Notes 4, 5 and 10)</u>	<u>Weekly or monthly (Notes 4 and 11)</u>	<u>Weekly or monthly (Notes 4 and 10)</u>
<u>FSA053</u>	<u>Quarterly (Note 4)</u>	<u>Quarterly (Notes 4 and 5)</u>	<u>Quarterly (Note 4)</u>	<u>Quarterly (Note 4)</u>
<u>FSA054</u>	<u>Quarterly (Note 4)</u>	<u>Quarterly (Notes 4 and 5)</u>	<u>Quarterly (Note 4)</u>	<u>Quarterly (Note 4)</u>
Note 1	...			
Note 4	<p>The <i>firms</i> covered by the consolidation for FSA013 may differ from those companies in the <i>UK consolidation group</i>. Reporting frequencies and reporting periods for this <i>data item</i> are calculated on a calendar year basis and not from a <i>firm's accounting reference date</i>. In particular:</p> <ul style="list-style-type: none"> (1) <u>A week means the period beginning on Saturday and ending on Friday.</u> (2) <u>A month begins on the first day of the calendar month and ends on the last day of that month.</u> (3) <u>Quarters end on 31 March, 30 June, 30 September and 31 December.</u> (4) <u>Daily means each <i>business day</i>.</u> <p>All periods are calculated by reference to London time.</p> <p>Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> or a <i>whole-firm liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the <i>firm</i> receives that <i>intra-group liquidity modification</i>, <i>whole-firm liquidity modification</i> or variation part of the way through such a period, unless the <i>whole-firm liquidity modification</i> or <i>intra-group liquidity modification</i> says otherwise.</p>			

<u>Note 5</u>	As specified in SUP 16.12.5R, solo consolidation has no application to liquidity reporting. Therefore it does not make any difference to the reporting of this item whether or not the firm is solo consolidated.
<u>Note 6</u>	<p>If the report is on a solo basis (and the firm is a UK firm) the reporting frequency is as follows:</p> <ul style="list-style-type: none"> (1) if the firm does not have an <i>intra-group liquidity modification</i> the frequency is: <ul style="list-style-type: none"> (a) weekly if the firm is a <i>standard frequency liquidity reporting firm</i>; and (b) monthly if the firm is a <i>low frequency liquidity reporting firm</i>; (2) if the firm is a <i>group liquidity reporting firm</i> in a non-UK DLG by modification (firm level) the frequency is: <ul style="list-style-type: none"> (a) weekly if the firm is a <i>standard frequency liquidity reporting firm</i>; and (b) monthly if the firm is a <i>low frequency liquidity reporting firm</i>; (3) the frequency is quarterly if the firm is a <i>group liquidity reporting firm</i> in a UK DLG by modification.
<u>Note 7</u>	<ul style="list-style-type: none"> (1) If the report is on a solo basis (and the firm is not a UK firm) the reporting frequency is as follows: <ul style="list-style-type: none"> (a) weekly if the firm is a <i>standard frequency liquidity reporting firm</i>; and (b) monthly if the firm is a <i>low frequency liquidity reporting firm</i>. (2) If the firm has a <i>whole-firm liquidity modification</i> (1) does not apply and instead the frequency of solo reporting is quarterly (or whatever other frequency the <i>whole-firm liquidity modification</i> requires).
<u>Note 8</u>	<ul style="list-style-type: none"> (1) If the report is by reference to the firm's DLG by default the reporting frequency is: <ul style="list-style-type: none"> (a) weekly if the <i>group liquidity standard frequency reporting conditions</i> are met; (b) monthly if the <i>group liquidity low frequency reporting conditions</i> are met.

	<p>(2) <u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p> <p>(3) <u>If the report is by reference to the firm's non-UK DLG by modification the reporting frequency is quarterly.</u></p>
Note 9	<p>(1) <u>If the reporting frequency is otherwise weekly, the item is to be reported on every business day if (and for as long as) there is a firm-specific liquidity stress or market liquidity stress in relation to the firm, branch or group in question.</u></p> <p>(2) <u>If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a firm-specific liquidity stress or market liquidity stress in relation to the firm, branch or group in question.</u></p> <p>(3) <u>A firm must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no firm-specific liquidity stress or market liquidity stress and none is expected.</u></p>
Note 10	<p><u>If the report is on a solo basis (including by reference to the firm's UK branch) the reporting frequency is as follows:</u></p> <p>(1) <u>weekly if the firm is a standard frequency liquidity reporting firm; and</u></p> <p>(2) <u>monthly if the firm is a low frequency liquidity reporting firm.</u></p>
Note 11	<p><u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(1) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(2) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p>

- 16.12.7 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.6R, unless indicated otherwise.

<i>Data item</i>	<u>Daily</u>	<u>Weekly</u>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...						
FSA010				15 <i>business days</i>		
...						
FSA012					30 <i>business days</i>	
FSA013					15 <i>business days</i>	
...						
FSA046	...					
FSA047	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 <i>business days</i></u>	<u>15 <i>business days or one Month (Note 5)</i></u>		

<u>FSA048</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>	<u>15 business days or one Month (Note 5)</u>		
<u>FSA050</u>			<u>15 business days</u>			
<u>FSA051</u>			<u>15 business days</u>			
<u>FSA052</u>		<u>22.00 hours (London time) on the second business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>			

<u>FSA053</u>				<u>15 business days</u>		
<u>FSA054</u>				<u>15 business days</u>		
Note 1	...					
<u>Note 5</u>	<u>It is one Month if the report relates to a non-UK DLG by modification or the firm has a whole-firm liquidity modification.</u>					

...

Regulated Activity Group 2.2

- 16.12.9 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below.

...

	<i>Member's adviser</i> (note 3)		<i>the Society</i> (note 1)		
Description of <i>data item</i> and <i>data item</i>	Frequency	Submission deadline	Description of <i>data item</i>	Frequency	Submission deadline
...					
Quarterly reporting statement					
Balance Sheet					
FSA001 (notes 4, 15, 20) or FSA029	Quarterly or half yearly	(note 14)			
	Quarterly (note 14)	(note 14)			
Income Statement					

FSA002 (notes 4, 20), or FSA030	Quarterly or half yearly (note 14) Quarterly	(note 14)			
Capital Adequacy					
...					
Credit Risk FSA004 (notes 4, 5, 20)					
Market Risk					
FSA005 (notes 4, 6, 20)	Quarterly or half yearly (note 14)	(note 14)			
<u>Market Risk Supplementary</u> FSA006 (note 7)					
<u>Operational Risk</u> FSA007 (notes 8, 9)	Quarterly Annually (note 18)	20 business days 2 months			
Large Exposures FSA008 (notes 4, 20)	Quarterly	20 business days (note 19)			
<u>Sole consolidation</u> FSA016 (note 17)	Half yearly	30 business days			

UK integrated large exposures					
FSA018 (note 11)	Quarterly	45 business days			
Pillar 2 questionnaire					
FSA019 (note 10)	Annually	2 months			
Non EEA subgroup					
FSA028	Half yearly	30 business days			
IRB portfolio risk					
FSA045 (note 16)	Quarterly or Half Yearly (note 14)	(note 14)			
Note 1	...				
Note 7	Only applicable to firms with a VaR model permission. [deleted]				
Note 8	This will not be applicable to BIPRU limited activity firms or BIPRU limited licence firms unless they have a waiver under BIPRU 6.1.2G. [deleted]				
Note 9	This is only applicable to a firm that has adopted, in whole or in part, either the standardised approach, alternative standardised approach, or advanced measurement approach under BIPRU 6. [deleted]				
Note 10	<p>Only applicable to BIPRU investment firms that:</p> <ul style="list-style-type: none"> (a) are subject to consolidated supervision under BIPRU 8, except those that are either included within the consolidated supervision of a group that includes a UK credit institution, or that have been granted an investment firm consolidation waiver; or (b) have been granted an investment firm consolidation waiver; or 				

	(c) are not subject to consolidated supervision under BIPRU 8. A BIPRU investment firm under (a) must complete the report on the basis of its UK consolidation group. A BIPRU investment firm under (b) or (c) must complete the report on the basis of its solo position. [deleted]
Note 11	Members of a UK integrated group should only submit this data item at the UK integrated group level. [deleted]
...	
Note 16	Only applicable to firms that have an IRB permission. [deleted]
Note 17	Only applicable to a firm that has a solo consolidation waiver. [deleted]
Note 18	The annual reporting date for this data item is six months after a firm's most recent accounting reference date. [deleted]
...	

16.12.9A G A Member's adviser that is also a BIPRU investment firm will also fall under one of the higher number RAGs that apply to BIPRU investment firms. That means that it will have to report a number of data items in addition to the ones that it has to supply under RAG 2.2.

Regulated Activity Group 3

16.12.10 R (1) SUP 16.12.11R to SUP 16.12.13R do not apply to:

(a) a lead regulated firm (except in relation to data items 47 to 55 (inclusive));

...

16.12.11 R The applicable data items referred to in SUP 16.12.4R are set out according to firm type in the table below:

Description of data item	Firms prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU(NV) Chapter 3	IPRU(NV) Chapter 5	IPRU(NV) Chapter 9	IPRU(NV) Chapter 13	UPRU
...								
Securitisation	...							
<u>Daily Flows</u>	<u>FSA047 (Notes 26, 29 and 31)</u>							
<u>Enhanced Mismatch Report</u>	<u>FSA048 (Notes 26, 29 and 31)</u>							
<u>Liquidity Buffer Qualifying Securities</u>	<u>FSA050 (Notes 27, 30 and 31)</u>							
<u>Funding Concentration</u>	<u>FSA051 (Notes 27, 30 and 31)</u>							
<u>Pricing data</u>	<u>FSA052 (Notes 27, 30 and 31)</u>							
<u>Retail and corporate funding</u>	<u>FSA053 (Notes 27, 30 and 31)</u>							
<u>Currency Analysis</u>	<u>FSA054 (Notes 27, 30 and 31)</u>							
<u>Systems and Controls Questionnaire</u>	<u>FSA055 (Note 28)</u>							
	...							

Note 25	...
Note 26	<p><u>A firm must complete this item separately on each of the following bases (if applicable).</u></p> <p class="list-item-l1">(1) <u>It must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm</i> alone.</u></p> <p class="list-item-l1">(2) <u>If it is a <i>group liquidity reporting firm</i> in a <i>DLG by default</i> and is a <i>UK lead regulated firm</i>, it must complete the item on the basis of that group.</u></p> <p class="list-item-l1">(3) <u>If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p> <p class="list-item-l1">(4) <u>If it is a <i>group liquidity reporting firm</i> in a <i>non-UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p>
Note 27	<p><u>A firm must complete this item separately on each of the following bases that are applicable.</u></p> <p class="list-item-l1">(1) <u>It must complete it on a solo basis unless it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm</i> alone.</u></p> <p class="list-item-l1">(2) <u>If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p>
Note 28	<p><u>If it is a <i>non-ILAS BIPRU firm</i>, it must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm</i> alone.</u></p>
Note 29	<p class="list-item-l1">(1) <u>This item must be reported in the reporting currency.</u></p> <p class="list-item-l1">(2) <u>If any <i>data element</i> is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.</u></p> <p class="list-item-l1">(3) <u>In addition, all <i>material currencies</i> (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:</u></p> <p class="list-item-l2">(a) <u>the reporting frequency is (whether under a <i>rule</i> or under a <i>waiver</i>) quarterly or less than quarterly; or</u></p> <p class="list-item-l2">(b) <u>the only <i>material currency</i> is the reporting currency;</u></p> <p class="list-item-l2">(3) <u>does not apply.</u></p>

	<p>(4) <u>If there are more than three <i>material currencies</i> for this <i>data item</i>, (3) only applies to the three largest in amount. A <i>firm</i> must identify the largest in amount in accordance with the following procedure.</u></p> <p>(a) <u>For each currency, take the largest of the asset or liability figure as referred to in the definition of <i>material currency</i>.</u></p> <p>(b) <u>Take the three largest figures from the resulting list of amounts.</u></p> <p>(5) <u>The date as at which the calculations for the purposes of the definition of <i>material currency</i> are carried out is the last day of the reporting period in question.</u></p> <p>(6) <u>The reporting currency for this <i>data item</i> is whichever of the following currencies the <i>firm</i> chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).</u></p>
<u>Note 30</u>	<u>Note 29 applies, except that paragraph (3) does not apply, meaning that <i>material currencies</i> must not be recorded separately.</u>
<u>Note 31</u>	<u>Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the <i>data item</i> in question if the <i>firm</i> receives that <i>intra-group liquidity modification</i> or variation part of the way through such a period. If the change is that the <i>firm</i> does not have to report a particular <i>data item</i> or does not have to report it at a particular <i>reporting level</i>, the <i>firm</i> must nevertheless report that item or at that <i>reporting level</i> for any reporting period that has already begun. This paragraph is subject to anything that the <i>intra-group liquidity modification</i> says to the contrary.</u>

16.12.11A G The columns in the table in SUP 16.12.11R that deal with *BIPRU 50K firms* and *BIPRU 125K firms* cover some liquidity items that only have to be reported by an *ILAS BIPRU firm*. In fact a *BIPRU 50K firm* and a *BIPRU 125K firm* cannot be an *ILAS BIPRU firm*. One reason for drafting the table in this way is that the classification of *firms* into *ILAS BIPRU firms* and *non-ILAS BIPRU firms* is not based on the classification into *BIPRU 50K firms*, *BIPRU 125K firms* and *BIPRU 730K firms* and the drafting of the table emphasises that. Also, the table covers consolidated reports and the conditions about what sort of group has to supply what type of liquidity report do not always depend on how the individual *firm* is classified.

- 16.12.12 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.4R are set out in the table below according to *firm type*. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
...					
FSA046	...				
FSA047	<u>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</u>			<u>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</u>	
FSA048	<u>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</u>			<u>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</u>	
FSA050	<u>Monthly (Note 5)</u>			<u>Monthly (Note 5)</u>	
FSA051	<u>Monthly (Note 5)</u>			<u>Monthly (Note 5)</u>	
FSA052	<u>Weekly or monthly (Notes 5 and 9)</u>			<u>Weekly or monthly (Notes 5 and 10)</u>	
FSA053	<u>Quarterly (Note 5)</u>			<u>Quarterly (Note 5)</u>	
FSA054	<u>Quarterly (Note 5)</u>			<u>Quarterly (Note 5)</u>	

<u>FSA055</u>	<u>Annually (Note 5)</u>	<u>Annually (Note 5)</u>	
...			
Note 4	...		
Note 5	<p><u>Reporting frequencies and reporting periods for this <i>data item</i> are calculated on a calendar year basis and not from a <i>firm's accounting reference date</i>. In particular:</u></p> <ul style="list-style-type: none"> (1) <u>A week means the period beginning on Saturday and ending on Friday.</u> (2) <u>A month begins on the first day of the calendar month and ends on the last day of that month.</u> (3) <u>Quarters end on 31 March, 30 June, 30 September and 31 December.</u> (4) <u>Daily means each <i>business day</i>.</u> <p><u>All periods are calculated by reference to London time.</u></p> <p><u>Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the <i>firm</i> receives that <i>intra-group liquidity modification</i> or variation part of the way through such a period, unless the <i>intra-group liquidity modification</i> says otherwise.</u></p>		
Note 6	<p><u>If the report is on a solo basis the reporting frequency is as follows:</u></p> <ul style="list-style-type: none"> (1) <u>if the <i>firm</i> does not have an <i>intra-group liquidity modification</i> the frequency is:</u> <ul style="list-style-type: none"> (a) <u>weekly if the <i>firm</i> is a <i>standard frequency liquidity reporting firm</i>; and</u> (b) <u>monthly if the <i>firm</i> is a <i>low frequency liquidity reporting firm</i>;</u> (2) <u>if the <i>firm</i> is a <i>group liquidity reporting firm</i> in a <i>non-UK DLG</i> by <i>modification (firm level)</i> the frequency is:</u> <ul style="list-style-type: none"> (a) <u>weekly if the <i>firm</i> is a <i>standard frequency liquidity reporting firm</i>; and</u> (b) <u>monthly if the <i>firm</i> is a <i>low frequency liquidity reporting firm</i>;</u> 		

	(3) <u>the frequency is quarterly if the firm is a group liquidity reporting firm in a UK DLG by modification.</u>
Note 7	<p>(1) <u>If the report is by reference to the firm's DLG by default the reporting frequency is:</u></p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p> <p>(2) <u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p> <p>(3) <u>If the report is by reference to the firm's non-UK DLG by modification the reporting frequency is quarterly.</u></p>
Note 8	<p>(1) <u>If the reporting frequency is otherwise weekly, the item is to be reported on every business day if (and for as long as) there is a firm-specific liquidity stress or market liquidity stress in relation to the firm or group in question.</u></p> <p>(2) <u>If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a firm-specific liquidity stress or market liquidity stress in relation to the firm or group in question.</u></p> <p>(3) <u>A firm must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no firm-specific liquidity stress or market liquidity stress and none is expected.</u></p>
Note 9	<p><u>If the report is on a solo basis the reporting frequency is as follows:</u></p> <p>(1) <u>weekly if the firm is a standard frequency liquidity reporting firm; and</u></p> <p>(2) <u>monthly if the firm is a low frequency liquidity reporting firm.</u></p>
Note 10	<p><u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(1) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p>

	(2) <u>monthly if the group liquidity low frequency reporting conditions are met.</u>
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16.12.13 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.12R, unless indicated otherwise.

Data item	<u>Daily</u>	<u>Weekly</u>	Monthly submissi on	Quarterly submissi on	Half yearly submissi on	Annual submissi on
...						
FSA046	...					
FSA047	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>	<u>15 business days or one Month (Note 3)</u>		

<u>FSA048</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>	<u>15 business days or one Month (Note 3)</u>		
<u>FSA050</u>			<u>15 business days</u>			
<u>FSA051</u>			<u>15 business days</u>			
<u>FSA052</u>		<u>22.00 hours (London time) on the second business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>			

<u>FSA053</u>				<u>15 business days</u>		
<u>FSA054</u>				<u>15 business days</u>		
<u>FSA055</u>						<u>15 business days</u>
...						
Note 2	...					
<u>Note 3</u>	<u>It is one Month if the report relates to a non-UK DLG by modification.</u>					

Regulated Activity Group 4

16.12.14 R (1) *SUP 16.12.15R to SUP 16.12.17R do not apply to:*

- (a) *a lead regulated firm (except in relation to data items 47 to 55 (inclusive));*

...

16.12.15 R The applicable *data items* referred to in *SUP 16.12.4R* are set out according to *firm type* in the table below:

Description of <i>data item</i>	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU firms</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	<i>IPRU(I NV)</i> Chapter 3	<i>IPRU(I NV)</i> Chapter 5	<i>IPRU(I NV)</i> Chapter 9	<i>IPRU(I NV)</i> Chapter 13	<i>UPRU</i>
...								
Securitisation	...							

<u>Daily Flows</u>	FSA047 (Notes 23, 26 and 28)					
<u>Enhanced Mismatch Report</u>	FSA048 (Notes 23, 26 and 28)					
<u>Liquidity Buffer Qualifying Securities</u>	FSA050 (Notes 24, 27 and 28)					
<u>Funding Concentration</u>	FSA051 (Notes 24, 27 and 28)					
<u>Pricing data</u>	FSA052 (Notes 24, 27 and 28)					
<u>Retail and corporate funding</u>	FSA053 (Notes 24, 27 and 28)					
<u>Currency Analysis</u>	FSA054 (Notes 24, 27 and 28)					
<u>Systems and Controls Questionnaire</u>	FSA055 (Note 25)					
	...					
Note 22	...					
Note 23	<p><u>A firm must complete this item separately on each of the following bases (if applicable).</u></p> <p>(1) <u>It must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm</i> alone.</u></p> <p>(2) <u>If it is a <i>group liquidity reporting firm</i> in a <i>DLG by default</i> and is a <i>UK lead regulated firm</i>, it must complete the item on the basis of that group.</u></p> <p>(3) <u>If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p>					

	<p>(4) <u>If it is a <i>group liquidity reporting firm</i> in a <i>non-UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p>
Note 24	<p><u>A firm must complete this item separately on each of the following bases that are applicable.</u></p> <p>(1) <u>It must complete it on a solo basis unless it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm alone</i>.</u></p> <p>(2) <u>If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p>
Note 25	<p><u>If it is a <i>non-ILAS BIPRU firm</i>, it must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm alone</i>.</u></p>
Note 26	<p>(1) <u>This item must be reported in the reporting currency.</u></p> <p>(2) <u>If any <i>data element</i> is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.</u></p> <p>(3) <u>In addition, all <i>material currencies</i> (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:</u></p> <p style="padding-left: 2em;">(a) <u>the reporting frequency is (whether under a <i>rule</i> or under a <i>waiver</i>) quarterly or less than quarterly; or</u></p> <p style="padding-left: 2em;">(b) <u>the only <i>material currency</i> is the reporting currency;</u></p> <p style="padding-left: 2em;">(3) <u>does not apply.</u></p> <p>(4) <u>If there are more than three <i>material currencies</i> for this <i>data item</i>, (3) only applies to the three largest in amount. A firm must identify the largest in amount in accordance with the following procedure.</u></p> <p style="padding-left: 2em;">(a) <u>For each currency, take the largest of the asset or liability figure as referred to in the definition of <i>material currency</i>.</u></p> <p style="padding-left: 2em;">(b) <u>Take the three largest figures from the resulting list of amounts.</u></p> <p>(5) <u>The date as at which the calculations for the purposes of the definition of <i>material currency</i> are carried out is the last day of the reporting period in question.</u></p>

	(6) The reporting currency for this <i>data item</i> is whichever of the following currencies the <i>firm</i> chooses, namely <u>USD</u> (the United States Dollar), <u>EUR</u> (the euro), <u>GBP</u> (sterling), <u>JPY</u> (the Japanese Yen), <u>CHF</u> (the Swiss Franc), <u>CAD</u> (the Canadian Dollar) or <u>SEK</u> (the Swedish Krona).
Note 27	<u>Note 26 applies, except that paragraph (3) does not apply, meaning that material currencies must not be recorded separately.</u>
Note 28	<u>Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the <i>data item</i> in question if the <i>firm</i> receives that <i>intra-group liquidity modification</i> or variation part of the way through such a period. If the change is that the <i>firm</i> does not have to report a particular <i>data item</i> or does not have to report it at a particular <i>reporting level</i>, the <i>firm</i> must nevertheless report that item or at that <i>reporting level</i> for any reporting period that has already begun. This paragraph is subject to anything that the <i>intra-group liquidity modification</i> says to the contrary.</u>

16.12.15 G The columns in the table in SUP 16.12.15R that deal with BIPRU 50K firms and BIPRU 125K firms cover some liquidity items that only have to be reported by an ILAS BIPRU firm. In fact a BIPRU 50K firm and a BIPRU 125K firm cannot be an ILAS BIPRU firm. One reason for drafting the table in this way is that the classification of *firms* into ILAS BIPRU firms and non-ILAS BIPRU firms is not based on the classification into BIPRU 50K firms, BIPRU 125K firms and BIPRU 730K firms and the drafting of the table emphasises that. Also, the table covers consolidated reports and the conditions about what sort of group has to supply what type of liquidity report do not always depend on how the individual *firm* is classified.

16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms</i>
...					

FSA046	...			
FSA047	<u>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</u>	<u>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</u>		
FSA048	<u>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</u>	<u>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</u>		
FSA050	<u>Monthly (Note 5)</u>	<u>Monthly (Note 5)</u>		
FSA051	<u>Monthly (Note 5)</u>	<u>Monthly (Note 5)</u>		
FSA052	<u>Weekly or monthly (Notes 5 and 9)</u>	<u>Weekly or monthly (Notes 5 and 10)</u>		
FSA053	<u>Quarterly (Note 5)</u>	<u>Quarterly (Note 5)</u>		
FSA054	<u>Quarterly (Note 5)</u>	<u>Quarterly (Note 5)</u>		
FSA055	<u>Annually (Note 5)</u>	<u>Annually (Note 5)</u>		
...				
Note 4	...			
Note 5	<p><u>Reporting frequencies and reporting periods for this <i>data item</i> are calculated on a calendar year basis and not from a <i>firm's accounting reference date</i>. In particular:</u></p> <ul style="list-style-type: none"> (1) <u>A week means the period beginning on Saturday and ending on Friday.</u> (2) <u>A month begins on the first day of the calendar month and ends on the last day of that month.</u> (3) <u>Quarters end on 31 March, 30 June, 30 September and 31 December.</u> 			

	<p>(4) <u>Daily means each business day.</u></p> <p><u>All periods are calculated by reference to London time.</u></p> <p><u>Any changes to reporting requirements caused by a firm receiving an intra-group liquidity modification (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the firm receives that intra-group liquidity modification or variation part of the way through such a period, unless the intra-group liquidity modification says otherwise.</u></p>
Note 6	<p>If the report is on a solo basis the reporting frequency is as follows:</p> <p>(1) <u>if the firm does not have an intra-group liquidity modification the frequency is:</u></p> <p>(a) <u>weekly if the firm is a standard frequency liquidity reporting firm; and</u></p> <p>(b) <u>monthly if the firm is a low frequency liquidity reporting firm;</u></p> <p>(2) <u>if the firm is a group liquidity reporting firm in a non-UK DLG by modification (firm level) the frequency is:</u></p> <p>(a) <u>weekly if the firm is a standard frequency liquidity reporting firm; and</u></p> <p>(b) <u>monthly if the firm is a low frequency liquidity reporting firm;</u></p> <p>(3) <u>the frequency is quarterly if the firm is a group liquidity reporting firm in a UK DLG by modification.</u></p>
Note 7	<p>(1) <u>If the report is by reference to the firm's DLG by default the reporting frequency is:</u></p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p> <p>(2) <u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p>

	(3) <u>If the report is by reference to the firm's non-UK DLG by modification the reporting frequency is quarterly.</u>
Note 8	<p>(1) <u>If the reporting frequency is otherwise weekly, the item is to be reported on every <i>business day</i> if (and for as long as) there is a <i>firm-specific liquidity stress</i> or <i>market liquidity stress</i> in relation to the <i>firm</i> or <i>group</i> in question.</u></p> <p>(2) <u>If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a <i>firm-specific liquidity stress</i> or <i>market liquidity stress</i> in relation to the <i>firm</i> or <i>group</i> in question.</u></p> <p>(3) <u>A firm must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no <i>firm-specific liquidity stress</i> or <i>market liquidity stress</i> and none is expected.</u></p>
Note 9	<p><u>If the report is on a solo basis the reporting frequency is as follows:</u></p> <p>(1) <u>weekly if the firm is a <i>standard frequency liquidity reporting firm</i>; and</u></p> <p>(2) <u>monthly if the firm is a <i>low frequency liquidity reporting firm</i>.</u></p>
Note 10	<p><u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(1) <u>weekly if the <i>group liquidity standard frequency reporting conditions</i> are met;</u></p> <p>(2) <u>monthly if the <i>group liquidity low frequency reporting conditions</i> are met.</u></p>

16.12.17 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.16R, unless indicated otherwise.

Data item	Daily	Weekly	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...						

FSA046	...					
FSA047	<u>22.00</u> <u>hours</u> <u>(London</u> <u>time) on</u> <u>the</u> <u>business</u> <u>day</u> <u>immediat</u> <u>ely</u> <u>followin</u> <u>g the last</u> <u>day of</u> <u>the</u> <u>reporting</u> <u>period</u> <u>for the</u> <u>item in</u> <u>question</u>	<u>22.00</u> <u>hours</u> <u>(London</u> <u>time) on</u> <u>the</u> <u>business</u> <u>day</u> <u>immediat</u> <u>ely</u> <u>followin</u> <u>g the last</u> <u>day of</u> <u>the</u> <u>reporting</u> <u>period</u> <u>for the</u> <u>item in</u> <u>question</u>	<u>15</u> <u><u>business</u></u> <u><u>days</u></u>	<u>15</u> <u><u>business</u></u> <u><u>days or</u></u> <u><u>one</u></u> <u><u>Month</u></u> <u><u>(Note 4)</u></u>		
FSA048	<u>22.00</u> <u>hours</u> <u>(London</u> <u>time) on</u> <u>the</u> <u>business</u> <u>day</u> <u>immediat</u> <u>ely</u> <u>followin</u> <u>g the last</u> <u>day of</u> <u>the</u> <u>reporting</u> <u>period</u> <u>for the</u> <u>item in</u> <u>question</u>	<u>22.00</u> <u>hours</u> <u>(London</u> <u>time) on</u> <u>the</u> <u>business</u> <u>day</u> <u>immediat</u> <u>ely</u> <u>followin</u> <u>g the last</u> <u>day of</u> <u>the</u> <u>reporting</u> <u>period</u> <u>for the</u> <u>item in</u> <u>question</u>	<u>15</u> <u><u>business</u></u> <u><u>days</u></u>	<u>15</u> <u><u>business</u></u> <u><u>days or</u></u> <u><u>one</u></u> <u><u>Month</u></u> <u><u>(Note 4)</u></u>		
FSA050			<u>15</u> <u><u>business</u></u> <u><u>days</u></u>			
FSA051			<u>15</u> <u><u>business</u></u> <u><u>days</u></u>			

<u>FSA052</u>		<u>22.00 hours (London time) on the second business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>			
<u>FSA053</u>				<u>15 business days</u>		
<u>FSA054</u>				<u>15 business days</u>		
<u>FSA055</u>					<u>15 business days</u>	
...						
Note 3	...					
<u>Note 4</u>	<u>It is one Month if the report relates to a non-UK DLG by modification.</u>					

...

Regulated Activity Group 7

16.12.22 R (1) SUP 16.12.22AR to SUP 16.12.24R do not apply to:

- (a) a *lead regulated firm* (except in relation to data items 47 to

55 (inclusive));

...

- 16.12.22A R The applicable *data items* referred to in SU 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>Data item</i>	<i>Firm prudential category and applicable data item (note 1)</i>				
<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>Exempt CAD firms subject to IPRU(INV) Chapter 13</i>	<i>Firms (other than exempt CAD firms) subject to IPRU(INV) Chapter 13</i>	<i>Firms that are also in one or more of RAGS 1 to 6 and not subject to IPRU (INV) Chapter 13</i>
...					
Securitisation					
<u>Daily Flows</u>	<u>FSA047 (Notes 16, 19 and 21)</u>				
<u>Enhanced Mismatch Report</u>	<u>FSA048 (Notes 16, 19 and 21)</u>				
<u>Liquidity Buffer Qualifying Securities</u>	<u>FSA050 (Notes 17, 20 and 21)</u>				
<u>Funding Concentration</u>	<u>FSA051 (Notes 17, 20 and 21)</u>				
<u>Pricing data</u>	<u>FSA052 (Notes 17, 20 and 21)</u>				
<u>Retail and corporate funding</u>	<u>FSA053 (Notes 17, 20 and 21)</u>				

<u>Currency Analysis</u>	<u>FSA054 (Notes 17, 20 and 21)</u>			
<u>Systems and Controls Questionnaire</u>	<u>FSA055 (Note 18)</u>			
	<u>...</u>			
Note 15	<u>...</u>			
Note 16	<p><u>A firm must complete this item separately on each of the following bases (if applicable).</u></p> <ul style="list-style-type: none"> (1) <u>It must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm alone</i>.</u> (2) <u>If it is a <i>group liquidity reporting firm</i> in a <i>DLG by default</i> and is a <i>UK lead regulated firm</i>, it must complete the item on the basis of that group.</u> (3) <u>If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</u> (4) <u>If it is a <i>group liquidity reporting firm</i> in a <i>non-UK DLG by modification</i>, it must complete the item on the basis of that group.</u> 			
Note 17	<p><u>A firm must complete this item separately on each of the following bases that are applicable.</u></p> <ul style="list-style-type: none"> (1) <u>It must complete it on a solo basis unless it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm alone</i>.</u> (2) <u>If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</u> 			
Note 18	<p><u>If it is a <i>non-ILAS BIPRU firm</i>, it must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an unconsolidated basis by reference to the <i>firm alone</i>.</u></p>			
Note 19	<p>(1) <u>This item must be reported in the reporting currency.</u></p>			

	<p>(2) If any <i>data element</i> is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.</p> <p>(3) In addition, all <i>material currencies</i> (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:</p> <ul style="list-style-type: none"> (a) the reporting frequency is (whether under a <i>rule</i> or under a <i>waiver</i>) quarterly or less than quarterly; or (b) the only <i>material currency</i> is the reporting currency; <p>(3) does not apply.</p> <p>(4) If there are more than three <i>material currencies</i> for this <i>data item</i>, (3) only applies to the three largest in amount. A firm must identify the largest in amount in accordance with the following procedure.</p> <ul style="list-style-type: none"> (a) For each currency, take the largest of the asset or liability figure as referred to in the definition of <i>material currency</i>. (b) Take the three largest figures from the resulting list of amounts. <p>(5) The date as at which the calculations for the purposes of the definition of <i>material currency</i> are carried out is the last day of the reporting period in question.</p> <p>(6) The reporting currency for this <i>data item</i> is whichever of the following currencies the <i>firm</i> chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).</p>
Note 20	Note 19 applies, except that paragraph (3) does not apply, meaning that <i>material currencies</i> must not be recorded separately.

Note 21	<p><u>Any changes to reporting requirements caused by a firm receiving an <i>intra-group liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the <i>data item</i> in question if the firm receives that <i>intra-group liquidity modification</i> or variation part of the way through such a period.</u> If the change is that the <i>firm</i> does not have to report a particular <i>data item</i> or does not have to report it at a particular <i>reporting level</i>, the <i>firm</i> must nevertheless report that item or at that <i>reporting level</i> for any reporting period that has already begun. This paragraph is subject to anything that the <i>intra-group liquidity modification</i> says to the contrary.</p>
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- 16.12.22B G The columns in the table in SUP 16.12.22AR that deal with *BIPRU 50K firms* and *BIPRU 125K firms* cover some liquidity items that only have to be reported by an *ILAS BIPRU firm*. In fact a *BIPRU 50K firm* and a *BIPRU 125K firm* cannot be an *ILAS BIPRU firm*. One reason for drafting the table in this way is that the classification of *firms* into *ILAS BIPRU firms* and *non-ILAS BIPRU firms* is not based on the classification into *BIPRU 50K firms*, *BIPRU 125K firms* and *BIPRU 730K firms* and the drafting of the table emphasises that. Also, the table covers consolidated reports and the conditions about what sort of group has to supply what type of liquidity report do not always depend on how the individual *firm* is classified.
- 16.12.23 R The applicable reporting frequencies for data items referred to in SUP 16.12.22AR are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Frequency				
Unconsolidated <i>BIPRU investment firm</i>	Solo consolidated <i>BIPRU investment firm</i>	<i>UK consolidation group or defined liquidity group</i>	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million	
...					
FSA046	...				

<u>FSA047</u>	<u>Daily, weekly, monthly or quarterly (Notes 4, 5 and 7)</u>	<u>Daily, weekly, monthly or quarterly (Notes 4, 5, 7 and 10)</u>	<u>Daily, weekly, monthly or quarterly (Notes 4, 6 and 7)</u>		
<u>FSA048</u>	<u>Daily, weekly, monthly or quarterly (Notes 4, 5 and 7)</u>	<u>Daily, weekly, monthly or quarterly (Notes 4, 5, 7 and 10)</u>	<u>Daily, weekly, monthly or quarterly (Notes 4, 6 and 7)</u>		
<u>FSA050</u>	<u>Monthly (Note 4)</u>	<u>Monthly (Notes 4 and 10)</u>	<u>Monthly (Note 4)</u>		
<u>FSA051</u>	<u>Monthly (Note 4)</u>	<u>Monthly (Notes 4 and 10)</u>	<u>Monthly (Note 4)</u>		
<u>FSA052</u>	<u>Weekly or monthly (Notes 4 and 8)</u>	<u>Weekly or monthly (Notes 4, 8 and 10)</u>	<u>Weekly or monthly (Notes 4 and 9)</u>		
<u>FSA053</u>	<u>Quarterly (Note 4)</u>	<u>Quarterly (Notes 4 and 10)</u>	<u>Quarterly (Note 4)</u>		
<u>FSA054</u>	<u>Quarterly (Note 4)</u>	<u>Quarterly (Notes 4 and 10)</u>	<u>Quarterly (Note 4)</u>		
<u>FSA055</u>	<u>Annually (Note 4)</u>	<u>Annually (Notes 4 and 10)</u>	<u>Annually (Note 4)</u>		
...					
Note 3	...				
<u>Note 4</u>	<u>Reporting frequencies and reporting periods for this <i>data item</i> are calculated on a calendar year basis and not from a firm's accounting reference date.</u> In particular:				

	<p>(1) <u>A week means the period beginning on Saturday and ending on Friday.</u></p> <p>(2) <u>A month begins on the first day of the calendar month and ends on the last day of that month.</u></p> <p>(3) <u>Quarters end on 31 March, 30 June, 30 September and 31 December.</u></p> <p>(4) <u>Daily means each business day.</u></p> <p><u>All periods are calculated by reference to London time.</u></p> <p><u>Any changes to reporting requirements caused by a firm receiving an intra-group liquidity modification (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the firm receives that intra-group liquidity modification or variation part of the way through such a period, unless the intra-group liquidity modification says otherwise.</u></p>
Note 5	<p>If the report is on a solo basis the reporting frequency is as follows:</p> <p>(1) <u>if the firm does not have an intra-group liquidity modification the frequency is:</u></p> <p>(a) <u>weekly if the firm is a standard frequency liquidity reporting firm; and</u></p> <p>(b) <u>monthly if the firm is a low frequency liquidity reporting firm;</u></p> <p>(2) <u>if the firm is a group liquidity reporting firm in a non-UK DLG by modification (firm level) the frequency is:</u></p> <p>(a) <u>weekly if the firm is a standard frequency liquidity reporting firm; and</u></p> <p>(b) <u>monthly if the firm is a low frequency liquidity reporting firm;</u></p> <p>(3) <u>the frequency is quarterly if the firm is a group liquidity reporting firm in a UK DLG by modification.</u></p>
Note 6	<p>(1) <u>If the report is by reference to the firm's DLG by default the reporting frequency is:</u></p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p>

	<p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p> <p>(2) If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p> <p>(3) If the report is by reference to the firm's non-UK DLG by modification the reporting frequency is quarterly.</p>
Note 7	<p>(1) <u>If the reporting frequency is otherwise weekly, the item is to be reported on every business day if (and for as long as) there is a firm-specific liquidity stress or market liquidity stress in relation to the firm or group in question.</u></p> <p>(2) <u>If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a firm-specific liquidity stress or market liquidity stress in relation to the firm or group in question.</u></p> <p>(3) <u>A firm must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no firm-specific liquidity stress or market liquidity stress and none is expected.</u></p>
Note 8	<p><u>If the report is on a solo basis the reporting frequency is as follows:</u></p> <p>(1) <u>weekly if the firm is a standard frequency liquidity reporting firm; and</u></p> <p>(2) <u>monthly if the firm is a low frequency liquidity reporting firm.</u></p>
Note 9	<p><u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(1) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(2) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p>

<u>Note 10</u>	<u>As specified in SUP 16.12.22AR, solo consolidation has no application to liquidity reporting. Therefore it does not make any difference to the reporting of this item whether or not the firm is solo consolidated.</u>
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- 16.12.24 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.23R, unless indicated otherwise.

Data item	<u>Daily</u>	<u>Weekly</u>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...						
FSA046	...					
FSA047	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>	<u>15 business days or one Month (Note 3)</u>		

<u>FSA048</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>	<u>15 business days or one Month (Note 3)</u>		
<u>FSA050</u>			<u>15 business days</u>			
<u>FSA051</u>			<u>15 business days</u>			
<u>FSA052</u>		<u>22.00 hours (London time) on the second business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>			

<u>FSA053</u>				<u>15 business days</u>		
<u>FSA054</u>				<u>15 business days</u>		
<u>FSA055</u>						<u>15 business days</u>
...						
Note 2	...					
<u>Note 3</u>	<u>It is one Month if the report relates to a non-UK DLG by modification.</u>					

Regulated Activity Group 8

16.12.25 R (1) SUP 16.12.25AR does not apply to:

- (a) a *lead regulated firm* (except in relation to data items 47 to 55 (inclusive));

...

16.12.25A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of data item	Firms prudential category and applicable data items (note 1)							
	<i>BIPRU firms</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	IPRU(NV) Chapter 3	IPRU(NV) Chapter 5	IPRU(NV) Chapter 9	IPRU(NV) Chapter 13	UPRU
...								
Securitisation	...							
<u>Daily Flows</u>	<u>FSA047 (Notes 21, 24 and 26)</u>							
<u>Enhanced Mismatch Report</u>	<u>FSA048 (Notes 21, 24 and 26)</u>							
<u>Liquidity Buffer Qualifying Securities</u>	<u>FSA050 (Notes 22, 25 and 26)</u>							
<u>Funding Concentration</u>	<u>FSA051 (Notes 22, 25 and 26)</u>							
<u>Pricing data</u>	<u>FSA052 (Notes 22, 25 and 26)</u>							
<u>Retail and corporate funding</u>	<u>FSA053 (Notes 22, 25 and 26)</u>							
<u>Currency Analysis</u>	<u>FSA054 (Notes 22, 25 and 26)</u>							
<u>Systems and Controls Questionnaire</u>	<u>FSA055 (Note 23)</u>							
	...							

Note 20	...
Note 21	<p><u>A firm must complete this item separately on each of the following bases (if applicable).</u></p> <p>(1) <u>It must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an <i>unconsolidated basis</i> by reference to the <i>firm alone</i>.</u></p> <p>(2) <u>If it is a <i>group liquidity reporting firm</i> in a <i>DLG by default</i> and is a <i>UK lead regulated firm</i>, it must complete the item on the basis of that group.</u></p> <p>(3) <u>If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p> <p>(4) <u>If it is a <i>group liquidity reporting firm</i> in a <i>non-UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p>
Note 22	<p><u>A firm must complete this item separately on each of the following bases that are applicable.</u></p> <p>(1) <u>It must complete it on a solo basis unless it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an <i>unconsolidated basis</i> by reference to the <i>firm alone</i>.</u></p> <p>(2) <u>If it is a <i>group liquidity reporting firm</i> in a <i>UK DLG by modification</i>, it must complete the item on the basis of that group.</u></p>
Note 23	<p><u>If it is a <i>non-ILAS BIPRU firm</i>, it must complete it on a solo basis. Therefore even if it has a <i>solo consolidation waiver</i> it must complete the item on an <i>unconsolidated basis</i> by reference to the <i>firm alone</i>.</u></p>
Note 24	<p>(1) <u>This item must be reported in the reporting currency.</u></p> <p>(2) <u>If any <i>data element</i> is in a currency or currencies other than the reporting currency, all currencies (including the reporting currency) must be combined into a figure in the reporting currency.</u></p> <p>(3) <u>In addition, all <i>material currencies</i> (which may include the reporting currency) must each be recorded separately (translated into the reporting currency). However if:</u></p> <p>(a) <u>the reporting frequency is (whether under a <i>rule</i> or under a <i>waiver</i>) quarterly or less than quarterly; or</u></p> <p>(b) <u>the only <i>material currency</i> is the reporting currency;</u></p> <p>(3) <u>does not apply.</u></p>

	<p>(4) <u>If there are more than three <i>material currencies</i> for this <i>data item</i>, (3) only applies to the three largest in amount. A <i>firm</i> must identify the largest in amount in accordance with the following procedure.</u></p> <p>(a) <u>For each currency, take the largest of the asset or liability figure as referred to in the definition of <i>material currency</i>.</u></p> <p>(b) <u>Take the three largest figures from the resulting list of amounts.</u></p> <p>(5) <u>The date as at which the calculations for the purposes of the definition of <i>material currency</i> are carried out is the last day of the reporting period in question.</u></p> <p>(6) <u>The reporting currency for this <i>data item</i> is whichever of the following currencies the <i>firm</i> chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).</u></p>
<u>Note 25</u>	<u>Note 24 applies, except that paragraph (3) does not apply, meaning that <i>material currencies</i> must not be recorded separately.</u>
<u>Note 26</u>	<u>Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements for the <i>data item</i> in question if the <i>firm</i> receives that <i>intra-group liquidity modification</i> or variation part of the way through such a period. If the change is that the <i>firm</i> does not have to report a particular <i>data item</i> or does not have to report it at a particular <i>reporting level</i>, the <i>firm</i> must nevertheless report that item or at that <i>reporting level</i> for any reporting period that has already begun. This paragraph is subject to anything that the <i>intra-group liquidity modification</i> says to the contrary.</u>

16.12.25B G The columns in the table in SUP 16.12.25AR that deal with *BIPRU 50K firms* and *BIPRU 125K firms* cover some liquidity items that only have to be reported by an *ILAS BIPRU firm*. In fact a *BIPRU 50K firm* and a *BIPRU 125K firm* cannot be an *ILAS BIPRU firm*. One reason for drafting the table in this way is that the classification of *firms* into *ILAS BIPRU firms* and *non-ILAS BIPRU firms* is not based on the classification into *BIPRU 50K firms*, *BIPRU 125K firms* and *BIPRU 730K firms* and the drafting of the table emphasises that. Also, the table covers consolidated reports and the conditions about what sort of group has to supply what type of liquidity report do not always depend on how the individual *firm* is classified.

- 16.12.26 R The applicable reporting frequencies for data items referred to in SUP 16.12.25AR are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firms other than BIPRU firms</i>
...					
FSA046	...				
FSA047	<u>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</u>			<u>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</u>	
FSA048	<u>Daily, weekly, monthly or quarterly (Notes 5, 6 and 8)</u>			<u>Daily, weekly, monthly or quarterly (Notes 5, 7 and 8)</u>	
FSA050	<u>Monthly (Note 5)</u>			<u>Monthly (Note 5)</u>	
FSA051	<u>Monthly (Note 5)</u>			<u>Monthly (Note 5)</u>	
FSA052	<u>Weekly or monthly (Notes 5 and 9)</u>			<u>Weekly or monthly (Notes 5 and 10)</u>	
FSA053	<u>Quarterly (Note 5)</u>			<u>Quarterly (Note 5)</u>	
FSA054	<u>Quarterly (Note 5)</u>			<u>Quarterly (Note 5)</u>	

<u>FSA055</u>	<u>Annually (Note 5)</u>	<u>Annually (Note 5)</u>	
...			
Note 4	...		
Note 5	<p><u>Reporting frequencies and reporting periods for this <i>data item</i> are calculated on a calendar year basis and not from a <i>firm's accounting reference date</i>. In particular:</u></p> <ul style="list-style-type: none"> (1) <u>A week means the period beginning on Saturday and ending on Friday.</u> (2) <u>A month begins on the first day of the calendar month and ends on the last day of that month.</u> (3) <u>Quarters end on 31 March, 30 June, 30 September and 31 December.</u> (4) <u>Daily means each <i>business day</i>.</u> <p><u>All periods are calculated by reference to London time.</u></p> <p><u>Any changes to reporting requirements caused by a <i>firm</i> receiving an <i>intra-group liquidity modification</i> (or a variation to one) do not take effect until the first day of the next reporting period applicable under the changed reporting requirements if the <i>firm</i> receives that <i>intra-group liquidity modification</i> or variation part of the way through such a period, unless the <i>intra-group liquidity modification</i> says otherwise.</u></p>		
Note 6	<p><u>If the report is on a solo basis the reporting frequency is as follows:</u></p> <ul style="list-style-type: none"> (1) <u>if the <i>firm</i> does not have an <i>intra-group liquidity modification</i> the frequency is:</u> <ul style="list-style-type: none"> (a) <u>weekly if the <i>firm</i> is a <i>standard frequency liquidity reporting firm</i>; and</u> (b) <u>monthly if the <i>firm</i> is a <i>low frequency liquidity reporting firm</i>;</u> (2) <u>if the <i>firm</i> is a <i>group liquidity reporting firm</i> in a <i>non-UK DLG</i> by <i>modification (firm level)</i> the frequency is:</u> <ul style="list-style-type: none"> (a) <u>weekly if the <i>firm</i> is a <i>standard frequency liquidity reporting firm</i>; and</u> (b) <u>monthly if the <i>firm</i> is a <i>low frequency liquidity reporting firm</i>;</u> 		

	(3) <u>the frequency is quarterly if the firm is a group liquidity reporting firm in a UK DLG by modification.</u>
Note 7	<p>(1) <u>If the report is by reference to the firm's DLG by default the reporting frequency is:</u></p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p> <p>(2) <u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(a) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p> <p>(b) <u>monthly if the group liquidity low frequency reporting conditions are met.</u></p> <p>(3) <u>If the report is by reference to the firm's non-UK DLG by modification the reporting frequency is quarterly.</u></p>
Note 8	<p>(1) <u>If the reporting frequency is otherwise weekly, the item is to be reported on every business day if (and for as long as) there is a firm-specific liquidity stress or market liquidity stress in relation to the firm or group in question.</u></p> <p>(2) <u>If the reporting frequency is otherwise monthly, the item is to be reported weekly if (and for as long as) there is a firm-specific liquidity stress or market liquidity stress in relation to the firm or group in question.</u></p> <p>(3) <u>A firm must ensure that it would be able at all times to meet the requirements for daily or weekly reporting under paragraph (1) or (2) even if there is no firm-specific liquidity stress or market liquidity stress and none is expected.</u></p>
Note 9	<p><u>If the report is on a solo basis the reporting frequency is as follows:</u></p> <p>(1) <u>weekly if the firm is a standard frequency liquidity reporting firm; and</u></p> <p>(2) <u>monthly if the firm is a low frequency liquidity reporting firm.</u></p>
Note 10	<p><u>If the report is by reference to the firm's UK DLG by modification the reporting frequency is:</u></p> <p>(1) <u>weekly if the group liquidity standard frequency reporting conditions are met;</u></p>

	(2) <u>monthly if the group liquidity low frequency reporting conditions are met.</u>
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- 16.12.27 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.26R, unless indicated otherwise.

Data item	Daily	Weekly	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...						
FSA046	...					
FSA047	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>	<u>15 business days or one Month (Note 3)</u>		

<u>FSA048</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>22.00 hours (London time) on the business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>	<u>15 business days or one Month (Note 3)</u>		
<u>FSA050</u>			<u>15 business days</u>			
<u>FSA051</u>			<u>15 business days</u>			
<u>FSA052</u>		<u>22.00 hours (London time) on the second business day immediat ely followin g the last day of the reporting period for the item in question</u>	<u>15 business days</u>			

<u>FSA053</u>				<u>15 business days</u>		
<u>FSA054</u>				<u>15 business days</u>		
<u>FSA055</u>						<u>15 business days</u>
...						
Note 2	...					
<u>Note 3</u>	<u>It is one Month if the report relates to a non-UK DLG by modification.</u>					

...

16 Annex 24R Data items for SUP 16.7 and SUP 16.12

...

Data item FSA010 is deleted from SUP 16 Annex 24R (Data items for SUP 16.7 and SUP 16.12) in its entirety, except that the heading for that item is amended as follows.

FSA010 Mismatch liquidity

[Deleted]

...

Data items FSA012 and FSA013 are deleted from SUP 16 Annex 24R (Data items for SUP 16.7 and SUP 16.12) in their entirety, except that the headings for those items are amended as follows.

FSA012 Non-deposit-taking EEA bank liquidity

[deleted]

FSA013 Stock liquidity

[deleted]

...

Insert the following data items FSA047 to FSA055 into SUP 16 Annex 24R (Data items for SUP 16.7 and SUP 16.12) in the appropriate numerical order. The text is all new and is not underlined.

FSA047**Daily
Flows****Part 1 - Memo Items**

- 1 Non-dated capital resources
- 2 Bank of England liquidity facilities
- 3 Other central bank liquidity facilities
- 4 Prior period's peak intra-day collateral used for UK settlement and clearing systems
- 5 Prior period's peak intra-day collateral used for settlement and clearing systems outside the UK

B	C	...	n
Date + 1	Date + 2	...	<i>Date + n</i>

Part 2 - Security, transferable whole-loan and commodity flows

- 6 Liquid asset buffer-eligible securities
- 7 Other high quality central bank, supranational and central government debt
- 8 US GSE/GSA securities
- 9 Own-name securities and transferable whole-loans
- 10 High quality asset-backed securities
- 11 High quality covered bonds
- 12 Securities issued by group entities
- 13 High quality corporate bonds (UK credit institutions)
- 14 High quality corporate bonds (non-UK credit institutions)
- 15 High quality corporate bonds (excluding credit institutions)
- 16 Equities included in major indices
- 17 Other securities and commodities

A	B	...	n
Date + 1	Date + 2	...	<i>Date + n</i>

		...	
		...	
		...	
		...	
		...	
		...	
		...	
		...	
		...	
		...	
		...	
		...	

Part 3 - Wholesale asset cash flows

- 18 Designated money market funds
- 19 Liquid asset buffer-eligible central bank reserves and deposits
- 20 Lending to group entities
- 21 Lending to UK credit institutions
- 22 Lending to non-UK credit institutions
- 23 Own account security cash flows
- 24 Notional flows of own-name securities and transferable whole-loans
- 25 Reverse repo (items reported in line 6)
- 26 Reverse repo (items reported in lines 7 and 8)
- 27 Reverse repo (items reported in lines 10 and 11)
- 28 Reverse repo (items reported in lines 13, 14 and 15)
- 29 Reverse repo (items reported in line 16)
- 30 Reverse repo (items reported in lines 9, 12 and 17)

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		...	
		...	
		...	

Part 4 - Other asset cash flows

- 31 Non-retail lending exposures
- 32 Retail lending exposures
- 33 SSPE asset cash flows

Part 5 - Repo cash flows

- 34 Repo (items reported in line 6)
- 35 Repo (items reported in lines 7 and 8)
- 36 Repo (items reported in lines 10 and 11)
- 37 Repo (items reported in lines 13, 14 and 15)
- 38 Repo (items reported in line 16)
- 39 Repo (items reported in lines 9, 12 and 17)

		...	
		...	
		...	
		...	
		...	
		...	

Part 6 - Wholesale liability cash flows

- 40 Primary issuances - senior securities
- 41 Primary issuances - dated subordinated securities
- 42 Primary issuances - structured notes
- 43 Covered bonds
- 44 Group entities
- 45 UK credit institutions
- 46 Non-UK credit institutions
- 47 Governments, central banks and supranationals
- 48 Non-credit institution financials
- 49 Non-financial large enterprises - Type A
- 50 Conditional liabilities pre-trigger contractual profile
- 51 SSPE liability cash flows

		...	
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		...	
		...	
		...	
		...	
		...	
		...	
		...	
		...	

Part 7 - Other liability cash flows

- 52 Non-financial large enterprises - Type B
- 53 SME deposits
- 54 Retail deposits - Type A
- 55 Retail deposits - Type B
- 56 Client / brokerage free cash

Part 8 - Off balance sheet flows and balances

- 57 Principal FX cash flows (including currency swaps)

		...	
--	--	-----	--

FSA048
Enhanced Mismatch Report
| Part 1 - Memo items

- 1 Non-dated capital resources
 - 2 Bank of England liquidity facilities
 - 3 Other central bank liquidity facilities
 - 4 Prior period's peak intra-day collateral used for UK settlement and clearing systems
 - 5 Prior period's peak intra-day collateral used for settlement and clearing systems outside the UK

A	B	C	D
	OMO	Collateral upgrade	Others

Part 2 - Security, transferable whole-loan and commodity flows

- 6 Liquid asset buffer-eligible securities
 - 7 Other high quality central bank, supranational and central government debt
 - 8 US GSE/GSA securities
 - 9 Own-name securities and transferable whole-loans
 - 10 High quality asset-backed securities
 - 11 High quality covered bonds
 - 12 Securities issued by group entities
 - 13 High quality corporate bonds (UK credit institutions)
 - 14 High quality corporate bonds (non-UK credit institutions)
 - 15 High quality corporate bonds (excluding credit institutions)
 - 16 Equities included in major indices
 - 17 Other securities and commodities

Part 3 - Wholesale asset cash flows

- 18 Designated money market funds
 - 19 Liquid asset buffer-eligible central bank reserves and deposits
 - 20 Lending to group entities
 - 21 Lending to UK credit institutions
 - 22 Lending to non-UK credit institutions
 - 23 Own account security cash flows
 - 24 Notional flows of own-name securities and transferable whole-loans
 - 25 Reverse repo (items reported in line 6)
 - 26 Reverse repo (items reported in lines 7 and 8)
 - 27 Reverse repo (items reported in lines 10 and 11)
 - 28 Reverse repo (items reported in lines 13, 14 and 15)
 - 29 Reverse repo (items reported in line 16)
 - 30 Reverse repo (items reported in lines 9, 12 and 17)

Non defined maturity	Repo/Reverse with open maturity

Part 4 - Other asset cash flows

- 31 Non-retail lending exposures
 - 32 Retail lending exposures
 - 33 SSPE asset cash flows

Part 5 - Repo cash flows

- 34 Repo (items reported in line 6)
35 Repo (items reported in lines 7 and 8)
36 Repo (items reported in lines 10 and 11)
37 Repo (items reported in lines 13, 14 and 15)
38 Repo (items reported in line 16)
39 Repo (items reported in lines 9, 12 and 17)

Part 6 - Wholesale liability cash flows

- 40 Primary issuances - senior securities
 - 41 Primary issuances - dated subordinated securities
 - 42 Primary issuances - structured notes
 - 43 Covered bonds
 - 44 Group entities
 - 45 UK credit institutions
 - 46 Non-UK credit institutions
 - 47 Governments, central banks and supranationals
 - 48 Non-bank institution financials
 - 49 Non-financial large enterprises - Type A
 - 50 Conditional liabilities pre-trigger contractual profile
 - 51 SSPE liability cash flows

100

Part 7 - Other liability cash flows

- 52 Non-financial large enterprises - Type B
 - 53 SME deposits
 - 54 Retail deposits - Type A
 - 55 Retail deposits - Type B
 - 56 Client / brokerage free cash

1

Part 8 - Off balance sheet flows and balances

- 57 Principal FX cash flows (including currency swaps)
 - 58 Committed facilities **received**
 - 59 Secured facilities provided - liquidity buffer securities
 - 60 Secured facilities provided - other securities
 - 61 Unsecured facilities provided - credit institutions
 - 62 Unsecured stand-by facilities provided - firm's SSPEs
 - 63 Unsecured stand-by facilities provided - entities other than credit institutions and firm's SSPEs
 - 64 Unsecured facilities provided by firm's SSPEs to third parties
 - 65 Unsecured facilities provided - entities other than credit institutions
 - 66 Overdraft and credit card facilities provided
 - 67 Pipeline lending commitments
 - 68 Contingent obligations to repurchase assets financed through third parties
 - 69 Other commitments and contingent facilities provided

Undrawn balance

Part 9 - Downgrade triggers

- 70 Asset put-backs from third party vehicles
 - 71 Conditional liabilities
 - 72 Over the counter (OTC) derivative triggers
 - 73 Other contingent liabilities

Part 10 - Derivatives margining and exposure

- 74 OTC derivative margin given
 - 75 Exchange traded margin given
 - 76 OTC derivative margin received
 - 77 Exchange traded margin received

Part 11 - Assets included in Part 2 that are held under re-hypothecation rights

- 11.1 - Assets included in Part 2 that are held under re-hypothecation rights

 - 78 Liquid asset buffer-eligible securities
 - 79 Other high quality central bank, supranational and central government debt
 - 80 US GSE/GSA securities
 - 81
 - 82 High quality asset-backed securities
 - 83 High quality covered bonds
 - 84 Securities issued by group entities
 - 85 High quality corporate bonds (UK credit institutions)
 - 86 High quality corporate bonds (non-UK credit institutions)
 - 87 High quality corporate bonds (excluding credit institutions)
 - 88 Equities included in major indices
 - 89 Other securities and commodities

Cash nominal	Collateral market value

Initial margin

MTM	MTM
exposure -	exposure
margined	non margined

Customer balance

FSA049

Intentionally left blank

FSA050**Liquidity Buffer Qualifying Securities**

	Issuer	A Market value of identifiable securities or security baskets
1	Australia	
2	Austria	
3	Belgium	
4	Canada	
5	Denmark	
6	Finland	
7	France	
8	Germany	
9	Ireland	
10	Italy	
11	Japan	
12	Luxembourg	
13	Norway	
14	Netherlands	
15	Portugal	
16	Slovenia	
17	Spain	
18	Sweden	
19	Switzerland	
20	United Kingdom	
21	United States of America	
22	Other	
23	Supranational(s)	
24	General Collateral - Europe	

FSA051
Funding Concentration

A	B	C
Counterparty	Amount	Weighted average residual maturity

Part 1 - Wholesale deposits

1		
2		
3		
4		
.		
.		
.		
28		
29		
30		

Part 2 -Repo Funding

1		
2		
3		
4		
.		
.		
.		
28		
29		
30		

FSA052
Pricing Data

Wholesale Liabilities (Raised during the week ending with the reporting date)

A	B	C	D	E	F	G	H	I	J
$\geq 1 \text{ month} \leq 3 \text{ months}$		$> 3 \text{ months} \leq 6 \text{ months}$		$> 6 \text{ months} \leq 1 \text{ year}$		$> 1 \text{ year} \leq 2 \text{ years}$		$> 2 \text{ years}$	
Spread	Volume	Spread	Volume	Spread	Volume	Spread	Volume	Spread	Volume

GBP

- 1 Cash deposits
- 2 Senior unsecured securities
- 3 Covered bonds
- 4 Asset backed securities including ABCP

US dollars

- 5 Cash deposits
- 6 Senior unsecured securities
- 7 Covered bonds
- 8 Asset backed securities including ABCP

Euro

- 9 Cash deposits
- 10 Senior unsecured securities
- 11 Covered bonds
- 12 Asset backed securities including ABCP

FSA053**Retail, SME and large enterprises Type B Funding****Part 1 - Retail deposits (Type A and Type B)**

- 1 Current and / or transactional accounts
- 2 Tax-advantaged savings accounts
- 3 On demand or instant access accounts
- 4 Fixed term accounts
- 5 Fixed notice accounts

		A	B
		Outstanding Balance	
Type A	Type B		

Part 2 - SME and large enterprises Type B

- 6 Current and / or transactional accounts
- 7 Tax-advantaged savings accounts
- 8 On demand or instant access accounts
- 9 Fixed term accounts
- 10 Fixed notice accounts

		A	B
		Outstanding Balance	
Type A	Type B		

Part 3 - Deposit insurance schemes such as FSCS

- 11 Deposits covered by deposit insurance schemes such as FSCS
- 12 Deposits **not** covered by deposit insurance schemes such as FSCS

FSA054
Currency analysis

		A	B
		Assets (%)	Liabilities (%)
1	GBP		
2	USD		
3	EUR		
4	JPY		
5	CHF		
6	CAD		
7	SEK		
8	NOK		
9	DKK		
10	AUD		
11	HKD		
12	ZAR		
13	Other		

FSA055**Systems and controls questionnaire****Part 1 - Overall Framework**

- 1 Does your firm have a liquidity risk management framework in place?
 (If you answer no above, leave the remaining data elements blank)

A

Part 2 - Systems and controls

- 2 Are processes, strategies and systems for liquidity risk assessment incorporated into the framework?
- 3 Is the framework documented?
- 4 Do you consider institution specific and market wide stresses and their impact upon your assets?
- 5 Do you consider your ability to raise funds under stressed market circumstances as adequate?

Part 3 - Stress testing

- 6 Does your firm undertake stress testing on your liquidity risk model?
- 7 Is your approach to stress testing documented?
- 8 How many times throughout the year do you conduct stress tests?

Part 4 - Contingency funding plans

- 9 Do you have an appropriate contingency funding plan in place?
- 10 How frequently is this plan updated? (Monthly/ Quarterly/ Semi- annually/ Annually/ less than once a year)
- 11 How many times has this plan been updated in the past 12 months?

Part 5 - Senior management oversight

- 12 Is the governing body / senior management actively involved in reviewing and updating the liquidity risk management approach?
- 13 How frequently does the governing body / senior management formally review the liquidity risk management approach? (Monthly/ Quarterly/ Semi- annually/ Annually/ less than once a year)
- 14 Is an appropriate process in place for capturing, managing and escalating liquidity risk issues?
- 15 Does the governing body approve stress tests and contingency funding plans?

Part 6 - Provisions on measurement and management

In your liquidity risk management do you consider:

- 16 Pricing liquidity risk?
- 17 Intra-day liquidity risk management?
- 18 Management of collateral positions?
- 19 How liquidity is managed across legal entities, business lines and currencies?
- 20 Funding diversification and market access?

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24G 24R

The guidance notes for data item FSA010 are deleted from SUP 16 Annex 25G (Guidance notes for data items in SUP 16 Annex 24R) in their entirety, except that the heading for that item is amended as follows.

FSA010 Mismatch liquidity

[Deleted]

...

The guidance notes for data items FSA 012 and FSA013 are deleted from SUP 16 Annex 25G (Guidance notes for data items in SUP 16 Annex 24R) in their entirety, except that the headings for those items are amended as follows.

FSA012 - Non-deposit taking EEA bank liquidity

[Deleted]

FSA013 - Stock liquidity

[Deleted]

...

Insert the following guidance notes into SUP 16 Annex 25G (Guidance notes for data items in SUP 16 Annex 24R) in the appropriate numerical order. The text is all new and is not underlined.

In accordance with the *rules* in SUP 16, a firm may be required to report either on a solo (including branch) basis or on behalf of a DLG. In this guidance, therefore, the words “firm” and “its” are to be construed accordingly.

FSA047**Daily Flows**

The purpose of this *data item* is to record details of an *ILAS BIPRU firm*'s liquidity flows. See further the *rules* and *guidance* in SUP 16.12.4.

Valuation

Except where outlined, a *firm* should follow the *FSA's rules* and *guidance* on valuation set out in *GENPRU 1.3*. A *firm* not subject to *GENPRU 1.3*, for example, an *incoming EEA firm*, should follow its applicable accounting standards.

Currency

The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

Amounts should be entered in multiples of 1,000 of the relevant currency unit.

Completion in a material currency

Where a *firm* is completing this *data item* in a *material currency*, the *firm* should only report positions and flows denominated in the *material currency* in question. In the case of off balance sheet items reportable in Part 8 where contingent liabilities or commitments may be drawn in multiple currencies, a *firm* should report these in the base currency of that contingent liability or commitment. Any payments and receipts in the *material currency* resulting from foreign exchange and currency swap flows are reported on line 57. If this *data item* is not being reported in a *material currency*, line 57 is left blank.

Data elements

These are referred to by row first and then by column. So, *data element* 2B will be the element entered in row 2 and column B.

Note this *data item* requires the completion of daily flows for only a subset of the rows in FSA 048 and a *firm* is only required to complete the *data elements* as outlined.

For the rows for which a *firm* is required to complete this *data item*, it should make entries in Column A for any daily flows of cash or securities on the day (not being a Saturday or Sunday) following the reporting date, such date being “Date +1”, and each day after that (not being a Saturday or a Sunday) in Column B onwards. If there are multiple flows on a single day these should be reported in a single Column.

The final Column required in this form is for the day (not being a Saturday or a Sunday) immediately prior to the earliest date a *firm* would report entries in Column F of FSA 048. None of the information entered in rows in FSA047 will therefore overlap with any of the information entered in rows on FSA 048 and vice versa.

Completion and submission to the FSA

A *firm* should complete this *data item* and report cash flows and security flows in the relevant time bands based on their residual contractual maturity. Asset flows should be entered according to their latest maturity. Liability cash flows should be entered according to their earliest possible date of outflow. Any flows or balances between entities included within the scope of the return should be eliminated in accordance with generally accepted accounting principles.

A firm should refer to the relevant Guidance Notes for FSA048 to complete the relevant data elements of this data item.

Validation rules

No rule as cell can be zero, positive or negative.

FSA048**Enhanced Mismatch Report**

The purpose of this *data item* is to record details of an *ILAS BIPRU firm's* liquidity mismatch positions. See further the *rules* and *guidance* in *SUP 16.12.4*.

Valuation

Except where outlined, a *firm* should follow the *FSA's rules* and *guidance* on valuation set out in *GENPRU 1.3*. A *firm* not subject to *GENPRU 1.3*, for example, an *incoming EEA firm*, should follow its applicable accounting standards.

Currency

The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

Amounts should be entered in multiples of 1,000 of the relevant currency unit.

Completion in a material currency

Where a *firm* is completing this *data item* in a *material currency*, the *firm* should only report positions and flows denominated in the *material currency* in question. In the case of off balance sheet items reportable in Part 8 where contingent liabilities or commitments may be drawn in multiple currencies, a *firm* should report these in the base currency of that contingent liability or commitment. Any payments and receipts in the *material currency* resulting from foreign exchange and currency swap flows are reported on line 57. If this *data item* is not being reported in a *material currency*, line 57 is left blank.

Data elements

These are referred to by row first and then by column. So, *data element* 2B will be the element entered in row 2 and column B.

Completion and submission to the FSA

A *firm* should complete this *data item* and report cash flows in the relevant time bands based on their residual contractual maturity. Asset flows should be entered according to their latest maturity. Liability cash flows should be entered according to their earliest possible date of outflow. Any flows or balances between entities included within the scope of the return should be eliminated in accordance with generally accepted accounting principles.

General

The completion table at the end of this guidance note identifies the columns which should be populated in respect of each row of *data item* FSA048.

Part 1 Memo items

1 Non-dated capital resources

A *firm* should report here the amount of its *capital resources* which do not have a contractual maturity date, including, but not limited to, a call date. If any instrument comprising a *firm's* *capital resources* includes a put option for the holder or a call option for the issuer with a pre-determined step and call structure they should be reported in line 41 with a maturity date assuming the option is exercised. Any instrument where the *firm* has a perpetual open call option to buy back the instrument, with no underlying step up or predetermined call structure should be reported as non-dated capital resources.

A *firm* may use the most recent figures from its management accounts for the amount of reserves included within non-dated capital resources and update this *data element* on a monthly basis.

2 Bank of England liquidity facilities

A *firm* should report in this row the total of any secured transactions with the Bank of England.

The Bank of England conducts regular Open Market Operations to provide to the banking system the amount of central bank money needed to enable reserve-scheme members, in aggregate, to achieve their reserves targets and the Operational Standing Lending Facility to give certain banks a means to manage unexpected ‘frictional’ payments shocks. In *data element* 2B, a *firm* should report the cash received, if any, pursuant to the usage of these or similar Bank of England facilities.

The Bank of England operates facilities to provide liquidity insurance to the banking system, whereby a *firm* can exchange its own collateral for government bonds. In *data element* 2C, a *firm* should report the market value of government bonds it receives pursuant to such Bank of England facilities, if any, in exchange for the *firm's* own collateral.

The Bank of England may also operate other facilities whereby a *firm* may repo securities, distinct from Open Market Operations, such as longer-term repo operations, or operations in exchange for wider collateral. In *data element* 2D, a *firm* should report the cash, if any, received pursuant to the usage of such facilities.

3 Other central bank liquidity facilities

A *firm* should report in this row the total of any secured transactions with central banks other than the Bank of England, mapping such transactions to the following categories:

In *data element* 3B, a *firm* should report outstanding borrowings from other central banks in routine open market operations secured against narrow collateral.

In *data element* 3C, a *firm* should report the market value of any government bonds or other collateral of a comparable quality that it receives in exchange for the *firm's* lower quality collateral.

In *data element* 3D, a *firm* should report the cash received from all other central bank facilities, including those that are for a longer-term or against wider collateral than routine open market operations.

4 Prior period's peak intra-day collateral used for UK settlement and clearing systems

Firms that are direct participants of clearing and settlement systems within the United Kingdom should report here the peak amount of cash and collateral that they used on an intra-day basis to meet the requirements of clearing and settlement systems in the *United Kingdom* since their previous reporting date for this *data item*.

A *firm* should note that the amount to be reported in this *data element* should be the minimum amount of collateral it would have needed to post in order to meet its actual payment and settlement obligations as mandated by the requirements of the system(s) in question. It is not, therefore, the amount of collateral that was in fact posted by the *firm* which could include significant over-collateralisation.

5 Prior period's peak intra-day collateral used for settlement and clearing systems outside the UK

Firms that are direct participants of clearing and settlement systems outside the United Kingdom should report here the peak amount of cash and collateral that they used on an intra-day basis to meet the requirements of clearing and settlement systems outside the *United Kingdom* since their previous reporting date for this *data item*.

A *firm* should note that the amount to be reported in this *data element* should be the minimum amount of collateral it would have needed to post in order to meet its actual payment and settlement obligations as mandated by the requirements of the system(s) in question. It is not, therefore, the amount of collateral that was in fact posted by the *firm* which could include significant over-collateralisation.

Part 2 Security, transferrable whole-loan and commodity flows

In this part of the *data item* a *firm* should report the current unencumbered stock of securities and their flows based on contractual maturities in the following types of securities by asset class:

- (1) securities and commodities held on the *firm*'s own account;
- (2) securities and commodities held as *clients'* or other customers' assets in relation to which the *firm* has re-hypothecation rights;
- (3) securities and commodities held by the *firm* as collateral pursuant to a *margin agreement*; and,
- (4) transferrable whole-loans held by the *firm* that meet the criteria set out below in relation to line 9

Contractual security flows will occur as a result of:

- (1) the settlement or maturity of own account securities or certain loans;
- (2) the settlement or maturity of a *repo*, reverse *repo*, securities loans or collateral swap; and
- (3) collateralised lending and borrowing transactions;

A *firm* should report positions at their clean market value (i.e. excluding accrued interest) and assume the maturity date of any collateral is the latest contractual maturity date possible. For securities without contractual maturity dates, it should report a maturity flow in Column J “>5 years”.

The inflow of securities or position balance should be positive while contractual outflow or maturity should be negative. For example, if a *firm* were to purchase a four month security with a market value excluding accrued interest of £100m that it held unencumbered as at the reporting date it would report +100,000 in Column A and -100,000 in column F of the appropriate row 6 to 17.

Own-account security flows (long positions):

Any own-account securities should be reported as a positive flow in Column A if unencumbered or on the settlement date of purchase as appropriate; and as a negative flow at maturity.

A corresponding cash outflow on settlement date and inflow on maturity date should be reported on line 23.

Own-account security flows (short positions):

Any short sale of a security should be treated as having a negative flow on the settlement date of the sale and a positive flow on the maturity date of the underlying security sold.

A corresponding cash inflow on settlement date and outflow on maturity date should be reported on line 23.

Repos, reverse repos, securities loans and collateral swaps:

Repos, reverse repos, securities loans and collateral swaps should be reported as inflows on the date securities are received and outflows on the date securities are delivered. A *firm* should report all such transactions involving own account, client and margin collateral.

Tri-party repo and tri-party reverse repo transactions should be treated in the same manner as all other *repo* and reverse *repo* transactions. For the purpose of this *data item*, any such trade where the cash provider can unilaterally change the collateral eligibility criteria should be treated as having an overnight maturity, irrespective of the stated contractual maturity of the transaction.

Where a *firm* enters into forward-starting reverse repo transactions against unspecified collateral that would be reportable in more than one row, it should in the case of reverse repos, assume that it will be delivered collateral, as qualifying, in the following order: lines

17; 9 and 12; 10; 13 to 15; 16; 11; 8; 7; and 6. On settlement it should allocate securities flows based on the collateral it receives.

For similar repo transactions it may assume it delivers any securities it holds unencumbered that are eligible.

In the case or reverse repos and repos corresponding cash outflows and inflows should be reported in lines 25 to 30 and lines 34 to 39 as appropriate.

Margin collateral:

A *firm* should report the net collateral received as margin in Column A if it is unencumbered, and not report a flow for its maturity. Any repos, reverse repos, securities loans or collateral swaps using margin collateral should be reported as outlined above.

Client collateral:

A *firm* should report any client collateral over which it has rehypothecation rights in Column A if it is unencumbered, and not report a flow for its maturity. Any repos, reverse repos, securities loans or collateral swaps using *client* collateral should be reported as outlined above.

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In relation to rows 6 to 17, when determining the *applicable credit quality step* (if any), a *firm* should make such determination in accordance with the *rules and guidance* in *BIPRU* 3.6 regardless of whether *BIPRU* 3.6 would apply to determine risk weighting. For the avoidance of doubt, this includes covered bonds and own-name securities. The description of which securities or loans should be reported in each row is as follows:

6 Liquid assets buffer-eligible securities

A *firm* should report in this row the unencumbered balances and the contractual securities flows of any securities it holds that qualify for inclusion in its liquid assets buffer as defined in *BIPRU* 12.7.

7 Other high quality central bank, supranational and central government debt

A *firm* should report in this row the unencumbered balances and the contractual securities flows of any securities not reported in line 6 or 8 whose obligor is a central government, *multilateral development bank* or central bank whose credit rating maps to *credit quality step* 2 or above in the *credit quality assessment scale* published by the FSA for the purpose of *BIPRU* 3 (the Standardised Approach to Credit Risk: mapping of the ECAIs credit assessment to credit quality steps (Long term mapping)).

For the avoidance of doubt, any securities that are issued by an agency explicitly guaranteed by the US government and which qualify for inclusion in line 8 should be reported in that line and not in line 7.

8 US GSE/GSA securities

A *firm* should report in this row the unencumbered balances and the contractual securities flows of any senior securities that it holds issued by, or guaranteed by one or more of, the United States Government Sponsored Enterprises (GSEs) or Government Sponsored Agencies (GSAs).

For the purposes of this row, GSAs and GSEs include only the Federal Home Loan Banks, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), Government National Mortgage Association (Ginnie Mae), Federal Farm Credit Banks and the Federal Agricultural Mortgage Corporation (Farmer Mac).

9 Own-name securities and transferrable whole-loans

A *firm* should report in this row (i) the unencumbered balances and contractual securities flows of any own-name covered bonds and asset-backed securities that it holds secured by the *firm's* assets where the credit rating of such *exposures* has a credit rating associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised Approach to Credit Risk: mapping of the ECAs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping (ii) the unencumbered balances and maturity flows of any whole-loans whose credit rating is associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised Approach to Credit Risk: mapping of the ECAs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping where such *exposures* are held on the *firm's* balance sheet for which there is no operational or contractual impediment to their being transferred to a third party.

10 High quality asset-backed securities

A *firm* should report in this row the unencumbered balances and contractual securities flows of any asset backed securities that it holds where the credit rating of such *exposures* is associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised Approach to Credit Risk: mapping of the ECAs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping, provided that such *exposure* is the most senior tranche of the issuing *securitisation special purpose entity*. All asset backed securities that are not included in this row should be reported in row 17.

For avoidance of doubt, a *firm* should exclude any unencumbered balances and securities flows of covered bonds in this row.

11 High quality covered bonds

A *firm* should report in this row the unencumbered balances and contractual securities flows of all covered bonds, where the credit rating of such *exposures* is associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised Approach to Credit Risk: mapping of the ECAs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping.

For the avoidance of doubt, own-name covered bonds, and covered bonds issued by *group* entities should not be reported in this row, but in rows 9 and 12 respectively.

12 Securities issued by group entities

A *firm* should report in this row the unencumbered balances and security flows attributable to securities where the obligor of those securities forms part of the *firm's group* where the issuing vehicle is excluded from the scope of the report. If the issuing vehicle is included in the scope of the report, the securities should be reported as own-name securities and reported on line 9, if the credit rating of such *exposures* is associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised Approach to Credit Risk: mapping of the ECAIs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping, or omitted from this report if they do not.

For avoidance of doubt, if a *firm* holds bonds issued by its *group*, the security flows attributable to them should be included only in this row, even if such security would otherwise qualify for inclusion in another row in Part 2.

13 High quality corporate bonds (UK credit institutions)

A *firm* should report in this row the unencumbered balances and contractual securities flows of all senior corporate bonds that it holds whose obligor is a credit institution incorporated in the *United Kingdom*, if the credit rating of such *exposures* is associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised Approach to Credit Risk: mapping of the ECAIs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping.

For avoidance of doubt, a *firm* should not report in this row any balances or flows from securities whose obligor is a member of the *firm's group*.

14 High quality corporate bonds (non-UK credit institutions)

A *firm* should report in this row the unencumbered balances and contractual securities flows of all senior corporate bonds that it holds whose obligor is a credit institution not incorporated in the *United Kingdom*, if the credit rating of such *exposures* is associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised Approach to Credit Risk: mapping of the ECAIs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping.

For avoidance of doubt, a *firm* should not report in this row any balances or flows from securities whose obligor is a member of the *firm's group*.

15 High quality corporate bonds (excluding credit institutions)

A *firm* should report in this row the unencumbered balances and contractual securities flows of all senior corporate bonds that it holds whose obligor is not a credit institution, if the credit rating of such *exposures* is associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised

Approach to Credit Risk: mapping of the ECAIs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping.

In addition a *firm* should include any securities whose obligor is a local government, state or municipality in this line, whose credit rating is associated with *credit quality step 2* or above in the *credit quality assessment scale* published by the FSA for the purpose of BIPRU 3 (the Standardised Approach to Credit Risk: mapping of the ECAIs credit assessment to credit quality steps (Long term mapping)) or *credit quality step 1* in the case of short-term mapping.

16 Equities included in major indices

A *firm* should report in this row the unencumbered balances and contractual securities flows of all equities that it holds to the extent they are constituents one or more of the indices listed in the table at *BIPRU 7.3.39R*.

For the purposes of computing maturity, a *firm* should treat equity securities as if they were instruments with a contractual maturity greater than five years.

17 Other securities and commodities

A *firm* should report in this row unencumbered balances and the contractual securities flows of all other securities, commodities and exchange-traded funds that it holds not reported on lines 6 to 16 of this *data item*.

For the purposes of computing maturity, a *firm* should treat equity securities or commodities as if they were instruments with a contractual maturity greater than five years.

Part 3 Wholesale asset cash flows

In this Part of the *data item*, a *firm* should report the principal cash flows associated with its wholesale assets. Transactions which do not have a specific contractual maturity date should be entered in column A for rows 18 to 22 and column B for rows 25 to 30.

18 Designated money market funds

A *simplified ILAS BIPRU firm* should report in this row the balance of any funds it holds in a *designated money market fund*. *Firms* that are not *simplified ILAS BIPRU firms*, should report the balance of any funds held in a *designated money market fund* in row 31 below.

19 Liquid assets buffer-eligible central bank reserves and deposits

A *firm* should report in this row any closing balances placed on deposit or as reserves with a central bank, where such reserves or deposits are eligible for inclusion in a *firm's* liquid assets buffer as defined in *BIPRU 12.7*. Deposit placed or reserves maintained with other central banks should be reported in row 22.

20 Lending to group entities

A *firm* should report here all lending, except reverse repo transactions reportable in rows 25 to 30, on both a term and open-maturity basis to entities in that *firm's group*.

21 Lending to UK credit institutions

A *firm* should report here lending on both a term and open-maturity basis to all *credit institutions* incorporated in the *United Kingdom*, except reverse repo transactions reportable in rows 25 to 30. A *firm* should include any cash balances placed on deposit with its agents in payment or settlements systems if appropriate.

A *firm* should report cash flows based on their latest contractual maturity date.

22 Lending to non-UK credit institutions

A *firm* should report here lending on both a term and open-maturity basis to all *credit institutions* incorporated outside the *United Kingdom*, except reverse repo transactions reportable in rows 25 to 30. A *firm* should include any cash balances placed on deposit with its agents in payment or settlements systems and central bank deposits not reported in line 19, if appropriate.

23 Own account security cash flows

A *firm* should report here the cash flows, based on the contractual principal inflows, resulting from the maturity, forward sale or purchase of own account securities reportable in rows 6 to 8 & 10 to 17.

Where a *firm* has written down the principal of a security it should report this written-down principal as the cash inflow.

A *firm* should report cash flows based on their latest contractual maturity date.

24 Notional flows of own-name securities and transferrable whole-loans

A *firm* should report here the contractual principal cash flows that would be receivable by a third-party owner of any own-name covered bonds and asset-backed securities and transferrable loans reported in line 9.

25 Reverse Repo (items reported in line 6)

A *firm* should report here all cash flows resulting from secured lending transactions where the flow of securities arising from the transactions is reported in line 6.

A *firm* should only report in this row any secured lending transactions where securities flows are reported in row 6.

26 Reverse Repo (items reported in lines 7 and 8)

A *firm* should report here all cash flows resulting from secured lending transactions where the flow of securities arising from the transactions is reported in rows 7 and 8.

A *firm* should only report in this row any secured lending transactions where securities flows are reported in rows 7 and 8.

27 Reverse Repo (items reported in lines 10 and 11)

A *firm* should report here all cash flows resulting from secured lending transactions where the flow of securities arising from the transactions reported in rows 10 and 11.

A *firm* should only report in this row any secured lending transactions where securities flows are reported in rows 10 and 11.

28 Reverse Repo (items reported in lines 13, 14 and 15)

A *firm* should report here all cash flows resulting from secured lending transactions where the flow of securities arising from the transactions is reported in row 13 to 15.

A *firm* should only report in this row any secured lending transactions where securities flows are reported in rows 13 to 15.

29 Reverse Repo (items reported in line 16)

A *firm* should report here all cash flows resulting from secured lending transactions where the flow of securities arising from the transactions is reported in row 16.

A *firm* should only report in this row any secured lending transactions where securities flows are reported in row 16.

30 Reverse Repo (items reported in lines 9, 12 and 17)

A *firm* should report here all cash flows resulting from secured lending transactions where the flow of securities arising from the transactions is reported in rows 9, 12 and 17.

A *firm* should only report in this row any secured lending transactions where securities flows are reported in rows 9, 12 and 17.

Part 4 Other asset cash flows

In this Part, a *firm* should report lending not reportable in Part 3. In column A, a *firm* should report any open maturity balances, or balances for which it does not have at the time of the reporting date information as to the term.

A *firm* should only report contractual principal repayments and treat all loans using their latest contractual maturity.

A *firm* is not required to update the amounts in rows 31 to 33 more frequently than monthly.

31 Non-retail lending exposures

A *firm* should report here the principal cash flows resulting from lending *exposures* that are not *retail exposures* not reported elsewhere in Parts 3 or 4. These assets represent loans to all enterprises.

32 Retail lending exposures

A *firm* should report here the principal cash flows resulting from all lending *exposures* that are *retail exposures*, provided that they are not reportable in line 33.

33 SSPE asset cash flows

A *firm* should report in here the principal cash flows of the underlying assets transferred to any *securitisation special purpose entities* (SSPEs), that are consolidated in the *firm's* consolidated financial statements and whose liabilities are reported on line 51.

Part 5 Repo cash flows

This part of the *data item* relates to the gross cash flows of secured or collateralised borrowing transactions which encumber the *firm's* securities or transferrable whole-loans and/or those of its *clients* in relation to which the *firm* has re-hypothecation rights. This section is further sub-divided into rows 34 to 39 according to the security encumbered in these secured transactions.

34 Repo (items reported in line 6)

A *firm* should report here all cash flows resulting from secured borrowing transactions where the flow of securities arising from the transactions is reported in row 6.

A *firm* should only report in this row any secured borrowing transactions where securities flows are reported in row 6.

35 Repo (items reported in lines 7 and 8)

A *firm* should report here all cash flows resulting from secured borrowing transactions where the flow of securities arising from the transactions is reported in rows 7 to 8.

A *firm* should only report in this row any secured borrowing transactions where securities flows are reported in rows 7 to 8.

36 Repo (items reported in lines 10 and 11)

A *firm* should report here all cash flows resulting from secured borrowing transactions where the flow of securities arising from the transactions is reported in rows 10 and 11.

A *firm* should only report in this row any secured borrowing transactions where securities flows are reported in rows 10 and 11.

37 Repo (items reported in lines 13, 14 and 15)

A *firm* should report here all cash flows resulting from secured borrowing transactions where the flow of securities arising from the transactions is reported in row 13 to 15.

A *firm* should only report in this row any secured borrowing transactions where securities flows are reported in rows 13 to 15.

38 Repo (items reported in line 16)

A *firm* should report here all cash flows resulting from secured borrowing transactions where the flow of securities arising from the transactions is reported in row 16.

A *firm* should only report in this row any secured borrowing transactions where securities flows are reported in row 16.

39 Repo (items reported in lines 9, 12 and 17)

A *firm* should report here all cash flows resulting from secured borrowing transactions where the flow of securities arising from the transactions is reported in rows 9, 12 and 17.

A *firm* should only report in this row any secured borrowing transactions where securities flows are reported in rows 9, 12 and 17.

Part 6 Wholesale liability cash flows

In this Part of the *data item*, a *firm* should report cash flows arising from wholesale liabilities not reported in Part 5. A *firm*'s wholesale liabilities are those liabilities not reported in Part 7.

Contractual cash flows related to any open-maturity, callable, puttable or extendable issuance should be analysed based on the earliest possible repayment date and reported in part 6 unless these instruments are perpetually callable (by the *firm*) and qualify as non-dated capital resources reported on line 1.

A *firm* should first assess whether a liability qualifies for reporting in row 44, then row 50, prior to assessing which other row a liability qualifies for.

Contractual cash flows from securities issued should be reported in one of lines 40 to 43 or 51. Contractual cash flows from deposits taken should be reported in one of lines 44 to 50.

40 Primary issuances – senior securities

A *firm* should report here the contractual cash flows of its vanilla senior unsecured debt securities, for the purposes of this row, vanilla means any debt security not reportable in row 41 to 43. A *firm* should include in this row any of its primary issuance that is government-guaranteed.

41 Primary issuances - dated subordinated securities

A *firm* should report here the contractual cash flows of its dated subordinated securities.

A *firm* should, however, exclude from this row any undated capital instrument that it issues. Issuance of this type should be reported in row 1 of this *data item*.

42 Primary issuance – structured notes

A *firm* should report here the contractual cash flows of its senior securities containing embedded *derivatives*.

43 Covered bonds

A *firm* should report here the contractual cash flows of its covered bonds excluding own-name covered bonds it holds for its own account and reports in line 9 of this *data item*.

44 Group entities

A *firm* should report here the contractual cash flows of its borrowing from other entities in its *group*, where such borrowings are not reported in lines 34 to 39.

To the extent the *rules* in SUP 16.12 require a *firm* to report on a basis which includes other entities in its *group*, the *firm* should not report in this line borrowings from those *group* entities.

45 UK credit institutions

A *firm* should report here the contractual cash flows of its borrowing from other from *credit institutions* which are incorporated in the *United Kingdom*, where such borrowings are not reported in lines 34 to 44.

A *firm* should not include in this row unsecured cash deposits received from the Bank of England.

46 Non-UK credit institutions

A *firm* should report here the contractual cash flows of its borrowing from other from *credit institutions* which are not incorporated in the *United Kingdom*, where such borrowings are not reported in lines 34 to 44.

A *firm* should not include in this row unsecured cash deposits received from central banks other than the Bank of England.

47 Governments, central banks and supranationals

A *firm* should report here the contractual cash flows of its borrowing from central and local governments, local authorities, central banks and supra-nationals, where such borrowings are not reported in lines 34 to 44.

48 Non-credit institution financials

A *firm* should report here the contractual cash flows of its borrowing from financial entities which are not *credit institutions*, where such borrowings are not reported in lines 33 to 42.

This category would, for example, include unsecured borrowings from a *depositary* or an *investment manager*.

49 Non-financial large enterprises – Type A

A *firm* should report here the contractual cash flows of its borrowing from non-financial large enterprises, where such borrowings are not reported in lines 34 to 44, subject to the funds provider being Type A as assessed by the *firm* according to the guidance in *BIPRU 12.5*.

A non-financial large enterprise is, for the purpose of identifying depositors in rows 49 and 52 of this *data item*, any depositor-type not captured by rows 44 to 48 and 53 to 56.

50 Conditional liabilities pre-trigger contractual profile

A *firm* should report here the contractual cash flows of liabilities where early repayment can be triggered upon the occurrence of an event or events related to the financial health of the company, (for example, a downgrade of the *firm's* credit rating, or breach of a financial covenant). For avoidance of doubt, acceleration of payment obligations triggered by the *firm's* default does not, in and of itself, qualify a liability for inclusion in this line. A typical example of such liabilities is Guaranteed Investment Contracts (GICs).

Any liability with a trigger and which would otherwise be included in lines 40 to 49 should be included in this row and not any other row.

In addition to reporting in this line, a *firm* should further breakdown the liabilities where those triggers are dependent on its credit rating, in the appropriate *data element* on line 70.

51 SSPE liability cash flows

A *firm* should report here the contractual cash flows of liabilities issued by any *securitisation special purpose entities (SSPEs)* that are consolidated in the firm's consolidated financial statements. The maturity profile of the *firm's* assets contained in these SSPEs should be reported on row 33.

Part 7 Other liability cash flows

A *firm* should report in this section of the *data item*, cash flows related to other liabilities according to the following criteria.

52 Non-financial large enterprises – Type B

A *firm* should report here the contractual cash flows of its borrowing from non-financial enterprises, where such borrowings are not reported in lines 33 to 42, subject to the funds provider being Type B as assessed by the *firm* according to the guidance in *BIPRU 12.5*.

A non-financial enterprise is, for the purpose of identifying depositors in rows 49 and 52 of this *data item*, any depositor-type not captured by rows 44 to 48 and 53 to 56.

53 SME deposits

A *firm* should report in this row all its deposits and account balances where the account holder is a *small or medium enterprise (SME)*.

A non-EEA *firm* may use its local definition of an SME.

54 Retail Deposits – Type A

A *firm* should report in this row, its retail deposits that are Type A, as assessed by the *firm* according to the guidance for *ILAS BIPRU firms* and for *simplified ILAS firms* in *BIPRU 12.5.25G*.

A retail deposit is any deposit in a retail banking account or product type predominantly used by an individual or individuals acting outside their trade, industry or profession, and includes, in each case, savings bonds.

A *firm* should report all deposits in column A, unless the deposit is for a fixed term. In considering whether a deposit is fixed term, a *firm* should assume the immediate exercise of any notice period or other right of the depositor to claim the repayment of funds at the earliest possible repayment date.

55 Retail Deposits – Type B

A *firm* should report in this row, its retail deposits that are Type B, as assessed by the *firm* according to the guidance for *ILAS BIPRU firms* and for *simplified ILAS firms* in *BIPRU 12.5*.

A retail deposit is any deposit in a retail banking account or product type predominantly used by an individual or individuals acting outside their trade, industry or profession, and includes, in each case, savings bonds.

A *firm* should report all deposits in column A, unless the deposit is for a fixed term. In considering whether a deposit is fixed term, a *firm* should assume the immediate exercise of any notice period or other right of the depositor to claim the repayment of funds at the earliest possible repayment date.

56 Client / brokerage free cash

A *firm* should report here all cash balances which it has received from its prime brokerage/prime services *clients* and which are not segregated from the *firm*'s own assets. A *firm* should not include excess margin cash in this row.

Balances should be reported in Column A without regard to their contractual maturity.

Part 8 - Off balance sheet flows and balances

A *firm* should report commitments given and received and contingent liabilities in rows 57 to 69.

A *firm* should separate its commitments and contingent liabilities according to:

- (i) stand-by facilities, which would typically be used to backstop outstanding debt of the borrower; and,
- (ii) other facilities which would typically be revolving loan facilities to corporate borrowers where utilisation rates will vary over time or letters of credit.

Unless either is reportable in rows 59 to 61, stand-by facilities provided should be reported in rows 62 or 63 and other facilities should be reported in row 64.

57 Principal FX cash flows (including currency swaps)

A *firm* should only make entries on this row where it is completing this *data item* on a non-consolidated *material currency* basis as defined in [SUP 16.], otherwise it should be left blank.

Where a *firm* is completing this *data item* on a *material currency* basis, it should report here all outright flows for its spot foreign exchange and foreign exchange forward transactions and all principal flows on any cross currency swaps, where those flows are payments or receipts of the *material currency* in which the *firm* is completing this *data item*.

For example, if a *firm* was completing this *data item* to show its contractual assets and liabilities denominated in *US dollars* and it had transacted a forward foreign exchange contract to purchase \$75m against the sale of an equivalent amount of another currency four months after the reporting date, it would enter -75,000 in column F and make no other entries.

58 Committed facilities received

A *firm* should report the balance of any undrawn committed facilities received which the FSA has permitted it to rely on for the purposes of meeting its *individual liquidity guidance*, as outlined in *BIPRU 12.9*.

Facilities of this kind received by the *firm* should be reported as a positive balance in the column of maturity. Facilities maturing in less than three months should be reported in Column A.

59 Secured facilities provided - liquidity buffer securities

A *firm* should report here the undrawn balance of all committed facilities where the borrower is contractually required to deliver securities eligible for inclusion in the *firm's* liquid assets buffer as defined in *BIPRU 12.7* and where the market value of those securities will exceed the amount of the loan drawn down.

Note a *firm* should only report committed facilities in this row if there is no impediment to using the securities deliverable under such borrowings for repo transactions.

60 Secured facilities provided - other securities

A *firm* should report here the undrawn balance of all committed facilities where the borrower is contractually required to deliver securities not eligible for inclusion in the *firm's* liquid assets buffer as defined in *BIPRU 12.7*.

Note a *firm* should only report committed facilities in this row if there is no impediment to using the securities deliverable under such borrowings for repo transactions.

61 Unsecured facilities provided - credit institutions

A *firm* should report here the balance of any undrawn committed financing facilities provided by the *firm* to *credit institutions* not reported on lines 59 and 60. Facilities of this kind provided to *credit institutions* should be reported as a negative balance.

62 Unsecured stand-by facilities provided - firm's SSPEs

A *firm* should report here undrawn balance of any committed stand-by facilities provided to the *firm's SSPEs* that are consolidated in its consolidated financial statements.

The assets and liabilities, if any, of these SSPEs will be reported on lines 33 and 51 respectively.

63 Unsecured stand-by facilities provided – entities other than credit institutions and firm's SSPEs

A *firm* should report here the undrawn balance of committed stand-by facilities to entities other than *credit institutions* and the *firm's SSPE's*. Facilities provided should be reported as a negative balance.

64 Unsecured facilities provided by firm's SSPEs to third parties

A *firm* should report here the undrawn balance of any committed facilities provided to third parties by *SSPEs* that are consolidated in its consolidated financial statements and whose assets and liabilities, if any, are reported on lines 33 and 51.

65 Unsecured facilities provided – entities other than credit institutions

A *firm* should report here the undrawn balance of other committed facilities provided to entities other than credit institutions.

Any facilities provided to *credit institutions* and/or secured against securities reportable in Part 2 of this *data item* should be reported on lines 59 to 61 as appropriate.

66 Overdraft and credit card facilities provided

A *firm* should report here the total balance of undrawn retail overdrafts and credit cards facilities provided to retail customers. Facilities provided should be reported as a negative balance.

67 Pipeline Lending Commitments

A *firm* should report here the total balance of any lending commitments to retail customers. A *firm* should only report contractual lending commitments which, if and when exercised, would be reportable in line 32.

68 Contingent obligations to repurchase assets financed through third parties

A *firm* should report here the balance of any of the *firm's* assets financed by third parties, where a *firm* has a contingent obligation to repurchase those assets triggered by deterioration in the *firm's* financial condition.

69 Other commitments and contingent facilities provided

A *firm* should report here all other undrawn commitments, guarantees and contingent liabilities not included elsewhere in Part 8.

Part 9 Downgrade triggers

For the purpose of rows 70 to 73, a *firm* should analyse and report, in the way described, in each of those rows any contractual outflows that would result from a downgrade of the *firm's* current long-term credit rating. A *firm* should consider downgrades of all its long-term counterparty, issuer and debt credit ratings.

A *firm* should assume that each *ECAI* that provides it with a long-term credit rating simultaneously downgrades that rating.

In addition a *firm* should consider the impact of a downgrade of its short-term credit rating. As *ECAIs* may not publish when a specific downgrade of a *firm's* long-term credit rating would result in a downgrade of a *firm's* short-term credit rating, a *firm* should assume its short-term credit rating would be downgraded at the highest long-term rating specified by each agency as being consistent with publically available information.

A *firm* should report such outflows on a non-cumulative basis in the appropriate column according to the severity of the downgrade that would cause such an outflow.

For the purpose of identifying which of columns B to K this Part of the *data item* a “notch” is the smallest discrete step by which a *firm's* long-term credit rating may be downgraded.

70 Asset put-backs from third parties

A *firm* should analyse and report here the outflows that may result from asset put-backs which would be triggered by a downgrade of its existing long and short-term credit rating according to the methodology outlined above.

The triggers for asset put-backs include but are not limited to:

- (1) as past originator of assets the downgrade of the *firm's* credit rating now precludes the continued financing of the assets in the structured vehicle;
- (2) as a swap provider against the assets placed in the vehicle the downgrade of the *firm's* credit rating now renders the *firm* ineligible to continue providing any *derivatives* (e.g. including but not limited to credit default swaps or total return swaps) to the structured vehicle. For the avoidance of doubt, if a *firm* was required to margin this exposure, it would be reported in line 70; and

- (3) the rating of the assets placed is linked to the rating of the *firm*; following a downgrade of the *firm* these assets are ineligible for continued financing by the third party vehicle.

71 Conditional Liabilities

A *firm* should analyse and report here the cash flow impact of a downgrade of its existing credit rating according to the methodology outlined above, on its conditional liabilities reported in row 50.

72 Over the counter (OTC) derivative triggers

A *firm* should analyse and report here any outflows that would be triggered by a downgrade of its credit rating according to the methodology outlined above.

A *firm* should include in this row the impact of increased collateralisation requirements and any termination payments.

73 Other contingent liabilities

A *firm* should report in this row, any other contractual outflows that would occur from the downgrade of its credit rating according to the methodology outlined above.

Part 10 Derivatives margining and exposure

Figures reported in rows 74 to 77 relate to any variation and initial margin given or received in respect of *derivatives* transactions. A *firm* should report together figures for own account and client accounts.

For each row, a *firm* should report:

- (1) In column B, the nominal amount of cash collateral given or received as initial plus variation margin;
- (2) In column C, the market value of collateral securities given or received as initial plus variation margin;
- (3) In column E, the initial margin paid or received;
- (4) In column G, the mark-to-market exposure of underlying *derivatives* transactions that are currently subject to margining for all or part of the exposure; and
- (5) In column H, the mark-to-market exposure of underlying *derivatives* transactions that are currently not subject to margining for any portion of the exposure.

Where a *firm* gives or receives initial margin on a net basis across *derivative* and non-*derivative* transactions, it should report the total amount in Column E without regard to the underlying transaction.

Margin and mark-to-market receivables should be reported with a positive sign while margin received and mark-to-market payables should be reported with a negative sign.

A *firm* should report the gross margin balances received or given by counterparty, e.g. if a *firm* transacts OTC derivatives with two counterparties, from one of which it has received cash collateral as margin of £25m and to the other of which it has paid cash collateral of

margin to of £20m, it should report +20,000 in *data element* 72B and -25,000 in *data element* 74B, it should not report a net figure of -5,000 in 74B

74 OTC derivative margin given

A *firm* should report here cash and collateral margin given and mark-to-market on margined *OTC derivatives*.

75 Exchange traded margin given

A *firm* should report here cash and collateral margin given on exchange traded *derivatives*.

76 OTC derivative margin received

A *firm* should report here cash and collateral margin received and mark-to-market on margined *OTC derivatives*.

77 Exchange traded margin received

A *firm* should report here cash and collateral margin received on exchange traded *derivatives*.

Part 11 Assets included in Part 2 held under re-hypothecation rights

Rows 78 to 89 relate to securities reported in Part 2 of this *data item*, held as *clients'* assets or net margin collateral received in relation to which the *firm* has re-hypothecation rights. Row 81 is intentionally left blank.

The definitions of securities reported in rows 78 to 89 are the identical to those in rows 6 to 17 inclusive.

Amounts in lines 78 to 89 should be reported as positive numbers.

Validation rules

Validation number	Data element		
1	2B	\geq	0
2	2C	\geq	0
3	2D	\geq	0
4	3B	\geq	0
5	3C	\geq	0
6	3D	\geq	0

7	4A	\geq	0
8	5A	\geq	0
9	6A	\geq	0
10	7A	\geq	0
11	8A	\geq	0
12	9A	\geq	0
13	10A	\geq	0
14	11A	\geq	0
15	12A	\geq	0
16	13A	\geq	0
17	14A	\geq	0
18	15A	\geq	0
19	16A	\geq	0
20	17A	\geq	0
21	18A	\geq	0
22	19A	\geq	0
23	31A+31C+31D+31E+31F+31G+31H+31I+31J	\geq	0
24	32A+32C+32D+32E+32F+32G+32H+32I+32J	\geq	0
25	33A+33C+33D+33E+33F+33G+33H+33I+33J	\geq	0
26	52A+52C+52D+52E+52F+52G+52H+52I+52J	\leq	0
27	53A+53C+53D+53E+53F+53G+53H+53I+53J	\leq	0
28	54A+54C+54D+54E+54F+54G+54H+54I+54J	\leq	0
29	55A+55C+55D+55E+55F+55G+55H+55I+55J	\leq	0
30	56A	\leq	0
31	58A+58C+58D+58E+58F+58G+58H+58I+58J	\geq	0
32	59A	\leq	0
33	60A	\leq	0
34	61A	\leq	0
35	62A	\leq	0
36	63A	\leq	0
37	64A	\leq	0

38	65A	\leq	0
39	66A	\leq	0
40	67A	\leq	0
41	68A	\leq	0
42	69A	\leq	0
43	Each cell in row 70 (70B to 70K)	\leq	0
44	Each cell in row 71 (71B to 71K)	\leq	0
45	Each cell in row 72 (72B to 72K)	\leq	0
46	Each cell in row 73 (73B to 73K)	\leq	0
47	74B	\geq	0
48	74C	\geq	0
49	74E	\geq	0
50	74G	\leq	0
51	74H	\leq	0
52	75B	\geq	0
53	75C	\geq	0
54	75E	\geq	0
55	76B	\leq	0
56	76C	\leq	0
57	76E	\leq	0
58	76G	\geq	0
59	76H	\geq	0
60	77B	\leq	0
61	77C	\leq	0
62	77E	\leq	0
63	78A	\geq	0
64	79A	\geq	0
65	80A	\geq	0
66	82A	\geq	0
67	83A	\geq	0
68	84A	\geq	0

69	85A	\geq	0
70	86A	\geq	0
71	87A	\geq	0
72	88A	\geq	0
73	89A	\geq	0

Cross validation rules for FSA047 and FSA048 (combined)

Validation number	Data element		
1	FSA048(6A) + FSA048(6B) + FSA047(6A+6B+6C+----+6n) +FSA048(6F) +FSA048(6G)+FSA048(6H)+FSA048(6I) +FSA048(6J)-FSA048(78A)	=	0
2	FSA048(7A) + FSA048(7B) + FSA047(7A+7B+7C+----+7n) +FSA048(7F) +FSA048(7G)+FSA048(7H)+FSA048(7I) +FSA048(7J)-FSA048(79A)	=	0
3	FSA048(8A) + FSA048(8B) + FSA047(8A+8B+8C+----+8n) +FSA048(8F) +FSA048(8G)+FSA048(8H)+FSA048(8I) +FSA048(8J)-FSA048(80A)	=	0
4	FSA048(9A) + FSA048(9B) + FSA047(9A+9B+9C+----+9n) +FSA048(9F) +FSA048(9G)+FSA048(9H)+FSA048(9I) +FSA048(9J)	=	0
5	FSA048(10A) + FSA048(10B) +FSA047(10A+10B+10C+----+10n) +FSA048(10F)+FSA048(10G)+FSA048(10H)+FSA048(10I) +FSA048(10J)- FSA048(82A)	=	0
6	FSA048(11A) + FSA048(11B) +FSA047(11A+11B+11C+----+11n) +FSA048(11F)+FSA048(11G)+FSA048(11H)+FSA048(11I) +FSA048(11J)- FSA048(83A)	=	0
7	FSA048(12A) + FSA048(12B) +FSA047(12A+12B+12C+----+12n) +FSA048(12F)+FSA048(12G)+FSA048(12H)+FSA048(12I) +FSA048(12J)- FSA048(84A)	=	0
8	FSA048(13A) + FSA048(13B) +FSA047(13A+13B+13C+----+13n) +FSA048(13F)+FSA048(13G)+FSA048(13H)+FSA048(13I) +FSA048(13J)- FSA048(85A)	=	0
9	FSA048(14A) + FSA048(14B) +FSA047(14A+14B+14C+----+14n) +FSA048(14F)+FSA048(14G)+FSA048(14H)+FSA048(14I) +FSA048(14J)- FSA048(86A)	=	0
10	FSA048(15A) + FSA048(15B) +FSA047(15A+15B+15C+----+15n) +FSA048(15F)+FSA048(15G)+FSA048(15H)+FSA048(15I) +FSA048(15J)- FSA048(87A)	=	0
11	FSA048(16A) + FSA048(16B) +FSA047(16A+16B+16C+----+16n) +FSA048(16F)+FSA048(16G)+FSA048(16H)+FSA048(16I) +FSA048(16J)- FSA048(88A)	=	0
12	FSA048(17A) + FSA048(17B) +FSA047(17A+17B+17C+----+17n)	=	0

	+FSA048(17F)+FSA048(17G)+FSA048(17H)+FSA048(17I) +FSA048(17J)-FSA048(89A)		
13	FSA048(20A) + FSA047(20A+20B+20C+-----+20n) + FSA048(20F) + FSA048(20G) + FSA048(20H) + FSA048(20I) + FSA048(20J)	>=	0
14	FSA048(21A) + FSA047(21A+21B+21C+-----+21n) + FSA048(21F) + FSA048(21G) + FSA048(21H) + FSA048(21I) + FSA048(21J)	>=	0
15	FSA048(22A) + FSA047(22A+22B+22C+-----+22n) + FSA048(22F) + FSA048(22G) + FSA048(22H) + FSA048(22I) + FSA048(22J)	>=	0
16	FSA047(24A+24B+24C+-----+24n) + FSA048(24F) + FSA048(24G) + FSA048(24H) + FSA048(24I) + FSA048(24J)	>=	0
17	FSA048(25B) + FSA047(25A+25B+25C+-----+25n) + FSA048(25F) + FSA048(25G) + FSA048(25H) + FSA048(25I) + FSA048(25J)	>=	0
18	FSA048(26B) + FSA047(26A+26B+26C+-----+26n) + FSA048(26F) + FSA048(26G) + FSA048(26H) + FSA048(26I) + FSA048(26J)	>=	0
19	FSA048(27B) + FSA047(27A+27B+27C+-----+27n) + FSA048(27F) + FSA048(27G) + FSA048(27H) + FSA048(27I) + FSA048(27J)	>=	0
20	FSA048(28B) + FSA047(28A+28B+28C+-----+28n) + FSA048(28F) + FSA048(28G) + FSA048(28H) + FSA048(28I) + FSA048(28J)	>=	0
21	FSA048(29B) + FSA047(29A+29B+29C+-----+29n) + FSA048(29F) + FSA048(29G) + FSA048(29H) + FSA048(29I) + FSA048(29J)	>=	0
22	FSA048(30B) + FSA047(30A+30B+30C+-----+30n) + FSA048(30F) + FSA048(30G) + FSA048(30H) + FSA048(30I) + FSA048(30J)	>=	0
23	FSA048(34B) + FSA047(34A+34B+34C+-----+34n) + FSA048(34F) + FSA048(34G) + FSA048(34H) + FSA048(34I) + FSA048(34J)	<=	0
24	FSA048(35B) + FSA047(35A+35B+35C+-----+35n) + FSA048(35F) + FSA048(35G) + FSA048(35H) + FSA048(35I) + FSA048(35J)	<=	0
25	FSA048(36B) + FSA047(36A+36B+36C+-----+36n) + FSA048(36F) + FSA048(36G) + FSA048(36H) + FSA048(36I) + FSA048(36J)	<=	0
26	FSA048(37B) + FSA047(37A+37B+37C+-----+37n) + FSA048(37F) + FSA048(37G) + FSA048(37H) + FSA048(37I) + FSA048(37J)	<=	0
27	FSA048(38B) + FSA047(38A+38B+38C+-----+38n) + FSA048(38F) + FSA048(38G) + FSA048(38H) + FSA048(38I) + FSA048(38J)	<=	0
28	FSA048(39B) + FSA047(39A+39B+39C+-----+39n) + FSA048(39F) + FSA048(39G) + FSA048(39H) + FSA048(39I) + FSA048(39J)	<=	0
29	FSA047(40A+40B+40C+-----+40n) + FSA048(40F) + FSA048(40G) + FSA048(40H) + FSA048(40I) + FSA048(40J)	<=	0
30	FSA047(41A+41B+41C+-----+41n) + FSA048(41F) + FSA048(41G) + FSA048(41H) + FSA048(41I) + FSA048(41J)	<=	0
31	FSA047(42A+42B+42C+-----+42n) + FSA048(42F) + FSA048(42G) + FSA048(42H) + FSA048(42I) + FSA048(42J)	<=	0

32	FSA047(43A+43B+43C+-----+43n) + FSA048(43F) + FSA048(43G) + FSA048(43H) + FSA048(43I) + FSA048(43J)	<=	0
33	FSA048(44A) + FSA047(44A+44B+44C+-----+44n) + FSA048(44F) + FSA048(44G) + FSA048(44H) + FSA048(44I) + FSA048(44J)	<=	0
34	FSA048(45A) + FSA047(45A+45B+45C+-----+45n) + FSA048(45F) + FSA048(45G) + FSA048(45H) + FSA048(45I) + FSA048(45J)	<=	0
35	FSA048(46A) + FSA047(46A+46B+46C+-----+46n) + FSA048(46F) + FSA048(46G) + FSA048(46H) + FSA048(46I) + FSA048(46J)	<=	0
36	FSA048(47A) + FSA047(47A+47B+47C+-----+47n) + FSA048(47F) + FSA048(47G) + FSA048(47H) + FSA048(47I) + FSA048(47J)	<=	0
37	FSA048(48A) + FSA047(48A+48B+48C+-----+48n) + FSA048(48F) + FSA048(48G) + FSA048(48H) + FSA048(48I) + FSA048(48J)	<=	0
38	FSA048(49A) + FSA047(49A+49B+49C+-----+49n) + FSA048(49F) + FSA048(49G) + FSA048(49H) + FSA048(49I) + FSA048(49J)	<=	0
39	FSA048(50A) + FSA047(50A+50B+50C+-----+50n) + FSA048(50F) + FSA048(50G) + FSA048(50H) + FSA048(50I) + FSA048(50J)	<=	0
40	FSA048(51A) + FSA047(51A+51B+51C+-----+51n) + FSA048(51F) + FSA048(51G) + FSA048(51H) + FSA048(51I) + FSA048(51J)	<=	0

FSA050**Liquidity Buffer Qualifying Securities**

The purpose of this *data item* is to record details of an *ILAS BIPRU firm's* unencumbered assets eligible for inclusion in its liquid assets buffer as defined in *BIPRU 12.7*. See further the *rules and guidance* in *SUP 16.12.4*.

A *firm* should complete this *data item* for each of the securities reported in column A, row 6 in Part 2 of FSA048.

Valuation

Except where outlined, a *firm* should follow the *FSA's rules and guidance* on valuation set out in *GENPRU 1.3*. A *firm* not subject to *GENPRU 1.3*, such as an *incoming EEA firm*, should follow its applicable accounting standards.

Currency

The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

Amounts should be entered in multiples of 1,000 of the relevant currency unit.

General

A *firm* reports unencumbered holdings of securities eligible for inclusion in its liquid assets buffer in column A, row 6 in Part 2 of FSA048. A *firm* should report in this *data item* a further breakdown by issuer of those securities.

Data elements

These are referred to by row first, and then by column, so *data element 2B* will be the element numbered 2 in column B.

Completion and submission to the FSA

A *firm* should complete this *data item* on a contractual basis irrespective of whether the position in question is held in the banking book or *trading book*.

A *firm* should report the clean market value of unencumbered securities held in its liquid assets buffer, according to the issuer in rows 1 to 24.

A *firm* should only report balances in row 24 to the extent that it has unencumbered securities delivered under reverse repo transactions where it cannot identify the issuer, but that all eligible issuers would qualify for inclusion in the liquid assets buffer as defined in *BIPRU 12.7*.

Validation rules

No rule as column A can be zero, positive or negative.

Cross validation rules between FSA048 and FSA050

(General note: cross validation rule should be applied only when the returns under consideration are for the same reporting date)

Validation number	Data element		
1	FSA050(1A) + FSA050(2A)+FSA050(3A)+----- +FSA050(23A)+FSA050(24A)	=	FSA048(6A)

FSA051**Funding Concentration**

The purpose of this *data item* is to record details of an *ILAS BIPRU firm's* funding concentrations. See further the *rules* and *guidance* in SUP 16.12.4.

Valuation

Except where outlined, a *firm* should follow the *FSA's rules* and *guidance* on valuation set out in *GENPRU 1.3*. A *firm* not subject to *GENPRU 1.3*, such as an *incoming EEA firm*, should follow its applicable accounting standards.

Currency

The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

General

This *data item* provides information on funding concentration risk of the *firm*.

Data elements

These are referred to by row first, and then by column, so *data element 2B* will be the element numbered 2 in column B.

Completion and submission to the FSA

A *firm* should complete this *data item* on a contractual basis irrespective of whether the position in question is held in the banking book or *trading book*.

The following fields are required for each row on this *data item*.

Column A Counterparty

A *firm* should report the identity of the ultimate parent of the entity which provides the *firm* with funding. As an example, where a *firm* raises funding from various entities that are each members of the same *group*, the *firm* should aggregate all such amounts and attribute them to the ultimate parent.

However, a *firm* should distinguish between entities in a *group* investing their own funds and funds which they invest on behalf of others, for example, as a fiduciary. If a fiduciary money manager provides funding to the *firm*, such amounts should not be aggregated outside the entity which holds the fiduciary responsibility for managing the funds. For example, if a Bank XYZ provides funding of £50m to the *firm* and its asset management subsidiary provides funding of £100m from a one or more fiduciary accounts, the *firm* should report this as two sources of funding in separate rows.

Where there is a lack of clarity about the ultimate parent to which funding should be attributed, a *firm* should complete this column of this *data item* on a “best efforts” basis.

Column B Amount

Amounts should be entered in multiples of 1,000 of the relevant currency unit.

A *firm* should report the total amount of funding received from the counterparty identified in Column A.

Column C Weighted average residual maturity

A *firm* should report figures in this column in months rounded to one decimal place.

In relation to each counterparty identified in column A, a *firm* should report the weighted average remaining maturity of funding provided by that counterparty and by any other counterparty in that counterparty’s *group* which is reported in column B. An example of this would be the following: XYZ Bank receives funding from two ABC Bank group entities. These are aggregated into one line. One ABC Bank entity provides 50% of the funding with 3 months remaining to maturity, while the other ABC Bank entity provides 50% of the funding with 6 months remaining to maturity, producing a weighted average remaining maturity of 4.5 months.

Part 1 Wholesale deposits

In this part of the *data item* the *firm* should analyse and report the counterparties responsible for the 30 largest concentrations of deposits reported in lines 45 to 50 inclusive of FSA 048.

Part 2 Repo funding

In this part of the *data item* a *firm* should analyse and report the counterparties responsible for the 30 largest concentrations of repo funding as reported in Part 5 of FSA 048.

Validation rules

Validation number	Data element		
1	Each cell in column B	\geq	0
2	Each cell in column C	\geq	0

FSA052 Pricing Data

The purpose of this *data item* is to record details relating to the average transaction volume of, and prices which the *firm* pays for, certain of its wholesale liabilities. See further the *rules* and *guidance* in SUP 16.12.4.

Valuation

Except where outlined, a *firm* should follow the FSA's *rules* and *guidance* on set out in GENPRU 1.3. A *firm* not subject to GENPRU 1.3, such as an *incoming EEA firm*, should follow its applicable accounting standards.

Currency

A *firm* should report any wholesale liabilities denominated in sterling in rows 1 to 4, in US dollars in rows 5 to 8 and in euro in rows 9 to 12. A *firm* does not need to report liabilities denominated in any other currency in this *data item*.

Spreads should be reported as a percentage, rounded to two decimal places and volumes should be reported in multiples of 1,000's.

Data elements

These are referred to by row first, and then by column, so *data element* 2B will be the element numbered 2 in column B.

Completion and submission to the FSA

A *firm* should complete this *data item* on a contractual basis based on the trade date of the liability in question, recording all relevant liabilities issued during the reporting period.

General

There are three different pieces of information required about each type of liability reportable in this *data item*:

- (1) average spread paid;
- (2) volume raised; and
- (3) maturity of the liability.

For the purpose of this *data item*, a *firm* should report the liabilities of the following types in the relevant rows for the currency

(i) Cash deposits

A *firm* should report all fixed term cash deposits reportable in lines 45 to 49 of FSA 048 in row 1 if denominated in GBP, in row 5 if denominated in USD or in row 9 if denominated in EUR.

(ii) Senior unsecured securities

A *firm* should report all senior unsecured securities issued reportable in line 40 of FSA 048 in row 2 if denominated in GBP, in row 6 if denominated in USD or in row 10 if denominated in EUR.

(iii) Covered Bonds

A *firm* should report all covered bonds encumbering the *firm's* own assets the issuance of which would be reportable in line 43 of FSA 048 in row 3 if denominated in GBP, in row 7 if denominated in USD or in row 11 if denominated in EUR.

(iv) Asset-backed securities (including ABCP)

A *firm* should report all debt issued by the *firm's* SSPEs as reported on line 51 of FSA 048. A *firm* should report such liabilities in row 4 if denominated in GBP, in row 8 if denominated in USD or in row 12 if denominated in EUR.

Weighted Average Spread and Volume Analysis:

A *firm* should report the weighted average spread paid and volume data in the following maturity bands, according to the maturity of the instrument issued:

- (1) ≥ 1 month ≤ 3 months in columns A and B;
- (2) > 3 months ≤ 6 months in columns C & D;
- (3) > 6 months ≤ 1 year in columns E & F;
- (4) > 1 year ≤ 2 years in columns G & H;
- (5) > 2 years in columns I & J.

For the purposes of this *data item*, a *firm* should ignore the time period between trade date and settlement date in calculating the maturity of a liability, e.g. a three month liability settling in two weeks time would, for the purposes of this *data item*, be considered as having a three month maturity and be reported in columns A & B.

In relation to each instrument of a type identified in this *data item* and issued by the *firm* or the *firm's* SSPEs, it should report:

- (1) the volume issued; and
- (2) the average spread paid (weighted by volume).

For the purposes of reporting the volume of liabilities issued, a *firm* should sum the net proceeds of each liability in the relevant maturity band according to the applicable currency.

For the purpose of reporting the average spread paid, a *firm* should report:

- (1) for an instrument with an original maturity of less than or equal to one year, the spread payable by the *firm* for that liability, if it were to have been swapped to the benchmark overnight index for the appropriate currency; and

- (2) for an instrument with an original maturity in excess of one year, the spread at issuance were it to be swapped to the relevant benchmark floating three month LIBOR for GBP and USD and EURIBOR for EUR..

For the purposes of calculating the average spread paid a *firm* should calculate the all-in cost in the currency of issue ignoring any FX swap, but including any premium or discount and fees payable or receivable, with the term of any theoretical or actual interest rate swap matching the term of the liability.

Validation rules

Validation number	Data element		
1	Each cell in columns B	\geq	0
2	Each cell in columns D	\geq	0
3	Each cell in columns F	\geq	0
4	Each cell in columns H	\geq	0
5	Each cell in columns J	\geq	0

FSA053 Retail, SME and Large Enterprises Type B Funding

The purpose of this *data item* is to record details relating to a *firm's* retail accounts and non-credit sensitive corporate accounts. See further the *rules* and *guidance* in SUP 16.12.4.

Valuation

Except where outlined, a *firm* should follow the *FSA's rules* and *guidance* on set out in GENPRU 1.3. A *firm* not subject to GENPRU 1.3, such as an *incoming EEA firm*, should follow its applicable accounting standards.

Currency

All figures should be entered in multiples of 1,000 of the relevant currency unit.

The reporting currency for this *data item* is whichever of the following currencies the *firm* chooses, namely USD (the United States Dollar), EUR (the euro), GBP (sterling), JPY (the Japanese Yen), CHF (the Swiss Franc), CAD (the Canadian Dollar) or SEK (the Swedish Krona).

Data elements

These are referred to by row first, and then by column, so *data element* 2B will be the element numbered 2 in column B.

Completion and submission to the FSA

A *firm* should complete this *data item* on a contractual basis based on an analysis of the *firm's* balance sheet on the reporting date in question.

General

A *firm* should report in Column A the outstanding balance at the close of business of the final business day of the month for which the *data item* is submitted, in each category of account identified in this *data item*.

Part 1 Retail deposits (type A and type B)

A *firm* should report information related to the retail accounts reported in lines 54 and 55 of FSA 048 in rows 1 to 5 of Part 1 of this *data item*.

A *firm* should report Type A balances in Column A of Part 1 and Type B balances in Column B.

1 Current and/or transactional accounts

A *firm* should report here the total balances of retail deposits held in instant access current and/or transactional accounts. Transactional accounts are those used to process transactions such as day-to-day outgoings, salary and bill payments.

2 Tax-advantaged savings accounts

A *firm* should report here the total balances of cash deposits held in ISA or other tax-advantaged accounts.

3 On demand or instant access accounts

A *firm* should report here the total balances of any remaining instant access retail accounts not reported in lines 1 & 2 of this *data item*.

4 Fixed term accounts

A *firm* should report here the total balances of all retail deposits held in fixed term deposit accounts in relation to which a depositor is unable to access their deposit prior to its contractual maturity.

5 Fixed notice accounts

A *firm* should report here the total balances of all retail deposits held in fixed notice deposit accounts in relation to which a depositor can:

- require the early repayment of an otherwise fixed term deposit by paying an early access charge; or,
- require the repayment of a deposit by giving a specified notice period.

Part 2 SME and large enterprises Type B

A *firm* should report information related to the SME and Large financial Enterprise (Type B) accounts reported in lines 52 and 53 of FSA 048 in rows 6 to 9.

6 Current and/or transactional accounts

A *firm* should report here the total of deposits held in instant access current and transactional accounts. Transactional accounts are those used to process transactions such as day-to-day outgoings, salary and invoice payments.

7 Tax-advantaged savings accounts

A *firm* should report here the total balances of deposits held in tax-advantaged accounts.

8 On demand or other instant access accounts

A *firm* should report here the total balances of any remaining instant access accounts not reported in lines 6 or 7 of this *data item*.

9 Fixed term accounts

A *firm* should report here the total balances of all deposits held in fixed term deposit accounts in relation to which a depositor is unable to access their deposit prior to its contractual maturity.

10 Fixed notice accounts

A *firm* should report here the total balances of all deposits held in fixed notice deposit accounts in relation to which a depositor can:

- require the early repayment of an otherwise fixed term deposit by paying an early access charge; or,
- require the repayment of a deposit by giving a specified notice period.

Part 3 Deposit insurance schemes such as FSCS

Part 3 of this *data item* relates to an analysis of a *firm's* retail deposits, as reported on lines 54 and 55 of FSA 048, insured by *FSCS* or other similar deposit insurance schemes.

In relation to each depositor who would in principle be eligible to claim compensation from the *FSCS* or another similar deposit insurance scheme in respect of his deposits with a *firm*, that *firm* should report the protected balances of accounts covered by the scheme in question. A *firm* should follow the current rules of any relevant scheme in reporting the protected balances.

11 Deposits covered by deposit insurance schemes such as FSCS

A *firm* should report here the total protected balances held in deposit accounts that would in principle be covered by the *FSCS* or other similar deposit insurance scheme, up to the maximum amount that depositor may be eligible to claim under the relevant scheme.

12 Deposits not covered by deposit insurance schemes such as FSCS

A *firm* should report here the excess of deposit account balances over the total protected balances held in those accounts that would in principle be covered by the *FSCS* or other similar deposit insurance scheme.

Validation rules

Validation number	Data element		
1	1A	\geq	0
2	1B	\geq	0
3	2A	\geq	0

4	2B	\geq	0
5	3A	\geq	0
6	3B	\geq	0
7	4A	\geq	0
8	4B	\geq	0
9	5A	\geq	0
10	5B	\geq	0
11	6B	\geq	0
12	7B	\geq	0
13	8B	\geq	0
14	9B	\geq	0
15	10B	\geq	0
16	11A	\geq	0
17	12A	\geq	0

Cross validation rules between FSA048 and FSA053

(General note: cross validation rule should be applied only when the returns under consideration are for the same reporting date)

Validation number	Data element		
1	$ABS\{FSA053(1A+2A+3A+4A+5A)\}$	=	$ABS\{FSA048(54A+54C+54D+54E+54F+54G+54H+54I+54J)\}$
2	$ABS\{FSA053(1B+2B+3B+4B+5B)\}$	=	$ABS\{FSA048(55A+55C+55D+55E+55F+55G+55H+55I+55J)\}$
3	$ABS\{FSA053(6B+7B+8B+9B+10B)\}$	=	$ABS\{FSA048(52A+52C+52D+52E+52F+52G+52H+52I+52J) + FSA048(53A+53C+53D+53E+53F+53G+53H+53I+53J)\}$

FSA054**Currency Analysis**

The purpose of this *data item* is to record details of a *firm's* currency mismatches. See further the *rules* and *guidance* in SUP 16.12.4.

Valuation

Except where outlined, a *firm* should follow the *FSA's rules* and *guidance* on valuation set out in *GENPRU 1.3*. A *firm* not subject to *GENPRU 1.3*, such as an *incoming EEA firm*, should follow its applicable accounting standards.

Currency

Not relevant.

Data elements

These are referred to by row first, and then by column, so *data element 2B* will be the element numbered 2 in column B.

Completion and submission to the FSA

A *firm* should complete this *data item* on a contractual basis based on an analysis of the *firm's* balance sheet as reportable for FSA 048, on the reporting date in question.

General

This report has two aspects. It asks a *firm* to report:

- (1) the currencies in which that *firm's* assets and liabilities and shareholders' equity are denominated; and
- (2) the percentage of that *firm's* total assets and liabilities and shareholders' equity which are denominated in those currencies.

A *firm* should exclude from its balance sheet derivative financial instruments as defined under IFRS.

In considering whether a *firm's* assets, liabilities or shareholders' equity are denominated in a specific currency, a *firm* should ignore the effect of any *derivatives*, e.g. if a *firm* issues a liability in GBP and enters into a *derivative* to swap the cash flows of that liability to another currency, for the purposes of this *data item*, it would be denominated in GBP.

For each row from 1 to 13, a *firm* should report column A and B. For example, for row 1, cell 1A should contain GBP (sterling) assets, excluding derivative financial instruments, expressed as a percentage (rounded to two decimal places) of the total assets, excluding derivative financial instruments, of the *firm*.

Validation rules

Validation number	Data element		
1	Each cell in column A	\geq	0
2	Each cell in column B	\geq	0
3	Each cell in column A	\leq	100%
4	Each cell in column B	\leq	100%
5	$1A+2A+3A+\dots+12A+13A$	=	100%
6	$1B+2B+3B+\dots+12B+13B$	=	100%

FSA055**Systems and Controls Questionnaire**

The purpose of this *data item* is to enable the *FSA* to monitor a *non-ILAS BIPRU firm's* compliance with the requirements set out in *BIPRU 12.3* (Liquidity risk management) and *BIPRU 12.4* (Stress testing and contingency funding).

In relation to the questions in FSA055, a *firm* should, as appropriate, answer “yes” or “no”, or choose a response from the drop-down menu.

Should a *firm* answer “no” to the first question in FSA055, it need not complete the rest of the *data item*.

Validation rules

All cells are controlled by drop-down menu. The menu option for each row is as under:

Validation number	Data element	Menu options
1	1A	Yes / No
2	2A	Yes / No
3	3A	Yes / No
4	4A	Yes / No
5	5A	Yes / No
6	6A	Yes / No
7	7A	Yes / No
8	8A	<= 52
9	9A	Yes / No
10	10A	Monthly/Quarterly/Semi-annually/Annually/less than once a year
11	11A	<=52
12	12A	Yes / No
13	13A	Monthly/Quarterly/Semi-annually/Annually/less than once a year
14	14A	Yes / No
15	15A	Yes / No

16	16A	Yes / No
17	17A	Yes / No
18	18A	Yes / No
19	19A	Yes / No
20	20A	Yes / No

After SUP 16 Annex 25G, insert the following new Annex. The text is not underlined.

SUP 16 Guidance on designated liquidity groups in SUP 16.12
 Annex
 26G

Purpose of this guidance

1. G The purpose of this Annex is to explain the different types of *defined liquidity group* dealt with in *SUP 16.12* (Integrated Regulatory Reporting) and what a group liquidity reporting firm is.
2. G *Defined liquidity groups* are relevant to liquidity reporting by *ILAS BIPRU firms*. Liquidity reporting under *SUP 16.12* relates to a *firm* on a solo or *branch* basis and in addition by reference to a *firm's designated liquidity group*.

The two main types of designated liquidity groups

3. G *Defined liquidity groups* are divided into two types:
 - (1) a *DLG by default*; and
 - (2) a *DLG by modification* (this type is subdivided into other types as explained in this Annex).

DLG by default

4. G Broadly speaking, a *firm's DLG by default* is made up of the members of the *firm's group* on which it relies for liquidity or that rely on the *firm*. It also includes certain funding vehicles. It covers each entity:
 - (1) that provides or is committed to provide material support to the *firm* against *liquidity risk*; or
 - (2) to which the *firm* provides or is committed to provide material support against *liquidity risk*; or
 - (3) that has reasonable grounds to believe that the *firm* would supply such support, and vice versa.
5. G Paragraph (b) of the definition of *DLG by default* deals with a case in which there are several *UK ILAS BIPRU firms* in the same *group*. The effect is this. Say that there are two *UK ILAS BIPRU firms*, A and B in the group. Say that A relies on, or is relied on by, companies M, N, O and P. B relies on, or is relied on by, companies P, Q, R and S. The result is that A and B have the same *DLG by default*, which is made up of companies A, B, M, N, O, P, Q, R and S.

- 6. G There is an exclusion relating to *participations*. Say that 70% of B is owned by unconnected third party shareholders and that A and B rely on each other. A will report on the basis of a group made up of A, B, M, N, O and P. B will report on the basis of a group made up of A, B, P, Q, R and S.
- 7. G The full definition is set out in the *Glossary*.
- 8. G The definition applies automatically. It does not depend, for example, on the *firm* getting a *waiver* under *BIPRU 12* (Liquidity). However, in practice it is likely that the *firm* and the *FSA* will agree who is in the *firm's DLG by default*.
- 9. G A *DLG by default* is only relevant to a *UK lead regulated firm*.
- 10. G A *firm* may have a *DLG by default* and a *DLG by modification* at the same time.

Types of DLG by modification

- 11. G A *DLG by modification* only applies to a *firm* with an *intra-group liquidity modification*. *BIPRU 12.8* has more about *intra-group liquidity modifications*.
- 12. G Every *firm* subject to *BIPRU 12* (Liquidity) is subject to the *overall liquidity adequacy rule*. The effect of that *rule* is that every *firm* is required to be self-sufficient in terms of liquidity adequacy and to be able to satisfy that *rule* relying on its own liquidity resources.
- 13. G The *FSA* recognises that a *firm* may be part of a wider *group* which manages its liquidity on a *group-wide* basis. This is recognised by an *intra-group liquidity modification*. A *DLG by modification* arises out of the *intra-group liquidity modification*.
- 14. G There are two types of *DLG by modification*:
 - (1) a *DLG by modification (firm level)*; and
 - (2) a *non-UK DLG by modification (DLG level)*.

Types of DLG by modification (firm level)

- 15. G If the *firm* obtains an *intra-group liquidity modification* it will permit the *firm* to rely on liquidity support from elsewhere in its *group* for the purposes of the *overall liquidity adequacy rule*. A *DLG by modification (firm level)* is made up of the *group* members on which the *firm* can rely for these purposes, together with the *firm* itself. It is called ‘*firm level*’ because it relates to the way that the *overall liquidity adequacy rule* is applied to the *firm*.
- 16. G There are two types of *DLG by modification (firm level)*:

- (1) a *UK DLG by modification*; and
 - (2) a *non-UK DLG by modification (firm level)*.
17. G It is not possible for a *firm* to have both types.
18. G A *UK DLG by modification* is made up solely of *UK ILAS BIPRU firms*. That means that the *intra-group liquidity modification* will permit the *firm* to rely on liquidity support from other specified *UK ILAS BIPRU firms* elsewhere in its *group*, but no one else.
19. G A *non-UK DLG by modification (firm level)* is defined to mean any kind of *DLG by modification (firm level)* except for a *UK DLG by modification*. In practice though an *intra-group liquidity modification* setting up a *non-UK DLG by modification (firm level)* will be expected to allow the *firm* to rely on support from a *parent undertaking* which is constituted under the law of a country or territory outside the *United Kingdom* or on *subsidiary undertakings* of that parent which are themselves constituted under the law of a country or territory outside the *United Kingdom*. These parents and their subsidiaries (together with the *firm* itself) will make up the *non-UK DLG by modification (firm level)*. It is not envisaged that a *non-UK DLG by modification (firm level)* will include *UK members* (other than the *firm* itself). That is why this type of *defined liquidity group* is called a *non-UK DLG by modification (firm level)*.

Non-UK DLG by modification (DLG level)

20. G It is envisaged that if a *firm* has a *UK DLG by modification*, the *intra-group liquidity modification* will apply the *overall liquidity adequacy rule* to the *UK DLG by modification* as a whole. The starting position is that the *UK DLG by modification* should be self-sufficient for liquidity purposes.
21. G However, the *intra-group liquidity modification* may permit the *UK DLG by modification* to rely on liquidity support from elsewhere in the *group*. In this case this other part of the group, together with the *UK DLG by modification*, forms the *non-UK DLG by modification (DLG level)*. It is called ‘*DLG level*’ because it relates to the way that the *overall liquidity adequacy rule* is applied to the *firm’s DLG*.
22. G It is not envisaged that a *firm* with a *non-UK DLG by modification (firm level)* will have a *non-UK DLG by modification (DLG level)*.
23. G It is envisaged that the only *group members* on which the *non-UK DLG by modification (firm level)* will be able to rely for these purposes will be foreign parents and others described in paragraph 19 of SUP 16 Annex 26. That is why it is called a *non-UK DLG by modification (DLG level)*.

Combinations of DLG

24. G That means that the types of *DLG by modification* a *firm* may have are these:

- (1) a *UK DLG by modification* and nothing else; or
- (2) a *non-UK DLG by modification (firm level)* and nothing else; or
- (3) a *UK DLG by modification* and *non-UK DLG by modification (DLG level)*.

Group liquidity reporting firm

25. G The defined term *group liquidity reporting firm* is also used in connection with reporting at the level of a *defined liquidity group*. Its purpose is to identify the *firms* on which the reporting obligation falls.
26. G The general principle is that reporting is done by *UK ILAS BIPRU firms*. In the case of a *DLG by modification*, the reporting will be done by *UK ILAS BIPRU firms* that have been granted the *intra-group liquidity modification*.
27. G However there may be other types members of the *defined liquidity group*. For example, say that *UK ILAS BIPRU firm A* has a *defined liquidity group* made up of companies B, C, D and E. Say that B is an *authorised person* but is not a *UK ILAS BIPRU firm*, that C is a *UK company* that is not *authorised* and that D and E are foreign and not *authorised*. A, B, C, D and E are all members of the *defined liquidity group*. However B, C, D and E do not have to report on the *defined liquidity group* under *SUP 16.12*. That obligation falls on A. A is the *group liquidity reporting firm*.

Part 3: Comes into force on 1 October 2010

In Part 3 of this Annex underlining indicates new text and striking through indicates deleted text.

Data item FSA011 in SUP 16 Annex 24R (Building society liquidity) is amended as follows.

FSA011 Building society liquidity

	Liquid assets realisable in up to 8 days
1	Gilts with residual maturities of <1 year
2	Gilts with residual maturities 1-5 years
3	Gilts with residual maturities over 5 years
4	Total gilts
17	Qualifying Money Market Funds
5	Other
6	Liquid assets realisable from 8 days to 3 months
7	Liquid assets realisable in 3 months and over
8	Total liquid assets

9 SDL at reporting date

Amounts of prudential 8 day liquidity at any time during the month (end of day balance)

10	Minimum total prudential liquidity during quarter
11	Maximum total prudential liquidity during quarter
12	Building society holdings - at reporting date

Specialist data

- 13 Business assets not FSRP as % of business assets
- 14 Deposits and loans as % of SDL
- 15 Amount of offshore deposits
- 16 Large shareholdings as % of SDL

Amount

A Amount	B As % of SDL on that day	C Date

1

1

The guidance notes for data item FSA011 in SUP 16 Annex 25G (Building society liquidity) are amended as follows.

FSA011 – Building society liquidity

This data item is used to monitor the liquidity position of *building societies* under *IPRU(BSOC)*.

Valuation

For the general policy on valuation, please see the rules and guidance set out in *GENPRU* 1.3.

Currency

You should report in the currency of your annual audited accounts ie in either Sterling, Euro, US dollars, Canadian dollars, Swedish Kronor~~Kroner~~, Swiss Francs or Yen. Figures should be reported in 000s.

Data elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

Definitions

Column A Values here should be reported on the same basis as they are reported in the balance sheet (FSA001), except they should include accrued interest for each item. It may include items which are not eligible for inclusion within the prudential liquidity calculation.

Column B ~~These amounts do not qualify as prudential liquidity. See *IPRU(BSOC)* Annex 5 for a list of assets that are ineligible.~~

Column C ~~These may be the same value as in Column A.~~

Column D ~~This is the result of applying the discount factors set out in *IPRU(BSOC)* 5.4.4G.~~

Column E ~~The amount of prudential liquidity.~~

1–5 Liquid assets realisable in up to 8 days

4 Total gilts

~~Include all gilt edged securities, according to their residual maturity. This is the sum of rows 1 to 3.~~

17 Qualifying Money Market Funds

~~See Annex 5A in IPRU(BSOC) Chapter 5, and paragraph 5.4.3 in the same chapter.~~

5 Other

~~Includes cash; current account balances; Treasury, local authority and eligible bank bills; deposits with local authorities, banks and building societies with not more than 8 days notice or within 8 days of maturity; Certificates of Deposit (CDs) issued by credit institutions with 3 months or less to maturity; and commercial paper with a residual maturity up to 1 month.~~

6 Liquid assets realisable from 9 days to 3 months

~~This is the portion of those assets defined in IPRU(BSOC) Annex 5A that are realisable from 9 days up to 3 months.~~

7 Liquid assets realisable in 3 months and over

~~This is the portion of those assets defined in IPRU(BSOC) Annex 5A that are realisable in 3 months and over.~~

8A Book value of total liquid assets

~~The sum of all liquid assets (data elements 4A to 7A). See IPRU(BSOC) Annex 5 for a list of those items that can be regarded as liquid assets.~~

8B Ineligible liquid assets

~~The sum of those amounts that are ineligible for inclusion as prudential liquidity (data elements 4B to 7B). See IPRU(BSOC) Annex 5 for a list of those items that can be regarded as eligible.~~

8E Total amount of prudential liquidity

~~This is the sum of data elements 4E to 7E.~~

9A SDL at reporting date

~~This is calculated as the sum of share liabilities including interest accrued, plus deposits and debt securities including interest accrued. See IPRU(BSOC) 5.3.2G for a definition of SDL.~~

10A-10C Minimum total prudential liability in the quarter

~~This is the minimum amount of total prudential liquidity held, based on end day positions, during the quarter. SDL on the relevant day should be the based on the estimated SDL on the relevant day. Dates should be reported in the format 'ddmmyy'.~~

11A-11C Maximum total prudential liability in the quarter

This is the maximum amount of total prudential liquidity held, based on end day positions, during the quarter. SDL on the relevant day should be based on the estimated SDL on the relevant day. Dates should be reported in the format 'ddmmyy'.

12A Building society holdings at reporting date

This is the total of liquid asset holdings with all other societies in total, and includes any undrawn committed facilities provided to societies. It covers securities and money market instruments issued by and deposits placed with any other building society.

Specialist data

This is the value of funding accounted for by those elements which are restricted (ie funding excluding shares held by individuals).

The purpose of 13A and 14A is to report the actual value of the QE of the statutorily defined percentages relating to the funding and lending nature limits.

13A Business assets not FSRP as % of business assets

This is the value of business assets that are not fully secured on residential property (FSRP) as a % of total business assets. It is monitored under Section 6 of the Building Societies Act 1986.

14A Deposits and loans as % of SDL

These are monitored under Section 7 of the Building Societies Act 1986.

15A Amount of offshore deposits

This is the amount of deposits taken by societies' undertakings doing deposit taking offshore (eg in the Channel Islands or Isle of Man), or other undertakings established in other countries primarily to take deposits.

16A Large shareholdings as % of SDL

This item relates to the aggregate balances on both share and deposit holdings (where a single holding in respect of an individual is the totality of accounts held by that individual), excluding accrued interest, which are each in excess of 0.25% of total SDL.

FSA011—Building society liquidity validations**Internal validations**

Data elements are referenced by row then column.

Validation number	Data element		
1	4A	=	1A + 2A + 3A
2	4C	=	1C + 2C + 3C
3	4D	=	1D + 2D + 3D
4	4E	=	4D
5	5E	=	5A - 5B
6	6E	=	6A - 6B
7	7E	=	7A - 7B
8			[deleted—replaced by validation 14]
9	8B	=	5B + 6B + 7B
10			[deleted—replaced by validation 15]
11			[deleted]
12	11A	>	10A
13	17E	=	17A
14	8A	=	4A + 17A + 5A + 6A + 7A
15	8E	=	4E + 17E + 5E + 6E + 7E

PAYMENT SERVICES (GIBRALTAR-BASED FIRMS) INSTRUMENT 2009

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes this instrument in the exercise of paragraph 14 (The scheme operator's rules) of Schedule 17 (The Ombudsman Scheme) to the Financial Services and Markets Act 2000 ("the Act").
- B. Paragraph 3(2) of Schedule 7 to the Payment Services Regulations 2009 (SI No 2009/209) ("the Regulations") as amended by the Payment Services (Amendment) Regulations 2009 (SI No 2009/2475) is relevant to the exercise of the power set out in paragraph A above because it provides that subsections (4), (5) and (6) of that power do not apply to the rules made by the Financial Ombudsman Service Limited set out in this instrument.
- C. The making of this instrument by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

- D. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
 - (1) the following provisions of the Act:
 - (a) section 226 (Compulsory Jurisdiction) as applied by regulation 125 (Transitional provisions: the ombudsman scheme) of the Regulations;
 - (b) paragraph 17 (Fees) of Schedule 1 as modified by regulation 92(1) (Costs of supervision) of the Regulations; and
 - (c) paragraph 13(4) (Authority's procedural rules) of Schedule 17 (The Ombudsman Scheme); and
 - (2) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- E. Paragraph 3(1) of Schedule 7 to the Regulations is relevant to the exercise of the powers set out in paragraphs D(1) and (2) above because it provides that section 155 (Consultation) of the Act does not apply to the rules made by the Financial Services Authority set out in this instrument.
- F. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- G. This instrument comes into force on 6 December 2009.

Amendments to the Handbook

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

Citation

- I. This instrument may be cited as the Payment Services (Gibraltar-based Firms) Instrument 2009.

By order of the Board of the Financial Ombudsman Service Limited
28 October 2009

By order of the Board
5 November 2009

Annex

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

EEA authorised payment institution

- (a) (in accordance with regulation 2(1) of the *Payment Services Regulations*) a person authorised in an *EEA State* other than the *United Kingdom* to provide *payment services* in accordance with the *Payment Services Directive*; and
- (b) (in accordance with paragraph 1 of Schedule 7 to the *Payment Services Regulations*) a firm which has its head office in Gibraltar, is authorised in Gibraltar to provide *payment services*, and has an entitlement corresponding to its passport right deriving from the *Payment Services Directive*, to establish a branch or provide services in the *United Kingdom*.

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND
INVESTMENT FIRMS (CAPITAL FLOORS) INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 January 2010.

Amendments to the Handbook

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Capital Floors) Instrument 2009.

By order of the Board
5 November 2009

Annex

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

TP 2 Capital floors for a firm using the IRB or AMA approaches

...

Purpose

- 2.3 G This section in part implements Articles 152(1) - (7) of the *Banking Consolidation Directive* and Article 43 of the *Capital Adequacy Directive*.

...

Capital floors: solo

- 2.8 R A *firm* calculating *risk weighted exposure amounts* in accordance with the *IRB approach* must during the ~~first, second and third~~ following twelve-month periods after 31 December 2006 provide capital resources that equal or exceed the following amounts:
- (1) for the first twelve-month period, 95%;
 - (2) for the second twelve-month period, 90%; and
 - (3) for the third and each subsequent twelve-month period, 80%;

of the solo capital resources requirement that applies to the *firm* under whichever part of *IPRU* applies under *BIPRU* TP 1.4R.

- 2.9 R A *firm* using the *advanced measurement approach* must, during each of the ~~second, and third~~ and subsequent twelve-month periods after 31 December 2006, provide capital resources which are at all times more than or equal to the amounts indicated in *BIPRU* TP 2.8R(2) and *BIPRU* TP 2.8R(3).

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND
INVESTMENT FIRMS (LARGE EXPOSURES TRANSITIONAL PROVISIONS)
(AMENDMENT) INSTRUMENT 2009**

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 January 2010.

Amendments to the Handbook

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Large Exposures Transitional Provisions) (Amendment) Instrument 2009.

By order of the Board
5 November 2009

Annex

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

TP 17 Large exposures: Exemptions for intra-group exposures for banks and investment firms

...

Duration of transitional

- 17.4 R (1) This Subject to (2), this section applies until 31 December 2009.
- (2) This section applies to the following until 31 December 2010:
- (a) a BIPRU limited activity firm; and
- (b) a BIPRU limited licence firm.

...

TP 19 Large exposures: Exemptions for intra-group exposures on a consolidated basis

...

Duration of transitional

- 19.3 R (1) This Subject to (2), this section applies until 31 December 2009.
- (2) This section applies to the following until 31 December 2010:
- (a) a BIPRU limited activity firm; and
- (b) a BIPRU limited licence firm.

**PRUDENTIAL REQUIREMENTS FOR INSURERS
(AMENDMENT NO 4) INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
 - (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 150(2) (Actions for damages);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance); and
 - (e) section 340 (Appointment); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

Commencement

- C. (1) Subject to (2), this instrument comes into force on 31 December 2009.
- (2) The amendments to Part 2 of Annex C (IPRU(FSOC)) come into force on 31 December 2010.
- D. The amendments to IPRU(FSOC) and IPRU(INS) which relate to FSA returns apply to all FSA returns for financial years ending on or after 31 December 2009.

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)
General Prudential sourcebook (GENPRU)	Annex A
Prudential sourcebook for Insurers (INSPRU)	Annex B
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex C
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex D

Citation

- F. This instrument may be cited as the Prudential Requirements for Insurers (Amendment No 4) Instrument 2009.

By order of the Board
5 November 2009

Annex A

Amendments to the General Prudential sourcebook (GENPRU)

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

Table: Base capital resources requirement for an insurer

2.1.30 R This table belongs to *GENPRU 2.1.29R*

<i>Firm category</i>		Amount: Currency equivalent of
General insurance business		
<i>Liability insurer</i> (classes 10-15)	<i>Directive mutual</i>	€ 2.4 <ins>2.625</ins> million
	<i>Non-directive insurer</i>	€ 300 <ins>350</ins> ,000
	<i>Other (including mixed insurer but excluding pure reinsurer and captive reinsurer)</i>	€ 3.2 <ins>3.5</ins> million
<i>Other insurer</i>	<i>Directive mutual</i>	€ 1.65 <ins>1.725</ins> million
	<i>Non-directive insurer (classes 1 to 8, 16 or 18)</i>	€ 225 <ins>260</ins> ,000
	<i>Non-directive insurer (classes 9 or 17)</i>	€ 150 <ins>175</ins> ,000
	<i>Mixed insurer</i>	€ 3.2 <ins>3.5</ins> million
	<i>Other (excluding pure reinsurer and captive reinsurer)</i>	€ 2.2 <ins>2.3</ins> million
<i>Long-term insurance business</i>		
<i>Mutual</i>	<i>Directive</i>	€ 2.4 <ins>2.625</ins> million
	<i>Non-directive mutual</i>	€ 600 <ins>700</ins> ,000
<i>Any other insurer (including mixed insurer but excluding pure reinsurer and captive reinsurer)</i>		€ 3.2 <ins>3.5</ins> million
<i>All business (general insurance business and long-term insurance business)</i>		
<i>Pure reinsurer excluding captive reinsurer</i>		€ 3.2 <ins>3.5</ins> million

<i>Captive reinsurer</i>	€ <u>1.1</u> million
--------------------------	----------------------

Annex B**Amendments to the Prudential sourcebook for Insurers (INSPRU)**

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

1.1.45 R The *premiums amount* is:

- (1) 18% of the *gross adjusted premiums amount*; less 2% of the amount, if any, by which the *gross adjusted premiums amount* exceeds €53.4 57.5 million; ...
- ...
- ...

1.1.47 R The *claims amount* is:

- (1) 26% of the *gross adjusted claims amount*; less 3% of the amount, if any, by which the *gross adjusted claims amount* exceeds €37.2 40.3 million; ...
- ...
- ...

2.1.22 R ...

- (3) The limits referred to in (1) and (2) are the following, expressed as a percentage of the *firm's business amount*:

- (a) for a *counterparty* exposure to an individual, unincorporated body of individuals or the aggregate exposure arising from the *counterparty* exposures to each member of a group of closely related individuals or unincorporated bodies of individuals:
 - (i) $\frac{1}{4}\%$ for that part of the exposure that arises from *unsecured debt* unsecured debt;
- ...
- ...

- (c) for a *counterparty* exposure to a *person*, or the aggregate exposure arising from the *counterparty* exposures to each member of a group of closely related *persons*, who do not fall into the categories of *counterparty* to whom (a) and (b)

apply:

- (i) 1% for that part of the exposure arising from *unsecured debt* *unsecured debt*; this limit is increased to 2.5% in the case of an exposure to a *regulated institution*;

...

- ...
- (7) In (3)(a)(i) and (3)(c)(i) an unsecured debt is any debt in respect of which the conditions in *INSPRU 2.1.35R* or *INSPRU 2.1.36R* and *INSPRU 2.1.37R* are not satisfied or, if satisfied only in relation to part of the debt, that part of the debt which is not covered by collateral or a guarantee, letter of credit or credit derivative in accordance with those rules.

...

3.1.45 R Except as provided in *INSPRU 3.1.46R*:

- (1) the risk-adjusted yield assumed for the investment or reinvestment of sterling sums (other than sums expected to be received within the next three years) must not exceed the lowest of:

(a) the higher of:

(i) the long-term gilt yield; and

(ii) the greater of:

(A) the forward gilts yield; and

(B) the forward rate on sterling interest rate swaps, reduced to exclude that part of the rate that represents compensation for credit risk;

where the forward yields and forward rates corresponding to the time when the sums are expected to be received are weighted so as to reflect the investment and reinvestment characteristics of the liabilities covered;

- (b) 3% per annum, increased by two thirds of the excess, if any, of the long-term gilt yield percentage in (a) over 3% per annum; and

(c) 6.5% per annum; and

- (2) ...

- 3.1.46 R For the ~~with-profits insurance contracts~~ *with-profits insurance contracts* of a *realistic basis life firm*, the risk-adjusted yield assumed for the investment or reinvestment of sums denominated in sterling must be no more than ~~rates derived from the forward gilts yield the greater of:~~
- (1) the forward gilts yield; and
 - (2) the forward rate on sterling interest rate swaps, reduced to exclude that part of the rate that represents compensation for credit risk;
where the forward yields and forward rates corresponding to the times when the sums are expected to be received are weighted so as to reflect the investment and reinvestment characteristics of the liabilities covered.
- 3.1.47 R The risk-adjusted yield assumed for the investment or reinvestment of ~~non-sterling~~ sums denominated in a currency other than sterling must be at least as prudent as in *INSPRU 3.1.45R* and *INSPRU 3.1.46R* taking into account the yields on government securities denominated in that currency.
- 3.1.47A R For the purpose of *INSPRU 3.1.47R* the yields on the government securities must be reduced to exclude that part of the yield that represents compensation for credit risk unless the following conditions are satisfied in relation to the issuer of those securities:
- (1) a credit rating is available from at least one of the rating agencies listed in *INSPRU 1.3.93R*; and
 - (2) the credit rating description in the first column of Table *INSPRU 1.3.90R* corresponding to the lowest such credit rating is either “exceptional or extremely strong” or “very strong”.

Annex C

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

Part 1: **Comes into force on 31 December 2009**

Appendix 2

GENERAL INSURANCE BUSINESS SOLVENCY MARGIN

Part I: the Premiums Basis

...

4. ~~Subject to rule 4.6(3), if~~ If the amount arrived at under 3 is more than ~~50~~ 57.5 million Euro, it must be divided into two portions, the former consisting of ~~50~~ 57.5 million Euro and the latter comprising the excess.

...

Part II: the Claims Basis

...

18. ~~Subject to rule 4.6(3), if~~ If the amount arrived at under 17 is more than ~~35~~ 40.3 million Euro, it must be divided into two portions, the former consisting of ~~35~~ 40.3 million Euro and the latter comprising the excess.

...

Appendix 10

Prudential Reporting Forms

FSC 3 – FORM 11 (Sheet 1)

Returns under the Friendly Societies Prudential Rules

General insurance business: Calculation of required margin of solvency – first method

Name of Society

Period ended 31 December

	Reg No	Units £/£000

Name of Fund/Summary

1 Last 12 months of
this period

2 Last 12 months of
previous period

Gross premiums receivable

11

Premium taxes and levies (included in line 11)

12

Sub-total A (11 – 12)

15

Division of
Sub-total A

Other than health
insurance

Up to and including sterling
equivalent of 50 57.5M Euro x
18/100

17

Excess (if any) over 50 57.5M
Euro x 16/100

18

Health insurance

Up to and including sterling
equivalent of 50 57.5M Euro x
6/100

19

Excess (if any) over 50 57.5M
Euro x 16/300

20

Sub-total B (17 + 18 + 19 + 20)

21

Gross premiums earned

22

Premium taxes and levies (included in line 22)

23

Sub-total H (22 – 23)

26

Division of
Sub-total H

Other than health
insurance

Up to and including sterling
equivalent of 50 57.5M Euro x
18/100

28

Excess (if any) over 50 57.5M
Euro x 16/100

29

Health insurance

Up to and including sterling
equivalent of 50 57.5M Euro x
6/100

30

Excess (if any) over 50 57.5M
Euro x 16/300

31

Sub-total I (28 + 29 + 30 + 31)

32

...

FSC 3 – FORM 12**Returns under the Friendly Societies Prudential Rules**

General insurance business: Calculation of required margin of solvency – second method, and statement of required minimum margin

Name of Society

Period ended 31 December

	Reg No	Units £/£000

Name of Fund/Summary

		1 Last 12 months of this period	2 Last 12 months of the previous period
Reference period (means the three last preceding financial years) (Note 1)	11		
Claims paid in reference period	21		
Claims outstanding carried forward at the end of the period	23		
Claims outstanding brought forward at the beginning of the period	25		
Sub-total E (21 + 23 – 25)	29		
Sub-total F: Conversion of Sub-total E to annual figure (multiply by 12 and divide by the number of months in the reference period)	31		
Division of Sub-total F	Other than health insurance	Up to and including sterling equivalent of 35 <u>40.3</u> M Euro x 26/100 (note 3)	32
		Excess (if any) over 35 <u>40.3</u> M Euro x 23/100 (note 3)	33
	Health insurance	Up to and including sterling equivalent of 35 <u>40.3</u> M Euro x 26/300 (note 3)	34
		Excess (if any) over 35 <u>40.3</u> M Euro x 23/300 (note 3)	35
Sub-total G (32 to 35)	39		
Second result Sub-total G x Sub-total D Sub-total C	(or, if 0.5 is greater, x 0.5)	41	
Higher of first result and brought forward amount (Note 2)	42		
Required margin of solvency (the higher of lines 41 and 42)	43		
Minimum guarantee fund	44		
Required minimum margin (the higher of lines 43 and 44)	49		

NOTES

1. If the society has not been in existence long enough to acquire a reference period, this must be stated and lines 11 to 41 ignored.
2. The entry at line 42 must be equal to the entry at line 52 on Form 11.
3. Entries in column 2, lines 32-35 must be the corresponding entries in column 1 of the Form for the previous year, even if the amount of Euro in the description of the line has changed.

Part 2: Comes into force on 31 December 2010**Minimum guarantee fund: long-term insurance business**

- 4.5 (1) [deleted]
- (2) For a *non-directive incorporated friendly society*, in the *financial year* during which the *friendly society* first obtains permission under the *Act* to carry on *long-term insurance business*, the *minimum guarantee fund* is the amount in column 2 of the table, which corresponds to the *friendly society's annual contribution income* in respect of that business in the last preceding *financial year*, as shown in column 1 of the table.

Contribution Income (in Euro)	<i>Minimum guarantee fund</i> (in Euro)
1,000,000 or less	100 <u>115</u> ,000
1,000,001 – 1,500,000	200 <u>230</u> ,000
1,500,001 – 2,000,000	300 <u>350</u> ,000
2,000,001 – 2,500,000	400 <u>460</u> ,000
2,500,001 – 3,000,000	500 <u>580</u> ,000
3,000,001 or more	600 <u>700</u> ,000

But where the *friendly society* had no *annual contribution income* in respect of *long-term insurance business* in the last preceding *financial year* or has not been in existence long enough to have a preceding *financial year*, the *minimum guarantee fund* is ~~100~~ 115,000 Euro.

- (3) ...
- (4) Where a *non-directive incorporated friendly society* obtains permission under the *Act* (or has obtained permission under the *Act* or authorisation under its predecessor legislation) to carry on *long-term insurance business*–
- (a) of a *class* additional to that in respect of which it already has permission; or
 - (b) in a part of the United Kingdom additional to that in respect of which it already has permission,

a *minimum guarantee fund* of ~~600~~ 700,000 Euro must be maintained by that *friendly society* for the whole of its *long-term insurance business* (that is to say, not only for the additional business carried on but also for the business previously carried on).

Minimum guarantee fund: general insurance business

- 4.6 (1) [deleted]
- (2) For *non-directive incorporated friendly societies*, the *minimum guarantee fund* for *general insurance business* is ~~225~~ 260,000 Euro.

...

Annex D

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

Chapter 9

FINANCIAL REPORTING

...

PART V

GROUP CAPITAL ADEQUACY

...

- 9.42D (1) An *insurer* must provide the following information from the report prepared in accordance with *SUP 16.7.83R* 16.12.33R in respect of the *financial year in question* of the *financial conglomerate* identified at Stage C of the decision tree in rule 9.42C:

...

...

APPENDIX 9.1 (rules 9.12 and 9.13)

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

...

continued

Calculation of general insurance capital requirement– premiums amount and brought forward amount

Form 11

Name of insurer

Global business / UK branch business / EEA branch business

Financial year ended

General/long-term insurance business

Company registration number	GL/UK/CM	day	month	year	units
R11					£000
This financial year					Previous year
1					2

Gross premiums written

11	
12	
13	
14	
15	
16	
21	
22	
23	
24	
25	
26	
30	
31	
32	
33	
34	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	

Premium taxes and levies (included in line 11)

Premiums written net of taxes and levies (11-12)

Premiums for classes 11, 12 or 13 (included in line 13)

Premiums for "actuarial health insurance" (included in line 13)

Sub-total A (13 + ½ 14 - ⅔ 15)

Gross premiums earned

Premium taxes and levies (included in line 21)

Premiums earned net of taxes and levies (21-22)

Premiums for classes 11, 12 or 13 (included in line 23)

Premiums for "actuarial health insurance" (included in line 23)

Sub-total H (23 + ½ 24 - ⅔ 25)

Sub-total I (higher of sub-total A and sub-total H)

Adjusted sub-total I if financial year is not a 12 month period to produce an annual figure

Division of gross adjusted premiums amount:

sub-total I (or adjusted sub-total I if appropriate) x 0.18
 Excess (if any) over 53.1 57.5M EURO
 x 0.02

Sub-total J (32-33)

Claims paid in period of 3 financial years

Claims outstanding carried forward at the end of the 3 year period For insurance business accounted for on an underwriting year basis
For insurance business accounted for on an accident year basis

Claims outstanding brought forward at the beginning of the 3 year period For insurance business accounted for on an underwriting year basis
For insurance business accounted for on an accident year basis

Sub-total C (41+42+43-44-45)

Amounts recoverable from reinsurers in respect of claims included in Sub-total C

Sub-total D (46-47)

Reinsurance ratio

(Sub-total D / sub-total C or, if more, 0.50 or, if less, 1.00)

Premiums amount (Sub-total J x **reinsurance ratio**)

Provision for claims outstanding (before discounting and net of reinsurance)

Provision for claims outstanding (before discounting and gross of reinsurance) if both 51.1 and 51.2 are zero, otherwise zero.

Brought forward amount (See instruction 4)

Greater of lines 50 and 53

Calculation of general insurance capital requirement– claims amount and result

Form 12

Name of insurer

Global business / UK branch business / EEA branch business

Financial year ended

General/long-term insurance business

	Company registration number	GL/UK/CM	day	month	year	units
R12						£000
Reference period (No. of months) See INSPRU 1.1.63R					This financial year 1	Previous year 2
Claims paid in reference period					11	
Claims outstanding carried forward at the end of the reference period					21	
Claims outstanding brought forward at the beginning of the reference period					22	
Claims incurred in reference period (21+22+23-24-25)					23	
Claims incurred for classes 11, 12 or 13 (included in 26)					24	
Claims incurred for "actuarial health insurance" (included in 26)					25	
Sub-total E (26 + ½ 27 - ⅓ 28)					26	
Sub-total F – Conversion of sub-total E to annual figure (multiply by 12 and divide by number of months in the reference period)					27	
Division of sub-total F (gross adjusted claims amount)	x 0.26				28	
	Excess (if any) over 37.2	40.3M EURO x 0.03			29	
Sub-total G (32 - 33)					31	
Claims amount Sub-total G x reinsurance ratio (11.49)					32	
Higher of premiums amount and brought forward amount (11.54)					33	
General insurance capital requirement (higher of lines 41 and 42)					39	
					41	
					42	
					43	

APPROVED REINSURANCE TO CLOSE INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
 - (1) the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (a) section 138 (General rule-making power); and
 - (b) section 156 (General supplementary powers); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 December 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Insurers (INSPRU) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Approved Reinsurance to Close Instrument 2009.

By order of the Board
5 November 2009

Annex A

Amendments to the Glossary of definitions

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

- approved reinsurance to close*
- (a) a *reinsurance to close* effected before 1 January 2005; or
 - (b) an agreement under which *members* of a *syndicate* in one *syndicate year* (“the reinsured *members*”) agree with the *members* of that *syndicate* in a later *syndicate year* or the *members* of another one other syndicate (“the reinsuring *members*”) that the reinsuring *members* will discharge, or procure the discharge of, or indemnify the reinsured *members* against, all known and unknown *insurance business* liabilities of the reinsured *members* arising out of the *insurance business* carried on by the reinsured *members* in that *syndicate year* that is:
 - (i) effected after 1 January 2005; and
 - (ii) not a balance transfer between two *syndicate years* where the *syndicate* has only one *member* and the *member* is the same in each of those years.; or
 - (c) an agreement under which members of a syndicate in one syndicate year (“the reinsured members”) agree with a subsidiary of the Society that that subsidiary will discharge, or procure the discharge of, or indemnify the reinsured members against, all known and unknown insurance business liabilities of the reinsured members arising out of the insurance business carried on by the reinsured members in that syndicate year (“the reinsured liabilities”) and where:
 - (i) that subsidiary is wholly owned by the Society and if from time to time the subsidiary has an asset or cash flow deficiency such that the subsidiary is unable to meet any of the liabilities which it has reinsured, the Society is legally obliged to pay to the subsidiary a sum equal to that deficiency; and
 - (ii) at the effective date of the agreement, the relevant syndicate year has been open for at least two years after the date at which it would normally have been closed in accordance with the policies and practices in relation to the syndicate concerned.

Annex B

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

- 8.2.16 R Notwithstanding that the liability of a reinsured *member* to a *policyholder* is unaffected by an *approved reinsurance to close* as described in INSPRU 8.2.15G, for the purposes of INSPRU and GENPRU only:
- (1) for an *approved reinsurance to close* which is not to a *subsidiary* of the *Society*:
 - (a) a *contract of insurance* reinsured under an *approved reinsurance to close* must be treated as if the reinsuring *member* and not the reinsured *member* had effected the original *contract of insurance*; and
 - (b) any payment received by a *member* as consideration for or in connection with an *approved reinsurance to close* must be treated as a *Lloyd's member's contribution* and not as *premium* or as a *reinsurance recovery*;
 - (2) any payment received by a *member* as consideration for or in connection with an *approved reinsurance to close* must be treated as a *Lloyd's member's contribution* and not as *premium* or as a *reinsurance recovery* for an *approved reinsurance to close* to a *subsidiary* of the *Society*, a *contract of insurance* reinsured under that *approved reinsurance to close* must be treated as if the reinsured *member* had not effected the original *contract of insurance* but:
 - (a) for the purposes of the calculation of the *Society GICR*, *general insurance business* carried on by *members* and *former underwriting members* which has been reinsured to a *subsidiary* of the *Society* under an *approved reinsurance to close* must be treated as reinsured to a third party; and
 - (b) for the purposes of the calculation of the *capital resources requirement* of a *subsidiary* of the *Society*, the *approved reinsurance to close* must be treated as a *reinsurance*.

**CAPITAL RESOURCES AND PROFESSIONAL INDEMNITY INSURANCE
REQUIREMENTS FOR PERSONAL INVESTMENT FIRMS INSTRUMENT 2009**

Powers exercised

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

Commencement

- C. (1) Subject to (2), this instrument comes into force on 31 December 2009.
(2) Part 2 of Annex B to this instrument comes into force on 31 December 2011.

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 (IPRU(INV)) is amended in accordance with Annex B to this instrument.

Notes

- F. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are intended for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Capital Resources and Professional Indemnity Insurance Requirements for Personal Investment Firms Instrument 2009.

By order of the Board
5 November 2009

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical place. This text is not underlined.

<i>annual financial statements</i>	the financial statements in respect of the year ending on the <i>firm's annual accounting reference date</i> , which is the date to which a corporate <i>firm's</i> accounts are prepared for the purposes of the Companies Acts, or, where the <i>firm</i> is not subject to the Companies Acts, the equivalent date chosen by the <i>firm</i> and notified to the FSA.
<i>category B firm</i>	a <i>personal investment firm</i> , other than an <i>exempt CAD firm</i> .
<i>category B1 firm</i>	a <i>category B firm</i> whose <i>permission</i> includes <i>dealing in investments as principal</i> .
<i>category B2 firm</i>	a <i>category B firm</i> whose <i>permission</i> does not include <i>dealing as principal</i> ; and is not subject to a <i>requirement</i> preventing the holding or controlling of <i>client money</i> or <i>custody assets</i> .
<i>category B3 firm</i>	<p>a <i>category B firm</i>:</p> <ul style="list-style-type: none"> (a) whose <i>permission</i> includes only <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts, home finance mediation activity, assisting in the administration and performance of contracts of insurances, arranging transactions in life policies and other insurance contracts, advising on investments and receiving and transmitting, on behalf of investors, orders in relation to securities and units in collective investment schemes</i>; and (b) which is subject to a <i>requirement</i> not to hold or control <i>client money</i> or <i>custody assets</i>.
<i>financial adviser</i>	<ul style="list-style-type: none"> (a) an individual appointed by an independent intermediary or by its <i>appointed representative</i> or where applicable, <i>tied agent</i>, to provide any or all of the following services: <ul style="list-style-type: none"> (i) giving advice on <i>investments</i> to <i>clients</i>; (ii) <i>arranging (bringing about) deals in investments or executing transactions involving, in each case, designated investments with or for clients</i>;

- (iii) managing investments;
 - (iv) receiving or holding *client money* or other *client assets*;
 - (v) safeguarding and administering investments.
- (b) For the purposes of this definition, an independent intermediary is a *firm* acting as an intermediary but excluding:
- (i) a *firm* which is a member of a *marketing group*;
 - (ii) a *product provider* which sells its own *packaged products*.
- marketing group* a group of *persons* who:
- (a) are allied together (either formally or informally) for the purposes of marketing *packaged products* of the *marketing group*; and
 - (b) each of whom, if it holds itself out in the *United Kingdom* as marketing *packaged products* to *private customers*, does so only as an *investment manager* or in relation to *packaged products* of the *marketing group*.
- marketing group associate* a *firm* other than a *product provider* which is a member of a *marketing group*.
- net long position* the situation in which a *firm* holds or will hold more *units* in an *investment* than it has contracted to *sell* or, in respect of *options*, where it has bought rights which exceed rights sold.
- net open foreign currency position* (in *IPRU(INV) 13*) a *firm's net long position or net short position*, whichever is the higher, in a currency other than that in which the *firm's books of account* are maintained.
- net short position*
- (1) (except in *IPRU(INV) 13*) a net short position which gives rise to an economic exposure to the issued *share capital* of a company.
Any calculation of whether a *person* has a short position must take account of any form of economic interest in the *shares* of the company.
 - (2) (in *IPRU(INV) 13*) the situation in which a *firm* has contracted to *sell* more of an *investment* than it holds or will hold or, in respect of *options*, where it has sold rights which exceed the rights bought.

<i>opted-in exempt CAD firm</i>	an <i>exempt CAD firm</i> which complies with the requirements in regulation 4C (or any successor provision) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (SI 2007/126).
<i>property fund</i>	<ul style="list-style-type: none"> (a) a <i>regulated collective investment scheme</i> dedicated to land and interests in land; (b) a fund of funds of which one or more of the funds to which it is dedicated falls within (a); (c) a constituent part of an umbrella fund which, if it were a separate fund, would fall within (a).
<i>special adjustment</i>	(in <i>IPRU(INV) 13</i>) a <i>position risk adjustment</i> , <i>counterparty risk adjustment</i> and <i>foreign exchange adjustment</i> .
<i>verified</i>	<p>(in <i>IPRU(INV) 13</i>) where interim net profits are to be included in a <i>firm's</i> capital resources, checked by an external auditor who has undertaken at least to:</p> <ul style="list-style-type: none"> (a) satisfy himself that the figures forming the basis of the interim profits have been properly extracted from the underlying accounting records; (b) review the accounting policies used in calculating the interim profits so as to obtain comfort that they are consistent with those normally adopted by the <i>firm</i> in drawing up its <i>annual financial statements</i> and are in accordance with the accounting principles set out in <i>IPRU(INV) 13</i>; (c) perform analytical procedures on the result to date, including comparisons of actual performance to date with budget and with the results of prior period(s); (d) discuss with management the overall performance and financial <i>position</i> of the <i>firm</i>; (e) obtain adequate comfort that the implications of current and prospective litigation, all known claims and commitments, changes in business activities and provisioning for bad and doubtful debts have been properly taken into account in arriving at the interim profits; and (f) follow up problem areas of which he is already aware in the course of auditing the <i>firm's</i> financial statements, a copy of whose report asserting that the interim net profits are reasonably stated has been submitted to the <i>FSA</i> (although

this does not apply to *exempt CAD firms*).

Amend the following definitions as shown.

- | | |
|------------------------|---|
| <i>adviser</i> | <ul style="list-style-type: none"> (1) <u>(except in IPRU(INV) 13) an individual who is: a representative, an appointed representative or a tied agent.</u> (2) <u>(in IPRU(INV) 13) a financial adviser.</u> |
| <i>initial capital</i> | <ul style="list-style-type: none"> ... |
| | <ul style="list-style-type: none"> (5) (in the case of an <i>institution</i> that is an <i>EEA firm</i>) capital resources calculated in accordance with the <i>CRD implementation measures</i> of its <i>Home State</i> for Article 4 of the <i>Capital Adequacy Directive</i> (Definition of initial capital) or Article 9 of the <i>Banking Consolidation Directive</i> (Initial capital requirements); and (6) (for the purposes of the definition of <i>dealing on own account</i> and in the case of an <i>undertaking</i> not falling within (3) or (4)) capital resources calculated in accordance with (3) and paragraphs (3) and (4) of the definition of <i>capital resources</i>; and (7) <u>(in IPRU(INV) 13) the initial capital of a firm calculated in accordance with IPRU(INV) 13.1A.6R.</u> |
| <i>representative</i> | <ul style="list-style-type: none"> (1) an individual who: ... |
| | <ul style="list-style-type: none"> (2) <u>(in IPRU(INV) 13 in relation to <i>designated investment business</i>) an individual appointed by a provider firm or by an appointed representative or tied agent of that firm to carry out either or both of the following activities:</u> <ul style="list-style-type: none"> (a) <u>giving advice on investments to customers on the merits of packaged products offered by that firm (or any other provider firm within the same marketing group); or</u> (b) <u>arranging (bringing about) deals in investments in relation to those products.</u> |
| | <ul style="list-style-type: none"> (3) <u>In (2), a provider firm is a firm that is:</u> <ul style="list-style-type: none"> (a) <u>a product provider; or</u> (b) <u>a marketing group associate.</u> |

Annex B

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

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

Part 1: Comes into force on 31 December 2009

Transitional provisions

1 Table Transitional provisions applying to IPRU(INV)

(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	<u>13.1.21 and 13.1.23</u>	R	<u>The requirement to hold additional capital resources where a policy excludes business or activities that have been carried out by the firm in the past or will be carried out by the firm only apply to a professional indemnity policy taken out, renewed or extended with effect from 31 December 2009.</u>	<u>31 December 2009 to 31 December 2010</u>	<u>31 December 2009</u>

Chapter 1: Application and General Provisions

- ...
- 1.2.1 R The ~~Glossary~~ Glossary applies to the transitional provisions, this chapter (*IPRU(Inv) 1, IPRU(Inv) 2, IPRU(Inv) 4 and IPRU(Inv) 6 and IPRU(Inv) 13*).

...

Chapter 13: Financial Resource Requirements for Personal Investment Firms

APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

13.1 APPLICATION

- 13.1.1 R (1) This chapter applies to a *firm* which is a *personal investment firm*.
- (2) For a *personal investment firm* which is an *exempt CAD firm*, the following apply:
- (a) sections 13.1 and 13.1A; and
 - (b) if it is not an *opted-in exempt CAD firm*, sections 13.2 to 13.8; or
 - (c) if it is an *opted-in exempt CAD firm*, sections 13.9 to 13.12 (but reading references to *Category category B firm* as references to the *firm*).
- (3) ~~Section 13.1 and sections 13.9 to 13.12 apply to For a personal investment firm which is a *Category category B firm*, section 13.1 and sections 13.9 to 13.12 apply.~~
- (4) ~~The definitions in the Glossary at Appendix 13(1) apply to this chapter.~~

13.1.1A G ~~Firms are reminded that a *media firm* is not a *personal investment firm*.~~

PURPOSE

- 13.1.2 G ~~This chapter amplifies threshold condition 4 (Adequate resources) by providing that a *firm* must meet, on a continuing basis, a basic solvency requirement and a minimum capital resources requirement. This chapter also amplifies Principles 3 and 4 which require a *firm* to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and to maintain adequate financial resources by setting out capital resources for a *firm* according to the regulated activity or activities it carries on.~~

- 13.1.3 G Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a firm faces in its day-to-day operations, including those arising from not meeting the legally required standard of care when advising on investments. The purpose of the rules in this section is also to ensure that a firm has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks. This includes, in the case of a UK firm exercising an EEA right, cover for breaches of obligations imposed by or under laws, or provisions having the force of law, in each EEA State in which the firm carries on business.

GENERAL REQUIREMENTS

- 13.1.2 R A firm must at all times:
- 13.1.4
- (1) have and maintain ~~at all times~~ financial capital resources of the kinds and amounts specified in, and calculated in accordance with, the *rules* of this chapter; and
 - (2) be able to meet its liabilities as they fall due.

REQUIREMENT TO HOLD PROFESSIONAL INDEMNITY INSURANCE

- 13.1.5 R A firm must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements in this section from:
- (1) an insurance undertaking which is authorised to transact professional indemnity insurance in the EEA; or
 - (2) a person of equivalent status in:
 - (a) a Zone A country;
 - (b) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

[Note: Article 4(3) of the Insurance Mediation Directive]

- 13.1.6 R An exempt CAD firm is not required to effect and maintain professional indemnity insurance unless it chooses this option (see 13.1A).

COMPARABLE GUARANTEE

- 13.1.7 R (1) A firm is not required to effect or maintain professional indemnity insurance if a bank, building society or an insurer provides the firm with a comparable guarantee.
- (2) If the firm is a member of a group in which there is a bank, building society or an insurer, the firm's comparable guarantee must be from that bank, building society or insurer.

- (3) A comparable guarantee means an enforceable, written agreement on terms at least equal to those required by IPRU(INV) 13.1.9R to 13.1.13R, as appropriate.
- 13.1.3(1) G Under *Principles 3 and 4* a firm is required to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and to maintain adequate financial resources. Under *Principle 9* a firm is obliged to take reasonable care to ensure the suitability of its *advice on investments* and discretionary decisions for any customer who is entitled to rely upon its judgement.
- 13.1.3(2) G Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a firm faces in its day to day operations, including those arising from not meeting the legally required standard of care when *advising on investments*. The purpose of 13.1.4(1) to 13.1.4(15) is to ensure that a firm has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks. This includes, in the case of a UK firm exercising an EEA right, cover for breaches of obligations imposed by or under laws, or provisions having the force of law, in each EEA State in which the firm carries on business.

RELEVANT INCOME

- 13.1.3(3) R The term "relevant income" in IPRU(INV) 13.1 this section refers to all income received or receivable which is commission, brokerage, fees or other related income, whether arising from the firm's *permitted activities* or not, for the last accounting year prior to inception or renewal of the professional indemnity insurance policy ("the policy").
- 13.1.4(1) R (1) A firm must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements of 13.1.4(2) to 13.1.4(15).
- (2) Paragraph (1) does not apply to an exempt CAD firm unless it chooses to comply with these rules (see 13.1A).

POLICY TERMS

- 13.1.4(2) R The policy must incorporate terms which are appropriate and must make provision for:
- (a) cover in respect of any claim for loss or damage, for which the firm may be liable as a result of an act or omission by:
- (i) (1) the firm; or
- (ii) (2) any person acting on behalf of the firm including employees, appointed representatives or its other agents;.

~~LIMITS OF INDEMNITY — IMD INSURANCE INTERMEDIARY OR AN EXEMPT CAD FIRM~~

- 13.1.10 R (b) if If the firm is an IMD insurance intermediary, whether or not it is also an exempt CAD firm, the appropriate minimum limits of indemnity per year which are no lower than:
- (i) (1) €1,120,200 for a single claim against the firm; and
 - (ii) (2) €1,680,300 in the aggregate;.

[**Note:** Article 4(3) of the *Insurance Mediation Directive*]

- 13.1.11 R (ba) if If the firm is an exempt CAD firm that maintains professional indemnity insurance under 13.1A.3(1)(b), the appropriate minimum limits of indemnity per year which are no lower than:
- (i) (1) €1,000,000 for a single claim against the firm; and
 - (ii) (2) €1,500,000 in the aggregate;.

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

- 13.1.12 R (c) if If the firm is both an IMD insurance intermediary and an exempt CAD firm that maintains professional indemnity insurance under 13.1A.4(1)(b), the appropriate additional limits of indemnity to 13.1.4(2)(b) 13.1.10R per year which are no lower than:
- (i) (1) €500,000 for a single claim against the firm; and
 - (ii) (2) €750,000 in the aggregate.

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

~~LIMITS OF INDEMNITY — OTHER FIRMS~~

- 13.1.13 R (d) if If the firm is not an IMD insurance intermediary or an exempt CAD firm, then the following limits of indemnity apply:
- (i) (1) if the firm has relevant income of up to £3,000,000, no lower than £500,000 for a single claim against the firm and £500,000 in the aggregate; or
 - (ii) (2) if the firm has relevant income of more than £3,000,000, no lower than £650,000 for a single claim against the firm and £1,000,000 in the aggregate.

- 13.1.4(2A) G Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* to be reviewed every five years to take into account movements in European consumer prices. These *limits* will therefore be subject to

further adjustments on the basis of index movements advised by the European Commission.

- 13.1.4(3) R If a policy is denominated in any currency other than euros, ~~an IMD insurance intermediary a firm~~ must take reasonable steps to ensure that the *limits of indemnity* are, when the policy is effected (i.e. agreed) and at renewal, at least equivalent to those required in 13.1.4 (2)(b) ~~denominated in euros~~.

READILY REALISABLE OWN FUNDS

- 13.1.4(4) G ~~For the purposes of the following provisions relating to professional indemnity insurance, the FSA expects items included in own funds to be regarded as "readily realisable" only if they can be realised, at any given time, within 90 days.~~
- 13.1.15 R ~~insurance intermediary a firm~~ must take reasonable steps to ensure that the *limits of indemnity* are, when the policy is effected (i.e. agreed) and at renewal, at least equivalent to those required in 13.1.4 (2)(b) ~~denominated in euros~~.
- 13.1.16 G A *firm* should consider whether the overall cover is adequate taking account of 13.1.22G(2) and whether the *firm* should seek additional cover or legal expenses insurance. (Legal defence costs are costs of defence against claims that fall under the terms of the policy.)
- 13.1.17 G The cover provided by the policy should be wide enough to include the liability of the *firm*, its *appointed representatives*, its *tied agents*, *employees* and its agents for breaches under the *regulatory systems* or civil law. If the *firm* operates outside the *United Kingdom* then the policy should cover other regulatory requirements imposed under the laws of other countries in which the *firm* operates.

POLICIES PROVIDING COVER FOR MORE THAN ONE FIRM

- 13.1.18 R If the policy provides cover to more than one *firm* then:
- (1) the relevant income for calculating the *limits of indemnity* is that of all the *firms* named in the policy combined;
 - (2) each *firm* named in the policy must have the benefit of the minimum *limits of indemnity* as required in this section; and
 - (3) each *firm* named in the policy must notify the FSA if the aggregate cover in the policy falls below the minimum *limits of indemnity*.

LIMITS OF INDEMNITY – ADDITIONAL REQUIREMENTS

- 13.1.4(5) E (a) In addition to the specific requirements in 13.1.4(2)-13.1.9R to 13.1.13R, to incorporate appropriate terms, the policy should must make provision for the following:
- (1) (i) for a *firm* with relevant income of more than £6,000,000, the aggregate limit identified in the table below:

Relevant income is (£)	Minimum aggregate
------------------------	-------------------

more than	up to	<i>limit of indemnity (£)</i>
...		

- (2) (ii) full retroactive cover in respect of the kinds of liabilities described in 13.1.4(2) 13.1.9R for claims arising from work carried out by the *firm*, or on its behalf, in the past; and
- (3) (iii) cover in respect of *Ombudsman* awards made against the *firm*.
- (b) ~~Compliance with (a) may be relied on as tending to establish compliance with the requirement in 13.1.4(2) for the professional indemnity insurance terms to be appropriate.~~
- (c) ~~Contravention of (a) may be relied on as tending to establish contravention of the requirement in 13.1.4(2) for the professional indemnity insurance terms to be appropriate.~~
- 13.1.4(6) G ~~A firm should consider whether the overall cover is adequate taking account of 13.1.4(9)(b) and whether the firm should seek additional cover or legal expenses insurance. (Legal defence costs are costs of defence against claims that fall under the terms of the policy.)~~
- 13.1.4(7) G ~~The cover provided by the policy should be wide enough to include the liability of the firm, its appointed representatives, or where applicable, its tied agent, employees and its agents for breaches of the firm's duty of skill and care, fiduciary duty, duty to look after documents or assets, fraud, and breaches of obligations imposed by or under the Act (or the Financial Services Act 1986 if relevant). If the firm operates outside the UK then the policy should cover other regulatory requirements imposed under the laws of other countries in which the firm operates.~~

EXCLUSIONS LIMITATIONS

- 13.1.4(8) R The policy must not be subject to conditions or exclusions which unreasonably limit the ~~its~~ cover provided for in 13.1.4(2) (whether by exclusion of cover, by policy excesses or otherwise).

EXCLUSIONS

- 13.1.21 R The policy must not:
- (1) exclude any type of business or activity that has been carried out by the firm in the past or will be carried out by the firm during the time for which the policy is in force; or
 - (2) exclude liabilities which are identified or crystallised as a result of regulatory action against the firm (either individually or as a member of a class of authorised persons);

unless the firm holds additional capital resources, in accordance with 13.1.23R.

- 13.1.4(9) G (a) The FSA considers it reasonable for a *firm's* policy to exclude cover for:
- (i) specific business lines if that type of business has not been carried out by the *firm* in the past and will not be carried out by the *firm* during the life of the policy; or
 - (ii) specific claims that have been previously notified to the *firm's insurer* and claimed for under another policy.
- (b) The FSA does not consider it reasonable for a *firm's* policy to treat legal defence costs cover as part of the *limits of indemnity* if this reduces the cover available for any individual substantive claim.

ADDITIONAL CAPITAL RESOURCES – EXCLUSIONS

- 13.1.23 R The amount of additional capital resources that a *firm* must hold as a result of an exclusion under 13.1.21R should be calculated by referring to the *firm's* relevant income in the following table:

<u>Relevant income £000s</u>		<u>Minimum additional capital resources £000s</u> <u>(Notes 1 and 2)</u>
<u>more than</u>	<u>up to</u>	
<u>0</u>	<u>100</u>	<u>5</u>
<u>100</u>	<u>200</u>	<u>12</u>
<u>200</u>	<u>300</u>	<u>18</u>
<u>300</u>	<u>400</u>	<u>21</u>
<u>400</u>	<u>500</u>	<u>23</u>
<u>500</u>	<u>600</u>	<u>25</u>
<u>600</u>	<u>700</u>	<u>27</u>
<u>700</u>	<u>800</u>	<u>28</u>
<u>800</u>	<u>900</u>	<u>30</u>
<u>900</u>	<u>1,000</u>	<u>31</u>
<u>1,000</u>	<u>1,500</u>	<u>37</u>
<u>1,500</u>	<u>2,000</u>	<u>42</u>
<u>2,000</u>	<u>2,500</u>	<u>46</u>
<u>2,500</u>	<u>3,000</u>	<u>51</u>
<u>3,000</u>	<u>3,500</u>	<u>55</u>

<u>3,500</u>	<u>4,000</u>	<u>59</u>
<u>4,000</u>	<u>4,500</u>	<u>63</u>
<u>4,500</u>	<u>5,000</u>	<u>67</u>
<u>5,000</u>	<u>6,000</u>	<u>73</u>
<u>6,000</u>	<u>7,000</u>	<u>79</u>
<u>7,000</u>	<u>8,000</u>	<u>85</u>
<u>8,000</u>	<u>9,000</u>	<u>90</u>
<u>9,000</u>	<u>10,000</u>	<u>95</u>
<u>10,000</u>	<u>100,000</u>	<u>95y</u>
<u>100,000</u>	n/a	<u>950</u>
<p>Note 1 – For <i>firms</i> with relevant income of more than £10m but up to £100m value y is calculated by relevant income/ £10m.</p>		
<p>Note 2 – The calculation of a <i>firm's</i> capital resources is set out in sections 13.1A to 13.12 (see rule 13.1.1 for application of these sections to an <i>exempt CAD firm</i> and a <i>category B firm</i>).</p>		

13.1.24 G The firm should hold additional capital resources in excess of those minimum amounts set out in the table in 13.1.23R where the required amounts of additional capital resources provide insufficient cover, taking into account the firm's individual circumstances.

EXCESS LEVEL

13.1.4(10) E R (a) The policy should must not:
13.1.25

- (i) make provision for payment by the *firm* of an excess on any claim of more than £5,000, unless (This does not apply to the extent that the firm holds additional own funds in a readily realisable form capital resources, in accordance with 13.1.4(12)) 13.1.27R; or,
- (ii) exclude any type of business or activity that has been carried out by the firm in the past or will be carried out by the firm during the time for which the policy is in force. (This does not apply to the extent that the firm holds, by way of additional own funds in a readily realisable form, an amount equivalent to a reasonable provision against its potential liabilities for that business or activity. Guidance on this is given in 13.1.4(13) and (14)); or

- (iii) exclude liability which is identified or crystallised as a result of regulatory action against the *firm* (either individually or as a member of a class of *authorised person*).
- (b) Contravention of (a) may be relied on as tending to establish contravention of 13.1.4(8).

EXCESS LEVEL

- 13.1.4(11) **E R** The reference to “excess” in 13.1.4(10)(a)(i) is to the highest excess level required to be paid under the policy unless that excess relates to a type of business that has not been carried out by the *firm* in the past. In those circumstances, the reference is to the next highest excess level required by the policy applicable to a type of business that has been carried out by the firm in the past.

ADDITIONAL OWN FUNDS CAPITAL RESOURCES – EXCESS

- 13.1.4(12) **E R** The amount of additional own funds capital resources that a *firm* must hold where the policy’s excess on any claim is more than £5,000 in 13.1.4(10)(a)(i) should must be calculated by referring to the *firm*’s relevant income and excess obtained in the following table:

All amounts are shown in £000s <u>(Notes 1 and 2)</u>		
Relevant income is		Excess obtained, up to and including
more than	up to	...
...		
<u>Note 1</u> – For <i>firms</i> with relevant income of more than £10m but up to £100m value y is calculated by relevant income/ £10m.		
<u>Note 2</u> – The calculation of a <i>firm</i> ’s capital resources is set out in sections 13.1A to 13.12 (see rule 13.1.1 for application of these sections to an <i>exempt CAD firm</i> and a <i>category B firm</i>).		

EXCLUSIONS

- 13.1.4(13) **G** A *firm* should take into account the following when assessing the amount of additional own funds to be held as provision as described in 13.1.4(10)(a)(ii):
- (a) the type of business line or activity excluded and the types of claim which might arise from it;

- (b) the number of contracts written or volume of activity;
 - (c) the number of complaints received by the firm relating to the excluded business or activity;
 - (d) generally accepted accounting principles applicable to provisions; and
 - (e) any other relevant information.
- 13.1.4(14) G If the firm holds additional own funds in accordance with 13.1.4(13) then the amount should be reviewed regularly. The reviews should take account of changes in the status of the policy exclusion(s) and any relevant changes to the firm's circumstances.

~~POLICIES PROVIDING COVER FOR MORE THAN ONE FIRM~~

- 13.1.4(15) R If the policy provides cover to more than one firm then in relation to 13.1.4(2) and (3):
- (a) the relevant income for calculating the limits of indemnity is that of all the firms named in the policy combined;
 - (b) each firm named in the policy must have the benefit of the minimum limits of indemnity as required in 13.1.4(2);
 - (c) each firm named in the policy must notify the FSA if the aggregate cover in the policy falls below the minimum in 13.1.4(2).

~~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 bank, building society, insurer or a firm which is a friendly society provides the firm with a comparable guarantee.
- (2) 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) A comparable guarantee means an enforceable, written agreement on terms at least equal to those required by IPRU(INV) 13.1.4(2)R.
- 13.1.6 R A firm must take out professional indemnity insurance from:
- (a) any insurance undertaking which is authorised to transact professional indemnity insurance in the EEA; or
 - (b) a person of equivalent status in

- (i) a ~~Zone A country~~;
- (ii) ~~the Channel Islands, Gibraltar, Bermuda or the Isle of Man.~~

NOTIFICATION REQUIREMENTS

- 13.1.7 G ~~Rule 13.1.9 is a notification rule and is in addition to any notification requirements in the Supervision Manual (Sup 15).~~
- 13.1.8 G ~~Firms are reminded to comply with SUP 15.7 (Form and method of notification) when notifying the FSA in accordance with rule 13.1.9.~~
- 13.1.9 R A *firm* must notify the FSA immediately if it becomes aware, or has information which reasonably suggests, that any of the matters in Table 13.1(1) following matters in relation to its professional indemnity insurance has occurred, may have occurred or may occur in the foreseeable future.:
- 13.1.28

Table 13.1(1)

This table forms part of 13.1.9

NOTIFIABLE EVENTS

1. In ~~relation to professional indemnity insurance, required in accordance with 13.1.4(1) to 13.1.4(15) and 13.1.5~~, if:
- (a) (1) professional indemnity insurance cannot be obtained within 28 days of the inception or renewal date;
 - (b) (2) professional indemnity insurance is cancelled;
 - (c) (3) the amount of aggregate cover is exhausted;
 - (d) (4) the *firm* commences business lines for which it had not obtained cover;
 - (e) (5) the *firm* is relying on ~~13.1.4(15) a policy that provides cover for more than one firm~~; or
 - (f) (6) the *firm* is relying on ~~13.1.5 a comparable guarantee provided in accordance with the rules in this chapter~~.
2. In respect of an ~~exempt CAD firm~~ complying with section 13.3:
- (a) ~~own funds falling below the applicable reference level~~;
 - (b) ~~own funds reaching the applicable € level specified in rule 13.3.1~~;
 - (c) ~~change of control causing loss of eligibility for that alternative test~~;
- 3.

(a) [deleted]
(b) [deleted]
(c) [deleted]
(d) [deleted]
(e) [deleted]
(f) [deleted]

13.1.10 R [deleted]
13.1.11 G [deleted]
13.1.12 R [deleted]
13.1.13 G [deleted]
13.1.14 R [deleted]
[DELETED]
13.1.15 R [deleted]
[DELETED]
13.1.16 R [deleted]
[DELETED]
13.1.17 R [deleted]

...

Delete Appendix 13(1) (Defined terms for Chapter 13) in its entirety. The deleted text is not shown here.

Appendix 13(1) (Defined terms for Chapter 13) [deleted]

Part 2: **Comes into force on 31 December 2011**

Transitional provisions

1 Table Transitional provisions applying to IPRU(INV)

(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	<u>13.1.21 and 13.1.23 [deleted]</u>	R	<u>The requirement to hold additional capital resources where a policy excludes business or activities that have been carried out by the firm in the past or will be carried out by the firm only apply to a professional indemnity policy taken out, renewed or extended with effect from 31 December 2009.</u>	<u>31 December 2009 to 31 December 2010</u>	<u>31 December 2009</u>
5	<u>13.3.2</u>	R	<u>A category B firm must meet the capital resources requirements in this transitional provision instead of those in 13.3.2 until 31 December 2013, unless the firm is already subject to a higher capital resources requirement, in which case this transitional provision does not apply.</u> <u>From 31 December 2011 to 31 December 2012, the firm's capital resources requirement must be calculated in accordance with whichever of (1) or (2) produces the higher amount:</u>	<u>From 31 December 2011 to 31 December 2013</u>	<u>31 December 2011</u>

			<p>(1) 1/12 of its fixed annual expenditure, calculated in accordance with 13.3.3R to 13.3.8R; or</p> <p>(2) £15,000.</p> <p><u>From 31 December 2012 to 31 December 2013, the firm's capital resources requirement must be calculated in accordance with whichever of (3) or (4) produces the higher amount:</u></p> <p>(3) 1/6 of its fixed annual expenditure, calculated in accordance with 13.3.3R to 13.3.8R; or</p> <p>(4) £15,000.</p>		
6	<u>13.3.13(2)</u>	R	<p><u>A category B firm can calculate the amount of the firm's total capital and reserves excluding preference share capital, less the amount of its intangible assets, multiplying it by 400% until 31 December 2013.</u></p>	<u>From 31 December 2011 to 31 December 2013</u>	<u>31 December 2011</u>

...

13.1.1 R (1) ...

- (2) For a *personal investment firm* which is an *exempt CAD firm*, the following apply:
 - (a) sections 13.1 and 13.1A; and
 - (b) if it is not an *opted-in exempt CAD firm*, ~~sections section~~ 13.2 to 13.8;
 - (c) if it is an *opted-in exempt CAD firm*, ~~sections 13.9 to 13.12 section 13.3~~ (but reading references to *category B firm* as references to the *firm*).
- (3) For a *personal investment firm* which is a *category B firm*, ~~section~~ sections 13.1 and ~~sections~~ 13.9 to 13.12 13.3 apply.

...

ADDITIONAL CAPITAL RESOURCES – EXCLUSIONS

- 13.1.23 R The amount of additional capital resources that a *firm* must hold as a result of an exclusion under 13.1.21R should be calculated by referring to the *firm*'s relevant income in the following table:

Relevant income £000s		Minimum additional capital resources £000s (Notes 1 and 2)
more than	up to	
...		
...		
Note 2 – The calculation of a <i>firm</i> 's capital resources is set out in sections 13.1A to 13.12 <u>13.3</u> (see rule 13.1.1 for application of these sections to an <i>exempt CAD firm</i> and a <i>category B firm</i>).		

...

ADDITIONAL CAPITAL RESOURCES – EXCESS

- 13.1.27 R The amount of additional capital resources that a *firm* must hold where the policy's excess on any claim is more than £5,000 must be calculated by referring to the *firm*'s relevant income and excess obtained in the following table:

All amounts are shown in £000s (Notes 1 and 2)		
Relevant income is		Excess obtained, up to and including
more than	up to	...
...		
Note 2 – The calculation of a <i>firm</i> 's capital resources is set out in sections 13.1A to 13.12 <u>13.3</u> (see rule 13.1.1 for application of these sections to an <i>exempt CAD firm</i> and a <i>category B firm</i>).		

...

13.1A FINANCIAL CAPITAL RESOURCES AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS REQUIREMENT FOR AN EXEMPT CAD FIRM

APPLICATION

13.1A.1

R ...

REQUIREMENT TO HOLD INITIAL INITIAL CAPITAL AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

13.1A.2

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

- (1) the requirement that is applied by section 13.1A; and
- (2)
 - (a) if it is not an opted-in exempt CAD firm, the requirement that is applied by ~~sections 13.2 to 13.8~~; or
 - (b) if it is an *opted-in exempt CAD firm*, the requirement that is applied by ~~sections 13.9 to 13.12~~ 13.3 (but reading references to *Category category B firm* as references to the *firm*).

13.1A.3

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

- (a) *initial capital* of €50,000; or
- (b) professional indemnity insurance at least equal to the requirements of ~~13.1.4(2)(b)~~ 13.1.11R and ~~13.1.4(3)~~ 13.1.15R to 13.1.6 13.1.27R; or
- (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[**Note:** Article 67(3) of *MiFID* and Article 7 of *CAD* (see also rule rule 13.1.4(2)(b) 13.1.10)]

- (2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £10,000.

13.1A.4

R (1) A *firm* that is also an *IMD insurance intermediary* must have professional indemnity insurance at least equal to the limits set out in ~~13.1.4(2)(b)~~ 13.1.10R and, in addition, has to have:

- (a) *initial capital* of €25,000; or
- (b) professional indemnity insurance at least equal to the requirements of ~~13.1.4(2)(e)~~ 13.1.12R and ~~13.1.4(3)~~ 13.1.15R to 13.1.6 13.1.27R; or
- (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and Article 8 of *CAD* (see also rule rule 13.1.4(2)(e) 13.1.12)]

(2) ...

...

13.2 FINANCIAL RESOURCES TESTS

13.2.1

R An ~~exempt CAD firm~~ must meet:

- (1) [deleted]
- (2) Financial Resources Test 1A (the ~~Adjusted Net current assets Test~~) calculated in accordance with section 13.4; and
- (3) Financial Resources Test 2 (the Expenditure based Test) calculated in accordance with section 13.5.

13.2.2

G [deleted]

13.2.3

G ~~Table 13A is a summary of the financial resources test for exempt CAD firm.~~

Table 13.A

This table forms part of guidance 13.2.3

SUMMARY OF FINANCIAL RESOURCES FOR EXEMPT CAD FIRMS			
Type of firm	Financial Resources Test 1A Adjusted net current assets Test	Financial Resources Test 2 Expenditure based Test	Rules/section references

<i>Exempt CAD firm</i>	Adjusted net current assets of £1	Financial resources equal to the highest of 4/52 of Relevant Annual Expenditure or 13/52 of Relevant Annual Expenditure without <i>special adjustments</i> or £400 per <i>adviser</i>	13.1A.14 13.4 13.5.1D and 13.5.2 to 13.5.4
<i>Exempt CAD firm which is a network</i>	Adjusted net current assets of £1	Financial resources equal to the higher of 13/52 of Relevant Annual Expenditure or £400 per <i>adviser</i>	13.1A.14 13.4 13.5.1B and 13.5.2 to 13.5.4

13.3 Financial Resources Test 1 - Own funds

13.3.1 R [deleted]

13.3.1A G [deleted]

13.3.2 R [deleted]

13.3.2A R [deleted]

13.3.2B G [deleted]

Table 13.3.2(2)

[deleted]

Alternative to Financial Resources Test 1

13.3.3 R [deleted]

13.3.3A R [deleted]

13.3.3B R [deleted]

13.4 Financial Resources Test 1A – Adjusted net current assets

- 13.4.1 R An *exempt CAD firm* must adjust its *net current assets* as follows:
- (1) exclude assets which cannot be realised or recovered within twelve months;
 - (2) exclude amounts receivable from *connected persons* to the extent that they are not *properly secured*, except amounts that are *deposits* referred to at item (11) in Part I of table 13.5.4(1) or at item (11) in Part I of table 13.5.4(2);
 - (3) value *investments* at current *market value*, using the *bid price* for a *net long position* in an investment and the *offer price* for a *net short position* in an investment;
 - (4) where applicable, deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but exclude from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.

- 13.4.2 R An *exempt CAD firm* must at all times have adjusted *net current assets* of at least £1.

13.5 FINANCIAL RESOURCES TEST 2 – EXPENDITURE-BASED REQUIREMENT**REQUIREMENT**

- 13.5.1 R [deleted]

- 13.5.1A R [deleted]

13.2 FINANCIAL RESOURCES REQUIREMENT FOR EXEMPT CAD FIRMS THAT HAVE NOT OPTED-IN

- 13.5.1B R An *exempt CAD firm* which is a *network* must have *financial capital* resources calculated in accordance with whichever of (1), or (2) produces the higher amount:

- (1) 13/52 one quarter of its *relevant fixed annual expenditure*, calculated in accordance with rule 13.5.2 13.2.3; or
- (2) an amount equal to £400 multiplied by the number of its *advisers*.

- 13.5.1C R [deleted]

- 13.5.1D R (1) [deleted]
13.2.2

- (2) An *exempt CAD firm* which is not ~~permitted to carry on the activity of managing investments or to delegate such activity to an investment firm a network~~ must have financial capital resources calculated in accordance with whichever of (3), (4) or (5) (1), (2) or (3) produces the highest amount:—
- (3) Financial capital resources which taking into account all the *special adjustments* amount to 4/52 of its ~~relevant~~ fixed annual expenditure calculated in accordance with *rules 13.5.2 13.2.3 to 13.2.7*; or
- (4) financial capital resources which disregarding all the *special adjustments* amount to 13/52 one quarter of its ~~relevant~~ fixed annual expenditure, calculated in accordance with *rules 13.5.2 13.2.3 to 13.2.7*; or
- (5) financial capital resources which taking into account all the *special adjustments* of an amount equal to £400 multiplied by the number of its *advisers*.

CALCULATION OF RELEVANT FIXED ANNUAL EXPENDITURE

- 13.5.2
13.2.3
- R (1) An *exempt CAD firm* must calculate its relevant fixed annual expenditure by reference to the amount described as total expenditure in its most recently prepared set of *annual financial statements*. If those statements were for a period other than 12 months, the amounts in the *firm's* profit and loss account must be adjusted proportionately.
- (2) Where an *exempt CAD firm* has just begun trading or has not been authorised long enough to submit such statements, the *firm* must calculate its relevant fixed annual expenditure on the basis of forecast or other appropriate accounts submitted to the *FSA*.
- (3) An *exempt CAD firm* may, subject to *rule 13.5.3 13.2.6*, deduct from its total expenditure the items set out in *table 13.5.2 13.2.3*.

Table 13.5.2 13.2.3

This table forms part of *rule 13.5.2 13.2.3*

DEDUCTIONS FROM EXPENDITURE	
(a)	Staff bonuses (except to the extent that they are guaranteed);
(b)	<i>employees' and directors' shares</i> in profits (except to the extent that the amount is guaranteed);
(c)	other appropriations of profits;
(d)	shared commissions commission and fees payable paid which are directly related to commissions commission and fees received receivable that are included within total revenue;

(e)	interest charges in respect of borrowing <ins>borrowings</ins> made to finance the acquisition of its <i>readily realisable investments</i> ;
(f)	interest paid to <i>clients</i> on <i>client money</i> ;
(g)	interest paid to <i>counterparties</i> ;
(h)	fees, brokerage and other charges paid to <i>recognised clearing houses</i> , <ins>recognised investment exchanges</ins> and <i>intermediate brokers</i> for the purposes of executing, registering or clearing transactions;
(i)	foreign exchange losses;
(j)	a firm must not deduct any exceptional expenditure other variable expenditure.

- 13.5.2A G 13.2.4
- (1) Salaries of *directors* or partners are not eligible for deduction, except to the extent that they can be demonstrated to be non-fixed costs of the *firm*.
 - (2) The deduction in item (c) is intended to cover forms of remuneration, other than those set out in (b), that are fixed or guaranteed.

- 13.2.5 G
- For the purpose of this section, fixed expenditure is expenditure which is inelastic relative to fluctuations in an *exempt CAD firm's* levels of business. Fixed expenditure is likely to include most salaries and staff costs, office rent, payment for the rent or lease of office equipment, and insurance premiums. It may be viewed as the amount of funds which a *firm* would require to enable it to cease business in an orderly manner, should the need arise. This is not an exhaustive list of such expenditure and a *firm* will itself need to identify (taking appropriate advice where necessary) which costs amount to fixed expenditure.

ADJUSTMENTS TO CALCULATION OF RELEVANT FIXED ANNUAL EXPENDITURE

- 13.5.3 R 13.2.6
- A *firm* must ensure that the expenditure base properly reflects the ongoing annual operating costs of the *firm* by having proper regard to its circumstances when deciding whether to include or exclude any item of expenditure or to make any other adjustment to the calculation of relevant annual expenditure.
- An *exempt CAD firm* must adjust its fixed expenditure calculation so far as necessary if and to the extent that since the date covered by the most recent annual financial statements or (if 13.2.3R(2) applies) since the budget was prepared:
- (1) its level of fixed expenditure changes materially; or
 - (2) its regulated activities comprised within its permission change.

13.2.7 R If an exempt CAD firm has a material proportion of its expenditure incurred on its behalf by third parties and such expenditure is not fully recharged to that firm then the firm must adjust its fixed expenditure calculation by adding back in the whole of the difference between the amount of the expenditure and the amount recharged.

13.5.3A G In rule 13.5.3 the FSA would expect a firm to take proper account of the effect of, for example, the ongoing annual operating costs of the firm being met by another party, or of a significant change in the structure of the firm's business during the year.

The FSA would consider as 'material' 10% of a firm's expenditure incurred on its behalf by third parties.

CALCULATION OF FINANCIAL CAPITAL RESOURCES TO MEET TESTS 1, 1A OR 2 THE EXPENDITURE-BASED REQUIREMENT

13.5.4 R An exempt CAD firm must be able to calculate its financial capital resources at any time on the basis of the balance sheet it could draw up at that time. For this purpose:

- (1) [deleted]
- (2) An exempt CAD firm must, adjust the assets in the balance sheet as specified in table 43.5.4(2) A and include the liabilities after making the adjustments specified in that table 43.5.4(2); and
- (3) the assets and liabilities in the balance sheet ...
- (2)

13.5.4A R [deleted]

TABLE 13.5.4(1) PART I [DELETED]

TABLE 13.5.4(1) PART II [DELETED]

TABLE 13.5.4(2) A PART I

This table forms part of rule 13.5.4 13.2.9

<u>EXEMPT CAD FIRM EXEMPT CAD FIRM</u>		
ASSETS	CALCULATION	TYPE OF ADJUSTMENT
(1) Land and Buildings	Exclude in full. (A loan secured by a charge on land and buildings may be deducted from liabilities in accordance with item (14) of Part II of this table.)	An Illiquid Adjustment
(2) Investments	Exclude in full the value of shares in connected companies.	An Illiquid Adjustment

	<p>Include any <i>net long position</i> in any fixed or current asset investment</p> <p>(a) valued at its current <i>bid price</i> (or, in the case of a <i>with profits life policy</i>, at its surrender value), and</p> <p>(b) discounted by the applicable percentage specified in table 13.5.4A B.</p>	A Position Risk Adjustment
(3) Investments subject to Repurchase, Reverse Repurchase, Stock Borrowing or Stock Lending transactions	<p>Include <i>investments</i> for which the <i>firm</i> has entered as principal into a repurchase, reverse repurchase, stock borrowing or stock lending transaction, after making (I) a deduction in accordance with item (2)<u>of this table</u>, and (II) a deduction calculated by</p> <p>(a) computing the <i>firm's</i> exposure (the difference between the <i>market value</i> of the <i>securities</i> and the loan or collateral (including accrued interest) where that difference is not in the <i>firm's</i> favour, after adjusting for any excess collateral), and</p> <p>(b) multiplying that exposure by the applicable percentage in table 13.5.4C D.</p>	<p>A Position Risk Adjustment</p> <p>A Counterparty Risk Adjustment</p>
(4) Debtors relating to Unsettled <i>Securities</i> Transactions – Cash against Documents	<p>Include debtors where the <i>firm</i> has entered into a transaction in <i>securities</i> or <i>units in collective investment schemes</i> as agent on a cash against documents basis and the transaction remains unsettled, after deducting an amount calculated by</p> <p>(a) computing the difference between the agreed settlement price for those <i>investments</i> and their current <i>market value</i> where that difference is not in the <i>firm's</i> favour, and</p> <p>(b) multiplying that difference by the applicable percentage specified in table 13.5.4B C.</p>	A Counterparty Risk Adjustment

<p>(5) Debtors relating to Unsettled <i>Securities</i> Transactions – Free Deliveries</p>	<p>Where the <i>firm</i> has delivered <i>securities</i> or <i>units</i> in <i>collective investment schemes</i> before receiving payment for them, or paid for such <i>investments</i> before receiving certificates of good title for them, and not more than 3 days have passed since delivery, include debtors after deducting an amount calculated by</p> <ul style="list-style-type: none"> (a) (i) (where the <i>firm</i> has delivered them) computing the full amount due to a <i>firm</i> under the contract; (ii) (where the <i>firm</i> has paid for them) computing their current <i>market value</i>; and (b) multiplying the amount or value at (a) by the applicable percentage specified in table 13.5.4C D. <p>Exclude debtors if more than 3 days have passed since delivery.</p>	<p>A Counterparty Risk Adjustment</p>
<p>(6) <i>Regulated collective investment schemes</i></p>	<p>Include an amount owing in respect of a transaction in <i>units</i> in a <i>regulated collective investment scheme</i> only</p> <ul style="list-style-type: none"> (a) if the amount has been due and unpaid for less than 90 days after the settlement date of the transaction to which it relates, and (b) after discounting that amount by the applicable percentage specified in table 13.5.4C D. <p>Exclude amounts that have been due and unpaid for more than 90 days.</p>	<p>A Counterparty Risk Adjustment</p>
<p>(7) Debts of <i>group</i> or <i>connected companies</i></p>	<p>Include an amount due from <i>group</i> or <i>connected companies</i> (which does not relate to trade debts)</p> <ul style="list-style-type: none"> (a) where the <i>firm</i> has no reason to doubt that it will be repaid in full on demand, and (b) after discounting the amount by the applicable percentage specified in table 13.5.4C D. <p>Exclude an amount that the <i>firm</i> has reason to doubt will be repaid in full on demand.</p>	<p>A Counterparty Risk Adjustment</p>
<p>(8) Debtors</p>	<p>Include amounts due from debtors (including <i>group</i> or <i>connected companies</i>) which have been due and unpaid for less than 90 days, after discounting the amount by the applicable percentage specified in table 13.5.4C D.</p>	<p>A Counterparty Risk Adjustment</p>

	Exclude amounts that have been due and unpaid for more than 90 days.	An Illiquid Adjustment
(9) Prepayments	<p>Include the amount of prepayments which relate to goods or services to be received or performed within 90 days, after discounting the amount by the applicable percentage specified in table 13.5.4C D.</p> <p>Exclude the amount of prepayments relating to more than 90 days.</p>	<p>A Counterparty Risk Adjustment</p> <p>An Illiquid Adjustment</p>
(10) Accrued income	<p>Include accrued income, including any such income not yet due and receivable in respect of fees earned in the performance of <i>investment management</i> services that is receivable within 90 days, after discounting the amount by the applicable percentage specified in table 13.5.4C D.</p> <p>Exclude accrued income receivable after 90 days.</p>	<p>A Counterparty Risk Adjustment</p> <p>An Illiquid Adjustment</p>
(11) Deposits	...	
(12) Other amounts due from Government bodies or local authorities	<p>Include other amounts due from UK Government bodies or local authorities if they are agreed and due within 90 days, after discounting the amounts by the applicable percentage specified in table 13.5.4C D.</p> <p>Exclude amounts that are not due to be paid within 90 days.</p>	<p>A Counterparty Risk Adjustment</p> <p>An Illiquid Adjustment</p>
(13) All other assets	<p>Exclude in full.</p> <p>If not otherwise excluded in full in this table, this category should include any holding in eligible capital instruments of an insurance undertaking, insurance holding company, or reinsurance undertaking that is a <i>subsidiary</i> or participation.</p> <p>Eligible capital instruments include ordinary share capital, cumulative preference shares, perpetual securities and long-term subordinated loans, that are eligible for insurance undertakings under PRU 2 INSPRU.</p>	An Illiquid Adjustment
Where applicable —Large exposures	Deduct an amount calculated in accordance with rule 13.6.2.	A Large exposure Adjustment

Table 13.5.4(2) A Part IIThis table forms part of *rule 13.5.4 13.2.9*

<u>EXEMPT CAD FIRM EXEMPT CAD FIRM</u>		
LIABILITY	CALCULATION	TYPE OF ADJUSTMENT
(14) Secured Liabilities	...	...
(15) Subordinated loans	...	...
(16) Commission on indemnity terms from the sale of <i>life policies</i> or <i>pension contracts</i>	...	...
(17) Investments (Short Positions)	Include a <i>net short position</i> (a) valued at its <i>offer price</i> , and (b) increased by the applicable percentage specified in table 13.5.4A B.	A Position Risk Adjustment
(18) Deficiency in subsidiary	...	...
(19) Liability for tax	...	...
(20) Creditors relating to Unsettled Securities Transactions Cash against Documents	Include creditors where a <i>firm</i> has entered into a transaction in <i>securities</i> or <i>units in collective investment schemes</i> as agent on a cash against documents basis, and the transaction remains unsettled, after adding an amount calculated by (a) computing the difference between the agreed settlement price for those <i>investments</i> and their current <i>market value</i> , and (b) multiplying that exposure by the applicable percentage specified in table 13.5.4B C.	A Counterparty Risk Adjustment

(21) Creditors relating to Unsettled Securities Transactions Free Deliveries	<p>Include an amount for creditors where (acting as agent) the <i>firm</i> has delivered certificates of title for <i>securities</i> or <i>units in collective investment schemes</i> before receiving payment for them, or where the <i>firm</i> has bought such <i>investments</i> before receiving certificates of good title for them, after adding an amount calculated by</p> <p>(a) (i) (where the <i>firm</i> has paid for them but not received certificates of good title for them) computing their current <i>market value</i>;</p> <p>(ii) (where the <i>firm</i> has delivered the certificates without receiving payment for them) computing the full amount due to a <i>firm</i> under the contract for sale; and</p> <p>(b) multiplying that exposure by the applicable percentage specified in table 13.5.4C D.</p>	A Counterparty Risk Adjustment
(22) Over the counter derivatives	<p>Include as a liability an amount for its positions in such <i>derivatives</i> calculated by</p> <p>(a) computing the credit equivalent of those positions in accordance with table 13.5.4D E, and</p> <p>(b) increasing that credit equivalent by the applicable percentage specified in table 13.5.4C D,</p> <p>(in addition to making an adjustment in accordance with item (17) of this table and (in respect of bought OTC equity options and covered warrants) in accordance with item (25)).</p>	A Counterparty Risk Adjustment
(23) Contingent Liabilities	...	...
(24) Preference Shares	Include as a liability any amounts in excess of the amounts which may be treated as <u>financial capital</u> resources specified in table 13.3.2(2) 13.1A.17R(1) and SUP 16.	
(25) Net open foreign currency position	Include as a liability an amount in respect of its foreign exchange risk calculated in accordance with table 13.5.4E F.	A Foreign Exchange Risk Adjustment
(26) All other liabilities	...	

Table 13.5.4A B

This table forms part of rule 13.5.4 13.2.9

POSITION RISK
...

Table 13.5.4B C

This table forms part of *rule 13.5.4 13.2.9*

UNSETTLED SECURITIES TRANSACTIONS	
Number of business days after due settlement date	Percentage
...	

Table 13.5.4C D

This table forms part of *rule 13.5.4 13.2.9*

COUNTERPARTY RISK	
Type of Counterparty	Deduction
...	

Table 13.5.4D E

This table forms part of *rule 13.5.4 13.2.9*

OVER THE COUNTER DERIVATIVES	
a. ...	

Table 13.5.4E F

This table forms part of *rule 13.5.4 13.2.9*

FOREIGN EXCHANGE RISK	
(a) ...	

SUBORDINATED LOANS

- 13.5.5 R An *exempt CAD firm* may treat a subordinated loan as a ~~financial resource~~ capital resources as specified in *table 13.1A.15R* and subject to *rule 13.5.5C 13.2.12*, if the long term subordinated loan is eligible for such treatment in accordance with *rule 13.5.5A 13.2.11*.
- 13.5.5A R A long term subordinated loan is eligible for such treatment if:
- 13.2.11
- (1) it is fully paid up;

- (2) it has an original maturity of at least five years, or where it has no fixed term, it is subject to five years' notice of repayment;
- (3) repayment, prepayment or termination is only permitted under the loan agreement:
 - (a) on maturity, or on expiration of the period of notice, if after such payment or termination a *firm* meets 120% of its financial capital resources requirement; or
 - (b) on winding up after the claims of all other creditors and all outstanding debts have been settled;
- (4) the amount used in the calculation of its financial capital resources is reduced on a straight line basis over the last five years of its term;
- (5) it is in the standard form prescribed by the *FSA* for long term subordinated loans.

13.5.5B R [deleted]

13.5.5C R The total amount of long term subordinated loans that an *exempt CAD firm* may include in the calculation of its financial capital resources is restricted as stipulated in 13.1A.17R and in *SUP 16*.

13.6 [Deleted]

13.7 [Deleted]

13.7.2B R An *exempt CAD firm* must, where it is exposed to undue risk in consequence of its membership of a *group*, provide against, reduce or eliminate that risk.

13.8 [Deleted]

13.9 FINANCIAL TESTS FOR CATEGORY B FIRMS

13.9.1 R A *Category B firm* must meet:

- (1) financial Resources Test 1 (the *Own funds* Test) calculated in accordance with section 13.10;
- (2) Financial Resources Test 1A (the *Adjusted Net current assets* Test) calculated in accordance with section 13.11, unless the *firm* is a *low resource firm* which is not permitted to carry on the activity of managing investments in respect of portfolios containing only *life policies*; and

- (3) Financial Resources Test 2 (the Expenditure-based Test) calculated in accordance with section 13.12 unless the firm is a low resource firm.
- 13.9.1A G Table 13b is a summary of the financial resources test for a *Category B firm*.

Table 13B This table forms part of rule 13.9.1

SUMMARY OF FINANCIAL RESOURCES FOR CATEGORY B FIRMS				
Type of firm	Financial Resources Test 1 <i>Own funds</i> Test	Financial Resources Test 1A Adjusted Net current assets Test	Financial Resources Test 2 Expenditure-based Test	Rule/section References
<i>Category B1</i> (including any <i>Network</i> in this category)	£10,000	Adjusted net current assets of £1	Liquid capital equal to the highest of 13/52 of relevant annual expenditure or £400 per adviser or £10,000	13.10 13.11 13.12.1 € 13.12.2 to 13.12.5 A
<i>Category B2</i> which is permitted to carry on the activity of <i>investment management</i> in respect of portfolios containing only <i>life policies</i> or to delegate such activity to an <i>investment firm</i>	£10,000	Adjusted net current assets of £1	Adjusted capital equal to the higher of 13/52 of relevant annual expenditure or £400 per adviser	13.10 13.11 13.12.1 D 13.12.2 to 13.12.5 A

<i>Category B2 with 26+ advisers</i>	£10,000	Adjusted <i>net current assets</i> of £1	Adjusted capital equal to the higher of 8/52 of relevant annual expenditure or £400 per adviser	13.10 13.11 13.12.1 E 13.12.2 to 13.12.5 A
<i>Category B2 with 1-25 advisers</i>	£10,000	Adjusted <i>net current assets</i> of £1	Adjusted capital equal to the higher of 4/52 of relevant annual expenditure or £400 per adviser	13.10 13.11 13.12.1 F 13.12.2 to 13.12.5 A
<i>Category B3 which is permitted to carry on the activity of <i>managing</i> <i>investments in</i> respect of portfolios containing only <i>life policies</i> or to delegate such activity to an <i>investment firm</i></i>	£10,000	Adjusted <i>net current assets</i> of £1	Adjusted capital equal to the higher of 8/52 of relevant annual expenditure or £400 per adviser	13.10 13.11 13.12.1 E 13.12.2 to 13.12.5 A

<i>Category B3 with 26+ advisers</i>	£10,000	Adjusted net current assets of £1	Adjusted capital equal to the higher of 4/52 of relevant annual expenditure or £400 per adviser	13.10 13.11 13.12.1 F 13.12.2 to 13.12.5 A
<i>Category B3 with 1-25 advisers</i>	£10,000	N/A	N/A	13.10
<i>Network in Category B2 or B3</i>	£10,000	Adjusted net current assets of £1	Adjusted capital equal to the higher of 13/52 of relevant annual expenditure or £400 per adviser	13.10 13.11 13.12.1 D 13.12.2 to 13.12.5 A
<i>All Category B firms that do not hold client money or assets, but are permitted to establish, operate or wind up a personal pension scheme.</i>	£10,000	Adjusted net current assets of £1	Adjusted capital equal to the highest of 6/52 of relevant annual expenditure, £400 per adviser, £10,000 and any other expenditure-based requirement set out in 13.12.1 applicable to the firm.	13.10 13.11 13.12.1 13.12.2 to 13.12.5 A

All Category B firms that hold client money or assets and are permitted to establish, operate or wind up a personal pension scheme.	£10,000	Adjusted net current assets of £1	Adjusted capital equal to the highest of 13/52 of relevant annual expenditure, £400 per adviser, and £10,000	13.10 13.11 13.12.1 G 13.12.2 to 13.12.5 A
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13.10 Financial Resources Test 1- Own funds Requirement

Requirement

- 13.10.1 R A Category B firm's own funds must at all times be at least £10,000.

Calculation

- 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 share capital (excluding preference shares redeemable by shareholders within 2 years) <i>Eligible LLP members' capital</i> Share premium account Retained profits (see 13.10.2AR) and interim net profits (Note 1)	Balances on proprietor's or partners' capital accounts current accounts (see 13.10.2AR)
Revaluation reserves	Revaluation reserves
Short-term subordinated loans	Short-term subordinated loans
Debt capital	
less	less

<p>Intangible assets</p> <p>Material current year losses</p> <p>Excess LLP members' drawings</p>	<p>Intangible assets</p> <p>Material current year losses</p> <p>Excess of current year drawings over current year profits</p>
<p>Note 1</p> <p>Retained profits must be audited and interim net profits must be verified by the firm's external auditor, unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 (section 294A (Exemptions from audit)), or where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts.</p>	

- 13.10.2A R For the purpose of calculating a *Category B firm's own funds*, the following adjustments apply to 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.
 - (4) a *Category B firm* must deduct any unrealized gains on investment property and include these within revaluation reserves.
 - (5) where applicable, a *Category B firm* must deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but exclude from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.
- 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. Where a *Category B firm* is a sole trader or a partnership:
- (1) it can use (to the extent necessary to make up any shortfall in the required resources) any of its personal assets (not being needed to meet liabilities arising from its personal activities and any business activities not regulated by the FSA);

- (2) ~~the firm's total financial resources, from whatever source, must at all times be sufficient to cover its total liabilities.~~
- 13.10.3 R (1) Where a *Category B3 firm* with 1-25 advisers has a facility under the PASS Loan Agreement Scheme it may make an adjustment in its *own funds* calculation in accordance with (2).
- (2) ~~a firm in (1) can regard as additional to its own funds the lower of either:~~
- (a) ~~the amount of the loan facility agreed (less any loan repayments already made and less the amount of the facility withdrawn or lapsed); or~~
 - (b) ~~the amount of the firm's provision for redress (net of any professional indemnity insurance recoverable) at the time of its application for the loan facility.~~

13.11 Financial Resources Test 1A - Adjusted net current assets

Application

- 13.11.1 R This section does not apply to a *low resource firm*.

Requirement

- 13.11.2 R A *Category B firm* must adjust its *net current assets* as follows:
- (1) ~~exclude assets which cannot be realised or recovered within twelve months;~~
 - (2) ~~exclude amounts receivable from connected persons to the extent that they are not properly secured, except amounts that are deposits referred to in item (11) of table 13.12.3(1) or item (11) in table 13.12.3(2);~~
 - (3) ~~value investments at current market value, using the bid price for a net long position in an investment and the offer price for a net short position in an investment;~~
 - (4) ~~where applicable, deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but exclude from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.~~
- 13.11.3 R A *Category B firm* must at all times have adjusted *net current assets* of at least £1.

13.12 FINANCIAL RESOURCES TEST 2 - EXPENDITURE-BASED REQUIREMENT

13.12.1 Application

13.12.1A R This section does not apply to a *low resource firm*.**REQUIREMENT****13.3 CAPITAL RESOURCES REQUIREMENT FOR CATEGORY B FIRMS AND OPTED-IN EXEMPT CAD FIRMS**

- 13.12.1B R A *Category category B firm* must have at all times financial capital resources calculated in accordance with *rules 13.12.2* *13.3.3* to *13.12.5* *13.3.14* which equal or exceed the amount specified in *rules 13.12.1C* *13.3.2 to F* as applicable.
- 13.12.1C R A *Category category B1 firm, including a Network* must have financial meet a capital resources requirement calculated in accordance with whichever of (1), or (2) or (3) produces the higher amount:
- (1) *13/52* 1/4 of its relevant fixed annual expenditure, calculated in accordance with *13.12.2* *13.3.3R* to *13.12.2D* *13.3.8R*; or
 - (2) an amount equal to £400 multiplied by the number of its *advisers*; or
 - (3) £10,000 *20,000*;
 - (2)
- 13.12.1D R (1) A *Category B2 firm* which is permitted to carry on the activity of *investment management* in respect of portfolios containing only *life policies* or to delegate such activity to an *investment firm* must have financial resources calculated in accordance with whichever of (3) or (4) produces the higher amount.
- (2) A *Network* in Category B2 or B3 must have financial resources calculated in accordance with whichever of (3) or (4) produces the higher amount.
- (3) *13/52* of its relevant annual expenditure, calculated in accordance with *13.12.2* to *13.12.2D*; or
- (4) an amount equal to £400 multiplied by the number of its *advisers*.
- 13.12.1E R (1) A *Category B2 firm* with more than 25 *advisers* which is not a *Network* and is not permitted to carry on the activity of *managing investments* in respect of portfolios containing only *life policies* or to delegate such activity to an *investment firm* must have financial resources calculated in accordance with whichever of (3) or (4) produces the higher amount.

- (2) A *Category B3 firm* which is permitted to carry on the activity of *investment management* in respect of portfolios containing only *life policies* or to delegate such activity to an *investment firm* must have financial resources calculated in accordance with whichever of (3) or (4) produces the higher amount.
- (3) 8/52 of its relevant annual expenditure, calculated in accordance with 13.12.2 to 13.12.2D; or
- (4) an amount equal to £400 multiplied by the number of its *advisers*.
- 13.12.1F R (1) A *Category B2 firm* with fewer than 26 *advisers* which is not a *Network* and is not permitted to carry on the activity of *managing investments* in respect of portfolios containing only *life policies* or to delegate such activity of *investment management* to an *investment firm* must have financial resources calculated in accordance with whichever of (3) or (4) produces the higher amount.
- (2) A *Category B3 firm* which is not permitted to carry on the activity of *investment management* in respect of portfolios containing only *life policies* or to delegate such activity to an *investment firm* must have financial resources calculated in accordance with whichever of (3) or (4) produces the higher amount.
- (3) 4/52 of its relevant annual expenditure, calculated in accordance with 13.12.2 to 13.12.2D; or
- (4) an amount equal to £400 multiplied by the number of its *advisers*.
- 13.12.1G R A *category B firm* whose permission includes *establishing, operating or winding up a personal pension scheme* must have financial resources calculated in accordance with (1) or (2):
- (1) For a *firm* which holds *client money* or assets, the highest of:
- (a) 13/52 of its relevant annual expenditure, calculated in accordance with 13.12.2 to 13.12.2D;
- (b) an amount equal to £400 multiplied by the number of its *advisers*; and
- (c) £10,000.
- (2) For a *firm* which does not hold *client money* or assets, the highest of:
- (a) 6/52 of its relevant annual expenditure, calculated in accordance with 13.12.2 to 13.12.2D;

- (b) ~~an amount equal to £400 multiplied by the number of its advisers;~~
- (e) £10,000; and
- (d) ~~any other expenditure based requirement set out in 13.12.1 applicable to the firm.~~

CALCULATION OF RELEVANT FIXED ANNUAL EXPENDITURE

- 13.12.2 R A *Category category B firm* must calculate its ~~relevant fixed~~ annual expenditure by reference to the amount described as total expenditure in its most ~~recently prepared set of annual financial statements~~. If those statements were for a period other than 12 months, the amounts in its profit and loss account must be adjusted proportionately recent RMAR drawn up at its accounting reference date.
- 13.12.2A R Where a *Category category B firm* has just begun trading or ~~have has~~ not been authorised long enough to submit such an *RMAR*, the *firm* must calculate its ~~relevant fixed~~ annual expenditure on the basis of forecast or other appropriate accounts submitted to the *FSA*.
- 13.12.2B R A *Category category B firm* may deduct from its ~~relevant total~~ annual expenditure ~~the items (a) to (f) set out in table 13.12.2 13.3.5, unless the firm is a Category B1 firm, in which case it may not deduct item (e).~~

Table 13.12.2 13.3.5

This table forms part of rule 13.12.2 13.3.5

DEDUCTIONS FROM EXPENDITURE	
(a)	staff bonuses (<u>except to the extent that they are guaranteed</u>);
(b)	<i>employees' and directors' shares</i> in profits (<u>except to the extent that the amount is guaranteed</u>);
(c)	interest charges in respect of borrowings made to finance the acquisition of its <i>readily realisable investments</i> ;
(d)	shared commissions paid commission and fees payable which are directly related to commissions received commission and fees receivable that are included within total revenue;
(e)	emoluments of <i>directors</i> , partners or a sole trader;
(f)	a firm must not deduct any exceptional expenditure other variable expenditure.

- 13.3.6 G For the purpose of this section, fixed expenditure is expenditure which is inelastic relative to fluctuations in a firm's levels of business. Fixed expenditure is likely to include most salaries and staff costs, office rent, payment for the rent or lease of office equipment, and insurance premiums. It may be viewed as the amount of funds which a firm would require to enable it to cease business in an orderly manner, should the need arise. This is not an exhaustive list of such expenditure and a firm will itself need to identify (taking appropriate advice where necessary) which costs amount to fixed expenditure.

ADJUSTMENTS TO CALCULATION OF RELEVANT FIXED ANNUAL EXPENDITURE

- 13.12.2C R A firm must ensure that the expenditure base properly reflects the ongoing annual operating costs of the firm by having proper regard to its circumstances when deciding whether to include or exclude any item of expenditure or to make any other adjustment to the calculation of relevant annual expenditure.
- A firm must adjust its fixed expenditure calculation so far as necessary if and to the extent that since the date covered by the most recent annual RMAR or (if 13.2.3R(2) applies) since the forecast was prepared:
- (1) its level of fixed expenditure changes materially; or
 - (2) its regulated activities comprised within its permission change.
- 13.3.8 R If a firm has a material proportion of its expenditure incurred on its behalf by third parties and such expenditure is not fully recharged to that firm then the firm must adjust its fixed expenditure calculation by adding back in the whole of the difference between the amount of the expenditure and the amount recharged.
- 13.12.2D G In rule 13.12.2C the FSA would expect a firm to take proper account of the effect of, for example, the ongoing annual operating costs of the firm being met by another party, or of a significant change in the structure of the firm's business during the year.
- The FSA would consider as material 10% of a firm's total expenditure incurred on its behalf by third parties.

CALCULATION OF FINANCIAL CAPITAL RESOURCES TO MEET TESTS 1, 1A OR 2 THE EXPENDITURE-BASED REQUIREMENT

- 13.12.3 R (1) This rule does not apply to a low resource firm;
- 13.3.10
- (2) A Category category B firm must be able to calculate its financial capital resources at any time in accordance with table 13.3.10 on the basis of the balance sheet the firm could draw drawn up by the firm at that time. For this purpose:

- (a) a *Category B1 firm* must adjust the assets in the balance sheet as specified in Part I of table 13.12.3(1) and include the liabilities after making the adjustments specified in Part II of table 13.12.3(1);
 - (b) a *Category B2 or B3 firm* to which 13.12 applies must adjust the assets in the balance sheet as specified in Part I of table 13.12.3(2) and include the liabilities after making the adjustments specified in Part II of table 13.12.3(2).
- (2) A firm must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its annual financial statements unless a rule requires otherwise.
- (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;
 - (d) where applicable, a *Category B firm* must deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but exclude from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.

Table 13.3.10

This table forms part of rule 13.3.10

<p>To calculate a <i>firm's capital resources</i>, the items in Stage B must be deducted from the items in Stage A. The result must then be added to the items in Stage C ((A-B) + C).</p>		
<u>Stage A</u>	<u>Item</u>	<u>Adjustment</u>
1	Paid up share capital excluding preference shares redeemable	Exclude any redeemable preference <i>shares</i> which fall due within two years. If preference <i>shares</i> are not redeemable by the shareholder

<u>Stage A</u>	<u>Item</u>	<u>Adjustment</u>
1	Paid up share capital excluding preference shares redeemable	Exclude any redeemable preference <i>shares</i> which fall due within two years. If preference <i>shares</i> are not redeemable by the shareholder

	<u>by shareholders within 2 years</u>	<u>within 2 years, they must be treated in accordance with 13.3.13R and 13.3.14R.</u>
<u>2</u>	<u>Eligible LLP members' capital</u>	
<u>3</u>	<u>Balances on proprietor's or partners':</u> <ul style="list-style-type: none"> • <u>Capital accounts</u> • <u>Current accounts</u> <u>Less</u> <ul style="list-style-type: none"> • <u>Excess LLP members' drawings</u> • <u>Excess of current year drawings over current year profits</u> 	
<u>4</u>	<u>Share premium account</u>	
<u>5</u>	<u>Retained profits (losses) plus current year net profits (losses) plus other reserves</u>	<p><u>Retained profits and retained losses are subject to the following adjustments:</u></p> <p class="list-item-l1">(1) <u>the 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;</u></p> <p class="list-item-l1">(2) <u>in respect of a defined benefit occupational pension scheme, the firm must derecognise any defined benefit asset;</u></p> <p class="list-item-l1">(3) <u>the 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; and</u></p> <p class="list-item-l1">(4) <u>where applicable, the firm must deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but exclude from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.</u></p> <p><u>Retained profits (or losses) do not need to be audited and current year net profits (or losses) do not need to be verified.</u></p>
<u>6</u>	<u>Revaluation reserve</u>	

<u>7</u>	<u>Subordinated loans</u>	<u>Subject to the limits set out in 13.3.11R to 13.3.14R.</u>
<u>Stage B</u>	<u>Item</u>	<u>Adjustment</u>
<u>8</u>	<u>Intangible assets</u>	<u>Deduct intangible assets in full.</u>
<u>9</u>	<u>Contingent liabilities</u>	<u>Deduct any contingent liability (including the overdraft of any other company which the firm has guaranteed).</u>
<u>10</u>	<u>Deficiencies in subsidiaries</u>	<u>Include a deduction for the amount by which the liabilities of any subsidiary (excluding its capital and reserves) exceed its tangible assets. This requirement applies only to the extent that the firm has not already made such a provision in its balance sheet.</u>
<u>11</u>	<u>Non-trade debtors (including from group and connected companies)</u>	<u>Deduct amounts in full.</u>
<u>12</u>	<u>Trade debtors (including from group and connected companies)</u>	<u>Deduct amounts due and unpaid for more than 90 days.</u>
<u>13</u>	<u>Land and buildings (net of any liabilities secured by a charge on the assets)</u>	<u>Deduct 30% of the net book value of land and buildings.</u>
<u>14</u>	<u>Investments</u>	<u>Deduct the applicable percentage for investments as specified in table 13.3.10.</u>
<u>15</u>	<u>Accrued Income</u>	<u>Deduct amounts receivable after more than 90 days.</u>
<u>16</u>	<u>Prepayments</u>	<u>Deduct amounts which relate to goods or services to be received or performed after more than 90 days.</u>
<u>17</u>	<u>Deposits</u>	<u>Deduct amounts other than:</u> <u>(a) cash and balances on current accounts and on deposit accounts with an approved bank or National Savings Bank which can be withdrawn within 90 days;</u> <u>(b) money on deposit with a UK local authority which can be withdrawn within 90 days;</u>

		<u>18(c) money deposited and evidenced by a certificate of tax deposit.</u>
<u>18</u>	<u>Other illiquid assets</u>	<u>Deduct amounts in full.</u>
<u>Stage C</u>	<u>Item</u>	<u>Adjustment</u>
<u>19</u>	<u>Personal assets of partnerships or sole traders</u>	<u>A sole trader or a partnership may include personal assets (based on a current independent valuation) to make up any shortfall in the required capital resources needed to meet its capital resources requirement. The assets must be discounted by the factors given in stage B of this Table and must not be needed to meet liabilities arising from personal activities or another business activity not regulated by the FSA.</u>

Table 13.12.3(1) Part I

This table forms part of rule 13.12.3

<i>FIRMS CATEGORY B1</i>	
<i>CALCULATION OF ASSETS</i>	
<i>ASSETS</i>	<i>ADJUSTMENTS</i>
(1) Land and Buildings	Exclude in full. (A loan secured by a charge on land and buildings may be deducted from liabilities in accordance with item (14) of Part II of this table.)

(2) Investments	<p>Include any <i>net long position</i> in any fixed or current asset investment (including <i>shares</i> in any connected company)</p> <p>(a) valued at its current bid price (or, in the case of a <i>with profits life policy</i>, at its surrender value), and</p> <p>(b) discounted by the applicable percentage specified in table 13.12.3A.</p> <p>A <i>firm</i> which acts as a market maker in second-hand <i>life policies</i> must comply with the relevant requirements in respect of second-hand <i>life policies</i> held by the <i>firm</i> and include such a policy.</p> <p>(a) valued at its surrender value at the date on which the <i>firm</i> acquired it, or its latest available surrender value if different.</p> <p>(b) where a life office whose policy is held by the <i>firm</i> has altered adversely the basis on which it calculates surrender values, the <i>firm</i> must revise its valuation of the second-hand <i>policy</i> as soon as practicable after becoming aware of the alteration.</p>
(3) Investments subject to Repurchase, Reverse Repurchase, Stock Borrowing or Stock Lending transactions	<p>Include <i>investments</i> for which the <i>firm</i> has entered as principal into a repurchase, reverse repurchase, stock borrowing or stock lending transaction on its own behalf, after making (I) a deduction in accordance with item (2), and (II) a deduction calculated by computing its exposure (the difference between the <i>market value</i> of the securities and the loan or collateral (including accrued interest) where that difference is not in the <i>firm's</i> favour, after adjusting for any excess collateral).</p>

(4) Debtors relating to Unsettled Securities Transactions Cash against Documents	<p>Include debtors where the <i>firm</i> has entered into a transaction on its own behalf in <i>securities</i> or <i>units</i> in <i>collective investment schemes</i> on a cash against documents basis, and the transaction remains unsettled, after deducting an amount calculated by</p> <ul style="list-style-type: none"> (a) computing the difference between the agreed settlement price for those <i>investments</i> and their current <i>bid price</i> where that difference is not in the <i>firm's</i> favour, and (b) multiplying that difference by the applicable percentage specified in table 13.12.3B.
(5) Debtors relating to Unsettled Securities Transactions Free Deliveries	<ul style="list-style-type: none"> (a) Include the full amount due to the <i>firm</i> from debtors if a <i>firm</i> has delivered <i>securities</i> or <i>units</i> in <i>collective investment schemes</i> before receiving payment for them, or paid for such investments before receiving certificates of good title for them, so long as not more than three days have passed since delivery (b) If more than three days have passed since delivery, exclude in full.
(6) Regulated collective investment schemes	<p>Include an amount owing in respect of a transaction in <i>units</i> in a <i>regulated collective investment scheme</i> only if the amount has been due and unpaid for 30 days or less after the settlement date of the transaction to which it relates.</p>
(7) Loans secured on <i>investments</i>	<p>If the <i>firm</i> holds client title documents as security for</p> <ul style="list-style-type: none"> (a) the repayment of money it has lent; or (b) money due to the <i>firm</i> in connection with the purchase for or sale to another person of those <i>investments</i>, which the <i>firm</i> has for genuine commercial reasons agreed to postpone, <p>the <i>firm</i> may include as an asset the lower of the following:</p> <ul style="list-style-type: none"> (i) the total amount due; (ii) the <i>market value</i> of the <i>investments</i> multiplied by the appropriate rates set out in table 13.12.3A.

(8) Trade debtors	<p>Include amounts owing only in respect of</p> <p>(a) (i) commission;</p> <p>(ii) <i>investment management fees</i>;</p> <p>(iii) other fees earned in connection with the <i>firm's investment business</i>,</p> <p>which are due from other authorised or EEA firms, recognised investment exchanges or recognised clearing houses and have been due and unpaid for 30 days or less;</p> <p>(b) (i) <i>investment management fees</i>; or</p> <p>(ii) pensions administration which have been due from its customers and unpaid for 30 days or less.</p> <p>(c) All other trade debtors must be deducted in full.</p>
(9) Prepayments	Include prepayments which relate to goods or services to be received or performed within 90 days.
(10) Accrued income	<p>(a) Accrued income relating to <i>investment management fees</i> not yet due and payable may be included if the fees relate to services provided within the previous six months.</p> <p>(b) Other accrued income may be included if it relates to interest on marketable debt instruments or on <i>deposits</i> included in item (11).</p>
(11) <i>Deposits</i>	<p>The following may be included:</p> <p>(a) cash and balances on current accounts and on <i>deposit</i> accounts with an <i>approved bank</i> or National Savings Bank which can be withdrawn within 90 days;</p> <p>(b) money on <i>deposit</i> with a UK local authority which can be withdrawn within 90 days;</p> <p>(c) money deposited and evidenced by a certificate of tax deposit.</p>

(12) Other Debts	<p>(a) Amounts owing in respect of</p> <ul style="list-style-type: none"> (i) interest on investments; (ii) repayments of marketable debt instruments at maturity or call; (iii) dividends declared by authorised or not EEA firms or by companies in respect of shares listed on a recognised or designated investment exchange; which have been due and unpaid for 30 days or less may be included. <p>(b) Other amounts due from UK government bodies may be included if they are agreed and due within 30 days.</p>
(13) All other assets	Exclude in full.

Table 13.12.3(1) Part II

This table forms part of rule 13.12.3

<i>FIRMS IN CATEGORY B1</i>	
CALCULATION OF LIABILITIES	
LIABILITIES	ADJUSTMENTS
(14) Secured Liabilities	<p>Include in full, except the amount of the liabilities secured by a charge on land and buildings which may be reduced by the smallest of the following amounts:</p> <ul style="list-style-type: none"> (a) the aggregate amount of the firm's secured liabilities which are due more than one year after the balance sheet date; (b) (if the land and buildings have been valued by an independent professional valuer within the past 18 months) 85% of the amount certified by the valuer as their market value; (c) 85% of the net book value of the land and buildings.
(15) Subordinated loans	<p>Include in full, except any short-term subordinated loan in the standard form prescribed by the FSA which may be treated as capital up to the limits specified in rules 13.12.5 and 13.12.5A.</p>

(16) Commission on indemnity terms from the sale of <i>life policies</i> or pension contracts	Include as a liability a provision for repayment, in the event that premiums cease within the indemnity period, which must equal or exceed 2.5% of the commissions the <i>firm</i> has received on indemnity terms during the previous twelve months. This provision must be reasonable having regard to its circumstances and, in particular, its previous lapse ratio.
(17) Short Positions	Include a <i>net short position</i> (a) valued at its offer price and (b) increased using the applicable percentage rate in table 13.12.3A.
(18) Deficiency in <i>subsidiary</i>	Include as a liability the amount by which the liabilities of any <i>subsidiary</i> (excluding its capital and reserves) exceed its tangible assets. This requirement applies only to the extent that the <i>firm</i> has not already made such a provision elsewhere in its financial statements.
(19) Liability for tax	Include as a liability a provision for taxation on the whole of the profits of the <i>firm's</i> business up to its balance sheet date.
(20) Creditors relating to Unsettled <i>Securities</i> Transactions—Cash against Documents	Include creditors where the <i>firm</i> has entered into a transaction on its own behalf in <i>securities</i> or <i>units</i> in <i>collective investment schemes</i> on a cash against documents basis, and the transaction remains unsettled, after adding an amount calculated by (a) computing the difference between the agreed settlement price for those <i>investments</i> and their current <i>market value</i> where that difference is not in the <i>firm's</i> favour, and (b) multiplying that difference by the applicable percentage specified in table 13.12.3B.

(21) Creditors relating to Unsettled Securities Transactions - Free Deliveries	<p>Include an amount for creditors where (acting on the firm's own behalf) the firm has delivered certificates of title for securities or units in collective investment schemes before receiving payment for them, or where a firm has bought such investments before receiving certificates of good title for them, as follows:</p> <p>(a) (if the firm has paid for them and not more than 3 days have passed since the payment was made) include in full;</p> <p>(b) (if more than 3 days have passed since the payment was made) include the full value of the securities at their current offer price.</p>
(22) Over the counter derivatives	<p>If the firm holds positions in derivatives on its own behalf must</p> <p>(a) make the adjustment in item (17) of this table, and</p> <p>(b) deduct the credit equivalent of those positions computed in accordance with table 13.12.3C. In addition, bought OTC options and covered warrants will be subject to table 13.12.3D.</p>
(23) Contingent Liabilities	A firm must include a provision for any contingent liabilities which exist at its balance sheet date that must be made.
(24) Redeemable Preference Shares	Include as a liability any redeemable preference shares which fall due within two years. If shares are not redeemable by the shareholder within 2 years, they must be treated in accordance with rules 13.12.5 and 13.12.5A.
(25) Foreign currency risk	If the firm holds positions on its own behalf in foreign currencies or has assets or liabilities denominated in foreign currencies, the firm must calculate a provision to cover the risk in accordance with table 13.12.3D and include the amount as a liability
(26) All other liabilities	Include in full.

Table 13.12.3(2) Part I

This table forms part of rule 13.12.3

FIRMS IN CATEGORIES B2 AND B3 <i>(except low resource firms)</i>	
CALCULATION OF ASSETS	
ASSETS	ADJUSTMENTS
(1) Land and buildings	<p>Include land and buildings which are not subject to any charge only if they have been valued either</p> <p>(a) at 60% of their net book value, or</p> <p>(b) (if valued by an independent professional valuer within the past three years) at 60% of the amount certified by the valuer to be the <i>market value</i>.</p>
(2) Motor vehicles	<p>(a) Include motor vehicles acquired less than 12 months ago valued at 50% of their cost</p> <p>(b) Include motor vehicles acquired within the past 24 months (but more than 12 months ago) valued at 25% of their cost</p> <p>(e) Exclude in full any other motor vehicles.</p>
(3) Investments	<p>Include any <i>net long position</i> in any fixed or current asset investment (including shares in any connected company)</p> <p>(a) valued at its current <i>bid price</i> (or, in the case of a with profits <i>life policy</i>, at its surrender value) and</p> <p>(b) discounted by the applicable percentage specified in table 13.12.3A.</p>
(4) Debtors relating to Unsettled Securities Transactions Cash against Documents	<p>Include debtors where a <i>firm</i> has entered into a transaction on its own behalf in <i>securities</i> or <i>units</i> in <i>collective investment schemes</i> on a cash against documents basis and the transaction remains unsettled after deducting an amount calculated by</p> <p>(a) computing the difference between the agreed settlement price for those <i>investments</i> and their current <i>bid price</i> where that difference is not in the <i>firm's</i> favour and</p> <p>(b) multiplying that difference by the applicable percentage specified in table 13.12.3B.</p>

(5) Debtors relating to Unsettled Securities Transactions Free Deliveries	<p>(a) Where the firm has delivered <i>securities or units in collective investment schemes</i> before receiving payment for them or paid for such <i>investments</i> before receiving certificates of good title for them include the full amount due to a firm from debtors so long as not more than 3 days have passed since delivery.</p> <p>(b) Exclude in full if more than 3 days have passed since delivery.</p>
(6) <i>Regulated collective investment schemes</i>	Include an amount owing in respect of a transaction in <i>units in a regulated collective investment scheme</i> only if the amount has been due and unpaid for not more than 90 days after the settlement date of the transaction to which it relates.
(7) Debts of <i>group or connected companies</i>	Include amounts due from <i>group or connected companies</i> (which do not relate to trade debts) where a firm has no reason to doubt that repayment will be made in full on demand.
(8) Trade debtors	Include amounts due from trade debtors (including group or connected companies) which have been due and unpaid for less than 90 days.
(9) Prepayments	Include prepayments which relate to goods or services to be received or performed within 90 days.
(10) Accrued income	<p>(a) Include accrued income not yet due and payable in respect of fees earned in the performance of investment management services that is receivable within six months.</p> <p>(b) Include any other accrued income receivable within 90 days.</p>
(11) <i>Deposits</i>	<p>Include amounts in respect of</p> <p>(a) cash and balances on current accounts and on <i>deposit accounts</i> with an <i>approved bank</i> or National Savings Bank which can be withdrawn within 90 days;</p> <p>(b) money on <i>deposit</i> with a UK local authority which can be withdrawn within 90 days;</p> <p>(c) money <i>deposited</i> and evidenced by a certificate of tax <i>deposit</i>.</p>

(12) Other amounts due from Government bodies or local authorities	Include other amounts due from UK Government bodies or local authorities if they are agreed and due within 90 days.
(13) All other assets	Exclude in full.

Table 13.12.3(2) Part II

This table forms part of rule 13.12.3

FIRMS IN CATEGORIES B2 AND B3 <i>(except low resource firms)</i>	
CALCULATION OF LIABILITIES	
LIABILITIES	CALCULATIONS
(14) Secured Liabilities	<p>Include in full, except the amount of the liabilities secured by a charge on land and buildings which may be reduced as follows:</p> <p>(a) If the liabilities secured exceed 85% of the value of the land and buildings, then the excess is treated as a liability;</p> <p>(b) If the land and buildings have been valued by an independent professional valuer within the past three years, the value of the land and buildings is the amount certified by the valuer as their market value; otherwise it is their net book value.</p> <p>(If 60% of the value of the land and buildings which are subject to a charge exceeds the liabilities secured, then the amount of that excess may be treated as an asset.)</p>
(15) Subordinated loans	Include in full, except any short term subordinated loan in the standard form prescribed by the FSA for such loans which may be treated as capital up to the limits specified in rules 13.12.5 and 13.12.5A.

(16) Commission on indemnity terms from the sale of <i>life policies</i> or pension contracts	Include as a liability a provision for repayment, in the event that premiums cease within the indemnity period, which must equal or exceed 2.5% of the commissions the <i>firm</i> has received on indemnity terms during the previous twelve months. This provision must be reasonable having regard to its circumstances and, in particular, its previous lapse ratio.
(17) Short Positions	Include a <i>net short position</i> (a) valued at its offer price, and (b) increased using the applicable percentage rate in table 13.12.3A.
(18) Deficiency in subsidiary	Include as a liability the amount by which the liabilities of any <i>subsidiary</i> (excluding its capital and reserves) exceed its tangible assets. This requirement applies only to the extent that the <i>firm</i> has not already made such a provision elsewhere in its financial statements.
(19) Liability for tax	Include as a liability a provision for taxation on the whole of the profits of its business up to its balance sheet date.
(20) Unsettled Securities Transactions – Cash against Documents	Include creditors where the <i>firm</i> has entered into a transaction on its behalf in <i>securities</i> or <i>units</i> in <i>collective investment schemes</i> on a cash against documents basis, and the transaction remains unsettled, after adding an amount calculated by (a) computing the difference between the agreed settlement price for those investments and their current <i>market value</i> , and (b) multiplying that difference by the applicable percentage specified in table 13.12.3B.

(21) Creditors relating to Unsettled <i>Securities Transactions</i> – Free Deliveries	<p>Include an amount for creditors where (acting on its behalf) the <i>firm</i> has delivered certificates of title for <i>securities</i> or <i>units</i> in <i>collective investment schemes</i> before receiving payment for them, or where the <i>firm</i> has bought such investments before receiving certificates of good title for them, as follows:</p> <p>(a) (if the <i>firm</i> has paid for them and not more than 3 days have passed since the payment was made) include in full;</p> <p>(b) (if more than 3 days have passed since the payment was made) include the full value of the <i>securities</i> at the current offer price.</p>
(22) <i>Over the counter derivatives</i>	<p>Include as a liability an amount for any positions the <i>firm</i> holds on its own behalf in such <i>derivatives</i> calculated by computing the credit equivalent of those positions in accordance with table 13.12.3C. In addition, bought <i>OTC derivatives</i> and covered <i>warrants</i> will be subject to table 13.12.3D.</p>
(23) Contingent Liabilities	<p>A <i>firm</i> must include a provision for any contingent liabilities which exist at its balance sheet date that must be made.</p>
(24) Long term liabilities	<p>Include as a liability any amount which falls due more than 3 years from the balance sheet date and is due to connected persons, in accordance with rules 13.12.5 and 13.12.5A.</p>
(25) Redeemable Preference Shares	<p>Include as a liability any redeemable preference shares which fall due within two years. If shares are not redeemable by the shareholder within two years, they must be treated in accordance with rules 13.12.5 and 13.12.5A.</p>
(26) Net open foreign currency position	<p>A <i>firm</i> must calculate its foreign exchange risk requirement in accordance with table 13.12.3D and include the amount as a liability.</p>
(27) All other liabilities	<p>Include in full.</p>

DISCOUNTS FOR INVESTMENTS	
<p>The percentages in the table are applied to the <i>market value</i> (unless otherwise stated) or of gross positions, i.e. both longs and shorts in each category; netting and offsetting are prohibited. The long or short position in a particular investment <i>investment</i> is the net of any long or short positions held in that same investment.</p>	
Investment	Discount
A. Debt	
UK Government or local authority stocks:	
- with less than one year to final redemption	2%
- with more than one year but less than five years to final redemption	5%
- with five years or more to final redemption	10%
Debt security:	
- debt instruments issued or accepted by an <i>approved bank</i> with less than 90 days to final redemption	2%
- other debt instruments which are <i>marketable investments</i> with less than one year to final redemption	5%
- other debt instruments which are <i>marketable investments</i> with less than five years to final redemption	10%
- other debt instruments which are <i>marketable investments</i>	15%
- floating rate notes which are <i>marketable investments</i> :	
- with no more than 20 years to final redemption	5%
- with more than 20 years to final redemption	10%
B. Equities	

<ul style="list-style-type: none"> - other <i>investments</i> listed on a <u>recognised</u> <u>recognised</u> or <u>designated investment exchange</u> <u>designated investment exchange</u> - <i>shares</i> traded on a <u>recognised</u> <u>recognised</u> or <u>designated investment exchange</u> <u>designated investment exchange</u> - other <i>shares</i> for which there is a <i>market maker</i> in the UK 	25% 35% 35%
<p>C. <i>Derivatives</i></p> <ul style="list-style-type: none"> — <i>exchange traded futures</i> — <i>OTC futures</i> — <i>Purchased options</i> — <i>Contracts for differences</i> 	4 x initial margin requirement Apply the appropriate percentage shown in A and B to the <i>market value</i> of the underlying position Apply the appropriate percentage shown in A and B to the <i>market value</i> of the underlying position but the result may be limited to the <i>market value</i> of the option 20% of the <i>market value</i> of the contract
<p>D C. <i>Other Investments</i></p> <ul style="list-style-type: none"> - <i>Unit linked bonds and units in authorised unit trust schemes</i> (other than <i>higher volatility funds</i> and <i>property funds</i>) or <u>regulated collective investment schemes</u> <u>regulated collective investment schemes</u> - <i>units in higher volatility funds</i> and <i>property funds</i> - with profit <i>life policies</i> (only applicable to <i>firms</i> other than <i>traded life policy market makers</i>) 	25% 50% 20% of the <i>surrender value</i> of the <i>policy</i>

-	<i>shares in subsidiary companies and shares which are not readily realisable securities in connected companies</i>	100%
-	<i>traded endowment policies (Note 1):</i> where a <i>traded life policy</i> is held for resale by a <i>firm</i> which is a <i>traded life policy market maker</i> :	
	(a) for 3 months or less	0% of the <i>surrender value</i> of the <i>policy</i>
	(b) for more than 3 months	10% of the <i>surrender value</i> of the <i>policy</i>
	when a <i>traded life policy</i> is held by a <i>firm</i> which is a <i>traded life policy market maker</i> for investment	10% of the <i>surrender value</i> of the <i>policy</i>
-	other	100%

Note 1 - A *traded life policy market maker* must:

- (1) include such a policy valued at its surrender value at the date on which the *firm* acquired it, or its latest available surrender value if different; and
- (2) where a life office whose policy is held by the *firm* has altered adversely the basis on which it calculates surrender values, revise its valuation of the *traded life policy* as soon as practicable after becoming aware of the alteration.

Table 13.12.3B—

This table forms part of rule 13.12.3

UNSETTLED SECURITIES TRANSACTIONS		
Number of business days after due settlement date	A %	B %
0—15	0	0
16—30	25	0
31—45	50	25

46—60	75	50
61 or more	100	75
over 90	100	100
Note 1	Column A applies to a transaction in a debt or debt-related instrument (unless the debt instrument is settled through the appropriate UK settlement system), and	
Note 2	Column B applies in all other cases (and, in particular, applies to equity and equity-related instruments).	

Table 13.12.3C

This table forms part of rule 13.12.3

OVER THE COUNTER DERIVATIVES											
a. By attaching current market values to contracts (marking to market), obtain the current replacement cost of all contracts with positive values.											
b. To obtain a figure for potential future credit exposure (except in the case of single currency “floating/floating interest rate swaps” in which only the current replacement costs will be calculated), the notional principal amounts or values underlying the firm’s aggregate positions are multiplied by the following percentages:											
<table> <thead> <tr> <th>Residual Maturity</th> <th>Interest Rate Contracts</th> <th>Foreign Exchange Contracts</th> </tr> </thead> <tbody> <tr> <td>One year or less</td> <td>Nil</td> <td>1%</td> </tr> <tr> <td>More than 1 year</td> <td>0.5%</td> <td>5%</td> </tr> </tbody> </table>			Residual Maturity	Interest Rate Contracts	Foreign Exchange Contracts	One year or less	Nil	1%	More than 1 year	0.5%	5%
Residual Maturity	Interest Rate Contracts	Foreign Exchange Contracts									
One year or less	Nil	1%									
More than 1 year	0.5%	5%									
e. The credit equivalent is the sum of current replacement cost and potential future credit exposure.											

Table 13.12.3D

This table forms part of rule 13.12.3

FOREIGN EXCHANGE RISK

- (a) A firm must deduct a foreign exchange risk requirement for all the following items which are denominated in a foreign currency:
- (i) all assets and liabilities, including accrued interest, denominated in the currency (all investments at market or realisable value);
 - (ii) any currency future, at the nominal value of the contract;
 - (iii) any forward contract for the purchase or sale of the currency, at the contract value, including any future exchange of principal associated with currency swaps;
 - (iv) any foreign currency options at the net delta (or delta-based) equivalent of the total book of such options;
 - (v) any non currency option, at market value;
 - (vi) any irrevocable guarantee;
 - (vii) any other off balance sheet commitment to purchase or sell an asset denominated in that currency.
- (b) The requirement must be calculated as follows:
- (i) using the spot rate, convert the net long position and net short position in each foreign currency into the currency in which the firm's annual financial statements are reported;
 - (ii) total the net open long positions and the net open short positions;
 - (iii) the higher of (i) and (ii) above is its net open foreign currency position;
 - (iv) multiply its net open foreign currency position by 10%;
- (c) A firm may not include any future income or expense not yet accrued but fully hedged (subject to deduction of an appropriate risk requirement).

13.12.4 SHORT TERM SUBORDINATED LOANS

13.12.4 R A Category *category B* firm may treat a subordinated loan as a financial resource capital resources, as specified in rules 13.12.5 13.3.13R to 5A and 13.3.14R, if the short term subordinated loan is eligible for such treatment in accordance with rule 13.12.4A 13.3.12R.

13.12.4A R A short term subordinated loan is eligible for such treatment if: 13.3.12

- (1) it has an original maturity of at least two years or, if it has no fixed term, it is subject to two years' notice of repayment;

- (2) payment of interest is not permitted under the loan agreement unless after such payment a *firm* ~~meet~~ meets 120% of its financial capital resources requirement;
- (3) repayment, prepayment or termination is only permitted under the loan agreement:
 - (a) on maturity, or on expiration of the period of notice, if after such payment or termination a *firm* meets 120% of its financial capital resources requirement; or
 - (b) on winding up after the claims of all other creditors and all outstanding debts have been settled;
- (4) it is in the standard form for short term subordinated loans prescribed by the *FSA*.

RESTRICTIONS

13.12.5 R A *Category category B firm* must calculate:
13.3.13

- (1) the aggregate amount of its short term subordinated loans, and its preference *shares* which are not redeemable within two years, ~~and for a Category B firm other than a Category B1 firm~~ its long term liabilities which are not secured on its assets, if they do not fall due more than three years from the balance sheet date, and are not due to *connected persons*; and
- (2) the amount of the *firm's* total capital and reserves excluding preference *share* capital, less the amount of its intangible assets, multiplied by 400~~200~~0%.

13.12.5A R A *Category category B firm* must treat as a liability in the calculation ~~or of~~ of its financial capital resource any amount by which the sum of 13.12.5(1) 13.3.13R(1) exceeds the product of 13.12.5(2) 13.3.13R(2).

CLOSE LINKS REPORTING INSTRUMENT 2009

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 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 purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 June 2010.

Amendments to the Handbook

- D. The Threshold Conditions (COND) are amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Close Links Reporting Instrument 2009.

By order of the Board
5 November 2009

Annex A

Amendments to the Threshold Conditions (COND)

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

- 2.3.7 G (1) For the purposes of *threshold condition 3 (Close links)* and except in relation to an *incorporated friendly society*, an undertaking is a *parent undertaking* of another *undertaking* (*a subsidiary undertaking*) if any of the following apply to it:
- ...
- (e) ~~it has a participating interest (as defined in section 421A of the Act (Meaning of "participating interest")) in the subsidiary undertaking and:~~
- (i) ~~actually exercises a dominant influence over it; or~~
- (ii) ~~it and the subsidiary undertaking are managed on a unified basis;~~
- ~~it has the power to exercise, or actually exercises, dominant influence or control over it, or it and the subsidiary undertaking are managed on a unified basis; or~~
- ...
- ...
- 2.3.8 G ...
- (2) ~~In relation to COND 2.3.7G (1)(e), a 'participating interest' means an interest held by an *undertaking* in the shares of another *undertaking* which it holds on a long term basis, for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest. A holding of 20% or more of the shares of an *undertaking* is presumed to be a participating interest unless the contrary is shown. Examples of interests of a temporary nature which do not constitute participating interests for the purpose of this control relationship include market-makers' holdings in a trading book. [deleted]~~
- (3) ~~Section 421A of the Act states that an interest held on behalf of an *undertaking* is treated as held by it. Thus, if the chain of ownership includes a trust, the FSA will treat the trustees as legal owners when determining whether it considers there to be a *close link*. The beneficiaries or settlors of a trust (or both) may also come within the scope of these provisions, depending on the terms of the trust.~~

~~However, the FSA will consider each case on its merits.~~ [deleted]

...

- 2.3.11A G Paragraphs 3(2)(e) to (f) of Schedule 6 to the Act reflect legislation initially introduced in the Post-BCCI Directive, which defines close links, in part, by reference to participation. Recital 5 of the Post-BCCI Directive gives further guidance on what is meant by ‘participation’ for the purposes of the directive. It states that the sole fact of having acquired a significant proportion of a company’s capital does not constitute participation for the purposes of the directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking.

...

COND 2 Annex 1G is deleted in its entirety. The deleted text is not shown struck through.

2 Annex 1G [deleted]

Annex B

Amendments to the Supervision manual (SUP)

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

11.9 Changes in close links

Requirement to notify changes in close links

- 11.9.1 R (1) A firm must notify the FSA that it has become or ceased to be *closely linked* with any *person*. The notification must be made by completing the Close Links Notification Form (see SUP 11.9.3AG) and must include the information set out in SUP 16.5.4R(4).
- (2) If a group includes more than one firm, a single close links notification may be made by completing the Close Links Notification Form and so satisfy the notification requirement for all firms in the group. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each firm in the group.
- 11.9.2 G Guidance on what constitutes a *close link* is provided in COND 2.3.
- 11.9.2A G A firm may elect not to include the following close links in the notification submitted under SUP 11.9.1R, SUP 11.9.5R or SUP 16.5:
- (1) shares held in its capacity as custodian provided it can only exercise any voting rights attached to such shares under instructions given in writing or by electronic means;
 - (2) shares held in its capacity as collateral taker under a collateral transaction which involves the outright transfer of securities provided it does not declare any intention of exercising (and does not exercise) the voting rights attaching to such shares.
- ...

Form of notification

- 11.9.3A G The Close Links Notification Form approved by the FSA for notifications under SUP 11.9.1R, SUP 11.9.5R and SUP 16.5.4R(1), may be found at the FSA's website www.fsa.gov.uk/Pages/Doing/Regulated/Notify/index.shtml.

Timing of notification requirement

- 11.9.4 R The firm must make a notification to the FSA under SUP 11.9.1R:
- (1) as soon as reasonably practicable and no later than one month after it becomes aware that it has become or ceased to be closely linked with any person; or

- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* and by completing the Close Links Notification Form, including the information set out in SUP 16.5.4R(4) for that *month* and must submit the *group organisation chart* on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the *FSA*, in which case the *group organisation chart* is not required:
- (a) including the information set out in SUP 16.5.4R(4) for that month; and
 - (b) if there is no person required to be included in the notification for a particular month, confirming this fact in the notification.
- ...

16.5 Annual Close Links Reports

Application

- 16.5.1 G This section applies to every *firm* listed in SUP 11.1.1R(1) to SUP 11.1.1R(6), except those *firms* excluded from its operation by SUP 16.1.1R and SUP 16.1.3R or which have elected to report on a monthly basis in accordance with SUP 11.9.5R.
- ...
- 16.5.4 R (1) A *firm* must submit a report to the *FSA* annually by completing the Close Links Notification Form (see SUP 11.9.3AG) and must include, containing the information in (3) or (4) (as applicable) and (5).
- ...
- (5) The firm must also submit a group organisation chart.
- 16.5.5 G The information required by SUP 16.5.4R(4) may be provided in the form of a group organisation chart. [deleted]
- ...

Schedule 2 Notification requirements

...

Sch 2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 11.9.1R	<i>Close links.</i>	(a) the name of the <i>person</i> ; (b) the nature of the <i>close links</i> ; (c) if the <i>close link</i> is with a <i>body corporate</i> , its country of incorporation, address and registered number; <u>and</u> (d) if the <i>close links link</i> is with an individual, his date and place of birth; <u>and</u> (e) <u>group organisation chart (required only quarterly if the firm has elected to report monthly)</u> .	The <i>firm</i> becoming aware that it has become or ceased to be <i>closely linked</i> with any <i>person</i> .	As soon as reasonably practicable and no later than one <i>month</i> after the <i>firm</i> becomes aware that it has become or ceased to be <i>closely linked</i> or if the <i>firm</i> has elected to report <i>monthly</i> , within 15 <i>business days</i> of the end of each <i>month</i> (see <i>SUP</i> 11.9.4R).
...				
<i>SUP</i> 16.5.4R	Reporting - annual <i>close links</i> report - every <i>firm</i> except: (1) an <i>ICVC</i> ; (2) an <i>incoming EEA firm</i> ; (3) an <i>incoming Treaty firm</i> ; (4) a <i>non-</i>	If the <i>firm</i> is not aware: (a) that it has <i>close links</i> ; or (b) of any material changes to the details since the last report;	Annually from the <i>accounting reference date</i> . If a <i>firm</i> is an unincorporated <i>friendly society</i> , then it is only required to submit a report if it is aware that it has	Four months.

	<p><i>directive friendly society;</i> (5) a <i>partnership</i>; (6) a <i>sole trader</i>; (7) a <i>service company</i>; (8) a <i>UCITS qualifer</i>.</p> <p>then confirmation of this.</p> <p>If the above does not apply, the report must contain a list of all <i>persons</i> with whom the <i>firm</i> has <i>close links</i> as at the <i>firm's firm's accounting reference date</i> of which it is aware, and for each such <i>person</i> state:</p> <ul style="list-style-type: none"> (a) its name; (b) the nature of the <i>close links</i>; (c) if the close link <i>close link</i> is with a <i>body corporate</i>, its country of incorporation, address and registered number; and (d) if the <i>close link</i> is with an individual, his date and place of birth; and <p>The information may be provided in the form of</p> <ul style="list-style-type: none"> (e) a group organisation chart. 	<p><i>close links.</i></p>	
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SUPERVISION MANUAL (AMENDMENT NO 16) INSTRUMENT 2009

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 6 December 2009.

Amendments to the Handbook

- C. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Supervision Manual (Amendment No 16) Instrument 2009.

By order of the Board
5 November 2009

Annex

Amendments to the Supervision manual (SUP)

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

10.12 Application for approval and withdrawing an application for approval

...

- 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~~ subject to investigation and the candidate's suitability to be approved to undertake a controlled function will be called into question. A person who provides information to the FSA that is false or misleading may commit a criminal offence, ~~and could face prosecution~~ under section 398 of the Act regardless of the status of their application.

**SUPERVISION MANUAL (RETAIL MEDIATION ACTIVITIES RETURN)
(AMENDMENT) INSTRUMENT 2009**

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 6 December 2009.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Supervision Manual (Retail Mediation Activities Return) (Amendment) Instrument 2009.

By order of the Board
5 November 2009

Annex

Amendments to the Supervision manual (SUP)

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

16 Annex 18BG	Notes for completion of the Retail Mediation Activities Return ('RMAR')
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...

NOTES FOR COMPLETION OF THE RMAR

...

Section E: Professional Indemnity Insurance

Note: *Home purchase* and *reversion activity* should be included under the existing mortgage headings in this section of the RMAR.

This section requires *firms* to confirm that they are in compliance with the prudential requirements in relation to professional indemnity insurance (PII).

Data is required in relation to all PII policies that a *firm* has in place, up to a limit of ten (the system will prompt you to submit data on all applicable policies). If a *firm* has more than ten policies, it should report only on the ten largest policies by premium.

Note on the scope of Section E: *retail investment firms* that fall within the scope of these data requirements, but do not meet the definition of *personal investment firm*, i.e. are not subject to *IPRU(Inv) 13*, will **not** be subject to this section.

The PII requirements for *authorised professional firms* ('APFs') that carry on *retail investment activities* are set out in *IPRU(Inv) 2.3*. APFs that carry on *home finance mediation activity* or *insurance mediation activity* are subject to the full requirements of *MIPRU 3*.

Firms which are subject to the requirements in both *PRU* and *IPRU* and *MIPRU* must apply the PII rules outlined in *IPRU(Inv) 43.1.4(1) 13*, not *MIPRU 3*.

Section E: guide for completion of individual fields

(Note to readers: the order of some of the rows of information has changed. These changes of order are not identified below.)

Part 1

Does your firm hold a comparable guarantee or equivalent cover in lieu of PII, or is it otherwise exempt from <u>any</u> holding PII in respect of any regulated activities (tick as appropriate)?	<p>This question will establish whether a <i>firm</i> is exempt from the requirements and so is not required to hold PII.</p> <p>The conditions for comparable guarantees and exemptions from the PII requirements for <i>firms</i> carrying on insurance or home finance mediation are set out in MIPRU 3.1.1R paragraphs (3) to (6).</p> <p>Personal investment firms can only be exempted by individual waiver granted by the FSA (unless IPRU(Inv) 13.1.5R 13.1.7R applies in respect of comparable guarantees).</p> <p>...</p>
If the firm does not hold a comparable guarantee or equivalent cover and is not exempt, does the firm currently hold PII?	...
Has the firm renewed its PII cover since the last reporting date?	<p>This question will ensure that a <i>firm</i> does not fill in <u>PII basic and detailed information</u> Part 2 of the PII section of the <u>RMAR</u> each time it reports, if the information only changes annually.</p> <p>If the <i>firm</i> is reporting for the first time, you should enter 'yes' here and complete the data fields.</p> <p>You should only enter 'n/a' if the <i>firm</i> is exempt from the PII requirements for all the <i>regulated activities</i> forming part of the RMAR.</p>

Part 2

At this point, if the *firm* has PII policy details to report, it should do so by clicking on the 'add PII policy' button in the summary screen. This will then prompt you to name the sub-section, e.g. 'policy1'. You may also add further sub-sections if the *firm* has two or more policies (up to a maximum of ten). You may enter one policy per line in the PII basic information table (up to a maximum of ten) and policy excess and exclusions in the PII detailed information table (up to a maximum of ten per policy).

PII Basic information

<u>Activities</u> What activities are covered by the policy(ies)?	You should indicate which <i>regulated activities</i> are covered by the <i>firm</i> 's PII policy or policies.
If your policy excludes all business activities carried on prior to a particular date (i.e. a retroactive start date), then insert the date here, if not please insert 'n/a'	Required terms of PII are set out for <i>personal investment firms</i> in IPRU(Inv) 13.1.4 13.1.5R and for <i>mortgage intermediaries</i> and <i>general insurance intermediaries</i> in PRU 9.2.10 MIPRU 3.2.4R .
Annualised premium	This should be the annual premium that is paid by the <i>firm</i> , net of tax and any other add-ons.

Limit of <u>indemnity received</u> Indemnity	<p>You should record here the indemnity limits on the <i>firm's</i> PII policy or policies, both in relation to single claims and in aggregate.</p> <p>Those firms subject to <i>Insurance Mediation Directive (IMD)</i> requirements should state their limit in Euros; those that are not subject to the <i>IMD</i> should select 'Sterling' from the drop-down list.</p> <p><i>Insurance intermediaries</i>, see <i>MIPRU 3.2.7R</i> and select either 'Euros' or 'Sterling' as applicable.</p> <p><i>Home finance intermediaries</i> should state their limits in Sterling (see <i>MIPRU 3.2.9R</i>).</p> <p>For <i>personal investment firms</i>, see <i>IPRU(INV) 13.1.4(2)R</i> <u>13.1.9R</u> and <u>13.1.4(5)E</u> <u>13.1.13R</u> and select either 'Euros' or 'Sterling' as applicable.</p> <p>If the <i>firm</i> is subject to more than one of the above limits (because of the scope of its <i>regulated activities</i>), and has one PII policy for all of its <i>regulated activities</i>, the different limits should be reflected in the policy documentation. If there is more than one limit, only the highest needs to be recorded in this field.</p>
--	--

PII detailed information

Business line	<p>Business lines for policy excesses should only be selected for FSA regulated business that you have undertaken in the past or will undertake during the period covered by the policy.</p> <p>Each such business line that has a policy excess should be selected from the drop down list.</p> <p>If the firm has only one excess for all business lines, then you should select 'All'.</p> <p>If the firm has a policy excess for one specific business line (e.g. Endowments), it should select it from the drop down list, and in the line beneath select 'All other' for the firm's remaining business lines.</p> <p>If the firm has a policy excess for a business line that is not in the drop down list, then the most relevant 'other' should be selected.</p>
Policy excess	<p>For <i>insurance intermediaries</i> and <i>home finance intermediaries</i>, see <i>MIPRU 3.2.10-14R</i>.</p> <p>For <i>personal investment firms</i>, see <i>IPRU(INV) 13.1.4E</i> <u>13.1.25R</u>.</p> <p>The amount of the excess relating to the business line selected should be entered here. If the policy has more than ten excesses, you should report only on the ten largest by excess.</p>
<u>Increased excess(es) for specific business types (only in relation to business you have undertaken in the past or will undertake during the period covered by the policy)</u>	<p><u>If the prescribed excess limit is exceeded for a type or types of business, the type(s) of business to which the increased excess applies and the amount(s) of the increased excess should be stated here</u></p> <p><u>(Some typical business types include pensions, endowments, FSAVCs, splits/zeroes, precipice bonds, income drawdown,</u></p>

	<i>(lifetime mortgages, discretionary management.)</i>
Policy <u>exclusions</u> <u>exclusion(s)</u> <u>for</u> <u>specific business types</u> (only in relation to <u>business exclusions</u> you have <u>had in the past undertaken in the past</u> or will <u>undertake</u> have during the period covered by the policy)	Select from the drop down list If there are any exclusions in the firm's PII policy which relate to any types of businesses or activities that the firm has carried out either in the past or during the lifetime of the policy, enter the business type(s) to which the exclusions relate here. (Some typical business types include pensions, endowments, FSAVCs, splits/zeroes, precipice bonds, income drawdown, lifetime mortgages, discretionary management.) If the firm has a policy exclusion for a business line that is not in the drop down list, then the most relevant 'other' should be selected.
Start date Date	The date the current cover began.
End date Date	The date the current cover expires
Insurer name (please select from the drop-down list)	The firm should select the name of the <i>insurance undertaking</i> or Lloyd's syndicate providing cover. If the PII provider is not listed you should select 'Multiple/Other' 'other' and enter the name of the <i>insurance undertaking</i> or Lloyd's syndicate providing cover in the free-text box. If a policy is underwritten by more than one <i>insurance undertaking</i> or Lloyd's syndicate, you should select 'multiple' and state the names of all the <i>insurance undertakings</i> or Lloyd's syndicates in the free-text box.
Annual income as stated on the most recent proposal form	This should be the income as stated on the firm's most recent PII proposal form. For a <i>personal investment firm</i> , this is relevant income arising from all of the firm's activities for the last accounting year before the policy began or was renewed (IPRU(INV) 4.3.1.3(3)R 13.1.8R). For <i>insurance intermediaries</i> and <i>mortgage intermediaries</i> this is the annual income given in the firm's most recent annual financial statement from the relevant <i>regulated activity</i> or activities (MIPRU 4.3.1R to 4.3.3R).
Amount of additional capital required for increased excess(es) (where applicable, total amount for all PII policies)	This should be calculated using the tables in IPRU(INV) 4.3.1.4(12)E 13.1.19R or MIPRU 3.2.14 – 16R to 3.2.16R as applicable. The total of additional capital (i.e. in relation to all of the firm's PII policies) should have been reported under 'additional capital requirements for PII' and/or 'additional own funds for PII' in section D1.
Total amount <u>Amount</u> of additional <u>own funds</u> <u>capital resources</u> required for policy exclusion(s)	<i>Personal investment firms</i> only - this should be calculated in line with IPRU(INV) 4.3.1.4(13)R 13.1.23R. The total of additional <u>own funds</u> <u>capital resources</u> (i.e. in relation to all of the firm's PII policies) should have been reported under 'additional capital requirements for PII' and/or 'additional <u>own funds</u> <u>capital resources</u> for PII' in section D1.
Total of additional <u>own funds</u> <u>capital resources</u> required	<i>Personal investment firms</i> only – this is the same figure as in section D1, representing the total of additional <u>own funds</u> <u>capital resources</u> required under IPRU(INV) 4.3.1.4(8)R 13.1.23R to 4.3.1.4(13)G 13.1.27R for all of the firm's PII policies.
Total of readily realisable <u>own funds</u> <u>capital resources</u>	<i>Personal investment firms</i> only - you should state here the total of the own funds reported in section D that are classed as 'readily realisable' under the terms of IPRU(INV) 4.3.1.4(4)R.

Excess/deficit of readily realisable own funds	<p>In this field, enter the result of the ‘total of additional own funds required’ less the ‘total of readily realisable own funds’.</p> <p><u>This field is no longer relevant.</u></p>
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FINANCIAL SERVICES COMPENSATION SCHEME (SINGLE CUSTOMER VIEW SUPERVISION AND OTHER AMENDMENTS) INSTRUMENT 2009

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 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 213 (The compensation scheme);
 - (e) section 214 (General);
 - (f) section 215 (Rights of the scheme in insolvency);
 - (g) section 218A (Authority’s power to require information);
 - (h) section 219 (Scheme manager’s power to require information); and
 - (i) section 223C (Payments in error);
 - (2) section 123 of the Banking Act 2009; and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

Commencement

- C. This instrument comes into force as set out below:

- (1) Part 1 of Annex A, Annex B and Part 1 of Annex C come into force on 6 December 2009;
- (2) Part 2 of Annex C comes into force on 1 January 2010; and
- (3) Part 2 of Annex A and Part 3 of Annex C come into force on 31 December 2010.

Confirmation and Remaking

- D. Chapter 6 of the Fees manual (FEES) and Chapter 15 of the Compensation sourcebook (COMP) are confirmed and remade with immediate effect.

Amendments to the Handbook

- E. The modules of the FSA’s Handbook or 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
Fees manual (FEES)	Annex B
Compensation sourcebook (COMP)	Annex C

Citation

F. This instrument may be cited as the Financial Services Compensation Scheme (Single Customer View Supervision and other Amendments) Instrument 2009.

By order of the Board
5 November 2009

Annex A

Amendments to the Glossary of definitions

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

The definition of *single customer view* set out in this Annex replaces that set out in Annex A of FSA 2009/47.

Insert the following new definitions in the appropriate alphabetical positions

Part 1: Comes into force on 6 December 2009

<i>electronic SCV rules</i>	(in <i>COMP</i>) <i>COMP</i> 17.2.1R(2), <i>COMP</i> 17.2.3R(3) and <i>COMP</i> 17.2.5R, the application of which is determined by <i>COMP</i> 17.1 and <i>COMP</i> 17.2.7R.
<i>FSA's SCV requirements</i>	(in <i>COMP</i>) the <i>FSA</i> 's requirements with respect to <i>single customer view</i> .
<i>single customer view</i>	(in <i>COMP</i>) a single, consistent view of an <i>eligible claimant</i> 's aggregate <i>protected deposits</i> with the relevant <i>firm</i> which contains the information required by <i>COMP</i> 17.2.4R, but excluding from that view those accounts where the <i>eligible claimant</i> is a beneficiary rather than the account holder or if the account is not active as defined in <i>COMP</i> 17.2.3R(2).

Part 2: Comes into force on 31 December 2010

<i>SCV implementation report</i>	(in <i>COMP</i>) a report in accordance with <i>COMP</i> 17.3.6R explaining how the relevant <i>firm</i> has satisfied the <i>FSA</i> 's <i>SCV requirements</i> .
<i>SCV report</i>	(in <i>COMP</i>) a report in accordance with <i>COMP</i> 17.3.9R from the relevant <i>firm</i> 's board of directors confirming that the <i>firm</i> 's <i>SCV system</i> satisfies the <i>FSA</i> 's <i>SCV requirements</i> .
<i>SCV system</i>	(in <i>COMP</i>) a <i>firm</i> 's system for satisfying the <i>FSA</i> 's <i>SCV requirements</i> .

Annex B

Amendments to the Fees manual (FEES)

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

- 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 not made in ~~good~~ bad faith.
- ...

Sch 4 Powers exercised

- 4.1 G The following powers and related provisions in or under the *Act* have been exercised by the FSA to make the *rules* in FEES:

	...
	Section 223 (Management expenses)
	<u>Section 223C (Payments in error)</u>
	...

- 4.2 G The following additional powers have been exercised by the FSA to make the *rules* in FEES:

	...
	Regulation 92 (Costs of compliance) of the <i>Payment Services Regulations</i>
	<u>Section 123 (Role of FSCS) of the Banking Act 2009</u>

Annex C

Amendments to the Compensation sourcebook (COMP)

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

Part 1: Comes into force on 6 December 2009

Scheme manager's power to require information

- 6.3.9 R For the purposes of sections 219(1A)(b) and (d) of the Act (Scheme manager's power to require information) whether a *relevant person* is unable or likely to be unable to satisfy claims shall be determined by reference to whether it is *in default*.
- ...

- 15.1.11 R The FSCS may treat an *eligible claimant* as if the *eligible claimant* had made a *claim* under the *compensation scheme* and pay compensation to an *eligible claimant* without having received an application and/or an assignment of the whole or any part of the claimant's rights against the *relevant person* and/or any third party (and COMP 3.2.1R(1) and COMP 7.2.1R are modified accordingly).
- ...

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...					
21	<u>COMP 17.3 and COMP 17.2.7R</u>	R	<p><u>(1) This transitional provision applies to a firm to which COMP 17 will apply.</u></p> <p><u>(2) If a firm operates less than 5,000 accounts held by eligible claimants, it may make or revoke an election (under COMP 17.2.7R) that</u></p>	<u>From 6 December 2009 until 30 December 2010</u>	<u>31 December 2010</u>

		<p><u>the electronic SCV rules do not apply.</u></p> <p><u>(3) A firm that made a valid election under (2) must provide the FSA with an SCV pre-implementation report by 31 July 2010 based on the firm's progress as at 30 June 2010 which must:</u></p> <p class="list-item-l1">(a) state the number of accounts held by <i>eligible claimants</i> as at 30 June 2010;</p> <p class="list-item-l1">(b) confirm that the <i>firm</i> is making the election in (2); and</p> <p class="list-item-l1">(c) state whether the <i>firm's board of directors</i> believes the <i>firm</i> will comply with the <i>FSA's SCV requirements</i> by 31 December 2010 and if not why not.</p> <p><u>(4) A firm that has not made a valid election under (2) must provide the FSA with an SCV pre-implementation report by 30 July 2010 based on the firm's progress as at 30 June 2010 which must state:</u></p> <p class="list-item-l1">(a) whether the <i>firm</i> has a plan for implementing the <i>FSA's SCV requirements</i>;</p> <p class="list-item-l1">(b) how the <i>firm</i> proposes to transfer to the <i>FSCS</i> a single</p>	
--	--	--	--

		<p><u>customer view for each eligible claimant including specifying the transfer method and format;</u></p> <p>(c) <u>the dates the firm started implementation and plans to end implementation and whether implementation is on time;</u></p> <p>(d) <u>whether the firm's board of directors believes implementation will be completed by 31 December 2010 and if not why not; and</u></p> <p>(e) <u>any issues that may impact on the firm's ability to implement by 31 December 2010.</u></p>		
--	--	---	--	--

...
Sch 2 Notification requirements

2.2G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...
<i>COMP</i> 14.4.6R	...	...	...	...	...
<i>COMP TP</i> 21R(2) and <i>COMP</i> 17.2.7R	<u>Election or revocation of election that the electronic SCV rules do not apply.</u>	<u>See Matter to be notified</u>	<u>See Matter to be notified</u>		<u>Immediately</u>

Sch 4 Powers exercised

- 4.1 G The following powers and related provisions in or under the *Act* ... have been exercised by the FSA to make the *rules* in COMP:

	...
	Section 215 (Rights of the scheme in relevant person's insolvency)
	...
	Section 218 (Annual report)
	<u>Section 218A (Authority's power to require information)</u>
	<u>Section 219 (Scheme manager's power to require information)</u>
	...

- 4.2 G The following additional powers have been exercised by the FSA to make the *rules* in COMP:

	Articles 3 ...
	<u>Section 123 (Role of FSCS) of the Banking Act 2009</u>

Part 2: Comes into force on 1 January 2010

- 16.3.10 R Where a *firm* operates under more than one trading name, the *firm* must, in any communication required by this section to a *protected deposit holder* who is or is likely to be eligible to claim for compensation from the *compensation scheme* or other *Home State* compensation scheme and generally in its *UK branches* and on its website, prominently disclose the trading names under which it operates and explain the impact this has on any *protected deposit holder*'s entitlement to compensation from the *compensation scheme* and any relevant *Home State* or *Host State* compensation scheme.

Part 3: Comes into force on 31 December 2010

- 17.2.3 R (1) A *firm* must be able to provide to the *FSCS* a *single customer view* for each *eligible claimant*, except where to the extent that the *eligible claimant* is the beneficiary of an account held on his behalf by another *person* or if the account is not active, within 72 hours of a

request by the FSCS.

...

- 17.2.7 R (1) If a *firm* operates less than 5,000 accounts held by *eligible claimants*, it may elect that ~~COMP 17.2.1R(2), COMP 17.2.3R(3) and COMP 17.2.5R~~ the *electronic SCV rules* do not apply.
- (1A) An election within (1) can be revoked.
- (1B) A firm must give the FSA notice of an election under (1) or a revocation under (1A).
- (1C) An election within (1) or a revocation within (1A) does not take effect until the firm has notified the FSA in writing of the election or revocation.
- (2) ...
- (3) If a *firm* hitherto within (1) operates 5,000 or more accounts held by *eligible claimants* for two consecutive accounts years as at 31 December of each year, ~~COMP 17.2.1R(2), COMP 17.2.3R(3) and COMP 17.2.5R~~ the *electronic SCV rules* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.
- (4) If a *firm* operates 5,000 or more accounts held by *eligible claimants* on 31 December 2009 ~~COMP 17.2.1R(2), COMP 17.2.3R(3) and COMP 17.2.5R~~ the *electronic SCV rules* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.

...

After COMP 17.2 insert the following new section as COMP 17.3. The text is not underlined.

17.3 Single customer view reporting

SCV implementation report and SCV report

- 17.3.1 R A *firm* must provide the FSA with an *SCV implementation report* and an *SCV report* within three *months* of receiving *permission to accept deposits* or, in the case of an *incoming EEA firm*, obtaining *top-up cover*.
- 17.3.2 R A *firm* must provide the FSA with an *SCV implementation report* and an *SCV report* within three *months* of a material change in the *firm's SCV system*.
- 17.3.3 G The FSA considers that a material change would include any changes that have a material impact on the *firm's SCV system*. For example, there is likely to be a material change in a *firm's SCV system* upon a merger or upon

- the acquisition of a deposit book, or the introduction of a new IT system that relates to the *firm's SCV system*.
- 17.3.4 R A *firm* must provide the *FSA* with an *SCV report* every four years (starting from 31 December 2010 or the date of receiving *permission to accept deposits* or, in the case of an *incoming EEA firm*, the date of obtaining *top-up cover*, whichever is later).
- 17.3.5 G The *FSA* may request an *SCV report* at any time as part of its ongoing supervision of the *firm*.
- 17.3.6 R (1) An *SCV implementation report* provided by a *firm* subject to the *electronic SCV rules* must contain a description of the following:
- (a) the *firm's SCV system* and how it has been implemented;
 - (b) how the *firm* proposes to transfer to the *FSCS* a *single customer view* for each *eligible claimant* including specifying the transfer method and format;
 - (c) the testing undertaken with respect to the *firm's SCV system*;
 - (d) the number of *single customer views* in the *firm's SCV system*;
 - (e) the *firm's* plan for the ongoing maintenance of the *firm's SCV system*;
 - (f) how the *firm's* board of directors will ensure that they remain satisfied that the *firm's SCV system* continues to satisfy the *FSA's SCV requirements*;
 - (g) how the check facility required by *COMP 17.2.5R(2)* is applied; and
 - (h) any other factors relevant to the design of the *firm's SCV system* or to an assessment of whether the *firm's SCV system* satisfies the *FSA's SCV requirements*.
- (2) An *SCV implementation report* provided by a *firm* not subject to the *electronic SCV rules* must contain the following:
- (a) a statement confirming that the information required by *COMP 17.2.3R(1)* is available and can be provided to the *FSCS* within 72 hours of a request by the *FSCS*;
 - (b) a description of how the information required by *COMP 17.2.3R(1)* is held by the *firm*; and
 - (c) a description of how the *firm* proposes to transfer to the *FSCS* the information required by *COMP 17.2.3R(1)*.
- 17.3.7 R A description of a *firm's SCV system* and how it has been implemented must

include an explanation of any code or keys used internally by the *firm* so that the *FSCS* can easily identify which accounts are held by *eligible claimants* and which accounts are held on behalf of beneficiaries who are or may be *eligible claimants*.

- 17.3.8 G (1) For the purposes of *COMP* 17.3.6R(2)(b), an example of a description of how the information required by *COMP* 17.2.3R(2)(b) is held by the *firm* is a statement advising that the information is held on paper, electronically or a mix of the two whichever is applicable.
- (2) For the purposes of *COMP* 17.3.6R(2)(c), an example of a description of how the *firm* proposes to transfer to the *FSCS* the information required by *COMP* 17.2.3R(1) is a statement advising that the transfer will be via paper or electronic process whichever is applicable.
- 17.3.9 R (1) An *SCV report* provided by a *firm* subject to the *electronic SCV rules* must contain:
- (a) a statement signed on behalf of the relevant *firm*'s board of directors confirming that the *firm's SCV system* satisfies the *FSA's SCV requirements*;
 - (b) the date when the *firm's SCV system* last produced a *single customer view* for each of the *firm's customers* that are *eligible claimants*;
 - (c) the date when the *firm's SCV system* last produced sample *single customer views* and the sample size;
 - (d) the number of *single customer views* in the *firm's SCV system*;
 - (e) a statement of whether the *firm's SCV* has been reviewed by external auditors, and if so stating the findings of that review; and
 - (f) a statement of whether there has been a material change to the *firm's SCV system* since the date of the *firm's previous SCV report*.
- (2) An *SCV report* provided by a *firm* not subject to the *electronic SCV rules* must contain:
- (a) a statement signed on behalf of the relevant *firm*'s board of directors confirming that the *firm's SCV system* satisfies the *FSA's SCV requirements*;
 - (b) the number of *single customer views* in the *firm's SCV system*; and
 - (c) the number of accounts operated by the *firm* held by *eligible claimants*.

FSCS sign off

- 17.3.10 R A *firm* subject to the *electronic SCV rules* must provide the *FSCS* with a representative sample of 10% of its *single customer views* or 10,000 of its *single customer views* (whichever is the smaller number) within:
- (1) three *months* of receiving *permission to accept deposits* or, in the case of an *incoming EEA firm*, obtaining *top-up cover*; and
 - (2) three *months* of a material change in the *firm's SCV system*.
- 17.3.11 G A representative sample should include all types of account held with the *firm* by all types of *eligible claimant* and where the *firm* operates under more than one trading name the sample should include all types of account held with the *firm* by all types of *eligible claimant* for each trading name.
- 17.3.12 R The *FSCS* must advise the *FSA* whether the information provided by a *firm's SCV system* is capable of being submitted to the *FSCS* and whether it is compatible with the *FSCS's systems*, within six *months* of receiving the information required by *COMP 17.3.10R*.

Amend the following as shown.

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...					
<u>22</u>	<u><i>COMP 17.3</i></u>	R	<u>A firm to which COMP 17 applies must provide the FSA with an SCV implementation report and a SCV report by 31 January 2011.</u>	<u>From 31 December 2010 until 31 January 2011</u>	<u>31 December 2010</u>
<u>23</u>	<u><i>COMP 17.3.10R and COMP 17.3.12R</i></u>	R	<u>(1) A firm subject to the electronic SCV rules must provide the FSCS with a representative sample of 10% of its single customer views or 10,000 of its single customer views (whichever is the smaller number) within:</u>	<u>From 31 December 2010 until 31 July 2011</u>	<u>31 December 2010</u>

		<p><u>sample of 10% of its single customer views or 10,000 of its single customer views (whichever is the smaller number)</u> by 31 January 2011.</p> <p><u>(2) The FSCS must advise the FSA whether the information provided by a firm's SCV system is capable of being submitted to the FSCS and whether it is compatible with the FSCS's systems within six Months of receiving the information required by (1).</u></p>		
--	--	---	--	--

...

Sch 2 Notification requirements

- 2.1G 1. The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting. In all cases, other than those concerning ~~Chapter Chapters 13, and Chapter 14 and 17 and the Transitional Provisions~~, the notification rules in *COMP* apply only to the FSCS (the scheme manager).

2. ...

2.2G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	...				
	<i>COMP</i> TP 21R(2) and <i>COMP</i> 17.2.7R	...			
	<i>COMP</i> 17.2.7R(1)	<u>Election that the electronic SCV rules do not apply.</u>	<u>See Matter to be notified</u>	<u>See Matter to be notified</u>	<u>Immediately</u>

<u>COMP</u> <u>17.2.7R(1A)</u>	Revocation of election that the <i>electronic SCV rules do not apply.</i>	<u>See Matter to be notified</u>	<u>See Matter to be notified</u>	<u>Immediately</u>
<u>COMP</u> <u>17.3.1R</u>	A firm must provide the FSA with an <i>SCV implementation report</i> and <i>SCV report</i>	See <u>COMP</u> <u>17.3.6R(1)</u> or <u>COMP</u> <u>17.3.6R(2)</u> as applicable and <u>17.3.9R(1)</u> or <u>COMP</u> <u>17.3.9R(2)</u> as applicable.	Receipt of <i>permission to accept deposits or obtaining top-up cover as applicable</i>	<u>Three months</u>
<u>COMP</u> <u>17.3.2R</u>	A firm must provide the FSA with an <i>SCV implementation report</i> and <i>SCV report</i>	See <u>COMP</u> <u>17.3.6R(1)</u> or <u>COMP</u> <u>17.3.6R(2)</u> as applicable and <u>COMP</u> <u>17.3.9R(1)</u> or <u>COMP</u> <u>17.3.9R(2)</u> as applicable.	<u>A material change in the firm's SCV system</u>	<u>Three months</u>
<u>COMP</u> <u>17.3.4R</u>	A firm must provide the FSA with an <i>SCV report</i>	<u>COMP</u> <u>17.3.9R(1)</u> or <u>COMP</u> <u>17.3.9R(2)</u> as applicable.	Every four years (starting from 31 December 2010 or the date of receiving <i>permission to accept deposits</i> or in the case of an <i>incoming EEA firm</i> the date of obtaining <i>top-up cover</i> , whichever is later)	<u>See Trigger Event</u>

**TREATY OF LISBON (CONSEQUENTIAL HANDBOOK AMENDMENTS)
INSTRUMENT 2009**

Powers exercised

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

Commencement

- C. This instrument comes into force on 1 December 2009.

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 Principles for Businesses (PRIN) Senior Management Arrangements, Systems and Controls sourcebook (SYSC) General Prudential sourcebook (GENPRU) Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) Prudential sourcebook for Insurers (INSPRU) Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC)) Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) Conduct of Business sourcebook (COBS) Insurance: Conduct of Business sourcebook (ICOBS) Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) Banking: Conduct of Business sourcebook (BCOBS) Market Conduct sourcebook (MAR) Training and Competence sourcebook (TC) Supervision manual (SUP) Decision Procedure and Penalties manual (DEPP) Dispute Resolution: Complaints sourcebook (DISP) Collective Investment Schemes sourcebook (COLL) Electronic Money sourcebook (ELM) Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) Prospectus Rules sourcebook (PR) Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex A

Glossary of definitions	Annex B
General Provisions (GEN)	Annex C
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex D
Supervision manual (SUP)	Annex E
Listing Rules sourcebook (LR)	Annex F

Amendments to material outside the Handbook

- E. The Unfair Contract Terms Regulatory Guide (UNFCOG) is also amended in accordance with Annex A to this instrument.

Notes

- F. In Annexes A and 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

- G. This instrument may be cited as the Treaty of Lisbon (Consequential Handbook Amendments) Instrument 2009.

By order of the Board
27 November 2009

Annex A

Amendments to the Handbook and the Regulatory Guides

In this Annex, the word or phrase in column (1) is replaced by the word or phrase in column (2) where indicated in column (3) & (4). Column (5) identifies further explanation to the amendment where this is needed.

(1)	(2)	(3)	(4)	(5) Note:	
Community/ community	EU	Glossary	<i>breach</i>		
			<i>relevant articles</i>		
			<i>trading venue</i>		
	BIPRU	ICOBS	3.4.121R(1)(b)(i)		
		SUP	1 Annex 1 Part 3 3.1R: Where?		
		COLL	App 3.3.4G		
			5.2.10BR(1)(c)	both occurrences	
	REC		5.2.10BR(2)		
			5.2.10EG(3)	both occurrences	
			6.9.6G(3)(a)(iii)	both occurrences	
			3.26.4R(1)		
	PR		6A.2.2G (1), (2) and (3)		
			1.2.2R(2) and (3)		
			1.2.3R(3) and (4)		
			5.2.1R		

Community/ community	<i>EU</i> law	Glossary	<i>corporate governance rules</i>	both occurrences
		GENPRU	TP 2.4R	
			TP 11.6R	
		INSPRU	TP 1.6R	
			TP 3.6R	
		SUP	TP 1.4 1R(2)	
		COLL	1.1.2G(2)	
Community/ community	<i>EEA</i>	MAR	1 Annex 2. Table: Part 1 – General. 2G(5)	
			1 Annex 2. Table: Part 1 – General. 2G(6)	
		DTR	5.4.9R	
a Community	<i>an EU</i>	SUP	13A Annex 2G 3	
			App 3.10.13G	
European Community	<i>EU</i>	Glossary	<i>approved financial institution</i> at (l)	
		BIPRU	3.4.30R(1)	
			3.5.5G, table, at row headed: “European Community, the International Monetary Fund and the Bank for International	

			Settlements”	
		INSPRU	1.3.87R(4)(a)	
		IPRU(INV)	3. Appendix 1 Glossary of Terms... <i>regulated financial institution</i> at (a)	
		COBS	3.6.2R(6)	
			1 Annex 1 Part 1 5.1R	
		SUP	App 3.3.1G(2)	
		UNFCOG	1.3.1G(2)(b)	
a European Community	an EU	PRIN	3.1.1R(1)	
			3.1.6R	
			4.1.1G	
		SYSC	1 Annex 1 1.1R(1)(b) and(c)	
			1 Annex 1 2.2R(2)	
		COBS	20.1.3R(1)	
		BCOBS	1.1.4R(3)	
		TC	Appendix 3.1.1R at <i>Incoming EEA firm</i>	
			Appendix 3.1.1R at <i>Incoming Treaty firm</i>	
		SUP	13A Annex 1G, paragraph 2	
			13A Annex 1G, at row marked: <i>PRIN</i>	
			13A Annex 1G, at row marked: <i>SYSC</i> ,	

			(2) and (3)	
			13A Annex 1G, at row marked: <i>GEN</i>	
			13A Annex 1G, at row marked: <i>TC</i>	
			13A Annex 2G (6)	
			15 Annex 1R Table, at row marked: SUP 15.3.7G to SUP 15.3.10G	
			15 Annex 1R Table, row marked: SUP 15.3.1R to SUP 15.3.16G	
			15 Annex 1R Table, row marked: SUP 15.3.1R to SUP 15.3.20G	
			15 Annex 1R Table, row marked: SUP 15.3.2G	
			15 Annex 1R Table, row marked: SUP 15.5.7R and SUP 15.5.8G	
		DISP	1 Annex 2G 2	
a Community	an <i>EU</i> law	DEPP	7.2.17G	
European Communities	<i>EU</i> or Euratom (the European Atomic Energy Community)	ELM	3.3.8R(2)(b)	
		IPRU(INV)	3. Appendix 47 Table 1, Row 1	
			3. Appendix 47 Table 2, Row 1	
			3. Appendix 1 –	

			Glossary of Terms... <i>acceptable collateral</i> at 2(e)	
			5. Appendix 1 – Glossary of Terms... <i>category a body</i> at (b)	
European Communities	European Union	IPRU(FSOC)	4.7(7)	
EC	EU	GENPRU	1.2.10G	
			2.1.2G	
			2.1.27G	4 occurrences
		INSPRU	1.4.2G	
			1.4.8G	
			1.5.3G	
			1.5.17G(3)	
			2.1.3G	
			2.2.2G	
			3.2.2G	
		SUP	11.3.14G	
article 48	article 54	Glossary	<i>incoming ECA provider</i>	
			<i>outgoing ECA provider</i>	
		MCOB	1.3.4R(1)(c)	
			3.3.5R(2)(d)	

Annex B

Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

EU the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended).

Amend the following definitions as shown.

Home State

...

- (5) (in relation to an *IMD insurance intermediary* or an *IMD reinsurance intermediary*):
 - (a) where the *insurance intermediary* is a natural person, the ~~Member State~~ *EEA State* in which his residence is situated and in which he carries on business;
 - (b) where the *insurance intermediary* is a legal person, the ~~Member State~~ *EEA State* in which its registered office is situated or, if under its national law it has no registered office, the ~~Member State~~ *EEA State* in which its head office is situated.

- ...
- (9) (in *DTR*)
 - (a) in the case of an *issuer* of debt securities the denomination per unit of which is less than EUR 1 000 or an issuer of *shares*:
 - (i) where the *issuer* is incorporated in the ~~Community EEA~~, the ~~Member State~~ *EEA State* in which it has its registered office;
 - (ii) where the *issuer* is incorporated in a third country, the ~~Member State~~ *EEA State* in which it is required to file the annual information with the competent authority in accordance with Article 10 of

Directive 2003/71/EC.

The definition of *Home State* shall be applicable to debt securities in a currency other than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1 000, unless it is nearly equivalent to EUR 1 000;

- (b) for an *issuer* not covered by (a), the *Member State EEA State* chosen by the *issuer* from among the *Member State EEA States* in which the *issuer* has its registered office and those *Member State EEA States* which have admitted its securities to trading on a *regulated market* on their territory. The issuer may choose only one *Member State EEA State* as its *home Home Member State*. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any *regulated market* in the *Community EEA*;

...

public international body ...

- (2) (in *LR* and *DTR*) the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Council of Europe Development Bank, 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 EU~~, 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.

third country issuer an issuer which is not a *community issuer* does not have its registered office in the *EEA*.

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

Treaty The Treaty establishing the European Community on the Functioning of the European Union.

Delete the following definition.

community issuer an issuer which has its registered office in the *Community*.
[**Note:** article 2(3) of the *MiFID Regulation*]

Annex C

Amendments to the General Provisions (GEN)

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

European Economic Area (EEA)

- 2.2.21 G The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends certain *EU* legislation to those *EEA States* which are not Member States of the *EU*, namely Norway, Iceland and Liechtenstein. References in the *Handbook* concerning the territorial scope of *EU* law should therefore be read as extending throughout the *EEA* where the context requires.

Treaty of Lisbon

- 2.2.22 G As a result of the Treaty of Lisbon, the European Union has replaced and succeeded the European Community. References in the *Handbook* to the European Community should therefore be interpreted as references to the European Union, where the context requires. In particular, references which are copied out directly from *EU* or *UK* legislation may contain references to the Community which should be read in conjunction with section 3 of the European Union (Amendment) Act 2008.

Annex D

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

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

3 Securities and Futures Firms which are not Investment Firms

...

Appendices

Appendix 1 - GLOSSARY OF TERMS FOR IPRU(INV) 3

European Communities means ~~Euratom (European Atomic Energy Community), the European Coal and Steel Community and the European Economic Community;~~ [deleted]

...

Appendix 35 (“*regulated financial institution*” and “*supranational organisation*”)

LIST OF REGULATED FINANCIAL INSTITUTIONS AND SUPRANATIONAL ORGANISATIONS

Part 1...

Part 2

List Of Supranational Organisations

a multilateral development bank;
 The Bank for International Settlements;
 The Council of Europe;
 Euratom (The European Atomic Energy Community);
 Eurofina (The European Company for Financing of Railroad Rolling Stock);
~~The European Coal and Steel Community;~~
~~The European Economic Community EU;~~
 The International Monetary Fund;

...

Annex E

Amendments to the Supervision manual (SUP)

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

SUP 13A Annex 2 G

Matters reserved to a Home State regulator

Introduction

...

9. Article 31(1) of *MiFID* prohibits Member States Member States from imposing additional requirements on a *MiFID investment firm* in relation to matters covered by *MiFID* if the *firm* is providing services on a cross-border basis. Such firms will be supervised by their Home State regulator.

...

Appendix 3

Guidance on passporting issues

3.3 Background

The Treaty establishing the European Community on the Functioning of the European Union

- App 3.3.1 G (1) The European Community Treaty (the “*Treaty*”), as amended by later Treaties, established Treaty establishes in EC EU law the rights of freedom of establishment and freedom to provide services in the European Community EU.
- (2) ...

...

EC EU and EEA

- App 3.3.3 G The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends EC certain EU legislation to any those EEA State States that is are not part Member States of the European Community EU. Any references to an EC Member State in this appendix, therefore, should be read as referring to an EEA State.

...

- App 3.3.7 G In giving its views, communications made by the European Commission have the status of guidance and are not binding on the national courts of *EEA States*. This is because it is the European Court of Justice that has ultimate responsibility for interpreting the *Treaty* and secondary legislation. Accordingly, the communications "do not prejudge the interpretation that the ~~Court of Justice of the European Communities~~ ..., which is responsible in the final instance for interpreting the *Treaty* and secondary legislation, might place on the matter at issue." (European Commission interpretative communication: Freedom to provide services and the general good in the insurance sector (C (99) 5046). However, the Courts may take account of European Commission communications when interpreting the *Treaty* and secondary legislation.

...

3.6 Freedom to provide services

- App 3.6.1 G Article 49 ~~56~~ (Services) (~~formerly article 59~~) of the *Treaty* grants to ~~EC~~ *EEA* nationals established in one *EEA State* the freedom to provide *cross border services* to ~~the nationals~~ of other *EEA States*.

...

- App 3.6.6 G An *insurance undertaking* that effects *contracts of insurance* covering risks or commitments situated in another *EEA State* should comply with the notification procedures for the provision of services within that *EEA State*. The location of risks and commitments is found by reference to the rules set out in paragraph 6 of schedule 12 to the *Act*, which derive from article 1 of the *Consolidated Life Directive* and article 2 of the *Second Non-Life Directive*. It may be appropriate for *insurers* to take legal advice as to how these rules are interpreted and applied in other *EEA States*. The need to passport may arise because of only one of the risks covered by an insurance policy. This includes, for example, where a policy covers a number of property risks and one of those properties is in another ~~Member State~~ *EEA State*.

...

- App 3.6.11 G The key distinction in relation to temporary activities is whether a *firm* should make its notification under the freedom of establishment in a *Host State*, or whether it should notify under the freedom to provide services into a *Host State*. It would be inappropriate to discuss such a complex issue in *guidance* of this nature. It is recommended that, where a *firm* is unclear on the distinction, it should seek appropriate advice. In either case, where a *firm* is carrying on activities in another ~~Member State~~ *EEA State* under a *Single*

Market Directive, it should make a notification.

...

- App 3.6.26 G *Firms* are reminded of their rights, under article 33 of *MiFID*, to become members of, or have access to, the *regulated markets* in other *Member States* Member States.

...

SUP TP 1

Transitional provisions

...

SUP TP 1.3 Transitional provisions relating to written concessions

...	
5.	An existing written concession is not carried forward if, and to the extent that, doing so would be inconsistent with a community <u>any EU law</u> obligation of the <i>United Kingdom</i> , in particular with the proper implementation of a directive.
...	

Annex F

Amendments to the Listing Rules sourcebook (LR)

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

LR App 1.1 Relevant definitions

Note: The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

...

public international body the African Development bank, the Asian Development Bank, the Caribbean Development Bank, the Council of Europe Development Bank, 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 EU~~, 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.

...

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND
INVESTMENT FIRMS (LIQUIDITY) (CONSEQUENTIAL AMENDMENTS)
INSTRUMENT 2009**

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 150(2) (Actions for damages);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
 - (1) Annex F (IPRU(BSOC)) comes into force on 1 June 2010;
 - (2) the remainder of this instrument comes into force on 1 December 2009.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
General Prudential sourcebook (GENPRU)	Annex C
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex D
Interim Prudential sourcebook for Banks (IPRU(BANK))	Annex E
Interim Prudential sourcebook for Building Societies (IPRU(BSOC))	Annex F
Supervision manual (SUP)	Annex G

Revocation of Interim Prudential sourcebook for Banks (IPRU(BANK))

E. The provisions of the Interim Prudential sourcebook for Banks (IPRU(BANK)) are revoked with effect from 1 November 2010.

Citation

F. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Liquidity) (Consequential Amendments) Instrument 2009.

By order of the Board
27 November 2009

Annex A

Amendments to the Glossary of definitions

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

- contingency funding plan* (1) (in SYSC 11) a plan for taking action to ensure that a firm has adequately liquid financial resources to meet its liabilities as they fall due, prepared under SYSC 11.1.24E.
(2) (in BIPRU 12) a plan for dealing with liquidity crises as required by BIPRU 12.4.10R.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

11 Liquidity risk systems and controls

11.1 Application

- 11.1.1 R SYSC 11 applies to an insurer, unless it is:
- (1) ~~an insurer, unless it is an EEA deposit insurer or a Swiss general insurer; a non-directive friendly society; or~~
 - (2) ~~a BIPRU firm; a Swiss general insurer; or~~
 - (3) ~~an incoming EEA firm which:~~
 - (a) ~~is a full BCD credit institution; and~~
 - (b) ~~has a branch in the United Kingdom; an EEA-deposit insurer; or~~
 - (4) ~~a third country BIPRU firm which:~~
 - (a) ~~is a bank; and~~
 - (b) ~~has a branch in the United Kingdom an incoming EEA firm; or~~
 - (5) an incoming Treaty firm.
- [Note: first paragraph of article 41 of the *Banking Consolidation Directive*]
- 11.1.2 R If this chapter applies because the ~~firm has a branch in the United Kingdom (see SYSC 11.1.1R(3) or SYSC 11.1.1R(4)), SYSC 11 applies only with respect to the branch.~~ [deleted]
- 11.1.3 R ~~SYSC 11 applies to an incoming EEA firm only to the extent that the relevant matter is not reserved by the relevant Single Market Directive to the firm's Home State regulator.~~ [deleted]
- 11.1.4 R ~~SYSC 11 does not apply to:~~
- (1) ~~a non-directive friendly society; or~~
 - (2) ~~a UCITS qualifier; or~~

- (3) an *ICVC*; or
 - (4) an *incoming EEA firm* (unless it has a *branch* in the *United Kingdom* – see *SYSC 11.1.1R(3)*); or
 - (5) an *incoming Treaty firm*; or
 - (6) an *incoming ECA provider* acting as such. [deleted]
- 11.1.5 G (1) *SYSC 11.1.11R* and *SYSC 11.1.12R* apply only to a *BIPRU firm*. [deleted]
- (2) *SYSC 11.1.26G* to *SYSC 11.1.32G* do not apply to *insurers*. [deleted]
- ...
- 11.1.10 G *SYSC 11.1.11R* and *SYSC 11.1.12R* implement the specific *liquidity risk requirements* of the *BCD*. [deleted]
- Requirements**
- 11.1.11 R A *BIPRU firm* must have policies and processes for the measurement and management of its net funding position and requirements on an ongoing and forward looking basis. Alternative scenarios must be considered and the assumptions underpinning decisions concerning the net funding position must be reviewed regularly.
[Note: annex V paragraph 14 of the *Banking Consolidation Directive*] [deleted]
- 11.1.12 R A *BIPRU firm* must have contingency plans in place to deal with liquidity crises.
[Note: annex V paragraph 15 of the *Banking Consolidation Directive*] [deleted]
- 11.1.13 G An *insurer* is also required to comply with the requirements in relation to *liquidity risk* set out in *INSPRU 4.1*.
- 11.1.14 G *SYSC 4.1.1R* requires a *BIPRU firm* to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to. A *BIPRU firm* is required by *SYSC 7.1.2R* to establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment. *Liquidity risk* is one of the risks covered by both of those requirements. [deleted]
- 11.1.15 G A *UK bank*, a *branch* of an *EEA bank* and a *branch* of an *overseas bank* is required in *IPRU(BANK) GN 3.4.3* to set out its policy on the management of its *liquidity*. *Guidance* on a bank's *liquidity policy statement* is given in *IPRU(BANK) LM Section 10*. *Guidance* on a bank's management of *liquidity risk* is given in *IPRU(BANK) LM Sections 2 and 9*. [deleted]

11.1.16 G A *building society* is required by *IPRU(BSOC) 5.2.7R* to maintain a board approved policy statement on liquidity. *Guidance on a building society's liquidity policy statement* is given in *IPRU(BSOC) 5.2.8* and *IPRU(BSOC) Annex 5B Guidance on a building society's management of liquidity risk* is given in *IPRU(BSOC) Sections 5.3 to 5.8.* [deleted]

...

Contingency funding plans

...

11.1.24 E ...

(3) The *contingency funding plan* of a *firm* described in *SYSC 11.1.1R(2)* to *SYSC 11.1.1R(4)* should cover the extent to which the actions in (1) include:

- (a) selling, using as *collateral* in secured funding (including repo), or securitising, its assets;
- (b) otherwise reducing its assets;
- (c) modifying the structure of its liabilities or increasing its liabilities; and
- (d) the use of committed facilities. [deleted]

...

...

Management information systems

11.1.26 G A *firm* should have adequate information systems for controlling and reporting *liquidity risk*. The management information system should be used to check for compliance with the *firm's* established policies, procedures and limits. [deleted]

11.1.27 G Reports on *liquidity risk* should be provided on a timely basis to the *firm's governing body*, senior management and other appropriate personnel. The appropriate content and format of reports depends on a *firm's* liquidity management practices and the nature, scale and complexity of the business. Reports to the *firm's governing body* may be less detailed and less frequent than reports to senior management with responsibility for managing *liquidity risk*. [deleted]

11.1.28 G The *FSA* would expect management information to normally contain the following:

- (1) a cash flow or funding gap report;

- (2) a funding maturity schedule;
 - (3) a list of large providers of funding; and
 - (4) a limit monitoring and exception report. [deleted]
- 11.1.29 G When considering what else might be included in *liquidity risk* management information, a *firm* should consider other types of information that may be important for understanding its *liquidity risk* profile. This may include:
- (1) asset quality and trends;
 - (2) any changes in the *firm's* funding strategy;
 - (3) earnings projections; and
 - (4) the *firm's* reputation in the market and the condition of the market itself. [deleted]
- Limit setting**
- 11.1.30 G A *firm's* senior management should decide what limits need to be set, in accordance with the nature, scale and complexity of its activities. The structure of limits should reflect the need for a *firm* to have systems and controls in place to guard against a spectrum of possible risks, from those arising in day to day *liquidity risk* management to those arising in stressed conditions. [deleted]
- 11.1.31 G A *firm's* should periodically review and, where appropriate, adjust its limits when conditions or risk tolerances change. [deleted]
- 11.1.32 G Policy or limit exceptions should receive the prompt attention of the appropriate management and should be resolved according to processes described in approved policies. [deleted]

Annex C

Amendments to the General Prudential sourcebook (GENPRU)

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

Part 1

Outline of other related provisions

...

- 1.2.21 G (1) SYSC 11 sets out material on systems and controls that apply specifically to *liquidity risk as that concept relates to an insurer*.

...

- (2A) BIPRU 12 sets out material on systems and controls that apply specifically to liquidity risk in relation to a BIPRU firm, a branch of an incoming EEA firm that is a full BCD credit institution and a branch of a third country BIPRU firm that is a bank.

...

- (4) SYSC 11.1.21 E is an *evidential provision* relating to the *general stress and scenario testing rule* concerning stress testing and scenario analyses. SYSC 11.1.24 E is an evidential provision relating to the overall Pillar 2 rule about contingency funding plans. Both of these evidential provisions apply only to an insurer to which that section of SYSC applies.

...

...

Additional guidance on stress tests and scenario analyses

...

- 1.2.78 G Additional *guidance* in relation to stress tests and scenario analysis for *liquidity risk as that concept relates to an insurer* is available in SYSC 11 (Liquidity risk systems and controls). BIPRU 12 sets out the main Handbook provisions in relation to liquidity risk for a BIPRU firm.

...

Part 2

(This Part is referred to in the new Transitional Provisions for BIPRU: see Annex D to this instrument.)

Application

1.2 Adequacy of financial resources

Application

1.2.1 R This section applies to:

- (1) a *BIPRU firm*; and
- (2) an *insurer*, unless it is:
 - (a) a *non-directive friendly society*; or
 - (b) a *Swiss general insurer*; or
 - (c) an *EEA-deposit insurer*; or
 - (d) an *incoming EEA firm*; or
 - (e) an *incoming Treaty firm*; and
- (3) a *firm* to which ~~GENPRU 1.2.2R~~ applies. [deleted]

1.2.2 R The *firms* referred to in ~~GENPRU 1.2.1R(3)~~ are:

- (1) an *incoming EEA firm* which:
 - (a) is a *full BCD credit institution*; and
 - (b) has a *branch* in the *United Kingdom*; and
- (2) a *third country BIPRU firm* which:
 - (a) is a *bank*; and
 - (b) has a *branch* in the *United Kingdom*. [deleted]

1.2.2A R In relation to any provision in this section which applies to a *BIPRU firm*, a reference in that provision to “financial resources” does not constitute a reference to “liquidity resources”.

1.2.3 R This section applies to a *firm* in ~~GENPRU 1.2.2R~~ in relation to *liquidity risk* only. Accordingly, for such a *firm*, the systems, processes and resources required by this section are only those that are required with respect to *liquidity risk*. [deleted]

- 1.2.3A G In relation to:
- (1) a BIPRU firm;
 - (2) an incoming EEA firm which:
 - (a) is a full BCD credit institution; and
 - (b) has a branch in the United Kingdom; and
 - (3) a third country BIPRU firm which:
 - (a) is a bank; and
 - (b) has a branch in the United Kingdom;
- BIPRU 12 contains rules and guidance in relation to the adequacy of that firm's liquidity resources.*
- 1.2.4 R ~~For a firm described in GENPRU 1.2.2R, this section applies only with respect to the branch. [deleted]~~
- 1.2.5 R ~~This section applies to an incoming EEA firm only to the extent that the relevant matter is not reserved by the relevant Single Market Directive to the firm's Home State regulator. [deleted]~~
- ...
- 1.2.7 G ~~The guidance in this section is drafted with respect to a firm to which this section and the other provisions of GENPRU and BIPRU (except BIPRU 12) referred to in this section apply in full. The guidance in this section is also applicable to a firm that falls into GENPRU 1.2.2R. However, the guidance in this section only applies to such a firm in respect of liquidity risk and it should be read accordingly.~~
- 1.2.8 G ~~In the case of an incoming EEA firm that is a full BCD credit institution and of a third country BIPRU firm that is a bank, this section only applies to its United Kingdom branch. However, as a branch is not itself a legal entity separate from the rest of a firm, his restriction does not mean that the rest of the firm can necessarily be left out of account when considering compliance with this section. For example, the availability of the branch's liquidity resources may be affected by general liquidity problems in the firm. Similarly, there may be liquidity resources elsewhere in the firm that are available to meet liquidity problems in the branch. [deleted]~~
- 1.2.9 G ~~One factor that may affect the degree to which it is necessary to take into account the firm as a whole is the extent to which the firm manages the liquidity of the branch on an autonomous basis, or includes the branch within integrated liquidity management of the firm as a whole. In the latter case, the requirement in the general stress and scenario testing rule,~~

~~insofar as it applies to liquidity, to carry out scenario analyses may be satisfied by the firm meeting similar requirements set by the regulator in its home country in respect of the firm as whole, provided that the firm separately identifies the impacts on the United Kingdom branch of the scenarios analysed. However, in the case of an incoming EEA firm, the application of this section is further restricted by GENPRU 1.2.5R.~~ [deleted]

...

1.2.11

- G The adequacy of a firm's financial resources needs to be assessed in relation to all the activities of the firm and the risks to which they give rise and so, ~~except as described in GENPRU 1.2.8G~~, this section applies to a firm in relation to the whole of its business. In the case of a UCITS investment firm this means that this section is not limited to designated investment business excluding scheme management activity. It also applies to scheme management activity and to activities that are not designated investment business.

Purpose

...

1.2.13

- G This section amplifies Principle 4, under which a firm must maintain adequate financial resources. It is concerned with the adequacy of the financial resources that a firm needs to hold in order to be able to meet its liabilities as they fall due. These resources include both capital and liquidity resources. As noted in GENRPU 1.2.3AG, however, the FSA's rules and guidance in relation to the adequacy of the liquidity resources of a BIPRU firm are set out in BIPRU 12.

...

Outline of other related provisions

...

1.2.21

- G ...
- (2) ~~Chapters LM and LS of IPRU(BANK) contain guidance on the overall financial adequacy rule so far as it relates to adequate liquidity for banks and the firms to which GENPRU 1.2.2R (Application of this section to certain non EEA firms) applies.~~ [deleted]
 - (3) ~~Chapter 5 of volume 1 of IPRU(BSOC) contains guidance and an evidential provision on the overall financial adequacy rule so far as it relates to adequate liquidity for a building society.~~ [deleted]

...

...

Requirement to have adequate financial resources

...

- 1.2.26A G *BIPRU 12 contains rules and guidance in relation to the adequacy of a BIPRU firm's liquidity resources. Consistent with GENPRU 1.2.2AR, in assessing the adequacy of its liquidity resources, a BIPRU firm should do so by reference to the overall liquidity adequacy rule, rather than the overall financial adequacy rule.*

Annex D

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

The definition of a BIPRU firm

...

1.1.9 G *EEA firms* are subject to the prudential standards of their home state regulator. But the *Banking Consolidation Directive* permits a host state *competent authority* to require a *BCD credit institution* to meet certain standards relating to its liquidity. The *FSA's* approach to liquidity for such *firms* is set out in *BIPRU(BANK)* and *SYSC 11 (Liquidity risk systems and controls) BIPRU 12*.

1.1.10 G ...

(5) An *overseas firm* that is subject to equivalent supervision is subject to the *threshold conditions* and the *Principles*. *BIPRU* and *GENPRU* do not generally apply. However ~~*GENPRU 1.2 (Adequacy of financial resources) BIPRU 12*~~ applies to a *credit institution* with respect to liquidity risk in relation to its *United Kingdom branch*.

In BIPRU 12.6.17G delete the equation and replace it with the following. The text is not underlined.

Liquidity Buffer \geq Wholesale net cash outflow component + Retail deposit component + Credit pipeline component	
Liquidity buffer	$\text{FSA048}_{18,1} + \text{FSA048}_{19,1} + \text{FSA048}_{6,1} + \text{FSA048}_{6,2} + \inf f \quad ; x = 1,2,3..y$ <i>where:</i> $f \leq \sum_{m=1}^x \text{FSA047}_{6,m}$
Retail deposit component	$\left(0.2 \times \sum_{m=1}^{10} \text{FSA048}_{54,m} \right) + \left(0.1 \times \sum_{m=1}^{10} \text{FSA048}_{55,m} \right)$
Credit pipeline component	$0.25 \times \left(\sum_{n=59}^{69} \text{FSA048}_{h,1} \right)$

<p>Wholesale net cash outflow component</p> $\left| \min \left( 0, \left(\sum_{n=44}^{51} FSA048_{n,1} \right) + \left(\sum_{n=52}^{53} \sum_{m=1}^5 FSA048_{n,m} \right) + FSA048_{56,1} + \inf g \quad ; \quad x = 1, 2, 3 \dots y \right) \right|$ <p>where:</p> $g \triangleq \sum_{m=1}^y \left[\left(\sum_{n=20}^{22} FSA047_{n,m} \right) + \left(\sum_{n=26}^{30} FSA047_{n,m} \right) + \left(\sum_{n=35}^{51} FSA047_{n,m} \right) + FSA047_{57,m} \right]$
<p>Where:</p> <p>y = number of business days in three months</p> <p>$FSAxxx_{i,j}$ = The entry in FSAXXX row i column j</p> <p>$\inf f(x); x = 1, 2, 3$ represents the greatest lower bound of the function $f(x)$ over the range $x = 1, 2, 3$</p>

After BIPRU TP 30, insert the following new transitional rules. The text is not underlined.

TP 31 Consequential changes to the Handbook occasioned by BIPRU 12: all firms to which BIPRU 12 applies

Application

- 31.1 R *BIPRU* TP 31 applies to a *firm* which as at 1 December 2009 falls into *BIPRU* 12.1.1R.
- 31.2 G The Prudential Sourcebook for Banks, Building Societies and Investment Firms (Liquidity) (Consequential Amendments) Instrument 2009 (FSA 2009/68) comes into force on 1 December 2009 (with the exception of Annex F which comes into force on 1 June 2010). The effect of *BIPRU* TP 26 is that the quantitative aspects of *BIPRU* 12 are disapproved for a period following 1 December 2009, the exact period of disapplication varying according to the type of *firm* in question. As a result of the phased application of the quantitative aspects of *BIPRU* 12, the associated consequential *Handbook* changes are also phased. *BIPRU* TP 31 deals with the phasing of those consequential *Handbook* changes.

Transitional provisions

31.3

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the		Transitional Provision	Transitional provision:	Handbook provisions:

	transitional provision applies			dates in force	coming into force
1	The changes to <i>GENPRU</i> set out in Annex C (Part 2) to instrument FSA 2009/68.	R	In relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LS of <i>IPRU(BANK)</i> , the changes effected by the Annex listed in column (2) do not apply.	1 December 2009 until 31 May 2010	1 December 2009
2	The changes to <i>GENPRU</i> set out in Annex C (Part 2) to instrument FSA 2009/68.	R	Subject to (3), in relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with <i>IPRU(BSOC)</i> , the changes effected by the Annex listed in column (2) do not apply.	1 December 2009 until 31 May 2010	1 December 2009
3	The changes to <i>GENPRU</i> set out in Annex C (Part 2) to instrument FSA 2009/68.	R	In relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with <i>IPRU(BSOC)</i> and which as at 1 June 2010 has a <i>simplified ILAS waiver</i> , the changes effected by the Annex listed in column (2) do not apply.	1 December 2009 until 30 September 2010	1 December 2009
4	The changes to <i>GENPRU</i> set out in Annex C (Part 2) to instrument FSA 2009/68.	R	In relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LM of <i>IPRU(BANK)</i> and which is not an <i>incoming EEA firm</i> or a <i>third country BIPRU firm</i> , the changes effected by the Annex listed in column (2) do not apply.	1 December 2009 until 30 September 2010	1 December 2009
5	The changes to <i>GENPRU</i> set out in Annex C (Part 2) to instrument FSA 2009/68.	R	In relation to a <i>firm</i> which as at 30 November 2009 calculates its liquidity resources in accordance with Chapter LM of <i>IPRU(BANK)</i> and which is an <i>incoming EEA firm</i> or a <i>third country BIPRU firm</i> , the changes effected by the Annex listed in column (2) do not	1 December 2009 until 31 October 2010	1 December 2009

			apply.		
6	The changes to <i>GENPRU</i> set out in Annex C (Part 2) to instrument FSA 2009/68.	R	In relation to an <i>incoming EEA firm</i> or a <i>third country BIPRU firm</i> which as at 30 November 2009 has a Global Liquidity Concession, the changes effected by the Annex listed in column (2) do not apply.	1 December until 31 October 2010 or, if earlier, the date on which the <i>firm</i> ceases to have a Global Liquidity Concession	1 December 2009
7	The changes to <i>GENPRU</i> set out in Annex C (Part 2) to instrument FSA 2009/68.	R	In relation to a <i>firm</i> which as at 1 December 2009 is a <i>full scope BIPRU investment firm</i> and which is also an <i>ILAS BIPRU firm</i> , the changes effected by the Annex listed in column (2) do not apply.	1 December 2009 until 31 October 2010	1 December 2009
8	The changes to <i>GENPRU</i> set out in Annex C (Part 2) to instrument FSA 2009/68.	R	In relation to a <i>firm</i> which as at 1 December 2009 is a <i>non-ILAS BIPRU firm</i> , the changes effected by the Annex listed in column (2) do not apply.	1 December 2009 until 31 October 2010	1 December 2009

TP 32 Consequential changes to the Handbook occasioned by BIPRU 12: simplified ILAS building societies

Application

32.1 R *BIPRU TP 32 applies to a firm which:*

- (1) as at 30 November 2009 calculates its liquidity resources in accordance with *IPRU(BSOC)*; and
- (2) as at 1 June 2010 has a *simplified ILAS waiver*.

Transitional provisions

32.2

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook provisions: coming into force
1	The changes to <i>IPRU(BSOC)</i> set out in Annex F to instrument FSA 2009/68.	R	The changes effected by the Annex listed in column (2) do not apply.	1 June 2010 until 30 September 2010	1 December 2009

Insert the following new entries into BIPRU Schedule 1 (Record keeping requirements) in the appropriate numerical position. The text is not underlined.

Record keeping requirements

Sch 1 Record keeping requirements

G	1 ...			
	2 ...			
	3 Table			
	Handbook reference	Subject of Record	Contents of Record	When record must
				Retention Period

			be made	
<i>BIPRU</i> 12.3.8R(1)	A <i>firm's liquidity risk tolerance</i>	An appropriately documented account of the <i>firm's liquidity risk tolerance</i>	Not specified	Not specified
<i>BIPRU</i> 12.4.13R	A <i>firm's contingency funding plan</i>	Formal documentation of the <i>contingency funding plan</i>	Not specified	Not specified
<i>BIPRU</i> 12.5.4R(2)	An <i>ILAS BIPRU firm's ILAA</i>	A written record of the <i>firm's ILAA</i>	Not specified	Not specified
<i>BIPRU</i> 12.5.13R(2)	<i>ILAA</i> methodology	Evidence supporting the behavioural assumptions that an <i>ILAS BIPRU firm</i> makes in carrying out its <i>BIPRU</i> 12.5.6R stress tests for the purpose of its <i>ILAA</i>	Not specified	Not specified
<i>BIPRU</i> 12.5.13R(3)	<i>ILAA</i> methodology	Evidence supporting an <i>ILAS BIPRU firm's</i> assessment of the adequacy of its liquidity buffer for the purpose of its <i>ILAA</i>	Not specified	Not specified
<i>BIPRU</i> 12.6.13R	The <i>simplified ILAS waiver application</i>	A written policy statement assessing the likelihood of withdrawal of retail <i>deposits</i> in the circumstances described in <i>BIPRU</i> 12.6.11R(2)(a)	Not specified	Not specified
<i>BIPRU</i>	A <i>simplified ILAS BIPRU</i>	A written record	Not	Not

12.6.21R	<i>firm's ILSA</i>	of the <i>firm's ILSA</i>	specified	specified
<i>BIPRU</i> 12.7.11R	Periodic realisation of assets	A written policy setting out the <i>firm's</i> approach to periodic realisation of its assets	Not specified	Not specified

Insert the following new entries into BIPRU Schedule 2 (Notification and reporting requirements) in the appropriate numerical position. The text is not underlined.

Notification and reporting requirements

Sch 2 Notification and reporting requirements

G	1 ...			
	2 ...			
	3 Table			
Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>BIPRU</i> 12.4.9R	Results of the <i>BIPRU</i> 12.4 stress tests	The results referred to in column (2)	The carrying out of the <i>BIPRU</i> 12.4 stress tests	To be reported in a timely manner
<i>BIPRU</i> 12.6.13R(2)	A <i>simplified ILAS BIPRU</i> firm's policy statement prepared in accordance with <i>BIPRU</i> 12.6.13R	The policy statement referred to in column (2)	The <i>firm's</i> decision to apply for a <i>simplified ILAS waiver</i>	Prior to the <i>firm's</i> application for a <i>simplified ILAS waiver</i>
<i>BIPRU</i> 12.9.13R	The occurrence of any of the events identified in <i>BIPRU</i> 12.9.14R	Fact of occurrence and adequately reasoned explanation for the deviation	The occurrence of any of the events identified in <i>BIPRU</i> 12.9.14R	As soon as the <i>firm</i> becomes aware of the event in question

<i>BIPRU</i> 12.9.18R	A firm's liquidity remediation plan	The matters identified in <i>BIPRU</i> 12.9.18R	The occurrence of any of the events identified in <i>BIPRU</i> 12.9.14R	Within two days of the notification made under <i>BIPRU</i> 12.9.13R
--------------------------	-------------------------------------	---	---	--

Annex E

Amendments to the Interim Prudential sourcebook for Banks (IPRU(BANK))

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

LM

MISMATCH LIQUIDITY

1 INTRODUCTION

1.1 Legal sources

...

- 2 As part of the implementation of the recast Capital Adequacy Directive and the Banking Consolidation Directive in the UK from January 2007, provisions relating to a firm's systems and controls for liquidity risk ~~have been introduced in SYSC 14~~ are given effect in BIPRU 12.3 and provisions concerning stress testing and scenario analysis have been introduced in BIPRU 12.4 and GENPRU 1.2.30R. The relevant rules implement part of Article 22 and Annex V of the Banking Consolidation Directive. This chapter, ~~and chapter LS and BIPRU 12.3 and 12.4 sets~~ set out the FSA's framework for monitoring the liquidity of banks authorised for the purposes of the Act to determine whether the above requirements are met.

...

2 RATIONALE

...

2.2 How the FSA monitors liquidity

- 6 ~~The responsibility for ensuring a bank can meet its obligations as they fall due rests with the bank's own management. The bank should take account of its characteristics and position within the banking system in determining a prudent liquidity policy.~~ [deleted]

...

3 MAIN FEATURES OF THE LIQUIDITY POLICY

...

3.1 Main prudential policies applying to banks

...

- 3 ~~A bank should have adequate systems for monitoring liquidity on a daily basis.~~

~~(See SYSC 11) [deleted]~~

- 3A A bank should carry out stress testing and scenario analysis in relation to liquidity risk. (See ~~GENPRU 1.2.26R~~ and associated guidance, and ~~SYSC 11~~). ~~[deleted]~~
- 3B A bank should have a contingency funding plan. (see ~~SYSC 11~~) ~~[deleted]~~
- ...

9 MONITORING LIQUIDITY

...

9.1.2 *Systems for monitoring liquidity*

- 2 In order to be considered to be conducting its business in a prudent manner a bank must maintain adequate systems. A bank should therefore have in place systems which enable it to monitor its liquidity profile on a frequent and timely basis.
 - a) What in detail will be considered adequate systems depends on the nature of business conducted by the bank. But every bank should have systems in place that enables it to calculate its liquidity position on a daily basis.
 - b) The adequacy of the systems in place for monitoring liquidity is checked through the section 166 process and through review team visits. ~~[deleted]~~

10 POLICY STATEMENTS

...

- 4 The policy statement should consider the management of liquidity in both normal and abnormal circumstances. In particular, it should include details of the bank's contingency funding plan maintained as required by ~~SYSC 11.1.24E BIPRU 12.4.10R~~.
- ...

LS

STERLING STOCK LIQUIDITY

1 INTRODUCTION

1.1 Legal sources

- 2 As part of the implementation of the recast Capital Adequacy Directive and the Banking Consolidation Directive in the UK from January 2007, provisions

relating to a firm's systems and controls for liquidity risk ~~have been introduced in SYSC-14 are given effect in BIPRU 12.3~~ and provisions concerning stress testing and scenario analysis are introduced in BIPRU 12.4 and GENPRU 1.2.30R. The relevant rules implement part of Article 22 and Annex V of the Banking Consolidation Directive. This chapter, ~~and chapter LM and BIPRU 12.3 and 12.4 sets set~~ out the FSA's framework for monitoring the liquidity of banks authorised for the purposes of the Act to determine whether the above requirements are met.

...

...

2**THE FSA'S APPROACH TO STERLING STOCK LIQUIDITY****1**

Regardless of whether a bank reports on a mismatch basis or a stock liquidity basis, the same principles apply. Namely, prudent liquidity management (on the part of the bank) and liquidity monitoring. Details of these are outlined in Chapter LM on mismatch liquidity ~~and BIPRU 12.3 and 12.4~~.

2

...

- b) For the FSA's general approach to liquidity and the mismatch approach to liquidity management, see the chapter on mismatch liquidity ~~and BIPRU 12.3 and 12.4~~.
- ...

3**MAIN FEATURES OF THE POLICY**

This section should be read in conjunction with its equivalent section in the chapter on mismatch liquidity, which sets out the obligations in respect of liquidity, which apply to all authorised banks, ~~and also in conjunction with the rules and guidance in BIPRU 12.3 and 12.4~~. The policy set out below replaces the framework for sterling maturity mismatches and applies only to UK-incorporated retail banks on a consolidated basis (unless otherwise agreed in writing with the FSA).

...

5**MONITORING LIQUIDITY****5.1****General****1**

All banks are required to maintain a liquidity policy statement to the FSA. ~~They should also maintain adequate systems for monitoring liquidity.~~

- a) ~~These are checked during the normal course of supervision by review team visits, treasury visits and reports under section 166 of the Act. [deleted]~~
- b) ...

Annex F

Amendments to the Interim Prudential sourcebook for Building Societies (IPRU(BSOC))

In this Annex, the following sections and provisions of IPRU(BSOC) are deleted. The text of the deleted sections and provisions is not shown.

5 LIQUIDITY

CONTENTS

	PAGE
5.1 Introduction	[Deleted]
5.2 Rules	[Deleted]
5.3 The Prudential Regime for Liquidity	...
5.4 Short-term Liquidity	[Deleted]
5.5 Supervisory Approach to Liquidity	[Deleted]
5.6 Board and Management Responsibilities	...
5.7 Society-only Approach to Liquidity	[Deleted]
5.8 Brokers' Advice	...

ANNEXES

5A Prudential Liquidity	...
5B Policy Statement on Liquidity	...
5C Inter-society Holdings	[Deleted]

Interim Prudential Sourcebook for Building Societies

5 Liquidity

5.1 Introduction [Deleted]

5.1.1 G [Deleted]

5.1.1A G [Deleted]

5.1.2 G [Deleted]

5.2 Rules [Deleted]

...

5.2.4 E [Deleted]

5.2.5 G [Deleted]

5.2.6 G [Deleted]

5.2.7 R [Deleted]

5.2.8 G [Deleted]

...

5.3 The Prudential Regime for Liquidity

...

5.3.3 G [Deleted]

5.3.4 G [Deleted]

...

5.4 Short-term Liquidity [Deleted]

5.4.1 G [Deleted]

5.4.2 G [Deleted]

5.4.3 G [Deleted]

5.4.4 G [Deleted]

5.4.5 G [Deleted]

5.4.6 G [Deleted]

5.4.7 G [Deleted]

5.5 Supervisory Approach to Liquidity [Deleted]

5.5.1 G [Deleted]

5.5.2 G [Deleted]

...

5.7 Society-only Approach to Liquidity [Deleted]

5.7.1 G [Deleted]

...

ANNEX 5A

Prudential Liquidity

...

ANNEX 5B

Policy Statement on Liquidity

...

ANNEX 5C

Inter-society Holdings [Deleted]

5C.1 G [Deleted]

5C.2 G [Deleted]

5C.3 G [Deleted]

5C.4 G [Deleted]

5C.5 G [Deleted]

Annex G

Amendments to the Supervision manual (SUP)

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

13A Annex 1G

Application of the Handbook to the 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
...		
SYSC	<p><i>SYSC 1</i> and <i>SYSC 1 Annex 1</i> (<i>Application of SYSC 2 and SYSC 3</i>) contain application provisions only. <i>SYSC 2</i> and <i>SYSC 3</i> apply only to an <i>insurer</i>, a <i>managing agent</i> and the <i>Society</i> as set out in <i>SYSC 1 Annex 1.1.1R</i>, which include the following exceptions:</p> <p>(1) <i>SYSC 2.1.1R(1)</i> and <i>SYSC 2.1.2G</i> do not apply;</p> <p>(2) <i>SYSC 2.1.3R</i> to <i>SYSC 2.2.3G</i> apply, but only in relation to allocation of the function in <i>SYSC 2.1.3R(2)</i> 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) <i>SYSC 3</i> applies, but only in so far as responsibility for the matter in question is not reserved by a European Community instrument to</p>	<p><i>SYSC 2</i> and <i>SYSC 3</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>SYSC 1 Annex 1.1.1R</i>). <i>SYSC 2</i> and <i>SYSC 3</i> have limited application for activities which are not carried on from a <i>UK</i> establishment (see <i>SYSC 1 Annex 1.1.1R(2A)</i>). Otherwise, see column (2). The <i>common platform requirements</i> in <i>SYSC 4 - SYSC 10</i> apply as set out in <i>SYSC 1 Annex 1.2.2R</i>. <i>SYSC 11 - SYSC 17</i> do not apply. <i>SYSC 18</i> applies.</p>

	<p>the <i>firm's Home State regulator</i>.</p> <p><i>SYSC 1.1.7 R (Where?)</i> further restricts the territorial application of <i>SYSC 1</i> to <i>SYSC 3</i> for an <i>incoming EEA firm</i>. Further <i>guidance</i> is contained in <i>SYSC 2.1.6G</i>, Question 12.</p> <p><i>SYSC 18</i> applies to the extent that the Public Interest Disclosure Act 1998 applies to the <i>firm</i>.</p> <p>The <i>common platform requirements</i> in <i>SYSC 4 - 10</i> apply as set out in Part 2 of <i>SYSC 1 Annex 1</i> (Application of the common platform requirement).</p> <p><i>SYSC 1 Annex 1.2.7G</i> reminds <i>EEA MiFID investment firms</i> that they must comply with the <i>common platform record-keeping requirements</i> in relation to a <i>branch</i> in the <i>United Kingdom</i>.</p> <p><i>SYSC 9</i> applies to activities carried on from an establishment in the <i>United Kingdom</i>, unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> (<i>SYSC 1 Annex 1.2.17R</i>).</p> <p><i>SYSC 11</i> applies to an <i>incoming EEA firm</i> which:</p> <p class="list-item-l1">(1) is a full BCD credit institution; and</p> <p class="list-item-l1">(2) has a branch in the United Kingdom (<i>SYSC 11.1.1 R (3)</i>)).</p> <p><i>SYSC 12</i> does not apply (<i>SYSC 12.1.3R</i>).</p>	
--	---	--

	<p><i>SYSC 13 does not apply (SYSC 13.1.1G).</i></p> <p><i>SYSC 14 does not apply (SYSC 14.1.1R).</i></p> <p><i>SYSC 15 does not apply (SYSC 15.1.1G).</i></p> <p><i>SYSC 16 does not apply (SYSC 16.1.1G).</i></p> <p><i>SYSC 17 does not apply (SYSC 17.1.1G).</i></p> <p><i>SYSC 18 applies.</i></p>	
...		
<i>GENPRU</i>	<p><i>GENPRU applies only to the firm's branch in the United Kingdom in relation to liquidity risk only (GENPRU 1.2.3R and GENPRU 1.2.21G). Does not apply.</i></p>	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> .
<i>BIPRU</i>	<p><i>BIPRU does not apply as EEA firms are subject to the prudential standards of their home state regulator (BIPRU 1.1.7R and BIPRU 1.1.9G).</i></p> <p><u><i>However, BIPRU 12 applies to an EEA firm as respects the activities of its UK branch, but in relation to liquidity risk only.</i></u></p>	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> .
...		

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24R

...

FSA048 Enhanced Mismatch Report

...

53 SME deposits

A *firm* should report in this row all its deposits and account balances where the account holder is a *small or and medium-sized enterprise (SME)*. A *firm* should also report here *deposits and account balances where the account holder is a partnership or a sole trader which would be a small and medium-sized enterprise if it were a company*.

...

57 Principal FX cash flows (including currency swaps)

...

For example, if a *firm* was completing this *data item* to show its contractual assets and liabilities denominated in *US dollars* and it had transacted a forward foreign exchange contract to purchase sell \$75m against the sale purchase of an equivalent amount of another currency four months after the reporting date, it would enter -75,000 in column F and make no other entries.

...

Part 11 Assets included in Part 2 held under re-hypothecation rights

Rows 78 to 89 relate to securities reported in Part 2 of this *data item*, held as *clients'* assets or derivative net margin collateral received in relation to which the *firm* has re-hypothecation rights. Row 81 is intentionally left blank.

...

HANDBOOK ADMINISTRATION (NO 16) INSTRUMENT 2009

Powers exercised

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

Commencement

- C. This instrument comes into force as follows:
 - (1) Annex J (LR) comes into force on 31 December 2009;
 - (2) Annex E (IPRU(INV)) comes into force on 31 December 2011;
 - (3) the remainder of this instrument comes into force on 6 January 2010.

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
Prudential sourcebook for Insurers (INSPRU)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex E
Supervision manual (SUP)	Annex F
Decision Procedure and Penalties manual (DEPP)	Annex G
Disputes Resolution: Complaints sourcebook (DISP)	Annex H
Compensation sourcebook (COMP)	Annex I
Listing Rules sourcebook (LR)	Annex J

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex K to this instrument. The general guidance in PERG does not form part of the Handbook.

Citation

- F. This instrument may be cited as the Handbook Administration (No 16) Instrument 2009.

By order of the Board
10 December 2009

Annex A

Amendments to the Glossary of definitions

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

<i>client</i>	(1) (except in <i>PROF</i> , <u>and except</u> in relation to a <i>home finance transaction</i>) has the meaning given in <i>COBS</i> 3.2, ...
	...
<i>complaints time</i>	<i>DISP</i> 4.7 <u>1.8.</u>
<i>barring rules</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 overseas company which is not a <i>primary listing</i> .

[*Editor's Note:* The definition of "secondary listing", as amended by this Annex, will be deleted w.e.f. 6 April 2010 as a result of the Listing Rules Sourcebook (Amendment No 3) Instrument 2009 (FSA 2009/54).]

Annex B**Amendments to the General Provisions (GEN)**

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

- 2.1.8 R ~~[deleted]~~ This chapter applies to all rules made by FOS Ltd.
- 2.1.9 G ~~[deleted]~~ 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 FEES 5 (Financial Ombudsman Service Funding) made by FOS Ltd.

Sch 4 Powers exercised

...

- 4.11 G GEN 2.1.8R is made by FOS Ltd in the exercise of its powers referred to in Schedule 4 to DISP.

Annex C

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

8 General provisions applying INSPRU and GENPRU to Lloyd's

...

8.3 The Central Fund

Application

8.3.1 R This ~~chapter~~ section applies to the *Society*.

Purpose

8.3.2 G The *rules* and *guidance* in this ~~chapter~~ section ...

Enabling Provision

8.3.3 D The directions in this ~~chapter~~ section ...

8.3.4 D The directions given in this ~~chapter~~ section ...

...

8.4 Capacity Transfer Market

Application

8.4.1 R This ~~chapter~~ section applies to the *Society*.

Purpose

8.4.2 G The *rules* and *guidance* in this ~~chapter~~ section ...

...

8.5 Former underwriting members

Application

8.5.1 R This ~~chapter~~ section applies to the *Society*.

Purpose

8.5.2 G The *rules* and *guidance* in this ~~chapter~~ section ...

Annex D

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

TP1 Transitional Provisions

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>MIPRU</i> 4.4.4R and <i>MIPRU</i> 4.4.8R(3)	R	A <i>firm</i> is not required to include goodwill in its intangible assets until 14 January 2008. [expired]	From 31 October 2004 until 14 January 2008	31 October 2004
...					

Annex E

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

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

Comes into force on 31 December 2011

- 13.3.10 R (1) A *category B firm* must be able to calculate its capital resources at any time in accordance with table 13.3.10 on the basis of the balance sheet drawn up by the *firm* at that time.
- (a)
- (b) ~~a or to which 13.12 applies must adjust the assets in the balance sheet as specified in Part I of table 13.12.3(2) and include the liabilities after making the adjustments specified in Part II of table 13.12.3(2).~~

Annex F

Amendments to the Supervision manual (SUP)

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

16 Annex 24R Data items for SUP 16.7 and SUP 16.12

...

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24GR

...

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>SUP</i> :
		...
		Section 341 ...
		<u>Paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority)</u>
		...

Annex G

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

After DEPP Transitional Provisions, insert the following.

Schedule 1 Record keeping requirements

1.1 G There are no record-keeping requirements in *DEPP*.

Schedule 2 Notification requirements

2.1 G There are no notification requirements in *DEPP*.

Schedule 3 Fees and other required payments

3.1 G There are no requirements for fees in *DEPP*.

3.2 G The FSA's power to impose financial penalties is contained in:

	Section 206 (Financial penalties) of the <i>Act</i>
	Part III of Schedule 1 (The Financial Services Authority) to the <i>Act</i>
	the <i>Money Laundering Regulations</i>
	the Transfer of Funds (Information on the Payer) Regulations 2007 (SI 2007/3298)
	the <i>RCB Regulations</i>
	the <i>Payment Services Regulations</i>

Schedule 4 Powers exercised

4.1 G The following powers and related provisions in or under the *Act* have been exercised by the FSA to make the statements of policy in *DEPP*:

	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i>)
	Section 93(1) (Statement of policy)
	Section 124(1) (Statement of policy)
	Section 157(1) (Guidance)

	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i>)
	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i>)
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i>)
	Paragraph 16 (Penalties) of Schedule 1 (The Financial Services Authority)

4.2	G	The following additional powers and related provisions have been exercised by the FSA to make the statements of policy in <i>DEPP</i> :
		Regulation 42 (Guidance) of the <i>RCB Regulations</i>
		Regulation 44 (Warning notices and decision notices) of the <i>RCB Regulations</i>
		Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>

Schedule 5 Rights of action for damages

5.1 G There are no rules in *DEPP*.

Schedule 6 Rules that can be waived

6.1 G There are no rules in *DEPP*.

Annex H

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

TP 1 Transitional provisions

TP 1.1 Transitional Provisions 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
...					
18	<i>DISP</i> 1.10.1R and <i>DISP</i> 1.10.2R, <i>DISP</i> 1.10.4R and <i>DISP</i> 1 Annex 1R	R	<p>(+) <i>Solely in respect of information regarding any reversion activity or home purchase activity required to be reported in DISP 1.10.1R and DISP 1.10.2R, a firm is not required to include such information in respect of relevant reporting periods (as set out in DISP 1.10.4R) ending before 1 October 2007;</i></p> <p>(2) <i>For the purpose of reporting complaints under generic product types in DISP 1 Annex 1R:</i></p> <ul style="list-style-type: none"> (i) <i>complaints relating to home reversion plans must be recorded under the heading of “Lifetime Mortgage”, and</i> (ii) <i>complaints relating to home purchase plans must be recorded under the heading of “Other Regulated Mortgage”.</i> <p><u>Expired</u></p>	1 April 2007 to 31 December 2008	<i>Commencement</i>
19	<i>DISP</i> 1.10.1CR and <i>DISP</i> 1.10.1DG	R	<i>Firms that submit a joint report before 31 July 2009 must clearly indicate in writing to the FSA the firms on whose behalf the report is submitted.</i> <u>Expired</u>	From 14 December 2007 to 31 July 2009	14 December 2007

20	<i>DISP 1.6.4R</i>	R	Where a complainant indicates after 6 July 2008 their acceptance of a response sent by the <i>respondent</i> under <i>DISP 1.6.4R</i> before 6 July 2008 then that response need not have referred to the ultimate availability of the <i>Financial Ombudsman Service</i> . <u>Expired</u>	From 6 July 2008 to 6 September 2008	6 July 2008
...					

TP 1.2 Table Fee tariffs for industry blocks [deleted]

Industry Block	Tariff base
1 Deposit acceptors	Number of accounts relevant to the activities in <i>DISP 2.3.1R</i>
2 Firms that undertake insurance activities, subject to prudential regulation only (excluding firms in blocks 13 & 15)	Relevant annual gross premium income
3 Society of Lloyd's	Flat fee
4 Firms that undertake insurance activities, subject to both prudential and conduct of business regulation (long term life insurers) (excluding firms in block 15)	Relevant adjusted annual gross premium income
5 Fund managers (including those holding client money/assets and not holding client money/assets)	Relevant funds under management
6 Operators, Trustees and Depositaries of collective investment schemes	Flat fee
7 Firms dealing as principal	Number of relevant traders
8 Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)	Number of relevant approved persons (controlled functions 21, 22, 24, 25, 26)
9 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)	Number of relevant approved persons (controlled functions 21, 22, 24, 25, 26)
10 Corporate finance advisers	Number of relevant approved persons (controlled function 23)
11 Execution only arrangers, dealers or	Flat fee

brokers	
12—Advisory only firms	Number of relevant approved persons (controlled functions 21, 22, 24, 25)
13—Cash plan health providers	Flat fee
15—Friendly Societies whose tax exempt business represents 95% or more of their total relevant business	Flat fee

TP 1.3 [deleted]

The industry blocks in Table 2 are the same as the equivalent activity group set out in part 7 of FEES 4 Annex 1R.
Where the tariff base in the table is defined in similar terms as the tariff base for the equivalent activity group set out in part 7 of FEES 4 Annex 1R, it must be calculated in the same way as that tariff base except that it takes into account only the firm's relevant business.

Schedule 2 Notification requirements

2.1 G ...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
FEES 5.4.1R	<i>Relevant business conducted</i>	The total amount of <i>relevant business</i> (measured in accordance with the appropriate tariff base(s)) which the <i>firm</i> conducted as at or in the year to 31 December as appropriate, in relation to the tariff base for each of the relevant <i>industry blocks</i> set out in FEES 5 Annex 1R	N/A	By the end of February each year

Delete Schedule 4 (Powers Exercised) and replace with the following text. The text is not underlined.

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the FSA to make the <i>rules</i> in <i>DISP</i> :
		Section 138 (General rule-making power)
		Section 139(4) (Miscellaneous ancillary matters)
		Section 150(2) (Actions for damages)
		Section 156 (General supplementary powers)
		Section 226 (Compulsory jurisdiction) (including as applied by regulation 125 of the <i>Payment Services Regulations</i>)
		Section 226A(7) (Consumer credit jurisdiction)
		Section 229 (Awards)
		Section 234 (Industry funding)
		Section 316(1) (Direction by Authority)
		Paragraphs 13 (Authority's procedural rules), 16B (Procedure for complaints etc) and 16D (Enforcement of money awards) of Schedule 17 (The Ombudsman Scheme)
		Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the <i>Ombudsman Transitional Order</i>
		Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the <i>Mortgage and General Insurance Complaints Transitional Order</i>
4.2	G	The following power in the <i>Act</i> has been exercised by the FSA to give the <i>guidance</i> in <i>DISP</i> :
		Section 157(1) (Guidance)
4.3	G	The following additional powers and related provisions have been exercised by the FSA to make the <i>guidance</i> in <i>DISP</i> :
		Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>

4.4	G	<p>The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FOS Ltd</i> to make the rules in <i>DISP</i>:</p> <table border="1"> <tr><td></td><td>Section 226A (Consumer Credit Jurisdiction)</td></tr> <tr><td></td><td>Section 227 (Voluntary Jurisdiction)</td></tr> <tr><td></td><td>Section 229 (Awards)</td></tr> <tr><td></td><td>Section 230 (Costs)</td></tr> <tr><td></td><td>Paragraphs 8 (Guidance), 14 (The scheme operator's rules), 15 (Fees), 16B (Consumer Credit Jurisdiction: Procedure for complaints etc) and 18 (Terms of reference to the scheme) of Schedule 17 (The Ombudsman Scheme)</td></tr> </table>		Section 226A (Consumer Credit Jurisdiction)		Section 227 (Voluntary Jurisdiction)		Section 229 (Awards)		Section 230 (Costs)		Paragraphs 8 (Guidance), 14 (The scheme operator's rules), 15 (Fees), 16B (Consumer Credit Jurisdiction: Procedure for complaints etc) and 18 (Terms of reference to the scheme) of Schedule 17 (The Ombudsman Scheme)
	Section 226A (Consumer Credit Jurisdiction)											
	Section 227 (Voluntary Jurisdiction)											
	Section 229 (Awards)											
	Section 230 (Costs)											
	Paragraphs 8 (Guidance), 14 (The scheme operator's rules), 15 (Fees), 16B (Consumer Credit Jurisdiction: Procedure for complaints etc) and 18 (Terms of reference to the scheme) of Schedule 17 (The Ombudsman Scheme)											
4.5	G	<p>The powers to make rules relating to the Ombudsman Scheme are shared between the <i>FSA</i> and the <i>FOS Ltd</i>. <i>FOS Ltd</i>'s rules are subject to <i>FSA</i> consent or approval. The rules made exclusively by <i>FOS Ltd</i> are:</p> <table border="1"> <tr> <td style="vertical-align: top;"><i>DISP 2</i></td><td>2.4.1R 2.5.1R 2.5.5R 2.6.3R 2.6.4R 2.7.9R(3)</td></tr> <tr> <td style="vertical-align: top;"><i>DISP 3</i></td><td>All the rules in this chapter, except for <i>DISP 3.7.4R</i> (which is made by the <i>FSA</i>) and <i>DISP 3.7.12R</i> (which is made by the <i>FSA</i> and the <i>FOS Ltd</i>).</td></tr> <tr> <td style="vertical-align: top;"><i>DISP 4</i></td><td>All rules</td></tr> <tr> <td style="vertical-align: top;"><i>FEES 5</i></td><td>5.1.6R 5.5 (all rules) 5.7.2R 5.7.3R 5.9.1R</td></tr> <tr> <td style="vertical-align: top;"><i>FEES 5</i></td><td>Annex 1R parts 3 and 4</td></tr> </table>	<i>DISP 2</i>	2.4.1R 2.5.1R 2.5.5R 2.6.3R 2.6.4R 2.7.9R(3)	<i>DISP 3</i>	All the rules in this chapter, except for <i>DISP 3.7.4R</i> (which is made by the <i>FSA</i>) and <i>DISP 3.7.12R</i> (which is made by the <i>FSA</i> and the <i>FOS Ltd</i>).	<i>DISP 4</i>	All rules	<i>FEES 5</i>	5.1.6R 5.5 (all rules) 5.7.2R 5.7.3R 5.9.1R	<i>FEES 5</i>	Annex 1R parts 3 and 4
<i>DISP 2</i>	2.4.1R 2.5.1R 2.5.5R 2.6.3R 2.6.4R 2.7.9R(3)											
<i>DISP 3</i>	All the rules in this chapter, except for <i>DISP 3.7.4R</i> (which is made by the <i>FSA</i>) and <i>DISP 3.7.12R</i> (which is made by the <i>FSA</i> and the <i>FOS Ltd</i>).											
<i>DISP 4</i>	All rules											
<i>FEES 5</i>	5.1.6R 5.5 (all rules) 5.7.2R 5.7.3R 5.9.1R											
<i>FEES 5</i>	Annex 1R parts 3 and 4											

Sch 5 Actions for damages for contravention under section 150 of the Act

...

5.2 G

...					
5 Funding	-	-	Yes	-	-

Annex I

Amendments to the Compensation sourcebook (COMP)

In this Annex, striking through indicates deleted text.

Sch 4 Powers exercised

4.1	G	The following powers and related provisions in or under the <i>Act</i> ... have been exercised by the FSA to make the <i>rules</i> in COMP:
		...
		Section 223 (Management expenses)
		...

Annex J

Amendments to the Listing Rules sourcebook (LR)

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

Comes into force on 31 December 2009

- 9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

...

- (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~~ Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009, published by the Financial Reporting Council in October 2009;

Annex K

Amendments to the Perimeter Guidance manual (PERG)

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

13.6 The recast Capital Adequacy Directive

...

Q58. How do we know whether we are an exempt CAD firm and what does this mean in practice?

...

For the rules transposing these requirements and supporting guidance, see ~~the Interim Prudential Sourcebook for Investment Businesses (Exempt CAD Firms) Instrument 2007 *IPRU(Inv)*~~ and in particular sections 13.1 and 13.1A and chapter 9. ...

FEES (MISCELLANEOUS AMENDMENTS NO 2) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (1) section 156 (General supplementary powers); and
 - (2) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- 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 11 December 2009.

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fees (Miscellaneous Amendments No 2) Instrument 2009.

By order of the Board
10 December 2009

Annex

Amendments to the Fees manual (FEES)

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

3 Annex 6R Fees payable for a permission or guidance on its availability in connection with the Basel Capital Accord

...

Table 1

Application group	Description of group	Application fee 2008/09		
		Advanced IRB (£'000)	Foundation IRB (£'000)	AMA (£'000)
...				

Table 2

Application group	Description of group		Application fee 2008/09		
	Modified eligible liabilities (£m)	Number of traders as at <u>the 31 December 2007 prior to the FSA financial year in which the fee is payable</u>	Advanced IRB (£'000)	Foundation IRB (£'000)	AMA (£'000)
...					

...

Table 3 (Advanced IRB approach where the FSA or Home State regulator has already given permission to use the foundation IRB approach)

Application group	Advanced IRB Application fee 2008/09 (£)
...	

FEES (BUILDING SOCIETIES) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (1) section 156 (General supplementary powers); and
 - (2) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- 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 11 December 2009.

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Notes

- E. In the Annex to this instrument, the "*Editor's 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 Fees (Building Societies) Instrument 2009.

By order of the Board
10 December 2009

Annex

Amendments to the Fees manual (FEES)

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

4 Annex 1 R Activity groups, tariff bases and valuation dates applicable

...

Part 2

...

Activity group	Tariff base
A.1	<p>MODIFIED ELIGIBLE LIABILITIES For banks and building societies:</p> <p>Part 1:</p> <p>...</p> <p>Assets</p> <p>In sterling: $\text{£21B} + 60\% \text{ of } \text{£22A} + \text{£23D} + \text{£23E} + \text{£23F} \pm \text{£23G} + \text{£30A} + \text{£30B} \pm \text{£30C} + \text{£32AA1} + \text{£32AA2} \pm \text{£32BA}$</p> <p>plus</p> <p>In foreign currency, one-third of:</p> <p>$\text{E21B} + 60\% \text{ of } \text{E22A} + \text{E23D} + \text{E23E} + \text{E23F} \pm \text{E23G} + \text{E30A} + \text{E30B} \pm \text{E30C} + \text{E32AA1} + \text{E32AA2} \pm \text{E32BA} + \text{C21B} + 60\% \text{ of } \text{C22A} + \text{C23D} + \text{C23E} + \text{C23F} \pm \text{C23G} + \text{C30A} + \text{C30B} \pm \text{C30C} + \text{C32AA1} + \text{C32AA2} \pm \text{C32BA}$</p>
	<p>Part 2: Non-resident office offset</p> <p>...</p> <p>Notes:</p> <p>(1) All references in the above formula are to entries on Form BT (that is, the Balance Sheet Form completed to provide information required following the Banking Statistics Review 1997 and returned by <i>banks and building societies</i> to the Bank of England as required by the Bank of England Act 1998).</p> <p>[Editor's Note: On 1 January 2010, the Bank of England will be removing entries relating to the Modified Eligible Liabilities]</p>

	<p>formulae from Form BT and inserting these on a new Form ELS. The formulae as they appear on Form ELS will provide the source for calculating Modified Eligible Liabilities for banks and building societies from the 2011/2012 financial year onwards. For further information, please refer to the Fees page of the FSA website at http://www.fsa.gov.uk/Pages/Doing/Regulated/Fees/index.shtml .]</p> <p>...</p>
	...
	<p>For building societies:</p> <ul style="list-style-type: none"> • deposit liabilities (including debt securities up to five years original maturity) (that is, the amounts in sterling (in column 1) and one third of foreign currency referenced amounts (in columns 2 and 3) for items B1.1+B1.2+B2.0a+B2.0b+B2.10+B2.13+B2.14+B2.15+B2.16) LESS amounts in respect of: • sterling repo liabilities with the Bank of England (that is, ONLY the amounts in sterling (in column 5) for item B2.5a) • balances held with the Bank of England (excluding cash ratio deposits) (that is, the amounts in sterling (in column 1) and one third of foreign currency referenced amounts (in columns 2 and 3) for item B6.2a, less the amounts in sterling (in column 1) and one third of foreign currency referenced amounts (in columns 2 and 3) for item OW1.1) • market loans to banks, building societies (balances with and loans to, plus CDs, Commercial paper) (that is, the amounts in sterling (in column 1) and one third of foreign currency referenced amounts (in columns 2 and 3) for items B6.3.a+B6.4.a+B6.4b+B6.5a+B6.5b+B6.12a) • investments with banks and building societies (bonds, notes and other debt instruments up to five years original maturity) (that is, the amounts in sterling (in column 1) and one third of foreign currency referenced amounts (in columns 2 and 3) for items B6.6a1+B6.6a2+B6.10a1+B6.10a2)
	<p>Note :</p> <p>All references in the definition for building society MELs are to entries in the MFS1 which is submitted <i>monthly</i> by all building societies to the FSA.</p> <p>For a <i>dormant account fund operator</i> the tariff base is not relevant and the flat fee in FEES 4 Annex 2R is payable.</p>
	...

PRUDENTIAL REQUIREMENTS (STRESS TESTING) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
 - (a) section 138 (General rule-making power);
 - (b) section 150(2) (Actions for damages);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Part 1 of Annexes A, B and C and Annexes D and E come into force on 14 December 2009.
- (2) Part 2 of Annexes A, B and C come into force on 14 December 2010.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
General Prudential sourcebook (GENPRU)	Annex C
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex D
Prudential sourcebook for Insurers (INSPRU)	Annex E

Citation

- E. This instrument may be cited as the Prudential Requirements (Stress Testing) Instrument 2009.

By order of the Board
10 December 2009

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Part 1: Comes into force on 14 December 2009

group

...

- (3) (for the purposes of SYSC 12 (Group risk systems and controls requirement) and GENPRU 1.2 (Adequacy of financial resources) and in relation to a *person* “A”)) A and any *person*:
 - (a) who falls into (1);
 - (b) who is a member of the same *financial conglomerate* as A;
 - (c) who has a *consolidation Article 12(1) relationship* with A;
 - (d) who has a *consolidation Article 12(1) relationship* with any *person* in (3)(a);
 - (e) who is a *subsidiary undertaking* of a person in (3)(c) or (3)(d); or
 - (f) whose omission from an assessment of the risks to A of A’s connection to any *person* coming within (3)(a)-(3)(e) or an assessment of the financial resources available to such *persons* would be misleading.

...

Part 2: Comes into force on 14 December 2010

group ...

- (3) (for the purposes of *SYSC 12* (Group risk systems and controls requirement), *SYSC 20* (Reverse stress testing) and *GENPRU 1.2* (Adequacy of financial resources) and in relation to a *person* “A”) A and any *person*:
- (a) who falls into (1);
 - (b) who is a member of the same *financial conglomerate* as A;
 - (c) who has a *consolidation Article 12(1)* relationship with A;
 - (d) who has a *consolidation Article 12(1)* relationship with any *person* in (3)(a);
 - (e) who is a *subsidiary undertaking* of a person in (3)(c) or (3)(d); or
 - (f) whose omission from an assessment of the risks to A of A’s connection to any *person* coming within (3)(a)-(3)(e) or an assessment of the financial resources available to such *persons* would be misleading.

...

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

Part 1: Comes into force on 14 December 2009

- 12.1.9 G For the purposes of SYSC 12.1.8R, the question of whether the risk management processes and internal control mechanisms are adequate, sound and appropriate should be judged in the light of the nature, scale and complexity of the *group's* business and of the risks that the group bears. Risk management processes must include the stress testing and scenario analysis required by GENPRU 1.2.42R and GENPRU 1.2.49R(1)(b).

Part 2: Comes into force on 14 December 2010

- 7.1.4A G ~~Other firms should take account of the risk management rules (SYSC 7.1.3R and SYSC 7.1.4R) as if they were guidance (and as if "should" appeared in those rules instead of "must") as explained in SYSC 1 Annex 1.3.3G.~~
For a common platform firm included within the scope of SYSC 20 (Reverse stress testing), the strategies, policies and procedures for identifying, taking up, managing, monitoring and mitigating the risks to which the firm is or might be exposed include conducting reverse stress testing in accordance with SYSC 20. A common platform firm which falls outside the scope of SYSC 20 should consider conducting reverse stress tests on its business plan as well. This would further senior personnel's understanding of the firm's vulnerabilities and would help them design measures to prevent or mitigate the risk of business failure.
- 7.1.4B G Other firms should take account of the risk management rules (SYSC 7.1.3R and SYSC 7.1.4R) as if they were guidance (and as if "should" appeared in those rules instead of "must") as explained in SYSC 1 Annex 1.3.3G.

After SYSC 19, insert the following new chapter. The text is not underlined.

20 Reverse stress testing

20.1 Application and purpose

Application

- 20.1.1 R (1) SYSC 20 applies to:

- (a) a *BIPRU firm*, unless it is a *BIPRU investment firm* excluded in accordance with (2); and
 - (b) an *insurer* unless it is:
 - (i) a *non-directive friendly society*; or
 - (ii) a *Swiss general insurer*; or
 - (iii) an *EEA-deposit insurer*; or
 - (iv) an *incoming EEA firm*; or
 - (v) an *incoming Treaty firm*.
- (2) Subject to (3) and (4), a *BIPRU investment firm* is excluded from the scope of *SYSC 20* if:
- (a) where it carries out the *regulated activity* of *managing investments* or *safeguarding and administering investments*, it has assets under management or administration of no more than £10 billion (or the equivalent amount in foreign currency); or
 - (b) the total annual *fee* and *commission* income arising from its *regulated activities* is no more than £250 million (or the equivalent amount in foreign currency); or
 - (c) it has assets and liabilities of no more than £2 billion (or the equivalent amount in foreign currency).
- (3) In order to determine whether a *BIPRU investment firm* is excluded from the scope of *SYSC 20*, the exclusion criteria in (2) apply on a consolidated basis to all of the *BIPRU investment firms* within the same *UK consolidation group* or *non-EEA sub-group* as if they were one *firm*.
- (4) Any *BIPRU investment firm* which is not excluded in accordance with (2) and (3) in any given year will continue to be subject to *SYSC 20* for the following two years irrespective of whether it satisfies the criteria to be excluded in any of those subsequent years.

Purpose

- 20.1.2 G This chapter amplifies *Principle 2*, under which a *firm* must conduct its business with due skill, care and diligence, and *Principle 3*, under which a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

- 20.1.3 G This chapter contains *rules* on reverse stress testing, which require a *firm* to identify and assess events and circumstances that would cause its business model to become unviable. This chapter also requires the *firm's* senior management or *governing body* to review and approve the results of the reverse stress testing exercise. This should help the *firm's* senior management to identify the *firm's* vulnerabilities and design a strategy to prevent or mitigate the risk of business failure.
- 20.1.4 G The reverse stress testing requirements are an integral component of a *firm's* business planning and risk management under *SYSC*. For *BIPRU firms* as referred to in *SYSC* 20.1.1R(1)(a), this chapter amplifies *SYSC* 7.1.1G to *SYSC* 7.1.8G on risk control. For *insurers* as referred to in *SYSC* 20.1.1R(1)(b), this chapter amplifies *SYSC* 14.1.17G to *SYSC* 14.1.25G on business planning and risk management.

20.2 Reverse stress testing requirements

- 20.2.1 R As part of its business planning and risk management obligations under *SYSC*, a *firm* must reverse stress test its business plan; that is, it must carry out stress tests and scenario analyses that test its business plan to failure. To that end, the *firm* must:
- (1) identify a range of adverse circumstances which would cause its business plan to become unviable and assess the likelihood that such events could crystallise; and
 - (2) where those tests reveal a risk of business failure that is unacceptably high when considered against the *firm's* risk appetite or tolerance, adopt effective arrangements, processes, systems or other measures to prevent or mitigate that risk.
- 20.2.2 R Where the *firm* is a member of:
- (1) an *insurance group*, in respect of which it is required to maintain group capital;
 - (2) a *UK consolidation group*; or
 - (3) a *non-EEA sub-group*;

it must conduct the reverse stress test on a solo basis as well as on a consolidated basis in relation to the *insurance group*, the *UK consolidation group* or the *non-EEA sub-group*, as the case may be.

- 20.2.3 R The design and results of a *firm's* reverse stress test must be documented and reviewed and approved at least annually by the *firm's* senior management or *governing body*. A *firm* must update its reverse stress test more frequently if it is appropriate to do so in the light of substantial changes in the market or in macroeconomic conditions.
- 20.2.4 G (1) Business plan failure in the context of reverse stress testing should be understood as the point at which the market loses confidence in a *firm* and this results in the *firm* no longer being able to carry out its business activities. Examples of this would be the point at which all or a substantial portion of the *firm's* counterparties are unwilling to continue transacting with it or seek to terminate their contracts, or the point at which the *firm's* existing shareholders are unwilling to provide new capital. Such a point may be reached well before the *firm's* financial resources are exhausted.
- (2) The FSA may request a *firm* to quantify the level of financial resources which, in the *firm's* view, would place it in a situation of business failure should the identified adverse circumstances crystallise.
- (3) In carrying out the stress tests and scenario analyses required by SYSC 20.2.1R, a *firm* should at least take into account each of the sources of risk identified in accordance with GENPRU 1.2.30R(2).
- 20.2.5 G Reverse stress testing should be appropriate to the nature, size and complexity of the *firm's* business and of the risks it bears. Where reverse stress testing reveals that a *firm's* risk of business failure is unacceptably high, the *firm* should devise realistic measures to prevent or mitigate the risk of business failure, taking into account the time that the *firm* would have to react to these events and implement those measures. As part of these measures, a *firm* should consider if changes to its business plan are appropriate. These measures, including any changes to the *firm's* business plan, should be documented as part of the "results" referred to in SYSC 20.2.3R.
- 20.2.6 G In carrying out its reverse stress testing, a *firm* should consider scenarios in which the failure of one or more of its major counterparties or a significant market disruption arising from the failure of a major market participant, whether or not combined, would cause the *firm's* business to fail.
- 20.2.7 G (1) The FSA may request a *firm* to submit the design and results of its reverse stress tests and any subsequent updates as part of its ARROW risk assessment.
- (2) In the light of the results of a *firm's* reverse stress tests, the FSA may require the *firm* to implement specific measures to prevent or mitigate the risk of business failure where that risk is not sufficiently mitigated by the measures adopted by the *firm* in accordance with SYSC 20.2.1R, and the *firm's* potential failure poses an unacceptable risk to the FSA's statutory objectives.

- (3) The FSA recognises that not every business failure is driven by lack of financial resources and will take this into account when reviewing a firm's reverse stress test design and results.

Annex C

Amendments to the General Prudential sourcebook (GENPRU)

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

Part 1: Comes into force on 14 December 2009

- 1.2.27 G The liabilities referred to in the *overall financial adequacy rule* include a *firm*'s contingent and prospective liabilities. ~~It excludes~~ They exclude liabilities that might arise from transactions that a *firm* has not entered into and which it could avoid, for example, by ~~ceasing to trade~~ taking realistic management actions such as ceasing to transact new business after a suitable period of time has elapsed. ~~It includes~~ They include liabilities or costs that arise as a consequence of strategies other than continuing as both in scenarios where the *firm* is a going concern and those where the *firm* ceases to be a going concern. ~~It~~ They also include claims that could be made against a *firm*, which ought to be paid in accordance with fair treatment of *customers*, even if such claims could not be legally enforced.
- ...

Systems, strategies, processes and reviews

- 1.2.30 R A *firm* must have in place sound, effective and complete processes, strategies and systems:
- ...

- (2) that enable it to identify and manage the major sources of risks referred to in (1), including the major sources of risk in each of the following categories where they are relevant to the *firm* given the nature and scale of its business:
- ...

- (j) interest rate risk (including in the case of a *BIPRU firm*, interest rate risk in the *non-trading book*); and
- (k) pension obligation risk; and
- (l) group risk.
- ...

- 1.2.32 G (1) This paragraph gives *guidance* on some of the terms used in the *overall Pillar 2 rule*.
- ...

- (6) Group risk is the risk that the financial position of a *firm* may be adversely affected by its relationships (financial or non-financial) with other entities in the same *group* or by risks which may affect the financial position of the whole *group*, for example reputational contagion. Further guidance on group risk can be found in GENPRU 1.2.87G to GENPRU 1.2.91G.
- ...

1.2.37 R The processes and systems required by the *overall Pillar 2 rule* must:

- (1) include an assessment of how it the *firm* intends to deal with each of the major sources of risk identified in accordance with GENPRU 1.2.30R(2); and
 - (2) take into account the impact of diversification effects and how such effects are factored into the *firm's* systems for measuring and managing risks; and
 - (3) include an assessment of the *firm-wide* impact of the risks identified in accordance with GENPRU 1.2.30R(2), to which end a *firm* must aggregate the risks across its various business lines and units, making appropriate allowance for the correlation between risks.
- ...

Stress and scenario tests

- 1.2.42 R (1) As part of its obligation under the *overall Pillar 2 rule*, a *firm* must, for each of the major sources of risk identified in accordance with GENPRU 1.2.30 R(2), carry out stress tests and scenario analyses that are appropriate to the nature, scale and complexity of those major sources of risk and to the nature, scale and complexity of the *firm's* business, as part of which the *firm* must:
- (a) take reasonable steps to identify an appropriate range of realistic adverse circumstances and events in which the risk identified crystallises; and
 - (b) estimate the financial resources the *firm* would need in each of the circumstances and events considered in order:
 - (i) to be able to meet its liabilities as they fall due;
 - (ii) to be able to meet the CRR;
 - (iii) to carry out the plans referred to in GENPRU 1.2.37R (1); and
 - (iv) otherwise to meet, to the extent that it considers necessary, that major source of risk.

- (2) In carrying out the stress tests and scenario analyses in (1), a *BIPRU firm* with an *IRB permission* must incorporate and take into account the stress tests required to be carried out under *BIPRU 4.3.39R* to *BIPRU 4.3.40R* (Stress tests used in assessment of capital adequacy) identify an appropriate range of adverse circumstances of varying nature, severity and duration relevant to its business and risk profile and consider the exposure of the *firm* to those circumstances, including:
- (a) circumstances and events occurring over a protracted period of time;
 - (b) sudden and severe events, such as market shocks or other similar events; and
 - (c) some combination of the circumstances and events described in (a) and (b), which may include a sudden and severe market event followed by an economic recession.
- (3) In carrying out the stress tests and scenario analyses in (1), a *BIPRU firm* must incorporate and take into account any other stress tests and scenario analyses that it is required to carry out under any other provision of the *Handbook*. In carrying out the stress tests and scenario analyses in (1), the *firm* must estimate the financial resources that it would need in order to continue to meet the *overall financial adequacy rule* and the *CRR* in the adverse circumstances being considered.
- (4) In carrying out the stress tests and scenario analyses in (1), the *firm* must assess how risks aggregate across business lines or units, any material non-linear or contingent risks and how risk correlations may increase in stressed conditions.
- (5) As part of its obligation under the *overall Pillar 2 rule*, a *BIPRU firm* must also incorporate and take into account any stress tests and scenario analyses that it is required to carry out under *BIPRU*. In particular, a *BIPRU firm* with an *IRB permission* must incorporate and take into account the stress test required to be carried out under *BIPRU 4.3.40R(2)*.
- 1.2.42A G In order to comply with the *general stress and scenario testing rule*, a *firm* should undertake a broad range of stress tests which reflect a variety of perspectives, including sensitivity analysis, scenario analysis and stress testing on an individual portfolio as well as a *firm-wide* level.
- 1.2.42B G A *BIPRU firm* with an *IRB permission* which has any material credit exposures excluded from its *IRB* models should also include these *exposures* in its stress and scenario testing to meet its obligations under the *general stress and scenario testing rule*. A *BIPRU firm* without an *IRB permission*, or an *insurer* that has any material credit and counterparty credit risk exposures, should conduct analyses to assess risks to the credit quality of its

counterparties, including any protection sellers, considering both on and off-balance sheet exposures.

- 1.2.42C G An insurer may choose to carry out its ICA through the use of stress testing and scenario analyses (see INSPRU 7.1.10G and INSPRU 7.1.68G). If it does so, in carrying out the stress tests and scenario analyses referred to in GENPRU 1.2.42R, an insurer should take into account the stress tests it uses for its ICA.
- 1.2.42D G In carrying out the stress tests and scenario analyses required by GENPRU 1.2.42R(1), a firm should also consider any impact of the adverse circumstances on its capital resources. In particular, a firm should consider the capital resources gearing rules where its tier one capital is eroded by the event.
- 1.2.42E G A firm should assign adequate resources, including IT systems, to stress testing and scenario analysis, taking into account the stress testing techniques employed, so as to be able to accommodate different and changing stress tests at an appropriate level of granularity.
- 1.2.42F G GENPRU 1.2.63G to GENPRU 1.2.78G provide additional guidance on stress testing and scenario analyses. In particular, GENPRU 1.2.73AG provides specific guidance on capital planning.

...

Documentation of risk assessments

- 1.2.60 R A firm must make a written record of the assessments required under this section. These assessments include assessments carried out on a consolidated basis and on a solo basis. In particular, it must make a written record of:
- ...
- (3) details of the stress tests and scenario analyses carried out, including any assumptions made in relation to scenario design, and the resulting financial resources estimated to be required in accordance with the general stress and scenario testing rule.
- ...

Additional guidance on stress tests and scenario analyses

- 1.2.63 G ~~The general stress and scenario testing rule requires a firm to carry out stress tests and scenario analyses as part of its obligations under the overall Pillar 2 rule.~~ Both stress tests and scenario analyses can be are undertaken by a firm to further a better understanding of the vulnerabilities that it faces under ~~extreme adverse~~ conditions. They are based on the analysis of the impact of ~~unlikely, but not impossible, events a range of events of varying nature, severity and duration~~. These events can be financial, operational or legal or relate to any other risk that might have an economic impact on the firm.
- ...
- 1.2.67 G ~~The general stress and scenario testing rule requires a firm, as part of carrying out stress tests and scenario analyses, to take reasonable steps to identify an appropriate range of realistic circumstances and events in which a risk would crystallise. In particular:~~
- (1) ~~a firm need only carry out stress tests and scenario analyses in so far as the circumstances or events are reasonably foreseeable, that is to say, their occurrence is not too remote a possibility;~~ and
 - (2) ~~a firm should also take into account the relative costs and benefits of carrying out the stress tests and scenario analyses in respect the circumstances and events identified.~~ [deleted]
- ...
- 1.2.70 G ~~Where a firm is exposed to market risk, The~~ the time horizon over which stress tests and scenario ~~analysis~~ analyses should be carried out ~~should will~~ depend on, among other things, the maturity and liquidity of the positions stressed. For example, for the market risk arising from the holding of investments, this ~~should will~~ depend upon:
- ...
- (2) the extent to which the market in those assets is sufficiently liquid (and would remain liquid in the changed circumstances contemplated in the stress test or scenario analysis) to allow the firm, if needed, to sell, hedge or otherwise mitigate the risks relating to its holding so as to prevent or reduce exposure to future price fluctuations. In devising stress tests and scenario analyses for market risk, a BIPRU firm should also take into account BIPRU 7.1.17R to BIPRU 7.1.20G.
- ...
- 1.2.73 G (1) ~~A firm should conduct stress tests and scenario analyses which project its financial position (both profitability and balance sheet~~

~~position) so as to estimate both its capital resources and capital resource requirements throughout an economic or business cycle.~~
~~[deleted]~~

- (1A) ~~For an insurer, these tests and analyses are in addition to those that may be used for the ICA (see INSPRU 7.1.10G and INSPRU 7.1.68G). Projections should be made on different bases, including ones which are consistent with the business plan, as well as others using ‘realistically adverse’ alternative scenarios. In considering the tests and analyses to be used for the purposes of these projections, an insurer should have regard to the matters mentioned below.~~
- (a) ~~As with the ICA, it is for the insurer to identify an appropriate range of adverse circumstances and events. As the projections are being assessed as part of business planning, the FSA would expect stresses and scenarios to be more likely than the extreme conditions covered by an ICA. As a guide, stresses and scenarios with a probability of once in a 25 year period would be useful as a reference when an insurer discusses projections of its financial position with the FSA (see also GENPRU 1.2.75G (3)).~~
- (b) ~~Business risk is likely to be a more significant feature in projecting an insurer’s financial position than in its ICA (see GENPRU 1.2.31R and GENPRU 1.2.32G).~~
- (c) ~~The treatment of new business is likely to be different for projecting an insurer’s financial position than in its ICA. In the former, this should be based on the firm’s business plan, but flexed to incorporate potential changes in trading conditions and strategy. In the latter, account should be taken of the effects of a closure to new business (see GENPRU 1.2.27G, GENPRU 1.2.73G(3) and INSPRU 7.1.16G to INSPRU 7.1.19G).~~
- (d) ~~Methods that are more approximate than used for an ICA may be appropriate for projecting elements of an insurer’s financial position (e.g. the with profits insurance capital component for realistic basis life firms). [deleted]~~
- (2) ~~A firm will need to consider the cycles it is most exposed to and whether these are general economic cycles or specific to particular markets, sectors or industries. The length of time over which such projections would be appropriate will therefore vary, but typically might be between three and five years. [deleted]~~
- (3) ~~The projections should be based on the firm’s business plan, but flexed to incorporate adverse trading conditions and any changes in strategy which the firm could and would take in response to those conditions. [deleted]~~

- (4) Changes in strategy might be necessary for instance because capital needed to be able to continue its business at existing volumes is eroded. A firm may also alter its capital management strategy to restrict distributions of profits or to raise additional capital. The combined effect on capital and retained earnings should be estimated. A firm should document how it would react to such economic and business risks. [deleted]
- (5) The FSA will take the projections referred to in this paragraph and the plan referred to in (4) into account as part of its SREP. The purpose of examining them is to enable the FSA to judge, at an appropriate level of certainty, whether the firm will be able to meet its obligations throughout a recession. [deleted]

Capital planning

- 1.2.73A G (1) In identifying an appropriate range of adverse circumstances and events in accordance with GENPRU 1.2.42R(2):
- (a) a firm will need to consider the cycles it is most exposed to and whether these are general economic cycles or specific to particular markets, sectors or industries;
 - (b) for the purposes of GENPRU 1.2.42R(2)(a), the amplitude and duration of the relevant cycle should include a severe downturn scenario based on forward looking hypothetical events, calibrated against the most adverse movements in individual risk drivers experienced over a long historical period;
 - (c) the adverse scenarios considered should in general be acyclical and, accordingly, the scenario should not become more severe during a downturn and less severe during an upturn. However, the FSA does expect scenarios to be updated with relevant new economic data on a pragmatic basis to ensure that the scenario continues to be relevant; and
 - (d) the adverse scenarios considered should reflect a firm's risk tolerance of the adverse conditions through which it expects to remain a going concern.
- (2) In making the estimate required by GENPRU 1.2.42R(3), a firm should project both its capital resources and its required capital resources over a time horizon of 3 to 5 years, taking account of its business plan and the impact of relevant adverse scenarios. In making the estimate, the firm should consider both the capital resources required to meet its CRR and the capital resources needed to meet the overall financial adequacy rule. The firm should make these projections in a manner consistent with its risk management processes and systems as set out in GENPRU 1.2.37R.

- (3) In projecting its financial position over the relevant time horizon, the firm should:
- (a) reflect how its business plan would “flex” in response to the adverse events being considered, taking into account factors such as changing consumer demand and changes to new business assumptions;
 - (b) consider the potential impact on its stress testing of dynamic feedback effects and second order effects of the major sources of risk identified in accordance with GENPRU 1.2.30R(2);
 - (c) estimate the effects on the firm’s financial position of the adverse event without adjusting for management actions;
 - (d) separately, identify any realistic management actions that the firm could and would take to mitigate the adverse effects of the stress scenario; and
 - (e) estimate the effects of the stress scenario on the firm’s financial position after taking account of realistic management actions.
- (4) A firm should identify any realistic management actions intended to maintain or restore its capital adequacy. These could include ceasing to transact new business after a suitable period has elapsed, balance sheet shrinkage, restricting distribution of profits or raising additional capital. A firm should reflect management actions in its projections only where it could and would take such actions, taking account of factors such as market conditions in the stress scenario and any effects upon the firm’s reputation with its counterparties and investors. The combined effect on capital and retained earnings should be estimated. In order to assess whether prospective management actions in a stress scenario would be realistic and to determine which actions the firm would and could take, the firm should take into account any preconditions that might affect the value of management actions as risk mitigants and analyse the difference between the estimates in (3)(c) and (3)(e) in sufficient detail to understand the implications of taking different management actions at different times, particularly where they represent a significant divergence from the firm’s business plan.
- (5) The firm should document its stress testing and scenario analysis policies and procedures, as well as the results of its tests in accordance with GENPRU 1.2.60R. These records should be included within the firm’s ICAAP or ICA submission document.
- (6) The FSA will review the firm’s records referred to in (5) as part of its SREP. The purpose of examining these is to enable the FSA to judge whether a firm will be able to continue to meet its CRR and

the overall financial adequacy rule throughout the projection period.

- (7) If, after taking account of realistic management actions, a firm's stress testing management plan shows that the firm's projected capital resources are less than those required to continue to meet its CRR or less than those needed to continue to meet the overall financial adequacy rule over the projection period, the FSA may require the firm to set out additional countervailing measures and off-setting actions to reduce such difference or to restore the firm's capital adequacy after the stress event.
- (8) The firm's senior management or governing body should be actively involved and engaged in all relevant stages of the firm's stress testing and scenario analysis programme. This would include establishing an appropriate stress testing programme, reviewing the programme's implementation (including the design of scenarios) and challenging, approving and actioning the results of the stress tests.
- (9) For an insurer:
 - (a) the treatment of new business when making capital projections is likely to be different from its ICA. In projecting its financial position, an insurer should take account of new business based on the firm's business plan, but flexed to take account of potential changes in trading conditions and strategy. When assessing its current capital adequacy under its ICA, an insurer should take account of the effects of closure to new business (see GENPRU 1.2.27G, GENPRU 1.2.73AG(3) and (4) and INSPRU 7.1.16G to INSPRU 7.1.19G). Also, an insurer may use methods that are more approximate than used for its ICA (for example, in projecting the with-profits insurance capital component for realistic basis life firms and the capital resources needed to meet the overall financial adequacy rule); and
 - (b) where management discretion is exercised as a normal part of an insurer's business (for example, in changing bonus rates or surrender values in accordance with the PPFM for with-profits business), under (3)(c) the insurer does not need to estimate the effect of an adverse event on its financial position without adjusting for such changes. However, the effect on the financial position of varying such actions should be estimated and understood.

- 1.2.73B G The FSA may formulate macroeconomic and financial market scenarios which a firm may use as an additional input to its ICAAP or ICA submission. In addition, the FSA may also ask a firm to apply specific scenarios directly in its ICAAP or ICA submission.

- ...
- 1.2.75 G (1) ~~A firm should assess the nature and severity of the economic recession or business cycle changes which are relevant to it given the nature and scale of its business. When projecting its capital resources and CRR, a firm should consider a range of stresses and scenarios both in nature and severity.~~ [deleted]
- (2) Stress and scenario analyses should, in the first instance, be aligned with the risk appetite of the *firm*, ~~as well as the nature, scale and complexity of its business and of the risks that it bears. and the~~ The calibration of ~~such the~~ stress and scenario analyses should be reconciled back to a clear statement setting out the premise upon which the *firm's* internal capital assessment under the *overall Pillar 2 rule* is based.
- (3) ~~A firm with an IRB permission should ensure that the range of stresses and scenarios considered encompasses the severity of recession specified in BIPRU 4.3.40R (Stress tests used in assessment of capital adequacy), which is one that might be expected to occur once in a 25 year period. Other firms may also find that this is a useful reference point when discussing their assessments with the FSA.~~ [deleted]
- (4) ...
- ...

Pension obligation risk

- 1.2.79 G ~~GENPRU 1.2.80G – to GENPRU 1.2.86G contain guidance on the assessment required by GENPRU 1.2.30R(2)(k) (Pension risk) for a firm exposed to pension obligation risk as defined in GENPRU 1.2.31R(5).~~
- 1.2.80 G The pension scheme itself (i.e. the scheme's assets and liabilities) is not the focus of the risk assessment; ~~but rather~~ it is the *firm's* obligations towards the pension scheme ~~which is~~. ~~A firm should include in its estimate of financial resources both its expected obligations to the pension scheme and any increase in obligations that may arise in a stress scenario.~~
- ...
- 1.2.82 G ~~A firm should also assess the risks that may increase its current funding obligations towards the pension scheme and that might lead to the firm not being able to pay its other liabilities as they fall due.~~
- ...
- 1.2.83A G ~~A firm is expected to determine where the scope of any stress test impacts upon its pension obligation risk and estimate how the relevant measure of~~

pension obligation risk will change in the scenario in question. For example, in carrying out stress tests under GENPRU 1.2.42R a firm must consider how a stress scenario, such as an economic recession, would impact on the firm's current obligations towards its pension scheme and any potential increase in those obligations. Risks such as interest rate risk or reduced investment returns may have a direct impact on a firm's financial position as well as an indirect impact resulting from an increase in the firm's pension scheme obligations. Both effects should be taken into account in a firm's estimate of financial resources under GENPRU 1.2.30R.

...

Group risk

- 1.2.87 G GENPRU 1.2.88G to GENPRU 1.2.91G contain additional guidance on the assessment required by GENPRU 1.2.30R(2)(l) (Group risk).
- 1.2.88 G A firm should include in the written record referred to in GENPRU 1.2.60R a description of the broad business strategy of the insurance group, the UK consolidation group or the non-EEA sub-group of which it is a member, the group's view of its principal risks and its approach to measuring, managing and controlling the risks. This description should include the role of stress testing, scenario analysis and contingency planning in managing risk at the solo and consolidated level.
- 1.2.89 G A firm should satisfy itself that the systems (including IT) of the insurance group, the UK consolidation group or the non-EEA sub-group of which it is a member are sufficiently sound to support the effective management and, where applicable, the quantification of the risks that could affect the insurance group, the UK consolidation group or the non-EEA sub-group, as the case may be.
- 1.2.90 G In performing stress tests and scenario analyses, a firm should take into account the risk that its group may have to bring back on to its consolidated balance sheet the assets and liabilities of off-balance sheet entities as a result of reputational contagion, notwithstanding the appearance of legal risk transfer.
- 1.2.91 G A firm should carry out stress tests and scenario analyses to a degree of sophistication which is commensurate with the complexity of its group and the nature of its group risk.

Part 2: Comes into force on 14 December 2010

1.2.75 G (1) ...

- ...
- (4) ~~A firm may also consider scenarios in which the amount of capital it currently holds would be exhausted. This would provide useful information about the reasonableness or remoteness of such scenarios arising. Where a firm uses capital models as part of its risk management processes, considering the sensitivity of model results to variations around the most likely ruin scenario focuses testing on the most relevant scenarios. In identifying adverse circumstances and events in accordance with GENPRU 1.2.42R(2), a firm should consider the results of any reverse stress testing conducted in accordance with SYSC 20. Reverse stress testing may be expected to provide useful information about the firm's vulnerabilities and variations around the most likely ruin scenarios for the purpose of meeting the firm's obligations under GENPRU 1.2.42R. In addition, such a comparison may help a firm to assess the sensitivity of its financial position to different stress calibrations.~~

Annex D

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

- 2.2.16 G If the *FSA* gives *individual capital guidance* to a *firm*, the *FSA* will state what amount and quality of capital the *FSA* considers the *firm* needs to hold in order to comply with the *overall financial adequacy rule*. It will generally do so by saying that the *firm* should hold *capital resources* of an amount which is at least equal to a specified percentage of that *firm's* *capital resources requirement*. Such amount should be sufficient to enable the firm to continue to meet the overall financial adequacy rule in the face of the adverse circumstances and events to which GENPRU 1.2.42R(2) refers, taking account of any risk mitigation available to the firm.
- ...
- 2.2.25 G (1) This paragraph applies to a small firm whose activities are simple and primarily not credit-related.
- ...
- (4) A *firm* should conduct stress tests and scenario analyses in accordance with GENPRU 1.2.42R to assess how that firm's capital and CRR would alter and what that firm's reaction might be to a range of adverse scenarios, including operational and market events. Where relevant, a firm should also consider the impact of an a severe economic or industry downturn on its future earnings, capital resources and capital resources requirement, taking into account its business plans. The downturn scenario should be based on forward looking hypothetical events calibrated against the most adverse movements in individual risk drivers experienced over a long historical period.
- 2.2.26 G In relation to a *firm* whose activities are moderately complex, in carrying out its *ICAAP*, *BIPRU* 2.2.25G(3) to (4) apply. In addition, it could:
- ...
- (7) assume that business does not develop as expected and consider how that *firm's* capital and *CRR* would alter and what that *firm's* reaction to a range of adverse economic scenarios might be (see *GENPRU 1.2.30R to GENPRU 1.2.43G* (the *overall Pillar 2 rule* and related *rules and guidance*)). Where appropriate, the adverse scenarios should consider the impact of market events that are instantaneous or occur over an extended period of time but which are nevertheless still co-dependent on movements in economic conditions;

- ...
- ...
- 2.2.40 G To assess its expected capital requirements over the economic and business cycles, a *firm* may wish to project forward its financial position taking account of its business strategy and expected growth according to a range of assumptions as to the state of the economic or business environment which it faces. For example, an *ICAAP* should include an analysis of the impact that the actions of a *firm's* competitors might have on its performance, in order to see what changes in its environment the *firm* could sustain. Projections over a three to five year period would be appropriate in most circumstances. A *firm* may then calculate its projected *CRR* and assess whether it could be met from expected financial resources. [Additional guidance on capital planning over an economic and business cycle can be found in GENPRU 1.2.73AG \(Capital planning\).](#)
- ...
- 2.2.44 G If a *firm's* current available *capital resources* are less than the capital resources requirement indicated by the stress test that need not be a breach of *BIPRU 2.2.41R*. The *firm* may wish to set out any countervailing effects and off-setting actions that can be demonstrated to the satisfaction of the *FSA* as being likely to reduce the difference referred to in the first sentence. The *FSA* is only likely to consider a demonstration of such actions as credible if those actions are set out in a capital management plan based on the procedures in *GENPRU 1.2.73G (Stress tests and scenario analyses throughout an economic or business cycle) 1.2.73AG (Capital planning)* and including a plan of the type referred to in *GENPRU 1.2.73G(4) 1.2.73AG(5)* that has been approved by the *firm's* senior management or governing body.
- ...
- 2.3.9 G For a larger and/or more complex *firm*, appropriate systems to evaluate and manage interest rate risk in the *non-trading book* may should include:
- (1) the ability to measure the exposure and sensitivity of the *firm's* activities, if material, to repricing risk, yield curve risk, basis risk and risks arising from embedded optionality (for example, pipeline risk, prepayment risk) as well as changes in the shape of the yield curve, changes between different market rates (i.e. basis risk) and changes to assumptions (for example, those about customer behaviour);
- ...
- ...
- 4.3.39A G The FSA expects that firms will routinely make use of stress testing and scenario analysis as a tool in the calibration and/or validation of their IRB

approach parameters in order to increase the accuracy or, at least, the conservatism of the estimates. Stress testing should include a thorough exploration of various outturns different to the firm's normal expectations in order to give the firm a clear view of the potential for the forward-looking estimate to be different from that indicated by the primary data source(s). Firms should consider this as an integral part of their quantification process, and should have clear standards for how the results of the stress tests affect the final estimates used for the IRB approach parameters.

- 4.3.40 R ...
- (2) The stress test must be designed to assess the firm's ability to meet its capital requirements for credit risk under GENPRU 2.1 during all stages of the economic cycle and during an economic recession such as might be experienced once in 25 years downturn scenario based on forward looking hypothetical events calibrated against the most adverse movements in individual risk drivers experienced over a long historical period.
- ...
- 5.2.9 R A firm must be able to satisfy the FSA that it has adequate risk management processes to control those risks to which the firm may be exposed as a result of carrying out credit risk mitigation. Those processes must include appropriate stress tests and scenario analyses relating to those risks, including residual risk and the risks relating to the intrinsic value of the credit risk mitigation.
- [Note: BCD Annex VIII Part 2 point 1]
- ...
- 5.4.53 R A firm must take into account the illiquidity of lower-quality assets. The liquidation period must be adjusted upwards in cases where there is doubt concerning the liquidity of the collateral. A firm must also identify where historical data may underestimate potential volatility, e.g. a pegged currency. Such cases must be dealt with by means of a stress scenario assessments.
- ...
- ...
- 5.6.19A G This paragraph provides guidance in relation to BIPRU 5.6.19R(8). In carrying out the stress testing programme, a firm should evaluate the simultaneous impact of individual stress scenarios on its counterparty exposures, its positions and the aggregate amount of margin calls that it would receive. A firm's stress scenarios should take into account the possibility that the liquidation period may be substantially longer than 5 days for repurchase transactions and securities lending or borrowing transactions, and 10 days for other types of securities financing transactions.

...

Stress testing and scenario analyses of trading book positions

- 7.1.17 R A firm must conduct a regular programme of stress testing and scenario analysis of its *trading book positions*, both at the trading desk level and on a firm-wide basis. The results of these tests must be reviewed by senior management and reflected in the policies and limits the firm sets.
- 7.1.17A G The firm's stress testing programme should be comprehensive in terms of both risk and firm coverage, and appropriate to the size and complexity of *trading book positions* held.
- 7.1.18 R In carrying out the stress tests and scenario analyses required by BIPRU 7.1.17R, a firm must incorporate and take into account any other relevant stress tests and scenario analyses that it is required to carry out under any other provision of the Handbook, and in particular under BIPRU 7.10.72R where the firm has a VaR model permission.
- 7.1.19 G This paragraph gives guidance in relation to the stress testing programme that a firm must carry out in relation to its *trading book positions*.
- (1) The frequency of the stress testing of *trading book positions* should be determined by the nature of the *positions*.
 - (2) The stress testing should include shocks which reflect the nature of the portfolio and the time it could take to hedge out or manage risks under severe market conditions.
 - (3) The firm should have procedures in place to assess and respond to the results of the stress testing programme. In particular, stress testing should be used to evaluate the firm's capacity to absorb losses or to identify steps to be taken by the firm to reduce risk.
 - (4) As part of its stress testing programme, the firm should consider how prudent valuation principles (see GENPRU 1.3) will be met in a stressed scenario.
- 7.1.20 G The stress testing and scenario analysis under BIPRU 7.1.17R should be taken into account under the overall Pillar 2 rule.

...

Risk management standards: Stress testing

- 7.10.72 R (1) A firm must frequently conduct a rigorous programme of stress testing. The results of these tests must be reviewed by senior management and reflected in the policies and limits the firm sets.
- (2) The programme must particularly address:

- ...
- (g) ... ; and
 - (h) other risks that may not be captured appropriately in the VaR model (for example, recovery rate uncertainty, implied correlations and skew risk) full revaluation, or a reliable approximation, of positions;
 - (i) instant shocks as well as effects of longer term periods of stress;
 - (j) calibration changes under stressed conditions;
 - (k) secondary risk factors (such as volatility);
 - (l) basis risk;
 - (m) systemic and localised stresses; and
 - (n) other risks that may not be captured appropriately in the VaR model (for example, recovery rate uncertainty, implied correlations and skew risk).
- ...

7.10.73A G The firm's stress testing programme should be comprehensive in terms of both risk and firm coverage, and appropriate to the size and complexity of trading book positions held.

- ...
- 9.1.8A G
 - (1) The FSA expects firms to conduct regular stress testing in relation to their securitisation activities and off-balance sheet exposures. The stress tests should consider the firm-wide impact of those activities and exposures in stressed market conditions and the implications for other sources of risk, for example, credit risk, concentration risk, counterparty risk, market risk, liquidity risk and reputational risk. Stress testing of securitisation activities should take into account both existing securitisations and pipeline transactions, as there is a risk that these would not be completed in a stressed market scenario.
 - (2) The frequency and extent of the stress testing should be determined by the materiality of the firm's securitisation activities and off-balance sheet exposures.
 - (3) A firm should have procedures in place to assess and respond to the results produced from the stress testing and these should be taken into account under the overall Pillar 2 rule.

Annex E

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

- 7.1.9A G This section sets out in greater detail the approach to be taken by a *firm* when carrying out the assessment of capital described in the preceding paragraph. This is the assessment referred to as an *individual capital assessment*. ~~The rules in GENPRU 1.2 also (see GENPRU 1.2.30R (1)(e)) require a firm to identify and assess risks to its being able to meet its CRR in the future. GENPRU 1.2.42R is a general requirement for a firm to carry out stress tests and scenario analyses taking into account an appropriate range of adverse circumstances and events relevant to the firm's business and risk profile and to estimate the financial resources it would need to continue to meet the overall financial adequacy rule in the stress scenarios considered. As part of its obligations under GENPRU 1.2.42R, the firm must carry out stress tests and scenario analyses to estimate the financial resources it would need to support its business plans and continue adequately to cover its CRR and meet the overall financial adequacy rule over a time horizon of 3 to 5 years.~~ This is a separate requirement from that to carry out an *ICA*, and guidance on this requirement is provided in GENPRU 1.2.73AG. In particular, *firms* should note that there is no requirement that the level of capital required as identified by the *ICA* should be equal to, or exceed, the *CRR*.
- ...
- 7.1.10 G ~~GENPRU 1.2.42R requires a firm to carry out stress tests and scenario analyses for each of the major sources of risk identified in accordance with GENPRU 1.2.30R. A firm may also approach the assessment of the adequacy of its capital resources choose to carry out its ICA in another way than through the use of stress tests and scenario analyses. The method should be proportionate to the size and nature of its business.~~
- ...
- 7.1.68 G ~~A Where a firm may choose chooses to carry out the assessment of the adequacy of capital resources its ICA through the use of stress testing and scenario analyses (noting that GENPRU 1.2.42R requires stress tests and scenario analyses to be undertaken to determine the overall financial adequacy of a firm's financial resources). Where used, such testing should reflect the potential range of outcomes for the risk being quantified, consistent with the prescribed confidence level for the ICA.~~

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND
INVESTMENT FIRMS (SHORT-TERM TRADE FINANCE TRANSACTIONS)
INSTRUMENT 2009**

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 2009.

Amendments to the Handbook

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Short-Term Trade Finance Transactions) Instrument 2009.

By order of the Board
10 December 2009

Annex

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

4.4.67 R ...

- (10) Notwithstanding (2) and (9), M must be at least one-day for:
- (a) import letters of credit (including standby letters of credit issued for similar purposes) and acceptances under them;
 - (b) export letters of credit confirmation and negotiation;
 - (c) pre-shipment and post-shipment acceptances and financing;
 - (d) export and import loans collateralised by underlying goods, up to a maximum maturity of 180 days; and
 - (e) performance guarantees, bid bonds and other guarantees (including standby letters of credit issued for similar purposes) relating to the export and import of goods and services;
- provided these exposures are not part of the firm's ongoing financing of the obligor.

...

- 4.4.69 G The last paragraph of paragraph 14 of Part 2 of Annex VII of the *Banking Consolidation Directive* says: "In addition, for other short-term exposures specified by the competent authorities which are not part of the credit institution's ongoing financing of the obligor, M shall be at least one-day. A careful review of the particular circumstances shall be made in each case." ~~The FSA has not at this stage specified any such short term exposure.~~
~~BIPRU 4.4.67R(10) is currently the only instance where the FSA has specified any such short-term exposures.~~

[Note: BCD Annex VII Part 2 point 14 (part)]

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (AMENDMENT NO 5)
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139(4) (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 247 (Trust scheme rules); and
 - (f) section 248 (Scheme particulars rules);
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 January 2010.

Amendments to the Handbook

- D. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 5) Instrument 2009.

By order of the Board
10 December 2009

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

OTC transactions in derivatives

5.2.23 R A transaction in an *OTC derivative* under *COLL 5.2.20R(1)(b)* must be:

...

(2) on approved terms; the terms of the transaction in *derivatives* are approved only if, ~~before the transaction is entered into, the depositary is satisfied that the counterparty has agreed with the ICVC or the authorised fund manager:~~

(a) ~~to provide carries out, at least daily and at any other time at the request of the ICVC or authorised fund manager, a reliable and verifiable valuation in respect of that transaction corresponding to its fair value (being the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction) and which does not rely only on market quotations by the counterparty; and~~

(b) ~~that it or an alternative counterparty will, at the request of the ICVC or authorised fund manager, can enter into one or more further transactions to sell, liquidate or close out that transaction at any time, at a its fair value arrived at under the reliable market value basis or pricing model agreed under (3);~~

...

5.2.23A R For the purposes of *COLL 5.2.23R(2)*, “fair value” is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction.

5.2.23B R In respect of its obligations under *COLL 6.6.4R(1)(a)*, the *depositary* must take reasonable care to ensure that the *authorised fund manager* has systems and controls that are adequate to ensure compliance with *COLL 5.2.23R(1) to (4)*.

...

Restrictions on lending of property other than money

5.5.7 R ...

- (4) Where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any of the rules in this chapter, nothing Nothing in this rule prevents the ICVC or the *depositary* at the request of the ICVC, or the *trustee* at the request of the *manager*, from:
- (a) lending, depositing, pledging or charging *scheme property* for *margin* requirements; or
 - (b) transferring *scheme property* under the terms of an agreement in relation to *margin* requirements, provided that the *authorised fund manager* reasonably considers that both the agreement and the *margin arrangements* made under it (including in relation to the level of *margin*) provide appropriate protection to *unitholders* where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any other of the rules in this chapter.

5.5.7A G An agreement providing appropriate protection to unitholders for the purposes of COLL 5.5.7R(4)(b) includes one made in accordance with the 1995 International Swaps and Derivatives Association Credit Support Annex (English Law) to the International Swaps and Derivatives Association Master Agreement.

...

Prudent spread of risk

- 5.6.3 R ...
- (2) The Subject to (3) and (4), the rules in this section relating to spread of investments, including immovables, do not apply during any period in which it is not reasonably practical to comply, until 12 months after the later of:
- (a) the date when the authorisation order in respect of the non-UCITS retail scheme takes effect; and
 - (b) the date the initial offer commenced;
- provided that (1) is complied with during such period.
- (3) Subject to (4), the limits in COLL 5.6.19R do not apply until 24 months after the later of:
- (a) the date when the authorisation order in respect of the non-UCITS retail scheme takes effect; and
 - (b) the date the initial offer commenced;

provided that (1) is complied with during such period.

- (4) The limit in *COLL 5.6.19R(7)* relating to immovables which are unoccupied and non-income producing or are in the course of substantial development, redevelopment or refurbishment applies from the later of the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect and the date the *initial offer* period commenced.
- ...

Transferable Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme

- 5.6.5 R *Transferable securities* and money-market instruments held within a *non-UCITS retail scheme* must:

- (1) ...
- (c) be *approved money-market instruments* not admitted to or dealt in on an *eligible market* which satisfy the requirements for investment by a *UCITS scheme* set out in *COLL 5.2.10AR(1)* to *COLL 5.2.10CR*; or
- ...

- 5.6.5A R *Transferable securities* held within a *non-UCITS retail scheme* must also satisfy the criteria in *COLL 5.2.7AR*, *COLL 5.2.7CR* and *COLL 5.2.7ER* for the purposes of investment by a *UCITS scheme*.

- 5.6.5B G *COLL 5.2.7AR* to *COLL 5.2.7ER* contain *rules and guidance* relating to the criteria that need to be satisfied for the purposes of investment in *transferable securities*.
- ...

Committees and delegation

- 6.6.15 R ...

- (5) Where a *depositary* retains services under (4):
- (a) if it retains the services of a *director* of the *ICVC*, or an *associate* ~~or of~~ such a *director* or its own *associate*, ~~or the~~ *authorised fund manager* of a *scheme* ~~or that authorised fund manager's associate~~, then its liability for those services shall remain unaffected; and
- ...
- ...

Transitional Provisions

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
...					
15	<u>Amendments to <i>COLL 5.6.3R</i> made by the Collective Investment Schemes Sourcebook (Amendment No 5) Instrument 2009</u>	R	<u>The new timing provisions in relation to the prudent spread of risk will not take effect until 6 January 2011 in relation to those non-UCITS retail schemes authorised as an AUT or an ICVC prior to 6 January 2010.</u>	<u>6 January 2010 to 5 January 2011</u>	<u>6 January 2010</u>