

**TRAINING AND COMPETENCE SOURCEBOOK (ACCREDITED BODIES
AMENDMENT) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers); and
 - (c) 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 on 20 January 2012.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Training and Competence Sourcebook (Accredited Bodies Amendment) Instrument 2012.

By order of the Board
19 January 2012

Annex

Amendments to the Glossary of definitions

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

- accredited body* any of the following bodies recognised by the *FSA* for the purpose of providing the independent verification required under *TC 2.1.27R*:
- ...
- (f) ~~The ifs School of Finance;~~ [The ifs School of Finance acts through its Institute of Financial Services]
 - (g) The Institute of Chartered Accountants in England and Wales;
 - (h) The Pensions Management Institute.

**GLOSSARY AMENDMENT (DEFINITION OF SETTLEMENT DECISION MAKERS)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000:
- (1) section 157(1) (Guidance); and
 - (2) section 395(5) (The Authority's procedures).

Commencement

- B. This instrument comes into force on 6 February 2012.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

Amendments to the Enforcement Guide

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

Citation

- F. This instrument may be cited as the Glossary Amendment (Definition of Settlement Decision Makers) Instrument 2012.

By order of the Board
19 January 2012

Annex A**Amendments to the Glossary of definitions**

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

*settlement
decision
makers* (in *DEPP* and *EG*) two members of the *FSA*'s ~~executive~~ senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level, with responsibility for deciding whether to give *statutory notices* in the circumstances described in *DEPP* 5. At least one of the decision makers will not be from the Enforcement and Financial Crime Division.

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

5.1.1 G ...

- (3) The decision will be taken jointly by two members of the *FSA's* ~~executive~~ senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level (the "*settlement decision makers*").
- (4) At least one of the *settlement decision makers* will not be from the Enforcement and Financial Crime Division. ~~One of the directors taking the decision~~ The other *settlement decision maker* will usually be, but need not be, the director of from the Enforcement and Financial Crime Division. Consistent with section 395(2) of the Act, a *settlement decision maker* will not have been directly involved in establishing the evidence on which the decision is based. ~~(In exceptional cases, the director of Enforcement may have been directly involved in establishing the evidence on which the decision is based and would not therefore be able to participate (see section 395(2) of the Act).)~~

...

Annex C

Amendments to the Enforcement Guide (EG)

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

2.38 The procedures the FSA will follow when giving *supervisory notices*, *warning notices* and *decision notices* are set out in *DEPP* 1 to 5. Under these procedures, the decisions to issue such notices in contested enforcement cases are generally taken by the *RDC*, an FSA Board committee that is appointed by, and accountable to, the FSA Board for its decisions generally. Further details about the *RDC* can be found in *DEPP* 3 and on the pages of the FSA web site relating to the *RDC*.³ However, decisions on settlements and *statutory notices* arising from them are taken by two members of the FSA's senior management ~~of at least director level~~, under a special settlement decision procedure (see chapter 5).

...

5.5 Decisions on settlements and *statutory notices* arising from them are taken by two members of the FSA's senior management ~~of at least director level~~, rather than by the *RDC* (*DEPP* refers to these individuals as the '*settlement decision makers*'). Full details of the special decision making arrangements for settlements are set out in *DEPP* 5.

³ <http://www.fsa.gov.uk/Pages/About/Who/board/committees/RDC/index.shtml>

FEES (MISCELLANEOUS AMENDMENTS) (NO 3) INSTRUMENT 2012

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 156 (General supplementary powers);
 - (2) section 157(1) (Guidance); and
 - (3) 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 as follows:
- (1) Annex A comes into force on 1 February 2012; and
 - (2) Annex B comes into force on 1 March 2012.

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with Annex A to this instrument.
- E. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Notes

- F. In Annex A 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

- G. This instrument may be cited as the Fees (Miscellaneous Amendments) (No 3) Instrument 2012.

By order of the Board
19 January 2012

Annex A

Amendments to the Fees manual (FEES)

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

Comes into force on 1 February 2012.

3.2.7 R Table of application, notification and vetting fees

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[Note: Guidance on how a *firm* liable to pay a fee under both rows (s) and (ze) of this table for the same transaction should expect to be treated is set out in FEES 3 Annex 11G.]

After FEES 3 Annex 10R insert the following new Annex. The text is not underlined.

3 Annex 11G Guidance on fees due under FEES 3.2.7R

The following table sets out *guidance* on how a *firm* liable to pay a fee under both FEES 3.2.7R(s) and FEES 3.2.7R(ze) for the same transaction should expect to be treated.

Firms liable under both FEES 3.2.7R(s) and FEES 3.2.7R(ze)

(1)	The transferor in <i>insurance business transfer schemes</i> is liable to pay the fee set out in FEES 3.2.7R(s). However, it may also be liable to pay the Special Project Fee for restructuring set out in FEES 3.2.7R(ze), calculated in accordance with FEES 3 Annex 9. It is possible then for a <i>firm</i> to have to pay two types of fees in respect of the same <i>insurance business transfer scheme</i> .
(2)	Where the situation described in (1) arises, the FSA will consider whether to reduce or remit a fee under FEES 2.3 (Relieving Provisions).

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Comes into force on 1 March 2012.

1.10.6 R ...

1.10.6A R (1) If a *firm* does not submit a complete report by the date on which it is due, in accordance with *DISP* 1.10.5R, the *firm* must pay an administrative fee of £250.

(2) The administrative fee in (1) does not apply if the *firm* has notified the *FSA* of a systems failure in accordance with *DISP* 1.10.6R.

...

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
...					
<u>31</u>	<u><i>DISP</i> 1.10.6AR</u>	R	(1) <u>A <i>firm</i> is not liable to pay the administrative fee in <i>DISP</i> 1.10.6AR in respect of a failure to submit a report in accordance with <i>DISP</i> 1.10.5R for a relevant reporting period ending before 1 March 2012.</u> (2) <u>Relevant reporting period in (1) has the meaning in <i>DISP</i> 1.10.4R.</u>	<u>From 1 March 2012</u>	<u>1 March 2012</u>

**LIQUIDITY STANDARDS (MISCELLANEOUS AMENDMENTS NO 4)
INSTRUMENT 2012**

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 20 January 2012.

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
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Liquidity Standards (Miscellaneous Amendments No 4) Instrument 2012.

By order of the Board
19 January 2012

Annex A

Amendments to the Glossary of definitions

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

charity (in *BCOBS* and *BIPRU*) 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.

Annex B

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

12.6 Simplified ILAS

...

Simplified ILAS conditions

...

12.6.7 R In this section:

- (1) a “retail *deposit*” is a *deposit* accepted from a *consumer*; and
- (2) “SME *deposits*” are *deposits* accepted from, and account balances where the account holders are, *small and medium-sized enterprises* (or *partnerships* or *sole traders* or *charities* which would be *small and medium-sized enterprises* if they were companies)

...

12.7 Liquid assets buffer

...

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) (a) to which it has legal title; and or
 - (b) to which a *central bank* has legal title but which meet the requirements of *BIPRU* 12.7.9AR(1), subject to *BIPRU* 12.7.9AR(2); and
- (3) which that *firm* realises on a regular basis.

12.7.9A R (1) For the purposes of *BIPRU* 12.7.9R(2)(b) the requirements are that:

- (a) the securities are in excess of the amount of collateral required to be held by that *central bank*; and
- (b) the *firm* is entitled to regain legal title to such securities without any encumbrance.

- (2) The firm may only count securities that meet the requirements of BIPRU 12.7.9R and BIPRU 12.7.9AR(1) from the point in time when the firm would regain legal title to the securities from the central bank, subsequent to any required notice period.
- (3) For the purposes of BIPRU 12.7.9AR(2) any required notice period is deemed to commence on the first business day that the central bank could receive notice from the firm.

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. However, any assets provided by the firm to a central bank as collateral which meet the requirements in BIPRU 12.7.9AR will be recognised as unencumbered by the FSA for the purposes of BIPRU 12.7.9R(1). For the avoidance of doubt, there is no need for notice to have actually been served to meet the requirements in BIPRU 12.7.9AR(2).

Annex C

Amendments to the Supervision manual (SUP)

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

16 Annex 25G **Guidance notes for data items in SUP 16 Annex 24R**

...

FSA 048 **Enhanced Mismatch Report**

...

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* and 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:

- (1) the securities are own-name covered bonds or asset-backed securities; or
- (2) 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~~ 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.~~

If (1) or (2) are not met the securities should be omitted from this report.

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.

CLIENT ASSETS SOURCEBOOK (LIENS AMENDMENT) INSTRUMENT 2012

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 (Miscellaneous ancillary matters);
 - (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 April 2012.

Amendments to the Handbook

- D. The Client Assets sourcebook (CASS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Client Assets Sourcebook (Liens Amendment) Instrument 2012.

By order of the Board
19 January 2012

Annex

Amendments to the Client Assets sourcebook (CASS)

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

6 Custody rules

...

6.3.3 G A *firm* should consider carefully the terms of its agreements with third parties with which it will deposit *safe custody assets* belonging to a *client*. The following terms are examples of the issues *firms* should address in this agreement:

...

- (4) ~~the restrictions over the third party's right to claim a lien, right of retention or sale over any *safe custody asset* which the *firm* holds for its *client*, or a right of set-off over any *client money* derived from that *safe custody asset*; [deleted]~~

...

6.3.5 R Subject to CASS 6.3.6R, in relation to a third party with which a *firm* deposits *safe custody assets* belonging to a *client*, a *firm* must ensure that ~~the~~ any agreement with that third party relating to the custody of those assets does not include the grant to that ~~third~~ party, or to any other *person*, of a lien or a right of retention or sale over the *safe custody assets*, or a right of set-off over any *client money* derived from those *safe custody assets*.

~~[Note: this provision is not in force from 1 October 2011 until 31 March 2012, by virtue of CASS TP 1.8]~~

6.3.6 R A *firm* may conclude an agreement with a third party relating to the custody of *safe custody assets* which ~~does confer~~ confers on that ~~third~~ party, or on another *person* instructed by that party to provide custody services for those assets, a lien, right of retention or sale, or right of set-off in favour of that ~~third~~ party or that other *person* ~~if and~~ only if that lien or right:

- (1) is confined to ~~an individual *client's safe custody assets* or *client money*~~ those *safe custody assets* held in an account with that third party or that other person and extends only to ~~that third party's (or a sub-custodian's, where a sub-custodian is appointed by that third party)~~ properly incurred charges and liabilities arising from the provision of custody services ~~to that *client*~~ in respect of *safe custody assets* held in that account; or
- (2) arises under the operating terms of a securities depository, securities settlement system or central counterparty in whose ~~books or accounts~~

account ~~a client's client money~~ ~~or safe custody assets~~ ~~is or~~ are recorded or held, and provided that it does so for the purpose only of facilitating the settlement of ~~that client's~~ trades involving the assets held in that account; or

- (3) arises in relation to ~~a client's~~ those safe custody assets ~~or client money~~ held in a jurisdiction outside the *United Kingdom*, provided that:
- (a) it does so as a result of local applicable law in that jurisdiction or as a necessary precondition for participation in a local market is necessary for that firm to gain access to the local market in that jurisdiction; and
- (b) in respect of each client to which those assets belong, either:
- (i) the firm has taken reasonable steps to determine that holding those assets ~~or that money~~ subject to such a that lien or right is in the best interests of that client; or
- (ii) where a client is a professional client, the firm is instructed by that client to hold those assets in that jurisdiction notwithstanding the existence of that lien or right.

~~[Note: this provision is not in force from 1 October 2011 until 31 March 2012, by virtue of CASS TP 1.8A]~~

6.3.7 G A firm will be considered to be acting on the instructions of its professional client under CASS 6.3.6R(3)(b)(ii) where:

- (1) the firm has received an individual instruction or has a standing instruction in its terms of business which results in it holding safe custody assets in the relevant jurisdiction; and
- (2) prior to acting on the instruction, the firm has expressly informed the client that holding that client's safe custody assets in the relevant jurisdiction will involve the granting of a lien or right over those assets. The firm may do this by discussing the lien or right individually with the client or by including reference to it in terms of business (which may themselves cross refer to a separate list of relevant jurisdictions to which 6.3.6R(3)(a) applies maintained on the firm's website in a form accessible to clients) or by a similar method.

6.3.8 R For the purpose of CASS 6.3.6R, references to a safe custody asset include any client money derived from that safe custody asset. Client money derived from a safe custody asset may be regarded as held in the same account as that safe custody asset even though that money and those assets may be recorded separately.

6.3.9 R CASS 6.3.6R does not permit a firm to agree to a right of set-off of the kind

prohibited by either CASS 7.8.1R or CASS 7.8.2R in relation to *client money*.

...

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
...					
8	CASS 6.3.5R	R	The <i>rule</i> listed in column (2) does not apply. [deleted]	1 October 2011 until 31 March 2012	1 October 2011
8A	CASS 6.3.6R CASS 6.3.5R to <u>CASS 6.3.8R</u>	R	The <i>rule</i> listed in column (2) does not apply. <u>The rules listed in column (2) do not apply in relation to agreements executed before 1 April 2012.</u>	1 October 2011 until 31 March 2012 <u>1 April 2012 until 30 September 2012</u>	1 October 2011 <u>1 April 2012</u>
		G	<u>Notwithstanding the operation of CASS TP 1.1R(8A), a firm should as soon as reasonably practicable modify its agreement with that third party so as to meet the requirements of CASS 6.3.5R to CASS 6.3.8R.</u>		
9	CASS 6.1.6R(2) and CASS 6.1.6AR	R	The <i>rules</i> to which column (2) refers do not apply in relation to an agreement that would otherwise be prohibited by CASS 6.1.6AR as a result of its application to a <i>rolling spot forex contract</i> . [deleted]	1 October 2011 until 31 October 2011	1 October 2011
		G	<u>Notwithstanding the operation of CASS TP 1.1(9)R, a firm should as soon as reasonably practicable modify its contractual agreement with that <i>retail client</i> so as to remove its ability to utilise that title</u>		

			transfer collateral arrangement.		
10	CASS 7.2.3R(2) and CASS 7.2.3AR	R	The <i>rules</i> to which column (2) refers do not apply in relation to an agreement that would otherwise be prohibited by CASS 7.2.3AR as a result of its application to a <i>rolling spot forex contract</i> . [deleted]	1 October 2011 until 31 October 2011	1 October 2011
		G	Notwithstanding the operation of CASS TP 1.1(10)R , a <i>firm</i> should as soon as reasonably practicable modify its contractual agreement with that <i>retail client</i> so as to remove its ability to utilise that title transfer collateral arrangement.		

**COMPENSATION SOURCEBOOK (DEPOSIT CLAIMS BY CREDIT UNIONS)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 213 (The compensation scheme); and
 - (4) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 20 January 2012.

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 (Deposit Claims by Credit Unions) Instrument 2012.

By order of the Board
19 January 2012

Annex**Amendments to the Compensation sourcebook (COMP)**

In this Annex, underlining indicates new text.

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) ...
 - (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*; or
 - (3) he was a credit union.

**DISCLOSURE RULES AND TRANSPARENCY RULES SOURCEBOOK
(AMENDMENT NO 5) INSTRUMENT 2012**

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 (Transparency rules);
 - (3) section 89B (Provision of voteholder information);
 - (4) section 89C (Provision of information by issuers of transferable securities);
 - (5) section 89D (Notification of voting rights held by issuer);
 - (6) section 89F (Transparency rules: interpretation etc);
 - (7) section 89G (Transparency rules: other supplementary provisions);
 - (8) section 101 (Part 6 rules: general provisions);
 - (9) schedule 7 (The Authority as Competent Authority for Part VI).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 February 2012.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Disclosure Rules and Transparency Rules Sourcebook (Amendment No 5) Instrument 2012.

By order of the Board
19 January 2012

Annex

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

In this Annex, underlining indicates new text.

Misleading information not to be published

- 1A.3.2 R An *issuer* must take all reasonable care to ensure that any information it notifies to a *RIS* is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.
- 1A.3.2.A R The duty imposed by *DTR* 1A.3.2R does not apply to an *issuer's* obligation under *DTR* 5.8.12R to make public the information contained in a voteholder notification made to it under *DTR* 5.1.2R.

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS
AMENDMENTS NO 4) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 149 (Evidential provisions);
 - (c) section 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. This instrument comes into force on 24 February 2012.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No 4) Instrument 2012.

By order of the Board
23 February 2012

Annex

Amendments to the Training and Competence sourcebook (TC)

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

Appendix 4E Appropriate Qualification tables

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Qualification table for : Advising on (but not dealing in) <i>securities</i> (which are not <i>stakeholder pension schemes, personal pension schemes or broker funds</i>) – Activity number 2 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
Certified International Wealth Manager	Association of International Wealth Managers	a
<u>CIIA qualification (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>Association of Certified International Investment Analysts (ACIIA)</u>	<u>a</u>
<u>MSC in Banking and International Finance (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>CASS Business School</u>	<u>a</u>
...		
ACI Diploma	ACI	a <u>a</u>
...		

Qualification table for : Advising on (but not dealing in) <i>Derivatives</i> –Activity number 3 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
Certified International Wealth Manager	Association of International Wealth Managers	a
<u>MSC in Banking and International Finance (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>CASS Business School</u>	<u>a</u>
...		
<u>Investment Advice Diploma (where candidate holds 3 units including the Derivatives unit)</u>	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	a

...		
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Qualification table relating to : Advising on <i>Packaged Products</i> (which are not <i>broker funds</i>) and <i>Friendly Society</i> tax-exempt policies - Activity Numbers 4 and 6 in TC Appendix 1.1.1 R		
Qualification	Qualification Provider	Key
...		
Investment Advice Diploma (<u>where candidate holds 3 units including the Private Client Advice unit</u>)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	a
...		

Qualification table for : Advising on, and dealing in <i>Securities</i> (which are not <i>stakeholder pension schemes</i> or <i>broker funds</i>) –Activity number 12 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
Certified International Wealth Manager	Association of International Wealth Managers	a
<u>CIIA qualification (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>Association of Certified International Investment Analysts (ACIIA)</u>	<u>a</u>
<u>MSC in Banking and International Finance (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>CASS Business School</u>	<u>a</u>
...		
SFA Securities and Financial Derivatives Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	b c
...		
ACI Diploma	ACI	d a
...		

Qualification table for : Advising on and dealing with or for clients in <i>Derivatives</i> - Activity number 13 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
Certified International Wealth Manager	Association of International Wealth Managers	a
<u>MSC in Banking and International Finance (provided it is accompanied with appropriate qualifications modules covering regulation & ethics,</u>	<u>CASS Business School</u>	<u>a</u>

<u>investment principles & risk and personal taxation)</u>		
...		
Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on <u>securities derivatives</u>	CFA Institute/ CFA Society of UK (<u>Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research</u>)	a
...		
Investment Advice Diploma (<u>where candidate holds 3 units including the Derivatives unit</u>)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	a
...		
Masters in Wealth Management (based on post 2010 examination standards)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>b a</u>
...		
SFA Futures and Options Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>b c</u>
SFA Securities and Financial Derivatives Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>b c</u>
Financial Derivatives paper of Diploma	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>b d</u>
SFA Securities Representative Examination plus Financial Derivatives Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>b c</u>
...		
TSA Registered Representative Examination	The Securities Association	<u>b c</u>
International Capital Markets Qualification (ICMQ) including pass in Futures, Options and other Derivative Products	Securities Institute/ South African Institute of Financial Markets	<u>b d</u>
...		

...

Qualification table for : Managing <i>investments</i> or Acting as a <i>Broker fund adviser</i> – Activity number 14 and 10 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	1
<u>Diploma in Financial Planning (must include a pass in J10: Discretionary Investment Management paper)</u>	<u>Chartered Insurance Institute (CII)</u>	<u>1</u>

<u>Diploma in Regulated Financial Planning plus J10: Discretionary Investment Management paper)</u>	<u>Chartered Insurance Institute (CII)</u>	<u>1</u>
...		

Qualification table for : Overseeing on a day to day basis operating a <i>collective investment scheme</i> or undertaking activities of a <i>trustee</i> or a <i>depository</i> of a <i>collective investment scheme</i> – Activity number 15 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
TSA Registered Representative Examination		...
<u>ACI Operations Certificate when combined with Chartered Institute of Securities and Investment (CISI) Introduction to Securities & Investments and one of the Regulatory units of the Investment Operations Certificate (IOC)</u>	<u>ACI The Financial Markets Association</u>	<u>4</u>
<u>ACI Dealing Certificate when combined with Chartered Institute of Securities & Investments (CISI) Introduction to Securities & Investments and one of the Regulatory units of the Operations Certificate (IOC)</u>	<u>ACI The Financial Markets Association</u>	<u>4</u>
...		

Qualification table for : Overseeing on a day to day basis safeguarding and administering <i>investments</i> or holding <i>client money</i> – Activity number 16 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
In-house module (only where the firm can demonstrate that none of the listed examinations are appropriate)	...	
<u>Investment Administration Qualification (IAQ) – ISA and PEP Administration Module 6</u>	<u>Chartered Institute of Securities & Investments (CISI)</u>	<u>6</u>

Qualification table for : Overseeing on a day to day basis administrative functions in relation to managing <i>investments</i>
...

Activity number 17 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
TSA Registered Representative Examinations	...	4
<u>ACI Operations Certificate when combined with Chartered Institute of Securities and Investment (CISI) Introduction to Securities & Investments and one of the Regulatory units of the Investment Operations Certificate (IOC)</u>	<u>ACI The Financial Markets Association</u>	<u>4</u>
<u>ACI Dealing Certificate when combined with Chartered Institute of Securities & Investments (CISI) Introduction to Securities & Investments and one of the Regulatory units of the Investment Operations Certificate (IOC)</u>	<u>ACI The Financial Markets Association</u>	<u>4</u>

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 4)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 145 (Financial promotion rules);
 - (3) section 156 (General supplementary powers); 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 31 December 2012.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex A to this instrument.

Amendments to material outside the Handbook

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

Citation

- F. This instrument may be cited as the Retail Distribution Review (Adviser Charging No 4) Instrument 2012.

By order of the Board
23 February 2012

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1A Adviser charging and remuneration

Application – Who? What?

6.1A.1 R ...

6.1A.1A G Guidance on the regulated activity of advising in relation to a new or existing investment can be found in PERG 8.24 to PERG 8.29. Although the guidance in PERG 8.29.7G relates to advising on investments under article 53 of the Regulated Activities Order, exactly the same answers apply to a personal recommendation because the examples given relate to the relationship between a firm and a particular client and advice given to that specific client. A firm wishing to know when it will be giving advice but not making a personal recommendation should refer to PERG 13.3.

...

Requirement to be paid through adviser charges

...

6.1A.4A R A firm and its associates may:

- (1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in COBS 6.1A.4R if:
 - (a) the *personal recommendation* was made on or before 30 December 2012;
 - (b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;
 - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
 - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
 - (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and

- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to that *firm* or its *associate*.

6.1A.4AA G (1) A *firm* may continue to accept a commission, remuneration or benefit of any kind after 30 December 2012 if there is a clear link between the payment and an investment in a *retail investment product* which was made by the *retail client* following a *personal recommendation* made, or a transaction executed, on or before 30 December 2012. This is the case even if the *firm* makes a *personal recommendation* to the same *retail client* after 30 December 2012 to the extent that the continued payment can properly be regarded as linked to the pre 31 December 2012 *personal recommendation* or transaction, rather than the new *personal recommendation*. Of course this is dependent upon the terms of the contract contemplating the continued receipt of such payments.

- (2) Examples of circumstances where a commission, remuneration or benefit is clearly linked to the retention of an investment in a *retail investment product* and can therefore continue to be accepted include (in each case where the terms of the contract contemplate a continued payment of the kind referred to in (1)):

- (a) no change is made to the *retail client's* investment in the relevant *retail investment product*;
- (b) the *retail client's* investment in, or regular contribution to, the relevant *retail investment product* is reduced; the *firm* may continue to accept the payment associated with the reduced investment amount;
- (c) the *retail client's* investment in the relevant *retail investment product* is transferred from accumulation *units* to income *units* or vice versa;
- (d) the *retail client* transfers all or part of his investment between funds within a *life policy*.

- (3) If a *firm* makes a *personal recommendation* to a *retail client* and wishes to:

- (a) receive remuneration for that *personal recommendation* in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by (1); or
- (b) be paid additional amounts for any actions which are linked to a new amount invested by the *retail client* in the relevant *retail investment product*;

it should only be paid those additional amounts for that *personal recommendation* or for those actions by *adviser charges*.

- (4) A firm may offset against any adviser charges which are payable by the retail client any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in (1).

...

6.1B Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration

Application – Who? What?

6.1B.1 R ...

6.1B.1A G Guidance on the regulated activity of advising in relation to a new or existing investment can be found in PERG 8.24 to PERG 8.29. Although the guidance in PERG 8.29.7G relates to advising on investments under article 53 of the Regulated Activities Order, exactly the same answers apply to a personal recommendation because the examples given relate to the relationship between a firm and a particular client and advice given to that specific client. A firm wishing to know when it will be giving advice but not making a personal recommendation should refer to PERG 13.3.

...

Requirement not to offer commissions

...

6.1B.5A R A firm and its associates may:

- (1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in COBS 6.1B.5R if:
 - (a) the *personal recommendation* was made on or before 30 December 2012;
 - (b) the offer and payment was permitted by the *rules* in force on 30 December 2012;
 - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
 - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
 - (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and

- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

6.1B.5B G A *firm* may continue paying commission, remuneration or benefits of any kind to another *firm* in relation to a *personal recommendation* made by that other *firm* in circumstances where that other *firm* may accept that commission, remuneration or benefit of any kind (see COBS 6.1A.4AR and COBS 6.1A.4AAG).

Annex B

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

8.29 Advice must relate to the merits (of buying or selling a particular investment)

...

8.29.7 G Typical recommendations and whether they will be regulated as *advising on investments* under article 53 of the *Regulated Activities Order*. This table belongs to PERG 8.29.1G to PERG 8.29.6G.

<u>Recommendation</u>	<u>Regulated under article 53 or not?</u>
<u>I recommend that you take out the ABC investment.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of a particular <i>investment</i> which the <i>client</i> could buy.</u>
<u>I recommend that you do not take out the ABC investment.</u>	<u>Yes. This is advice which steers the <i>client</i> away from a particular <i>investment</i> which the <i>client</i> could have bought.</u>
<u>I recommend that you take out either the ABC investment or the DEF investment.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of more than one particular <i>investment</i> which the <i>client</i> could buy.</u>
<u>I recommend that you sell your ABC investment.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of a particular <i>investment</i> which the <i>client</i> could sell.</u>
<u>I recommend that you do not sell your ABC investment.</u>	<u>Yes. This is advice which steers the <i>client</i> away from a particular <i>investment</i> which the <i>client</i> could have sold.</u>
<u>I recommend that you transfer ownership of your ABC investment to your spouse.</u>	<u>Advising the <i>client</i> to gift an <i>investment</i> to another person will not be advice because it does not involve advice on <u>buying, selling, subscribing for or underwriting an investment.</u></u>
<u>I recommend that you increase the regular payments you are making to your GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.</u>
<u>I recommend that you decrease the regular payments you are making to</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund but advises</u>

<u>your GHI fund*.</u>	<u>against the <i>client</i> buying as many as he intended.</u>
<u>I recommend that you keep making the same regular payments to your GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.</u>
<u>I recommend that you stop making the regular payments you are making to the GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> away from buying <i>units</i> in a particular fund which the <i>client</i> could have bought.</u>
<u>I recommend that you pay a lump sum into your GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.</u>
<u>I recommend that you do not pay a lump sum into your GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> away from buying <i>units</i> in a particular fund which the <i>client</i> could have bought.</u>
<u>I recommend that you move part of your investment in the JKL <i>investment</i> from fund X into fund Y*.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of selling <i>units</i> in a particular fund and buying <i>units</i> in another specific fund. Where the two funds are sub-funds of the same main fund it is still advice. The terms ‘bought’ and ‘sold’ are given a wide meaning and include any acquisition or disposal for valuable consideration.</u>
<u>I recommend that you move all of your investment in JKL <i>investment</i> from fund X into fund Y*.</u>	<u>Yes, for the same reason.</u>
<u>I recommend that you move your MNO <i>investment</i> from platform X and re-register it on platform Y.</u>	<u>This is unlikely to be advice because normally it will not involve buying and selling the <i>investment</i> held on the platform.</u>
<u>A <i>client</i> decides of his own accord to increase, decrease or temporarily suspend his regular payments or the payments are increased automatically into an <i>investment</i> without advice being given.</u>	<u>No. No advice is being given.</u>
<u>The <i>firm</i> is providing discretionary management services under a mandate and makes changes to a <i>client’s investment</i> without providing</u>	<u>No. No advice is being given.</u>

<u>advice.</u>	
<u>Dividends are re-invested into an investment without advice being given.</u>	<u>No. No advice is being given.</u>
<u>* The same answer would apply where the fund is a <i>life policy</i> as rights under a <i>contract of insurance</i> are regulated <i>investments</i> under the <i>Act</i>. The position under a <i>personal pension scheme</i> is similar, as explained in more detail in <i>PERG 12.3</i>.</u>	

**CONDUCT OF BUSINESS SOURCEBOOK (WITH-PROFITS BUSINESS)
INSTRUMENT 2012**

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 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 1 April 2012.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (With-Profits Business) Instrument 2012.

By order of the Board
23 February 2012

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>strategic investment</i>	<p>an investment which:</p> <p>(a) is made for a strategic purpose;</p> <p>(b) is made for an expected duration consistent with that purpose and is, or has the potential to be, illiquid or hard to value; and</p> <p>(c) is significant in value in proportion to the size of the <i>with-profits fund</i>.</p>
<i>terms of reference</i>	<p>the terms of reference of a <i>firm's with-profits committee</i>, or the terms of appointment of the person or persons acting as the <i>with-profits advisory arrangement</i>, satisfying the requirements set out in COBS 20.5.3R.</p>
<i>with-profits advisory arrangement</i>	<p>(a) an independent person; or</p> <p>(b) if appropriate, one or more <i>non-executive directors</i> appointed to provide independent judgment to the <i>governing body</i> of a <i>firm</i>;</p> <p>which satisfies the requirements of its <i>terms of reference</i>.</p>

Amend the following as shown.

<i>required percentage</i>	<p>the <i>required percentage</i> referred to in COBS 20.2.17R is, for each <i>with-profits fund</i>:</p> <p>(a) the percentage (if any) required in respect of that fund by:</p> <p>(i) the <i>firm's</i> articles of association, registered rules or other equivalent instrument; or</p> <p>(ii) a relevant order made by a court of competent jurisdiction;</p> <p>(b) if (a) does not apply, the percentage specified in the <i>firm's PPFM</i>, if that percentage <u>that reflects the <i>firm's</i> established practice, <u>if it has one</u></u>;</p> <p>(c) if (a) and (b) do not apply, not less than 90 per cent.</p>
----------------------------	---

*with-profits
committee*

a committee; ~~of the governing body, including non-executive members,
of the governing body and possibly some external non-directors with
appropriate skills and experience~~

- (a) the majority of the members of which are independent of the firm,
or, where there is an equal number of independent and non-
independent members, which is chaired by a person who is one of
the independent members; and
- (b) which satisfies the requirements of its terms of reference.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

- 20.1.4 R The following do not apply to a *non-directive friendly society*:
- (1) *COBS 20.3 (Principles and Practices of Financial Management);*
~~and~~
 - (2) *COBS 20.4 (Communications with with-profits policyholders);*
and
 - (3) *COBS 20.5 (With-profits governance).*
- ...
- 20.2.1 G (1) *With-profits business*, by virtue of its nature and the extent of discretion applied by *firms* in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of *policyholders*. Potential conflicts of interest may arise between shareholders and *with-profits policyholders*, between *with-profits policyholders* and non-profit *policyholders* within the same fund, between *with-profits policyholders* and the members of mutually-owned *firms*, between *with-profits policyholders* and management, and between different classes of *with-profits policyholders*, for example those with and without guarantees. The *rules* in this section address specific situations where the risk may be particularly acute. ~~However, a *firm* should give careful consideration to any aspect of its operating practice that has a bearing on the interests of its *with-profits policyholders* to ensure that it does not lead to an undisclosed, or unfair, benefit to *shareholders*.~~
- (2) *With-profits policyholders* have an interest in the whole and in every part of the *with-profits fund* into which their *policies* are written and from which the amounts payable in connection with their *policies* are to be paid. Those amounts include those required to satisfy their contractual rights and such other amounts as the *firm* is required to pay in order to treat them fairly (including but not limited to the amounts required to satisfy their reasonable expectations).
 - (3) The fair treatment of *with-profits policyholders* requires the *firm's* pay-outs on individual *with-profits policies* to be fair (see *COBS 20.2.3R* et seq.) and, if the *firm* makes a distribution from the *with-profits fund* into which their *policies* are written, the receipt by the *with-profits policyholders* of at least the *required*

percentage (see COBS 20.2.17R).

- 20.2.1A R A firm must take reasonable care to ensure that all aspects of its operating practice are fair to the interests of its with-profits policyholders and do not lead to an undisclosed, or otherwise unfair, benefit to shareholders or to other persons with an interest in the with-profits fund.
- 20.2.1B G (1) Notwithstanding that there may not be a rule in the remainder of this section addressing a particular aspect of a firm's operating practices, firms will need to ensure that they take reasonable care to ensure that all aspects of their operating practice comply with COBS 20.2.1AR.
- (2) For the avoidance of doubt COBS 20.2.1AR does not exhaust or restrict the scope of Principle 6. Firms will in any event need to ensure that their operating practices are consistent with Principle 6.
- 20.2.1C G When considering the provisions in this chapter a firm will need to ensure that, if applicable, it complies with the with-profits governance requirements in COBS 20.5.
- 20.2.1D G For the purposes of COBS 20.2.1AR the FSA expects a firm to be able to demonstrate that it has taken reasonable care to ensure its operating practices are fair, including being able to produce appropriate evidence to show that it has followed relevant governance procedures.
- ...
- 20.2.16 R A firm must not, in so far as is reasonably practicable, make a market value reduction to the face value of the units of an accumulating with-profits policy unless:
- (1) the market value of the with-profits assets in the relevant with-profits fund is, or is expected to be, significantly less than the assumed value of the assets on which the face value of the units of the policy has been based; ~~or~~ and
- (2) there has been, or there is expected to be, a high volume of surrenders, relative to the liquidity of the relevant with profits fund; and the market value reduction is no greater than is necessary to reflect the impact of the difference in value referred to in (1) ~~or~~ (2) on the relevant surrender payment out to the policyholder.
- 20.2.16A G If a firm is able to satisfy COBS 20.2.16R(1), then the volume of surrenders, transfers, or other exits from the with-profits fund that there has been, or is expected to be, is a factor that a firm may take into account when it is considering whether to make a market value reduction, and if so, its amount, subject to the limit in COBS 20.2.16R(2).

Conditions relevant to distributions

- 20.2.17 R A *firm* must:
- (1) not make a distribution from a *with-profits fund*, unless the whole of the cost of that distribution can be met without eliminating the regulatory surplus in that *with-profits fund*; and
 - (2) ensure that the amount distributed to *policyholders* from a *with-profits fund*, taking into account any adjustments required by COBS 20.2.17AR, is not less than the *required percentage* of the total amount distributed; and
 - (3) ~~if it adjusts the amounts distributed to *policyholders*, apply a proportionate adjustment to amounts distributed to shareholders, so that the distribution to *policyholders* will not be less than the *required percentage*.~~
- 20.2.17A R (1) Where a *firm* adjusts the amounts distributed to *policyholders*, either by market value reduction or otherwise, in a way that would result in a distribution to *policyholders* of less than the *required percentage*, taking both the relevant distributions and the adjustment into account, then the *firm* must apply a proportionate adjustment to amounts distributed to shareholders so that the distribution to *policyholders* will not be less than the *required percentage*.
- (2) The adjustments referred to in (1) include but are not limited to a situation where such an adjustment has the effect of retrospectively reducing past *policyholder* distributions.
- 20.2.17B G An example of the application of COBS 20.2.17AR, without limitation to its scope generally, is where a *firm* reduces, for any reason, the amounts of a bonus or of bonus units added to *policies* in force. The *firm* should treat this as effectively a ‘negative distribution’, calculated by making the same assumptions regarding discount rates and other relevant factors as would be used for positive bonus additions. The amount so calculated should then be taken into account in ensuring that the amount distributed to *policyholders* from a *with-profits fund* is not less than the *required percentage* for the purposes of COBS 20.2.17R.
- ...
- 20.2.21 R At least once a year (or, in the case of a *non-directive friendly society*, at least once in every three years) and whenever a *firm* is seeking to make a *retribution* of its *inherited estate*, a *firm’s* governing body must determine whether the *firm’s* *with-profits fund*, or any of the *firm’s* *with-profits fund*, has an *excess surplus*.
- 20.2.22 E (1) If a *with-profits fund* has an *excess surplus*, and to retain that surplus would be a breach of *Principle 6* (Customers’ interests) the *firm* should:

- (a) make a distribution from that *with-profits fund*; ~~or~~
- (b) carry out a *retribution*.

...

...

New business

- 20.2.28 R ~~If a A firm proposes to must not effect new *contracts of insurance* in an existing *with-profits fund*, it must only do so unless:~~
- (1) ~~on terms that are, in the reasonable opinion of the *firm's governing body*, is satisfied, so far as it reasonably can be, and can demonstrate, having regard to the analysis in (2), unlikely to have a material that the terms on which each type of contract is to be effected are likely to have no adverse effect on the interests of its existing the *with-profits policyholders* whose *policies* are written into that fund; and~~
 - (2) the *firm* has:
 - (a) carried out or obtained appropriate analysis, based on relevant evidence and proportionate to the risks involved, as to the likely impact on *with-profits policyholders*, having regard to relevant factors including:
 - (i) the volumes of each type of contract that the *firm* expects to be effected; and
 - (ii) the periods over which the contracts are expected to remain in force; and
 - (b) provided the analysis referred to in (a) to its *with-profits committee* or, if applicable, its *with-profits advisory arrangement* and to its *governing body* for the purposes of (1).
- 20.2.28A G (1) Writing new *insurance business* into a *with-profits fund* is not, of itself, automatically adverse to the interests of *with-profits policyholders*. For example, new *insurance business* which defers the emergence or distribution of surplus to a limited extent for a number of *policyholders*, or which leads to a marginal change in the equity backing ratio, may, subject to satisfying the guidance in COBS 20.2.60G and COBS 20.2.29G, reasonably be considered not to have an adverse effect on the *with-profits policyholders* in a *with-profits fund*, if the *firm's governing body* is satisfied (and can demonstrate based on appropriate analysis) that each new line of *insurance business* is likely to be financially self-supporting over the periods during which the contracts are expected to remain in

force and is likely to add sufficient value to the *with-profits fund*.

- (2) Conversely, if the particular line of new *insurance business* is priced on loss-making terms or the terms are such that the new *insurance business* is not likely to generate sufficient value after covering all the costs associated with it (in either case when considered in aggregate over the periods over which the contracts are expected to remain in force), then in the FSA's view, the terms of that *insurance business* are likely to have an adverse impact on *with-profits policyholders* interests in the relevant fund.
- (3) Firms will need to ensure that they comply with COBS 20.2.28R at all times, but in practice firms will be expected to pay particular attention when they are designing and pricing or re-pricing products, when they are preparing their financial plans that take into account their expected costs and levels of new business, and, in particular, when reviewing their financial performance, if that reveals that costs or levels of new business have varied significantly from those expected previously.
- (4) New business for the purposes of COBS 20.2.28R will not, in general, include increments on existing *policies* or business written as a result of the exercise of options by an existing *policyholder*.

20.2.29 G In some circumstances, it may be difficult or impossible for a *firm* to mitigate the risk of ~~a material~~ an adverse effect on its existing, or new, *with-profits* policyholders

20.2.30 G (1) When a *firm* prices the new *insurance business* that it proposes to effect in an existing *with-profits fund* it should estimate the volume of new *insurance business* that it is likely to effect and then build in adequate margins that will allow it to recover any acquisition costs to be charged to the *with-profits fund*.

(2) COBS 20.2.28R requires firms to obtain appropriate analysis and evidence and this should include at least a profitability analysis on a marginal cost basis.

...

Other rules and guidance on the conduct of *with-profits* business

...

20.2.36 G R If a ~~proprietary firm is considering using~~ A firm must not:

(1) use *with-profits assets* to finance the purchase of ~~another business~~ a *strategic investment*, directly or by or through a *connected person*; or

- (2) ~~if a *firm* is considering whether it should retain such an investment referred to in (1);~~

~~it should consider whether unless its *governing body* is satisfied, so far as it reasonably can be, and can demonstrate, that the purchase or retention would be, or will remain, fair to is likely to have no adverse effect on the interests of its *with-profits policyholders* whose *policies* are written into the relevant fund. When a *firm* makes that assessment it should consider whether it would be more appropriate for the investment to be made using assets other than those in a *with-profits fund*.~~

20.2.36A R A *firm* must keep adequate records setting out the strategic purpose for which a *strategic investment* has been purchased or retained.

20.2.36B G (1) In order for a *firm* to comply with COBS 20.2.36R, a *firm's governing body* should consider:

- (a) the size of the investment in relation to the *with-profits fund*;
- (b) the expected rate of return on the investment;
- (c) the risks associated with the investment, including, but not limited to, liquidity risk, the capital needs of the acquired business or investment and the difficulty of establishing fair value (if any);
- (d) any costs that would result from divestment;
- (e) whether the *with-profits actuary* would regard the investment as having no adverse effect on the interests of *with-profits policyholders* as a class;
- (f) in the case of a proprietary *firm*, whether it would be more appropriate for the investment to be made using assets other than those in the *with-profits fund*; and
- (g) any other relevant material factors.

(2) A *firm* should also consider whether making or retaining the investment should be disclosed to *with-profits policyholders*.

(3) Examples of *strategic investments* include, but are not limited to, a significant investment in another business or significant real estate assets used within the business of the *firm*.

...

Major Significant changes in with-profits funds

...

20.2.41A R A firm must contact the FSA as soon as is reasonably practicable to make arrangements to discuss what actions may be required to ensure the fair treatment of with-profits policyholders if, in relation to any with-profits fund it operates:

- (1) the firm reasonably expects, or if earlier, there has been, a sustained and substantial fall in either the volume of new non-profit insurance contracts, or in the volume of new with-profits policies (effected other than by reinsurance), or in both, effected into the with-profits fund; or
- (2) the firm cedes by way of reinsurance most or all of the new with-profits policies which it continues to effect.

20.2.41B G (1) The aim of the discussions in COBS 20.2.41AR is to:

- (a) allow the FSA to comment on the adequacy of the firm's planning; and
 - (b) seek agreement with the firm on any other appropriate actions to ensure with-profits policyholders are treated fairly.
- (2) If the firm is no longer effecting a material volume of new with-profits policies (other than by reinsurance) into a with-profits fund; or if it is ceding by way of reinsurance most or all of the new with-profits policies which it continues to effect, then it may also be appropriate to consider whether, in the particular circumstances of the firm, it should be regarded as ceasing to effect new contracts of insurance for the purposes of COBS 20.2.54R(3).
- (3) In the discussions the FSA will have with regard to COBS 20.2.28R (New business), if the volumes of new business are expected to be profitable and, in relation to non-profit insurance business, it is demonstrated that a fair distribution to with-profits policyholders out of the fund can be achieved and the economic value of any expected future profits is likely to be available for distribution during the lifetime of the with-profits business for the purposes of COBS 20.2.60G, then, in the FSA's view, it is likely to be reasonable for a firm to be satisfied that there will be no adverse effect for with-profits policyholders, and accordingly that such business may continue to be written.

...

20.2.42 R A firm that is seeking to make a reattribution of its inherited estate must:

- (1) identify at the earliest appropriate point a policyholder advocate, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of

~~*policyholders, to negotiate with the firm on behalf of relevant with-profits policyholders*~~ first discuss with the *FSA* (as part of its determination under *COBS 20.2 .21R*):

- (a) its projections for capital required to support existing business, which must include an assessment of:
 - (i) the firm's future risk appetite for the *with-profits fund* and other relevant business; and
 - (ii) how much of the margin for prudence can be identified as excessive and removed from the projected capital requirements; and
- (b) its projections for capital required to support future new business, which must include an assessment of:
 - (i) new business volumes;
 - (ii) product terms; and
 - (iii) pricing margins;

- (2) following the discussions referred to in (1), identify at the earliest appropriate point a *policyholder advocate*, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of *policyholders*, to negotiate with the firm on behalf of relevant *with-profits policyholders* and seek the approval of the *FSA* for the appointment of the *policyholder advocate* as soon as he is identified, or appoint a *policyholder advocate* nominated by the *FSA* if its approval is not granted; and

...

...

20.2.44 G The precise role of the *policyholder advocate* in any particular case will depend on the nature of the *firm* and the *retribution* proposed. A *firm* will need to discuss, with a view to agreeing, with the *FSA* the precise role ...

...

20.2.45 R A *firm* must:

- (1) notify the *FSA* of the terms on which it proposes to appoint a *policyholder advocate* (whether or not the candidate was nominated by the *FSA*);
- (2) ensure that the terms of appointment for the *policyholder advocate*:

- (a) include a description of the role of the *policyholder advocate* as agreed with the *FSA* under *COBS 20.2.44G*;
- (aa) stress the independent nature of the *policyholder advocate's* appointment and function, and are consistent with it;
- ...
- (e) specify when and how the *policyholder advocate's* appointment may be terminated; ~~and~~
- (f) allow the *policyholder advocate* to communicate freely and in confidence with the *FSA*;
- (g) require the *policyholder advocate* to communicate with *policyholders*:
 - (i) as soon as is practicable after his appointment, having regard to (h)(i) and (iii); and
 - (ii) thereafter no less frequently than every six months for the duration of the *policyholder advocate's* appointment; and
- (h) require the *policyholder advocate*:
 - (i) to make reasonable endeavours to agree with the *firm* the contents of any proposed *policyholder communications*;
 - (ii) to allow sufficient time for the process in (i) in order to meet any timescales in (g); and
 - (iii) to provide copies of the final draft of the intended *policyholder communications*, whether or not agreement has been reached in accordance with (i) above, both to the *firm* and to the *FSA* at least seven days in advance of the date on which the *policyholder advocate* intends to make the *communications*.

...

- 20.2.54 R A *firm* will be taken to have ceased to effect new *contracts of insurance* in a *with-profits fund*:
- (1) when any decision by the *governing body* to cease to effect new *contracts of insurance* takes effect; or
 - (2) where no such decision is made, when the *firm* is no longer:

- (a) actively seeking to effect new *contracts of insurance* in that fund; or
 - (b) effecting new *contracts of insurance* in that fund, except by increment; or
- (3) if the firm:
- (a) (i) is no longer effecting a material volume of *with-profits policies* (other than by *reinsurance*), into the *with-profits fund*; or
 - (ii) is ceding by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect; and
 - (b) cannot demonstrate that it will treat *with-profits policyholders* fairly if it does not cease to effect new *contracts of insurance*.
- 20.2.55 R ~~A firm must contact the FSA to discuss whether it has, or should be taken to have, ceased to effect new *contracts of insurance* if:~~
- (1) ~~it is no longer effecting a material volume of new *with-profits policies* in a particular *with-profits fund*, other than by *reinsurance*; or~~
 - (2) ~~it cedes by way of *reinsurance* most of the new *with-profits policies* which it continues to effect.~~
- G For the purposes of COBS 20.2.54R(3) the FSA will have regard to, amongst other things, the factors set out in COBS 20.2.41BG(3).
- 20.2.56 R The run-off plan required by ~~this section~~ COBS 20.2.53R must:
- (1) ~~demonstrate~~ include an up-to-date plan to demonstrate how the firm will ensure a fair distribution of the closed *with-profits fund*, and its *inherited estate* (if any); and
 - (2) be approved by the *firm's governing body*.
- 20.2.57 G (1) A firm should also include the information described in Appendix 2.15 (Run-off plans for closed with-profits funds) of the Supervision manual in its run-off plan.
- (2) A firm should periodically review and update its run-off plan and submit updated versions to the FSA when requested to do so.
- ...
- 20.2.60 G (1) If *non-profit insurance business* is written in a *with-profits fund*, a firm should take reasonable steps to ensure that the

economic value of any future profits expected to emerge on the *non-profit insurance business* is available for distribution during the lifetime of the *with-profits business*.

- (1A) Where a *with-profits fund* contains assets which may not be readily realisable, the *firm* should take reasonable steps to ensure that the economic value of those assets is made available as part of a fair distribution to *with-profits policyholders*.
- (2) Where it is agreed by its *with-profits policyholders*, and subject to meeting the requirements for effecting new *contracts of insurance* in an existing *with-profits fund* (COBS 20.2.28R), a *mutual* may make alternative arrangements for continuing to carry on *non-profit insurance business*, and a *non-directive friendly society* may make alternative arrangements for continuing to carry on non-insurance related business.

...

Governance arrangements for with-profits business

- 20.3.2 G ~~In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (SYSC 3.2.6R or SYSC 6.1.1R), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records any applicable *PPFM*. These arrangements should:~~
- ~~(1) be appropriate to the scale nature and complexity of the *firm's with profits business*;~~
 - ~~(2) include the approval of the *firm's PPFM* by its *governing body*; and~~
 - ~~(3) involve some independent judgment in assessing compliance with its *PPFM* and addressing conflicting rights and interests of *policyholders* and, if applicable, *shareholders*, which may include but is not confined to:~~
 - ~~(a) establishing a *with profits committee*;~~
 - ~~(b) asking an independent person with appropriate skills and experience to report on these matters to the *governing body* or to any *with profits committee*; or~~
 - ~~(c) for small *firms*, asking one or more non-executive members of the *governing body* to report to the *governing body* on these matters. [deleted]~~
- 20.3.3 G If a *person* or committee who provides independent judgement wishes to make a statement or report to *with-profits policyholders*, in addition to any annual report made by a *firm* to those *policy holders*, a *firm* should

~~facilitate this.~~ [deleted]

After COBS 20.4 insert the following new section. The text is not underlined.

20.5 With-profits governance

Requirement to appoint a with-profits committee or advisory arrangement

- 20.5.1 R A *firm* must, in relation to each *with-profits fund* it operates:
- (1) appoint:
 - (a) a *with-profits committee*; or
 - (b) a *with-profits advisory arrangement* (referred to in this section as an ‘advisory arrangement’), but only if appropriate, in the opinion of the *firm’s governing body*, having regard to the size, nature and complexity of the fund in question;
 - (2) ensure that the *with-profits committee* or advisory arrangement operates in accordance with its *terms of reference*; and
 - (3) make available a copy of any *terms of reference* on the *firm’s* website, or if the *firm* does not have a website, at the request of *policyholders*.
- 20.5.2 G (1) Ultimate responsibility for managing a *with-profits fund* rests with the *firm* through its *governing body*. The role of the *with-profits committee* or advisory arrangement is, in part, to act in an advisory capacity to inform the decision-making of a *firm’s governing body*. The *with-profits committee* or advisory arrangement also acts as a means by which the interests of *with-profits policyholders* are appropriately considered within a *firm’s* governance structures. The *with-profits committee* or advisory arrangement should address issues affecting *policyholders* as a whole or as separately identifiable groups of *policyholders* generally rather than dealing with individual *policyholder* complaints or taking management decisions with respect to a *with-profits fund*.
- (2) If a *firm* considers that it is appropriate to appoint an advisory arrangement, a *firm’s governing body* will need to decide whether it is appropriate to appoint an independent person or one or more *non-executive directors* to carry out the role. The *FSA* expects *firms* to make this determination according to the nature, size and complexity of the fund in question. So the larger or more complex the fund is, the more likely it would be that it would be appropriate to appoint an independent person.
 - (3) Where a *firm* has appointed a *with-profits committee* to one of its *with-profits funds* it may also decide to appoint that *with-profits committee* to some or all of its other *with-profits funds*, even if the *firm* would not

have determined it appropriate to appoint a *with-profits committee* to those other funds when considered individually having regard to their size, nature or complexity.

Terms of reference of with-profits committee or advisory arrangement

- 20.5.3 R A *firm* must ensure that the *terms of reference* contain, as a minimum, terms having the following effect:
- (1) the role of the *with-profits committee* or advisory arrangement is, as relevant, to assess, report on, and provide clear advice and, where appropriate, recommendations to the *firm's governing body* on:
 - (a) the way in which each *with-profits fund* is managed by the *firm* and, if a *PPFM* is required, whether this is properly reflected in the *PPFM*;
 - (b) if applicable, whether the *firm* is complying with the principles and practices set out in the *PPFM*;
 - (c) whether the *firm* has addressed effectively the conflicting rights and interests of *with-profits policyholders* and other *policyholders* or stakeholders including, if applicable, shareholders, in a way that is consistent with *Principle 6* (treating customers fairly); and
 - (d) any other issues with which the *firm's governing body*, *with-profits committee* or advisory arrangement considers *with-profits policyholders* might reasonably expect the *with-profits committee* or advisory arrangements to be involved;
 - (2) that the *with-profits committee* or advisory arrangement must:
 - (a) decide on the specific matters it will consider in order to enable it to carry out its role described in (1)(a) to (d) as appropriate to the particular circumstances of the *with-profits fund(s)*; and
 - (b) in any event give appropriate consideration to the following non-exhaustive list of specific matters:
 - (i) the identification of surplus and *excess surplus*, the merits of its distribution or retention and the proposed distribution policy;
 - (ii) how bonus rates, smoothing and, if relevant, market value reductions have been calculated and applied;
 - (iii) if relevant, the relative interests of *policyholders* with and without valuable guarantees;
 - (iv) the *firm's* with-profits customer communications such as annual *policyholder* statements and product literature and

whether the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the annual report made by a *firm*;

- (v) any significant changes to the risk or investment profile of the *with-profits fund* including the management of material illiquid investments and the *firm's* obligations in relation to *strategic investments*;
 - (vi) the *firm's* strategy for future sales supported by the assets of the *with-profits fund* and its impact on surplus;
 - (vii) the impact of any management actions planned or implemented;
 - (viii) relevant management information such as customer complaints data (but not necessarily information relating to individual customer complaints);
 - (ix) the drafting, review, updating of and compliance with run-off plans, court schemes and similar matters; and
 - (x) the costs incurred in operating the *with-profits fund*;
- (3) that any person appointed as a member of the *with-profits committee* or as a person carrying out the advisory arrangement must have the appropriate skills, knowledge and experience to perform, or contribute to, as appropriate, the role set out in (1) and (2);
- (4) if the *firm* appoints a *with-profits committee*:
- (a) that there must be three or more members;
 - (b) that the quorum for any meeting (or decision by written procedure) must be at least half of the number of, and no less than two, members; and
- (5) that the *with-profits committee* or advisory arrangement must:
- (a) advise the *governing body* on the suitability of candidates proposed for appointment as the *with-profits actuary*; and
 - (b) assess the performance of the *with-profits actuary* at least annually, and report its view to the *governing body* of the *firm*.
- 20.5.4 G (1) The *FSA* expects that a *with-profits committee* will meet at least quarterly and ad hoc if required.

- (2) The *FSA* expects that, in general, a *with-profits committee* or advisory arrangement will work closely with the *with-profits actuary*, and obtain his opinion and input as appropriate.

Role of with-profits committee or advisory arrangement in the *firm's* governance20.5.5 R A *firm* must:

- (1) ensure that its *governing body*, in the context of its consideration of issues referred to in COBS 20.5.3R(1)(a) to (d) and (2)(b)(i) to (x):
 - (a) obtains, as relevant, assessments, reports, advice and/or recommendations of the *with-profits committee* or advisory arrangement, if the *governing body*, the *with-profits committee* or advisory arrangement considers that significant issues concerning the interests of *with-profits policyholders* need to be considered by the *firm*;
 - (b) allows the *with-profits committee* or advisory arrangement sufficient time to enable it to provide fully considered input on the issues to be considered;
 - (c) considers fully and gives due regard to the input of the *with-profits committee* or advisory arrangement when determining issues concerning the management of the *with-profits funds* and the interests of *with-profits policyholders*;
 - (d) if the *governing body* decides to depart in any material way from the advice or recommendations of the *with-profits committee* or advisory arrangement, sets out fully its reasons and allows the *with-profits committee* or advisory arrangement a reasonable period to consider them and respond; and
 - (e) considers any further representations from the *with-profits committee* or advisory arrangement and, if appropriate, sets out fully any additional reasons if it continues to depart from the *with-profits committee* or advisory arrangement's advice or recommendation;
- (2) provide a *with-profits committee* or advisory arrangement with sufficient resources as it may reasonably require to enable it to perform its role effectively;
- (3) notify the *FSA* of the decision of the *governing body* to depart from the advice or recommendation of the *with-profits committee* or advisory arrangement if the *with-profits committee* or advisory arrangement considers that the issue is sufficiently significant and requests of the *governing body* that the *FSA* be informed; and
- (4) consult the *with-profits actuary* on the appointment of a new member of the *with-profits committee* or of the person or persons carrying out the advisory arrangement.

20.5.6 G (1) COBS 20.5.5R(2) requires that a *firm* provides a *with-profits committee* or advisory arrangement with sufficient resources. A *with-profits*

committee or advisory arrangement should be able to obtain external professional, including actuarial, advice, at the expense of the *firm*, if the *with-profits committee* or advisory arrangement considers the advice to be necessary to perform its role effectively. In a proprietary firm the *with-profits committee* or advisory arrangement should be able to request that the cost of the external professional advice either is not chargeable to the *with-profits fund* in question, or is shared with the *with-profits fund*, according to whether the issue under consideration is wholly or partly to the benefit of the *firm* rather than *policyholders*. A *with-profits committee* or advisory arrangement should also be adequately supported by the *firm's* own internal resources and support functions. This may include the *firm* ensuring that relevant employees, including the *with-profits actuary*, are made sufficiently available, and provide relevant information and input, to assist the *with-profits committee* in its role, as required.

- (2) If the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the annual report made by a *firm*, the effect of COBS 20.5.5R(2) is that a *firm* will need to facilitate this.
- (3) In order to comply with SYSC 3.2.20R the FSA expects *firms* to keep full records of all requests of, and material produced by, the *with-profits committee* or advisory arrangement, and of all decisions and reasons of the *governing body* as described in COBS 20.5.5R(1)(d) and (e).
- (4) For the purposes of COBS 20.5.5R(3), the FSA expects that it will only be in exceptional circumstances that a *with-profits committee* or alternative arrangement will consider a departure from a recommendation or advice to be sufficiently significant to warrant its making a request of the *governing body* that the FSA be informed.

Assessment of independence by governing body

- 20.5.7 G (1) The FSA expects the *governing body* of the *firm* to decide whether a member of the *with-profits committee* or a person (other than a *non-executive director*) carrying out the advisory arrangement is independent. The FSA expects a *firm's governing body* to adopt the following approach and have regard to the following factors when making this assessment:
- (a) the *governing body* should determine whether the person is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the person's judgment; and
 - (b) the *governing body* should state its reasons if it determines that a person is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the person:

- (i) has been an employee of the *firm* or group within the last five years; or
- (ii) has, or has had within the last three years, a material business relationship with the *firm* either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the *firm*; or
- (iii) has received or receives additional remuneration from the *firm*, participates in the *firm's* share option or a performance-related pay scheme, or is a member of the *firm's* pension scheme; or
- (iv) has close family ties with any of the *firm's* advisers, directors or senior employees; or
- (v) has significant links with the *firm's* directors through involvement in other companies or bodies; or
- (vi) represents a significant shareholder; or
- (vii) has served on the *governing body* for more than nine years from the date of their first election.

- (2) If a *firm* appoints one or more *non-executive directors* to carry out the advisory arrangement, the *FSA* expects the *governing body* of the *firm* to be satisfied that that person or persons is or are adequately able to provide independent judgment.

Governance arrangements in relation to the PPFM

20.5.8 G In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (*SYSC 3.2.6R*), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records, any applicable *PPFM*. These arrangements should:

- (1) be appropriate to the scale, nature and complexity of the *firm's with-profits business*; and
- (2) include the approval of the *firm's PPFM* by its *governing body*.

Amend the following as shown.

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	<i>COBS 20.2.1G to COBS 20.2.23R, COBS 20.2.26R to COBS 20.2.41G, COBS 20.2.53R to COBS 20.2.60G (Treating with profits policy holders fairly)</i>	R	The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>FSA</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005.	...	...
...					
2.11	<i>COBS TP 2.9</i>	G	The <i>rules and guidance</i> on treating with-profits policyholders fairly (<i>COBS 20.2.1G - COBS 20.2.41G; COBS 20.2.53R - COBS 20.2.60G</i>) may be contrary to, or inconsistent with, some arrangements that were formally approved by the <i>FSA</i> , a <i>previous regulator</i> or a court...	...	...
...					
<u>2.18</u>	<u><i>COBS 20.2.53R to COBS 20.2.60G, SUP App 2.15G</i></u>	<u>R</u>	<p><u>(1) Unless (2) applies, and subject to (3), a <i>firm</i> that has ceased to effect new <i>contracts of insurance</i> in a <i>with-profits fund</i> must submit to the <i>FSA</i> a <i>run-off plan</i> of the type described in <i>COBS 20.2.53R(2); COBS 20.2.56R, and COBS 20.2.57G</i>, if it has not done so already, by 31 December 2012, regardless of when it closed to new business.</u></p> <p><u>(2) Paragraph (1) does not apply to a <i>firm</i> if, and to the extent that, to comply would be contrary to or inconsistent with an arrangement that was formally approved by a court of competent</u></p>	<u>From 1 April 2012 indefinitely</u>	<u>1 November 2007 and 1 April 2012</u>

			<p><u>jurisdiction, on or before 1 April 2012.</u></p> <p><u>(3) A firm required by (1) above to produce a run-off plan:</u></p> <p><u>(a) should consider the guidance in SUP App 2.15.6G, 2.15.7G(11), 2.15.13G, 2.15.14G and 2.15.15G to continue to apply to it, as appropriate;</u></p> <p><u>(b) may demonstrate compliance with the guidance in SUP App 2.15.2G, 2.15.3G, 2.15.4G and 2.15.5G by reference to existing documents created by or for the firm, provided that it submits copies of relevant extracts to the FSA;</u></p> <p><u>(c) may disregard the remaining provisions in SUP App 2.15G if to do so would be consistent with meeting the requirements of COBS 20.2.56R(1); and</u></p> <p><u>(d) may otherwise tailor the run-off plan to reflect the fact that the fund in question has already been closed.</u></p>		
2.19	<u>COBS 20.2.53R to COBS 20.2.60G</u>	G	<p><u>The effect of COBS TP 2.18 is that firms which were not required to submit a run-off plan to the FSA because they ceased to effect new contracts of insurance before 1 November 2007 or because of previous transitional provisions in COBS, will need to submit a version of a run-off plan to the FSA, taking into account the fact that the fund has already closed, by 31 December 2012. However, this will not apply to the extent that</u></p>	<p><u>From 1 April 2012 indefinitely</u></p>	<p><u>1 November 2007 and 1 April 2012</u></p>

			<u>it would be inconsistent with a formally approved court scheme.</u>		
<u>2.20</u>	<u>COBS 20.2.28R</u>	R	<u>Firms which continue to effect new contracts of insurance in reliance on decisions made by the firm's governing body complying with COBS 20.2.28R prior to 1 April 2012 are deemed to be compliant with COBS 20.2.28R until 1 July 2012.</u>	<u>From 1 April 2012 to 1 July 2012</u>	<u>1 April 2012</u>
<u>2.21</u>	<u>COBS 20.2.36R to COBS 20.2.36AR</u>	R	<u>Firms which retain strategic investments in reliance on decisions made by the firm's governing body appropriately taking into account COBS 20.2.36G prior to 1 April 2012 are deemed to be compliant with COBS 20.2.36R and 20.2.36AR until 1 October 2012.</u>	<u>From 1 April 2012 to 1 October 2012</u>	<u>1 April 2012</u>
<u>2.22</u>	<u>COBS 20.5.1R to 20.5.5R</u>	R	<u>Firms' existing governance arrangements are deemed to comply with the provisions in COBS 20.5.1R to 20.5.5R until 1 July 2012.</u>	<u>From 1 April 2012 to 1 July 2012</u>	<u>1 April 2012</u>

...

Schedule 1 Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>COBS 19.2.3R</u>	Promotion of personal pension scheme	...	...	...
<u>COBS 20.2.36AR</u>	<u>strategic investments</u>	<u>A description of the strategic purpose for which a strategic investment has been purchased or retained</u>	<u>Before making a strategic investment or when reviewing whether to retain a strategic investment</u>	<u>Until the firm ceases to hold the strategic investment in question</u>

...				
-----	--	--	--	--

Schedule 2 Notification requirements

Handbook reference	Matters to be notified	Contents of notification	Trigger Event	Time allowed
...				
<i>COBS</i> 21.2.8R	...			
<u><i>COBS</i> 20.5.5R(3)</u>	<u>The decision of a <i>firm's governing body</i> to depart from the advice or recommendation of the <i>with-profits committee</i> or advisory arrangement.</u>	<p><u>A description of:</u></p> <p><u>(1) the decision of, and reasons given by, the <i>firm's governing body</i>;</u></p> <p><u>(2) the recommendation and advice of the <i>with-profits committee</i> or advisory arrangement;</u></p> <p><u>together with a copy of the <i>firm's</i> records of the decision, reasons, advice and recommendations.</u></p>	<u>The <i>with-profits committee</i> or advisory arrangement considers that the issue is sufficiently significant and requests of the <i>governing body</i> that the <i>FSA</i> be informed.</u>	<u>As soon as reasonably practicable</u>

Annex C**Amendments to the Supervision manual (SUP)**

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

- 4.3.17 R A *firm* must require and allow any *actuary* appointed to perform the *with-profits actuary* function to perform his duties and must:
- ...
- (4); ~~and~~
- (5) pay due regard to his advice...(the committee of management); and
- (6) ensure that where a conflict of interest may arise in relation to the role of the *with-profits actuary* and the advice he gives, for example due to the *firm's* reporting lines or remuneration process, that potential conflict is identified and managed in order to minimise the possible effect of the potential conflict on the advice given.

HANDBOOK ADMINISTRATION (NO 25) INSTRUMENT 2012**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) Part 1 of Annex D (SUP) comes into force on 22 March 2012;
 - (2) Part 2 of Annex A (Glossary) and Annex C (COBS) come into force on 1 October 2012;
 - (3) Annex E (DISP) comes into force on 31 December 2012; and
 - (4) the remainder of this instrument comes into force on 1 April 2012.

Amendments to the Handbook

- D. The modules 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
Conduct of Business sourcebook (COBS)	Annex C
Supervision manual (SUP)	Annex D
Dispute Resolution: Complaints sourcebook (DISP)	Annex E
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex F
Listing Rules sourcebook (LR)	Annex G

Amendments to material outside the Handbook

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

Amendment to instrument

- F. Annex A and Annex B to the Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2011 (FSA 2011/30) are amended in accordance with Annex A (Glossary) and Annex C (COBS) to this instrument respectively.

Citation

- G. This instrument may be cited as the Handbook Administration (No 25) Instrument 2012.

By order of the Board
21 March 2012

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 1 April 2012

<i>financial promotion rules</i>	... (4) <u>(in relation to <i>BCOBS</i>) all or any of the <i>rules</i> in <i>BCOBS 2</i> that impose requirements in relation to a <i>financial promotion</i> but only to the extent that they apply to a <i>financial promotion</i>.</u>
<i>percentage ratio</i>	(in <i>LR</i>) (in relation to a transaction) the figure, expressed as a percentage, that results from applying a calculation under a class test <u><i>class test</i></u> to the transaction.

Part 2: Comes into force on 1 October 2012

The amendment to the definition of “pension opt-out” shown below replaces that made by Annex A to the Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2011 (FSA 2011/30).

<u><i>group stakeholder pension scheme</i></u>	<u><i>a stakeholder pension scheme which is available to employees of the same employer or of employers within a group.</i></u>
<i>pension opt-out</i>	a transaction, resulting from the decision of a <i>retail client</i> who is an individual, to: <ul style="list-style-type: none"> (a) <u>opt out of an <i>occupational pension scheme</i>, <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> to which his employer contributes and</u> of which he is a member; or (b) <u>decline to become a member of an <i>occupational pension scheme</i>, <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> to which his employer contributes and of which he is eligible to join, or will be eligible to join at the end of a waiting period;</u> <p>in favour of a <i>stakeholder pension scheme</i> or <i>personal pension scheme</i>.</p>

Editor’s Note: The introduction here of the definition of “group stakeholder pension scheme” in effect brings forward the making of this definition. This definition was originally made by the Retail Distribution Review (Corporate Pensions) Instrument 2010 (FSA 2010/21) with a commencement date of 31 December 2012.

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.

12.1.11 R Where this section applies with respect to a *financial conglomerate*, the risk management processes referred to in SYSC 12.1.8R(2) must include:

...

(3) ...; ~~and~~

(4) ...

(5) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans; a *firm* must update ~~those~~ these arrangements regularly.

...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

The amendment to COBS 19.2.2R shown below replaces that made by Annex B to the Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2011 (FSA 2011/30).

Comes into force on 1 October 2012

Suitability

19.2.2 R Where a *firm* prepares a *suitability report* it must:

...

- (2) (in the case of a personal pension scheme, stakeholder pension scheme or an FSAVC), explain why it considers the personal pension scheme, stakeholder pension scheme or FSAVC to be at least as suitable as any ~~stakeholder pension scheme, AVC or facility~~ to make additional contributions to an occupational pension scheme, group personal pension scheme or group stakeholder pension scheme which is available to the *retail client*.

Annex D

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 22 March 2012

16 Annex 14(1)R Quarterly return (CQ) for credit unions

...

SUPPLEMENTARY ANALYSIS OF THE QUARTERLY RETURN

The Supplementary Analysis of the Quarterly Return should be completed as part of the Quarterly Return by credit unions in Great Britain where they meet one or more of the following conditions at the end of the quarter:

- the credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the credit union has issued deferred shares in accordance with section 31A of the Act; or
- the credit union has admitted corporate members under section 5A of the Act.

Interest-bearing shares

...

In 16 Annex 14(2)R (Annual return (CY) for credit unions) the “Supplementary Analysis of the Annual Return”, which is currently located after the “Auditor’s statement”, is moved so that it appears after the chart headed “Committee of management and other officers of the credit union”.

Amend the following as showing.

16 Annex 14(2)R Annual return (CY) for credit unions

...

SUPPLEMENTARY ANALYSIS OF THE ANNUAL RETURN

The Supplementary Analysis of the Annual Return should be completed as part of the Annual Return by credit unions in Great Britain where they meet one or more of the following conditions at the end of the financial year:

- the credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the credit union has issued deferred shares in accordance with section 31A of the Act;
- the credit union has admitted corporate members under section 5A of the Act; or
- the credit union’s rules limit the number of non-qualifying members of the credit union, in

accordance with section 5(5) of the Act

Interest-bearing shares

...

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24R

...

FSA004 – Credit risk

...

Column B

For firms on the standardised approach, this should be calculated as set out in *BIPRU 3* and *BIPRU 5*. It equates to the fully adjusted exposures values (E*) after adjustment to off-balance sheet items under *BIPRU 3.6.1R* ~~3.6.1R~~ 3.7.1R.

...

Part 2: Comes into force on 1 April 2012

16 Annex 19BG NOTES FOR COMPLETION OF THE MORTGAGE LENDING & ADMINISTRATION RETURN ('MLAR')

...

INTRODUCTION: GENERAL NOTES ON THE RETURN

...

4b. Sale and rent back business

...

Guidance to sale and rent back (SRB) firms on the completion of the MLAR

...

~~It is recognised that SRB products are not loans. However, in order to use the MLAR as a vehicle for capturing data on these products, they are to be treated in some sections of the MLAR as if they were loan products. Therefore SRB providers should note the following in relation to their reporting of SRB agreements and SRB assets:~~

In section A

- Do **not** enter any information on SRB agreements in A1.6 ‘Loans to customers’ or A3.5 ‘Other loans’.
- Report SRB assets in A1.11.
- Report any liabilities incurred in acquiring SRB assets in A2.7.
- ~~Details of SRB agreements should be entered in A3.5 ‘Other loans’, in the ‘Unsecuritised balances’ section.~~

In section B

- Where applicable, information on SRB agreements should be entered in B2.5 ‘Other loans’.

...

16 Annex 29AG Guidance notes for the data item in SUP 16 Annex 29R

...

Validation number	Data element	Sign	Formula
...			
9	20A	=	14A-19A <u>19A-14A</u>
...			

Annex E

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Comes into force on 31 December 2012

1 Annex 1CR Illustration of the online reporting requirements, referred to in DISP 1.10.2AR

...

1 Does the data reported in this return cover *complaints* about matters relating to the *retail investment activities* carried out by one or more ~~than one~~ *retail investment adviser(s) (RIA)*? ~~If 'Yes', then list the individual reference numbers (IRNs) of all the *retail investment advisers* included in this return.~~ Please list the individual reference numbers of all the RIAs included in this return.

Yes/No

...

Annex F

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

2A.3 Guidance on RAP recognition requirements

...

- 2A.3.2 G The *guidance* in relation to the *recognition requirements* in the sections of *REC 2* listed in Column A of the table below applies to an *RAP* in relation to the equivalent *RAP recognition requirements* listed in Column C and (if shown) with the modifications in Column B.

Table: Guidance on RAP recognition requirements

Column A <i>REC 2</i> guidance which applies to an <i>RAP</i>	Column B Modification to <i>REC 2</i> guidance for an <i>RAP</i>	Column C Relevant <i>RAP</i> recognition requirement
...
<i>REC 2.5.3G</i> to <i>REC 2.5.20G</i> (Systems and controls and conflicts) and <i>REC 2.5A</i> (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg <u>16</u> and <u>17(2)(f)</u>
...
<i>REC 2.7.3G</i> to <i>REC 2.7.4G</i> (Access to facilities)	The <i>FSA</i> shall have regard to whether an <i>RAP</i> provides access to bid at auctions only to those <i>persons</i> eligible to bid under article 18 of the <i>auction regulations</i> .	Reg <u>17(2)(a)</u> and <u>20</u>
...

Annex G

Amendments to the Listing Rules sourcebook (LR)

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

Appendix 1 Relevant definitions

...

percentage ratio (in relation to a transaction) the figure, expressed as a percentage, that results from applying a calculation under a *class test* *test* to the transaction.

Annex H

Amendments to the Perimeter Guidance manual (PERG)

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

2.6 Specified investments: a broad outline

...

Alternative finance investment bonds

...

2.6.11C G The arrangements which grant rights under an *alternative debenture* arise where:

...

(4) the bond-issuer undertakes under the arrangements:

(a) to make a repayment in respect of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond term (whether or not in instalments); and

(b) ...

(5) the amount of the additional payments does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital; and

...

4.4 What is a regulated mortgage contract?

...

Type of lending

4.4.11 G The definition of *regulated mortgage contract* also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as secured overdraft facility, a secured bridging loan, a secured credit card facility, and ~~so-called ‘equity release loans’ (defined as regulated lifetime mortgage contracts in this guidance)~~ under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the interest) is not required until the property is sold, usually on the death of the borrower.

4.4.12 G A number of products, however, are excluded from the definition, such as:

- (1) loans secured by a second or subsequent charge (as the lender does not have a first charge); and
- (2) loans secured on commercial premises (as the borrower will not be using the land as or in connection with a dwelling); and
- (3) ~~so-called ‘home reversion schemes’, under which a property owner (usually an older person) sells some or all of his interest in the property in return for a lump sum (usually a proportion of the value of the property sold) and a right to reside at the property for the rest of his life. (It should be noted, however, that the Government announced in May 2005 that ‘home reversion schemes’ and ‘flexible tenure products’ are to be regulated by the FSA and that it would be introducing legislation to this effect.)~~ [deleted]

...

14.2 General issues

Q2. What is the purpose of the Regulation of Financial Services (Land Transactions) Act 2005?

This Act makes clear that the potential regulatory scope of the Financial Services and Markets Act 2000 enables the FSA to regulate activities that are similar to those that are already regulated when carried on in relation to traditional mortgages but which involve the provider acquiring land rather than simply providing finance for its purchase by the homeowner. This typically includes:

- schemes (~~often termed ‘equity release schemes’~~) where a provider buys an interest in a homeowner’s property and allows the homeowner to continue to reside in the property (‘home reversion plans’); and
- certain types of Islamic financing arrangements designed to enable the purchase of a home in a way that is acceptable under Islamic law, such as Ijara or diminishing Musharaka (‘home purchase plans’); and
- schemes where a provider buys an interest in a homeowner’s property and allows the homeowner to continue to reside in the property in return for payment of rent (‘sale and rent back agreement’).

...

14.3 Activities relating to home reversion plans

...

Q6. Will a ~~mortgage-to-rent scheme~~ sale and rent back agreement be a home reversion plan?

~~No. This is most unlikely as mortgage-to-rent schemes do not usually provide for the homeowner (having sold his property to the scheme provider), or a related person as the case~~

~~may be, to occupy the property until he dies or enters a care home or for a fixed period of at least twenty years.~~ Where an arrangement meets the requirements for both a *regulated sale and rent back agreement* and a *home reversion plan*, it will be treated as a *home reversion plan* only and will not be a *regulated sale and rent back agreement*. Guidance on the meaning of a *regulated sale and rent back agreement* is in PERG 14.4A (Activities relating to regulated sale and rent back agreements).

...

FEES PROVISIONS (2012/2013) INSTRUMENT 2012

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 99 (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) 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 2012.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Fees Provisions (2012/2013) Instrument 2012.

By order of the Board
21 March 2012

Annex

Amendments to the Fees manual (FEES)

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

4 Annex 5R Periodic fees for designated professional bodies payable in relation to the period 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013

Table of fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date
The Law Society of England & Wales	£ 41,530 <u>£36,595</u>	30 April 2011 <u>2012</u>
...	...	
...		

...

4 Annex 6R Periodic fees for recognised investment exchanges, recognised clearing houses and recognised auction platforms payable in relation to the period 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013

...

Part 1 – Periodic fees for UK recognised clearing houses and recognised investment exchanges

Name of UK recognised body	Amount payable	Due date
Euroclear UK & Ireland Limited	£ 325,000 <u>£300,000</u>	30 April 2011 <u>2012</u>
	...	
ICE Futures Europe Ltd	£ 255,000 <u>£250,000</u>	30 April 2011 <u>2012</u>
	...	
LIFFE Administration and Management	£ 400,000 <u>£375,000</u>	30 April 2011 <u>2012</u>
	...	

LCH Clearnet Limited	£375,000	30 April 2011 <u>2012</u>
	<u>£350,000</u>	
	...	
The London Metal Exchange Limited	£237,500	30 April 2011 <u>2012</u>
	<u>£225,000</u>	
	...	
London Stock Exchange plc	£335,000	30 April 2011 <u>2012</u>
	<u>£307,000</u>	
	...	
EDX London Ltd	£60,000	30 April 2011
	£30,000	1 September 2011
PLUS Markets Plc	£110,000	30 April 2011 <u>2012</u>
	<u>£95,000</u>	
	...	
European Central Counterparty Limited	£187,500	30 April 2011 <u>2012</u>
	<u>£177,500</u>	
	...	
ICE Clear Europe Limited	£275,000	30 April 2011 <u>2012</u>
	<u>£270,000</u>	
	...	
Chicago Mercantile Exchange Clearing Europe	£125,000	30 April 2011 <u>2012</u>
	<u>£200,000</u>	
	...	
...		

...

6 Annex 1R 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 2011 to 31 March 2012	£1,000,000,000
<u>1 April 2012 to 31 March 2013</u>	<u>£1,000,000,000</u>

FEES (MISCELLANEOUS AMENDMENTS) (NO 4) INSTRUMENT 2012

- 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 99 (Fees);
 - (b) section 101 (Part 6 rules: general provisions);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 234 (Industry Funding);
 - (f) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (g) paragraphs 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI);
 - (2) the following powers and related provisions in the Regulated Covered Bond Regulations 2008 (SI 2008/346):
 - (a) regulations 18, 20, 24 and 25 (notification requirements);
 - (b) regulation 42 (Guidance); and
 - (c) regulation 46 and paragraph 5 of Schedule 1 (fees); and
 - (3) the following provisions of the Electronic Money Regulations 2011 (SI 2011/99):
 - (a) regulation 49 (Reporting requirements);
 - (b) regulation 59 (Costs of supervision); and
 - (c) regulation 60 (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 April 2012.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C

Regulated Covered Bonds sourcebook (RCB)	Annex D
--	---------

Citation

- E. This instrument may be cited as the Fees (Miscellaneous Amendments) (No 4) Instrument 2012.

By order of the Board
21 March 2012

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

issuer

...

- (5) (in *RCB* and *FEES* 3, where applicable) (as defined in Regulation 1(2) of the *RCB Regulations*) a person which issues a *covered bond*.

...

Annex B

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
...		
(zl) An applicant for recognition as an <i>accredited body</i>	...	
<u>(zm) An issuer applying for registration of a regulated covered bond.</u>	(1) Unless (2) applies, <u>£45,000.</u> (2) In the case of a <u>proposed covered bond or programme where the assets in the asset pool will consist primarily of UK residential mortgages,</u> <u>£25,000.</u>	<u>On or before the date the application is made.</u>
<u>(zn) An issuer who proposes to make a material change to the contractual terms of a regulated covered bond under RCB 3.5.4D.</u>	<u>£6,500</u>	<u>On or before the date the notification under RCB 3.5.4D is made.</u>

3 Annex 1R Authorisation fees payable

...

Part 7 – Change of legal status – sponsors fees

An application involving only a simple change of legal status for the purposes of FEES 3.2.7R(j) is from an applicant:

(1) which is a new legal entity intending to carry on the business of an existing sponsor (as defined in the listing rules) in respect of which the FSA does not currently require, and is not proposing to require, remedial action relating to any aspect of its provision of sponsor

<u>services</u>); and	
(2) which (subject to any changes required only as a result of the change in legal status) is to:	
	<u>(a) assume all of the rights and obligations in connection with any of the sponsor activities of the existing sponsor under the listing rules;</u>
	<u>(b) make no changes to the systems and controls of the existing sponsor which ensure that the existing sponsor can carry out its role as sponsor in accordance with LR 8 (Sponsors: Premium listing);</u>
	<u>(c) have the individuals within the existing sponsor that are engaged in the provision of sponsor services engaged in the same role for the applicant; and</u>
	<u>(d) otherwise continue to comply in all respects with the criteria for approval as a sponsor set out in LR 8.6.5R.</u>

...

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

...

Part 2

Sponsor Application Fees	
Fee type	Fee amount
Application for approval as <i>sponsor</i>	£15,000
<u>Application for approval as <i>sponsor</i> following change of legal status in accordance with FEES 3 Annex 1, Part 7</u>	<u>£5,000</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.

...		
-----	--	--

Category 4	Non-equity <i>prospectus</i> or <i>base prospectus</i> (excluding drawdown <i>prospectus</i> or <i>base prospectus</i>) Equivalent document referred to in <i>PR</i> 1.2.2R(2) or (3) or <i>PR</i> 1.2.3R(3) or (4)	...
...		
Category 6	Non-equity <i>securities note</i> and <i>summary</i> Summary document referred to in <i>PR</i> 1.2.3R(8)	£660 £825
...		
Category 8	Drawdown <i>prospectus</i> or <i>base prospectus</i>	£660

...

4.2 Obligation to pay periodic fees

...

4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
<i>Sponsors</i>	<p><u>(1) Approval of <i>sponsor</i>, unless (2) applies.</u></p> <p><u>(2) In the case of approval of a <i>sponsor</i> following a change of legal status in accordance with FEES 3 Annex 1, Part 7, the balance of the fee otherwise due from the original <i>sponsor</i>.</u></p> <p><u>Where a payment is made in accordance with (2) the original <i>sponsor's</i> obligation to pay that fee ceases.</u></p>
...			

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

...

Part 2
....

Activity group	Tariff base
...	
A.10	<p>NUMBER OF TRADERS Any <i>employee</i> or agent, who:</p> <ul style="list-style-type: none"> • ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FSA</i> in its fee-block A.10 (firms dealing as principal); and who, • as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>. <p>But not any <i>employees</i> or agents who work solely in the <i>firm's MTF</i> operation.</p> <p><u>A firm may, as an option, report <i>employees</i> or agents as full-time equivalents (FTE), taking account of any part-time staff. In calculating the FTE, firms must take into account the total hours <i>employees</i> or agents have contracted to work for the firm and not the time <i>employees</i> or agents devote to the function of dealing as principal. Any figures using the FTE calculation to be recorded to one decimal place, rounded down to the nearest decimal place.</u></p>
...	

4 Annex 11R Periodic fees in respect of payment services carried on by fee-paying payment service providers under the Payment Services regulations and electronic money issuance by fee-paying electronic money issues under the Electronic Money Regulations in relation to the period 1 April 2011 to 31 March 2012

...

Part 3	...
Activity Group	Tariff base

...	
G.10	<p>Average outstanding electronic money as defined under regulation 2(1) of the <i>Electronic Money Regulations</i>.</p> <p>This is the average total amount of financial liabilities related to <i>electronic money</i> in issue at the end of each calendar day over the preceding six <u>twelve</u> calendar months (which is the period ending on the date set out under Part 4), calculated on the first calendar day of each calendar month and applied for that calendar month (£million). <u>This tariff base applies for the period 2012/13.</u></p>
...	

...

5 Annex 1 Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2011/12

...

Compulsory jurisdiction – general levy

Industry block	Tariff base	General levy payable by firm
...		
18 – <i>fee-paying electronic money issuers</i>	<p>For all <i>fee-paying electronic money issuers</i> except for <i>small electronic money institutions</i>, a flat fee <u>average outstanding <i>electronic money</i></u>, as described in <i>FEES 4 Annex 11R Part 3</i>. <u>This tariff base applies for the period 2012/13.</u></p>	£180 [tbc]
...

...

Annex C

Amendments to the Supervision manual (SUP)

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

16 Annex 18AR Retail Mediation Activities Return ('RMAR')

...

SECTION J: data required for calculation of fees

Part 1

	FSA <u>Annual Regulated Income</u>	FOS <u>Relevant Annual Income</u>	FSCS <u>Annual Eligible Income</u>
Home finance mediation	see <i>FEES 4</i> Annex 1R Part 2 fee_block A18	<i>FEES 5</i> Annex 1R industry block 16	<i>FEES 6</i> Annex 3R sub-class E2
Non-investment insurance mediation	see <i>FEES 4</i> Annex 1R Part 2 fee_block A19	<i>FEES 5</i> Annex 1R industry block 17	<i>FEES 6</i> Annex 3R sub-class B2
Life and pensions mediation	n/a <u>Annual income as defined in Part 2 for the financial year ended in the calendar year ending 31 December 2012 in respect of fee blocks A.12 and A.13</u>	n/a <u>Annual income as applied in relation the equivalent activity groups set out in Part 1 of <i>FEES 4</i> Annex 1R in respect of industry blocks 8 and 9</u>	<i>FEES 6</i> Annex 3R sub-class C2
Investment mediation	n/a <u>Annual income as defined in Part 2 for the financial year ended in the calendar year ending 31 December 2012 in respect of fee blocks A.12 and A.13</u>	n/a <u>Annual income as applied in relation the equivalent activity groups set out in Part 1 of <i>FEES 4</i> Annex 1R in respect of industry blocks 8 and 9</u>	<i>FEES 6</i> Annex 3R sub-class D2

Number of relevant CF30s	n/a	FEES 5 Annex 1R industry block 8/9	n/a
--------------------------	-----	------------------------------------	-----

Part 2

Definition of annual income

“Annual income” for the purposes of life and pensions mediation and investment mediation in respect of the data required for the calculation of FSA and FOS fees, is an amount equal to the net amount retained by the firm of all income due to the firm in respect of, or in relation to, the provision in the UK of the regulated activities specified in FEES 4 Annex 1R, Part 1 as belonging to fee-blocks A.12 and A.13.

For the purposes of calculating annual income, ‘net amount retained’ means:

(a) all brokerages, commissions, fees, and other related income (for example, administration charges, overrides, profit shares etc) due to the firm in respect of, or in relation to, the provision in the UK of the regulated activities specified in FEES 4 Annex 1R, Part 1 as belonging to fee-blocks A.12 or A.13 and which the firm has not rebated to clients or passed on to other authorised firms (for example, where there is a commission chain).

Plus:

(b) any ongoing commission from previous business received by the firm during the reporting year.

Plus:

(c) the ‘commission-equivalent’ of any relevant business. In this instance, the ‘commission equivalent’ is an estimate of the amount the firm would otherwise have received for any regulated activity under (a) above, but for which it has made a business decision not to charge.

...

16 Annex 18BG Notes for completion of the Retail Mediation Activities Return ('RMAR')

...

Section J: data required for calculation of fees

...

Data for fees calculations	<i>Firms</i> will need to report data for the purposes of calculating <i>FSA</i> , <i>FOS</i> and <i>FSCS</i> levies.
FSA	The relevant information required is the tariff data set out in <i>FEES</i> 4 Annex 1R Part 2 under fee-blocks A.18 and A.19 and, in respect of fee-blocks A.12 and A.13, the tariff data set out under the definition of "annual income" in Section J of <i>SUP</i> 16 Annex 18AR as read together with the guidance on calculating and apportioning annual income below. Note that <i>firms</i> are required to report tariff data information relating to all business falling within fee-blocks A.12/A.13/A.18/A.19 and not simply that relating to retail investments.
FOS	The relevant information required is the tariff data set out in <i>FEES</i> 5 Annex 1R industry blocks 8/9, 16 and 17 and, in respect of industry blocks 8 and 9, the tariff data set out under the definition of "annual income" in Section J of <i>SUP</i> 16 Annex 18AR as read together with the guidance on calculating and apportioning annual income below. Note that <i>firms</i> are required to report tariff data information relating to all business falling within investments industry blocks 8/9, 16 and 17.
...	

...

For reporting dates after end February 2008, *firms* should report the information in their year end *RMAR*. *Firms* which do not yet have data for a full 12 months ending on their *accounting reference date* (for example if they have not traded for a complete financial year by the time of the *accounting reference date*) should complete Section J with an 'annualised' figure based on the actual income up to their *accounting reference date*. That is, such *firms* should pro-rate the actual figure as if the *firm* had been trading for 12 months up to the *accounting reference date*. So for a *firm* with 2 months of actual income of £5000 as at its *accounting reference date*, the 'annualised' figure that the *firm* should report is £30,000.

The following table sets out guidance on how a *firm* should calculate annual income as defined in Section J of *SUP* 16 Annex 18AR.

Guidance on calculating and apportioning annual income

Calculating annual income

(1) Annual income should include all amounts due to the *firm* arising out of the *regulated activities* referred to in fee-blocks A.12 and A.13 for which the *firm* holds permission, including regular *charges* and instalments due to the *firm* during the reporting year.

The *firm* should refer to the fee-block definitions in FEES 4 Annex 1R, Part 1 to decide which particular income streams should be taken into account when calculating its annual income for the purposes of fee-blocks A.12 and A.13.

(2) To avoid any doubt, the *firm* should exclude from the calculation of its annual income any *regulated activities* belonging to fee-blocks A.12 and A.13 where the performance of such *regulated activities* is entirely incidental to the carrying out by the *firm* of the *regulated activity of managing investments* belonging to fee-block A.7.

(3) To avoid double-counting, amounts which have been passed on to other firms may be excluded from the calculation of annual income. Transfers of income to other firms may be especially common within *groups* where, to present a single interface to *clients*, all amounts due to the *group* may be collected by one *firm* for subsequent redistribution to other *firms* within the *group*. It is for *groups* themselves to decide the most convenient way to report such annual income – i.e. whether the *firm* which receives the full amount should declare such full amount, or whether each *firm* in the *group* should report its separate distribution.

(4) The *firm* should include earnings from those who will become its appointed representatives immediately after authorisation.

(5) If any *fee* payable by the *firm* to another party for arranging a transaction with a *client* exceeds the amount payable by the end *client*, the *firm* may not take that excess into account in calculating the net amount retained but must instead net the sum payable by the end *client* to zero.

(6) The total should include administration charges and any interest from income related to the *regulated activities*.

(7) Items such as general business expenses (eg employees' salaries and overheads) should not be deducted, nor any penalties or fines that have been levied against the *firm*.

(8) Rebates to *clients* should be excluded and also *fees* or *commission* passed to other authorised *firms*.

(9) *Authorised professional firms* should exclude income from *non-mainstream regulated activities*. They may estimate the proportion of their business that is derived from such activities and split the income from individual invoices accordingly.

Apportioning income

Where a *firm* cannot separate its income on the basis of activities, it may apportion the income on the basis of the proportionate split of business that the *firm* otherwise undertakes. For instance:

(1) If a firm receives annual income from a platform-based business it may report this in line

with a wider breakdown of its activities.

(2) A firm providing corporate finance advice which does not maintain records of the split between regulated activities and non-regulated activities for individual cases may calculate that regulated business accounts for a certain proportion of its business overall and apply that as a multiplier across its income.

(3) A firm may allocate ongoing commission from previous business on the basis of the type of firm it receives the commission from. This avoids tracking back legacy business which may no longer match the provider's current business model.

(4) An authorised professional firm may estimate the proportion of its business that is derived from regulated activity and split its income for individual invoices accordingly.

(5) If a firm has invested income from regulated activities, then any interest received should be reported as income, in proportion to the volume of regulated business it undertakes to avoid tracking back old payments.

(6) Firms' systems ought to be able to distinguish UK from non-UK business to establish which conduct of business regime it was conducted under. If, however, they do not relate the figures back to income streams for the specific regulated activities in a particular fee-block then the firm may make a proportionate split as described above, calculating its regulated UK income on the basis of the overall split between UK and overseas income.

(7) It is for individual firms to determine how they should calculate the appropriate split of income. The FSA is not prescriptive about the methodology. It requires only that:

(a) the approach should be proportionate – the FSA is looking for firms to make their best efforts to estimate the split;

(b) the firm must be able on request to provide a sound and clearly expressed rationale for its approach – for example, if all invoices were analysed over a particular period, the firm should be able to justify the period as representative of its business across the year;

(c) the methodology should be objective – for example, based on random sampling of invoices or random stratified sampling;

(d) the firm must on request be able to provide an audit trail which demonstrates that the choice of methodology was properly considered at an appropriate level or in the appropriate forums within the firm, and the decision periodically reviewed at the same level or in an equivalent forum.

...

Annex D

Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

Delete all of RCB 5. The deleted text is not shown.

...

Amend the following as shown.

Schedule 3R Fees and other requirement payments

The provisions relating to fees are set out in ~~RCB Chapter 5~~ FEES 3.2.7R(zm) (application fee), FEES 3.2.7R(zn) (material change fee) and in RCB 3.6.1R (administrative fee).

**LIQUIDITY STANDARDS (MISCELLANEOUS AMENDMENTS NO 5)
INSTRUMENT 2012**

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 2012.

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 Liquidity Standards (Miscellaneous Amendments No 5) Instrument 2012.

By order of the Board
21 March 2012

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.

12.4 Stress testing and contingency funding

...

12.4.16 G The FSA expects that a firm's contingency funding plan will encompass a range of actions that the firm might take in anticipation of or in response to changes in its funding position. These changes could result from either firm-specific or general developments. The FSA anticipates that different actions in a contingency funding plan would be taken at different stages of a developing situation.

...

12.7 Liquid assets buffer

...

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 only:

- (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 only 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.

...

12.7.5 R Subject to *BIPRU 12.7.6R*, for the purpose of *BIPRU 12.7.2R(3)* a firm may include only 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.

...

- 12.7.11 R (1) For the purpose of *BIPRU* 12.7.9R(3), a ~~firm~~ *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 *BIPRU* 12.7.2R(2). [deleted]~~
- (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.
- (5) A *firm* must also ensure that it periodically tests its operational ability to raise funds, through the use of central bank liquidity facilities to which it has access, using a proportion of those of its assets not in its liquid assets buffer.

...

12.9 Individual liquidity guidance and regulatory intervention points

...

- 12.9.12 G ...
- 12.9.12A G The FSA expects that a firm will respond dynamically to any deterioration in its liquidity position and will take contingent action as set out in its contingency funding plan well in advance of a potential event.
- 12.9.13 R ~~On the occurrence of any~~ As soon as a firm becomes aware of the occurrence or expected occurrence of the events identified in BIPRU 12.9.14R, a firm must as soon as it becomes aware of the event in question it must immediately provide to the FSA:
- (1) ~~notify the FSA~~ notification in writing of the event;
 - (2) ~~provide the FSA with~~ an adequately reasoned explanation for the ~~deviation~~ event; and
 - (3) ~~implement~~ an indication of the management actions the firm has taken to date to address the event, including actions from 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*.
- ...
- 12.9.18 R For the purposes of BIPRU 12.9.17R, a *firm's* liquidity remediation plan must:
- ...
- (3) in relation to any of the events identified in BIPRU 12.9.14R that has occurred, ~~or is expected to occur,~~ detail the actions that the *firm* intends to take to remedy the ~~relevant deviation event,~~ or avoid the expected ~~deviation~~ event, as the case may be, 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;

...

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 5)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers); and
 - (c) section 157(1) (Guidance); and
- 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 2012.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) 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 Retail Distribution Review (Adviser Charging No 5) Instrument 2012.

By order of the Board
21 March 2012

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1B Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration

...

Requirements on firms facilitating the payment of adviser charges

6.1B.9 R A *firm* that offers to facilitate, directly or through a third party, the payment of *adviser charges* ~~from a retail client's retail investment product or otherwise, including~~ by means of a *platform service* must:

...

6.1B.9A G A firm facilitates the payment of *adviser charges* for the purposes of COBS 6.1B.9R if the *adviser charge* is not paid directly by the *retail client*, but is instead paid on behalf of the *retail client* via the *firm*.

6.1B.9B G A firm may facilitate the payment of *adviser charges* for the purposes of COBS 6.1B.9R by:

- (1) selling all or part of the *retail client's retail investment product* to pay the *adviser charge*; or
- (2) disposing of or reducing all or part of the *retail client's rights* under the *retail investment product* (for example, by way of a part disposal which creates benefits under a *life policy*) to pay the *adviser charge*; or
- (3) separating out an amount or amounts for the payment of the *adviser charge* from the amount received from the *retail client* to be invested or from the *premium* in the case of a *life policy*; or
- (4) paying the *adviser charge* from the *retail client's* cash account.

...

6.1D Product provider requirements relating to consultancy charging and remuneration

...

Requirements on firms facilitating the payment of consultancy charges

6.1D.9 R A *firm* that offers to facilitate, directly or through a third party, the payment of *consultancy charges* ~~from an employee's investment in a group personal~~

~~pension scheme or group stakeholder pension scheme~~ must:

...

- 6.1D.9A G A firm facilitates the payment of consultancy charges for the purposes of COBS 6.1D.9R if the consultancy charge is not paid directly by the employee, but is instead paid on behalf of the employee via the firm.
- 6.1D.9B G A firm facilitates the payment of consultancy charges for the purposes of COBS 6.1D.9R by:
- (1) selling all or part of, or rights under, the employee's investment in a group personal pension scheme or group stakeholder pension scheme to pay the consultancy charge; or
 - (2) disposing of or reducing all or part of the employee's rights under the group personal pension scheme or group stakeholder pension scheme (for example, by way of a part disposal which creates benefits under a life policy) to pay the consultancy charge; or
 - (3) separating out an amount or amounts for the payment of the consultancy charge from the amount received from the employer on behalf of the employee or from the premium in the case of a life policy.

...

15.2 The right to cancel

...

Disclosing a right to cancel or withdraw

- 15.2.5 R (1) The *firm* must disclose to the *consumer*:
- (a) in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract that attracts a right to cancel or withdraw; and
 - (b) in a *durable medium*;
- the existence of the right to cancel or withdraw, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it indicating the address to which the notification of cancellation or withdrawal should be sent.
- (1A) If the firm offers to facilitate, directly or through a third party, the payment of adviser charges or consultancy charges, it must disclose to the consumer at the same time as it makes the disclosure in (1):

- (a) whether any refund will include an *adviser charge* or *consultancy charge*; and
- (b) that the *consumer* may be liable to pay any outstanding *adviser charges* or *consultancy charges*.

...

Annex B

Amendments to the Supervision manual (SUP)

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

16 Annex 21R REPORTING FIELDS

R This is the annex referred to in SUP 16.11.7R

...

2 SPECIFIC REPORTING FIELDS

(a) Retail investments

The following data reporting fields must be completed, where applicable, for all *retail investment* transactions, including *structured capital-at-risk products*:

Data reporting field	Illustrative code (where applicable)	Notes
...		
Total <i>premium/contribution</i> amount	Numeric £	Enter annualised amount rounded to nearest £ <u>If the <i>firm</i> facilitates the payment of an <i>adviser charge</i> or <i>consultancy charge</i>, enter the amount paid into the <i>retail investment product</i>, irrespective of whether this amount includes the <i>adviser charge</i> or <i>consultancy charge</i>.</u>
...		

**CONDUCT OF BUSINESS SOURCEBOOK (CONTRACTING OUT)
INSTRUMENT 2012**

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 145 (Financial promotion rules);
 - (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. This instrument comes into force on 6 April 2012.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Contracting Out) Instrument 2012.

By order of the Board
21 March 2012

Annex A

Amendments to the Glossary of definitions

Delete the following definitions.

appropriate personal pension ~~a personal pension scheme or a stakeholder pension scheme which is an appropriate scheme under section 7(4) of the Pension Schemes Act 1993 or section 3(4) of the Pension Schemes (Northern Ireland) Act 1993.~~

contracting out comparison a description of:

- (a) ~~the benefits that minimum contributions would secure if a retail client did not contract out of the State Second Pension; and~~
- (b) ~~the material differences between the anticipate position if a retail client remains contracted into the State Second Pension and the anticipated position if that client contracts out;~~

~~which is calculated to the client's state retirement age using the lower and higher rates of return and aggregate contributions for the current tax year and any future tax years in the period ending 5 April 2012.~~

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

13.4 Contents of a key features illustration

...

13.4.4 R There is no requirement to include a *projection* in a *key features illustration*:

...

(2) if the product is:

(a) a *SIPP* from which no *income withdrawals* are being taken ~~(but if the *SIPP* is being used to contract out of the State Second Pension, the *key features illustration* must include a projection for an *appropriate personal pension* and a *contracting out comparison*, for those benefits);~~ or

(b) a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*).

...

13 Annex 2 Projections

...

R	
3	How to calculate a projection for a future annuity
3.1	A <i>projection</i> for a future annuity must:
	...
(3)	(for a protected rights annuity) be calculated on a unisex basis so the policyholder has female mortality and the spouse has male mortality; [deleted]
	...

...

R

4	How to calculate a projection for an appropriate personal pension [deleted]	
4.1	(If a <i>client</i> is considering whether to contract out), a <i>projection</i> for an appropriate personal pension must include or be accompanied by	
	(1)	a <i>contracting out comparison</i> providing a description of:
	(a)	the benefits that minimum contributions would secure if a <i>retail client</i> did not contract out of the State Second Pension; and
	(b)	the material differences between the anticipated position if a <i>retail client</i> remains contracted into the State Second pension and the anticipated position if that <i>client</i> contracts out;
		which is calculated to the <i>client's</i> state retirement age using the lower and higher rates of return in 4.2R and aggregate contributions for the current tax year and any future tax years in the period ending 5 April 2012;
	(2)	an explanation that the figures in the comparison are intended to illustrate:
	(a)	the amount of the pension that the <i>client</i> might get compared with the benefit to be given up under the State Second Pension; and
	(b)	what might happen if the lower and higher rates of return were achieved each year.

R	
4.2	This table belongs to 4.1R
Pre and post vesting real rates of return for contracting out comparisons	
Lower rate	Higher rate
1%	3%

14.2 Providing product information to clients

The provision rules

14.2.1 R A *firm* that sells:

...

(3A) ~~the variation of a *SIPP* to a *retail client*, to contract out of the State Second Pension, must provide the *client* with a *projection* for an *appropriate personal pension* and a *contracting-out comparison* for those benefits together with such additional information as is necessary for the *client* to understand the consequences of the variation; [deleted]~~

...

Annex C**Amendments to the Supervision manual (SUP)**

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

16.8 Persistence reports from insurers and data reports on stakeholder pensions

...

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

...

16.8.13 R A persistency or data report must not report on any of the following:

...

(2) ~~an appropriate *personal pension scheme* to which contributions are made only by the Department of Social Security; [deleted]~~

...

**EMPLOYERS' LIABILITY INSURANCE: DISCLOSURE BY INSURERS (NO 2)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2012.

Amendments to the Handbook

- D. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Employers' Liability Insurance: Disclosure by Insurers (No 2) Instrument 2012.

By order of the Board
21 March 2012

Annex

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

8.4 Employers' Liability Insurance

Application

8.4.1 R ...

(3) In this section references to:

- (a) an 'employers' liability register' are to the employers' liability register referred to in *ICOBS* 8.4.4R(1)(a);
- (b) a '*director's* certificate' are to ~~the~~ a statement complying with the requirements in *ICOBS* 8.4.4R(1)(b); ~~and~~
- (c) *employers' liability insurance* include business accepted under *reinsurance to close* covering *employers' liability insurance* (including business that is only included as *employers' liability insurance* for the purposes of this section); and
- (d) a 'qualified *director's* certificate' are to the statement complying with the requirements in *ICOBS* 8.4.4R(1)(b)(ii).

...

Purpose

8.4.3 G The purpose of *ICOBS* 8.4 is to assist individuals with claims arising out of their course of employment in the *United Kingdom* for employers carrying on, or who carried on, business in the *United Kingdom*, to identify an *insurer* or *insurers* that provided *employers' liability insurance* (other than certain co-insurance and excess cover arrangements) by requiring *insurers* to produce an employers' liability register. In particular it aims to assist ex-employees whose employers no longer exist or who cannot be located.

Principal obligation to produce an employers' liability register and supporting documents

8.4.4 R (1) A firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under *reinsurance to close*, which includes *United Kingdom* commercial lines *employers' liability insurance*, must:

- (a) ...

- (b) obtain and submit to the FSA a written statement, by a *director* of the *firm* responsible for the production of the employers' liability register, that to the best of the *director's* knowledge the *firm in its production of the register has been properly prepared in accordance* is either:
- (i) materially compliant with the requirements of *ICOBS* 8.4.4R(2) and *ICOBS* 8 Annex 1; or
 - (ii) not materially compliant with the provisions referred to in (i), in which case the statement must also set out, to the best of the *director's* knowledge, the information required by *ICOBS* 8.4.4AR; and
- (c) obtain and submit to the FSA ~~an independent assurance~~ a report ~~addressing the accuracy and completeness of the employers' liability register~~ satisfying the requirements of *ICOBS* 8.4.4CR, prepared by an auditor satisfying the requirements of *SUP* 3.4 and *SUP* 3.8.5R to 3.8.6R, and addressed to the *directors* of the *firm*.

(1A) For the purposes of *ICOBS* 8.4.4R(1)(b):

- (a) 'materially compliant' means that in relation to at least ninety-nine percent of *policies* for which information is required to be included, the information in the register does not contain any inaccuracy or lack faithful reproduction (as relevant) that would affect the outcome of a search when compared to a search carried out with fully accurate and/or faithfully reproduced information; and
- (b) the *firm* must ensure that the *director's* certificate includes the description of 'materially compliant' referred to in (a).

...

(3) For the purposes of (1)(b) and (c) the *director's* certificate and ~~independent assurance~~ report prepared by an auditor must:

- (a) relate to a version of the register as at a date no later than 12 *months* after it is first produced in accordance with (1)(a); and
- (b) be obtained and submitted to the FSA within ~~3~~ four *months* of the date in (a).

...

8.4.4A R The information referred to in *ICOBS* 8.4.4R(1)(b)(ii) is:

- (1) a description of the ways in which the *firm*, in its production of the register, is not materially compliant;
- (2) the number of *policies*, in relation to which, either:

- (a) the *firm* is not able to include any information in the register; and/or
- (b) information is included in the register but information may be incorrect or incomplete;

in each case as a proportion of the total number of *policies* required to be included in the register;

- (3) where the *firm* is only practicably able to provide an estimate of the numbers in (2), the basis of each estimate; and
- (4) a description of the systems and controls used in the production of the register and of the steps, together with relevant timescales, that the *firm* is taking to ensure that the *firm* will be materially compliant as soon as practicable.

8.4.4B G In relation to the written statement referred to in *ICOBS* 8.4.4R(1)(b):

- (1) *ICOBS* 8.4.4R(1)(b) does not preclude the relevant *director* from, in addition, including in the *director's* statement any of the following as relevant:
 - (a) if a *firm's* employers' liability register is more than materially compliant, a statement to this effect, and/or a statement of the extent to which the *director* considers, to the best of his knowledge, the *firm* to be compliant in its production of the register;
 - (b) reasons for the level of any non-compliance; and/or
 - (c) information relating to *policies* which are not required to be included in the register;
- (2) the statement regarding the *firm's* level of compliance with requirements in *ICOBS* 8.4.4R(2) and *ICOBS* 8 Annex 1, and, in relevant cases, the steps the *firm* is undertaking to ensure material compliance as soon as practicable, does not alter the underlying requirement that the *firm* has to comply fully with the relevant requirements in *ICOBS* 8.4.4R(2) and *ICOBS* 8 Annex 1 (that is, not just to a material extent). So, it is possible that a *firm* will be able to comply with *ICOBS* 8.4.4R(1)(b) but continue to not fully comply with the underlying requirements, for example, in respect of the *policies* falling outside the ninety-nine percent threshold. In relation to these *policies*, as well as those identified in any qualified *director's* certificate, the *firm* will need to remedy errors or omissions as soon as practicable, and have systems and controls in place to give effect to this on an ongoing basis.

8.4.4C R The report referred to in *ICOBS* 8.4.4R(1)(c) must:

- (1) be prepared on the basis of providing an opinion under a *limited assurance engagement* confirming whether the auditor has found no reason to believe that the *firm*, solely in relation to the *firm's* extraction of

information from its underlying records, has not materially complied with the requirements in *ICOBS* 8.4.4R(2) and *ICOBS* 8 Annex 1 in the production of its employer's liability register, having regard in particular to the possible errors and omissions referred to in (3) below;

- (2) use the description of material compliance as referred to in *ICOBS* 8.4.4R(1A)(a) adapted as necessary to apply solely to the *firm's* extraction of information from its underlying records;
- (3) address, in particular, the following risks:
- (a) information relating to certain *policies* issued or renewed on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the *firm's* underlying records;
- (b) information relating to certain *policies* in respect of which claims were made on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the *firm's* underlying records;
- (c) relevant information required to be included in the register, and which is included in the *firm's* underlying records, is omitted from, or is inaccurately entered on to, the register; and
- (d) information relating to *policies* which do not provide *employers' liability insurance* are included in the register.

...

FSA notification requirements

8.4.6 ...

8.4.6A R A *firm* with potential liability under an excess *policy* and which satisfies the requirements in *ICOBS* 8 Annex 1.1.1BR must notify the *FSA* before the date upon which it first seeks to rely upon that *rule* and ensure that the requirements of *ICOBS* 8.4.6R(2) are satisfied in respect of this notification.

Requirement to make employers' liability register and supporting documents available

8.4.7 R (1) A *firm* must make available:

- (a) the information in the employers' liability register either:
- (i) ...
- (ii) by arranging for a tracing office which meets the conditions in *ICOBS* 8.4.9R to make the information available on the tracing office's website; and
- (b) ~~on request,~~ the latest *director's* certificate ~~and independent~~

assurance report and the latest report prepared by an auditor for the purposes of *ICOBS* 8.4.4R(1)(c), to a tracing office which has obtained information from the *firm* for the purposes of providing comprehensive tracing information, in accordance with *ICOBS* 8.4.4R(2)(d), provided that the tracing office has agreed with the *firm* not to disclosure confidential information in the certificate and the report to third parties, save as required by law.

(2) If a *firm* arranges for a tracing office to make information available for the purposes of (1)(a)(ii) the *firm* must:

- (a) send to the tracing office copies of its latest *director's* certificate and ~~independent assurance~~ report prepared by the *firm's* auditor provided that the tracing office has agreed with the *firm* not to disclosure confidential information in the certificate and the report to third parties, save as required by law;

...

8.4.8 E For the purposes of *ICOBS* 8.4.4R(2)(d) and *ICOBS* 8.4.7R(1)(a)(ii) the existence of published and up-to-date versions of both a certificate from the *directors* of the tracing office, stating that the tracing office has complied in all material respects with the requirements in *ICOBS* 8.4.9R(1) to (6), and ~~an independent a report under a reasonable assurance engagement report,~~ addressing the accuracy and completeness of the tracing office's database, may be relied upon as tending to establish that a *firm* has satisfied the requirement to use a tracing office which meets the conditions in *ICOBS* 8.4.9R(1) to (6).

Qualifying tracing offices

8.4.9 R The conditions referred to in *ICOBS* 8.4.4R(2)(d) and *ICOBS* 8.4.7R(1)(a)(ii) are that the tracing office is one which:

...

- (2) maintains adequate records of the *director's* certificates and ~~independent assurance~~ reports prepared by an auditor sent to it by *firms* for the purposes of complying with these *rules*;

...

(7) includes in its published annual report:

- (a) a certificate from the *directors* of the tracing office stating whether the tracing office has complied with the requirements in (1) to (6) in relation to the period covered by the annual report; and
- (b) an independent ~~assurance~~ report commissioned under a *reasonable assurance engagement* satisfying the requirement in *ICOBS* 8.4.9AR, addressing the accuracy and completeness of the database, prepared by an auditor satisfying the requirements of *SUP* 3.4 and *SUP* 3.8.5R to 3.8.6R, and addressed to the *directors* of the tracing

office; and

(8) ...

8.4.9A R The requirement referred to in *ICOBS* 8.4.9R(7)(b) is that the report must include an opinion from the auditor confirming whether, in all material respects, the tracing office maintains a database which accurately and reliably stores information submitted to it by *firms* for the purpose of complying with relevant requirements in *ICOBS* 8.4 and that it has systems which can adequately keep it up to date in the light of new information provided by *firms*.

...

Updating and verification requirements

8.4.11 R (1) A *firm* must notify the *FSA*:

- (a) of any information provided to the *FSA* under *ICOBS* 8.4.6R or *ICOBS* 8.4.6AR which ceases to be true or accurate; and
- (b) of the new position, in accordance with the notification requirements under *ICOBS* 8.4.6R;

...

(2) A *firm* producing an employers' liability register must:

...

- (d) obtain and submit to the *FSA* a *director's* certificate:
 - (i) no later than twelve *months* after the date of the most recent *director's* certificate, obtained and submitted to the *FSA* in accordance with *ICOBS* 8.4.4R(1)(b) or this *rule*;
 - (ii) complying with the requirements, and containing ~~the statement~~ one of the statements, set out in *ICOBS* 8.4.4R(1)(b); and
 - (iii) in relation to a version of the employers' liability register dated no more than ~~three~~ four *months* prior to the date of the *director's* certificate;
- (e) obtain and submit to the *FSA* ~~an independent assurance~~ a report prepared by an auditor:
 - (i) no later than twelve *months* after the date of the most recent ~~independent assurance~~ report, obtained and submitted to the *FSA* in accordance with *ICOBS* 8.4.4R(1)(c) or this *rule*;
 - (ii) complying with the requirements, ~~and containing the statement~~, set out in *ICOBS* 8.4.4R(1)(c); and

- (iii) in relation to a version of the employers' liability register dated no more than ~~three~~ four months prior to the date of the ~~assurance~~ report; and
- (f) make available, in accordance with *ICOBS* 8.4.7R, the *director's* statement in (d) and the ~~independent assurance~~ report in (e) no later than ~~3~~ four months after the effective date of the version of the register to which they relate, in place of the previous certificate and report.

8.4.12 G ...

8.4.12A R (1) For the purposes of *ICOBS* 8.4.11R(2)(a), 8.4.11R(2)(b) and *ICOBS* 8 Annex 1 a claim is deemed to be made in relation to a *policy* at the date on which the *firm* establishes, or otherwise accepts, that it has provided relevant cover under the *policy*, and is therefore potentially liable subject to the terms of the *policy*.

(2) A *firm* must use reasonable endeavours to establish whether it has provided relevant cover:

- (a) within three *months* of being notified of a potential claim; or
- (b) if that is not possible, as soon as is reasonably practicable thereafter.

...

8 Annex 1 Employers' liability register

See *ICOBS* 8.4.4R(1)(a).

Part 1 In relation to information to be included in the employers' liability register

1.1 R A *firm* must:

- (1) for each *policy* it enters into or renews on or after 1 April 2011, include, in relation to that *policy*, all the information required by the form in 1.2R, in accordance with the notes;
- (2) for each *policy* not falling in (1) and in relation to which a claim is made on or after 1 April 2011, include, in relation to that *policy*, all the information required by the form in 1.2R that the *firm* holds, in accordance with the notes; and
- (3) in relation to (1) and (2) include the notes set out in 1.2R.

1.1A R A *firm* is not required to include information required by 1.1R(1) and (2) to the extent that it relates to the *firm's* potential liability as a co-insurer, other than as the lead *insurer*, under a co-insurance arrangement satisfying the following conditions:

- (1) the risk is covered by a single contract at an overall premium and for the same period by two or more *insurers* each for its own part;
- (2) one of the *insurers* is the lead *insurer* who is treated as if it were the *insurer* covering the whole risk;
- (3) the lead *insurer* fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating;
- (4) the *firm* has entered into and maintains with the lead *insurer* up-to-date written agreements identifying the *policies* in relation to which the *firm* is a co-insurer of the lead *insurer* and the proportions of the risk for which the co-insurer is responsible; and
- (5) the *firm* is satisfied that the lead *insurer* complies with the requirements in 1.1R(1) and (2) in relation to the co-insured *policies*.

1.1B R A *firm* is not required to include information required by 1.1R(1) and (2) to the extent that it relates solely to the *firm's* potential liability under an excess *policy* where another *insurer* has principal liability for the risk, and the following conditions are satisfied:

- (1) the principal *insurer's* maximum liability under the primary *policy* covering the risk is for no less than £5,000,000 in relation to a single event;

- (2) the *firm* has no liability to potential claimants until those claimants have exhausted their remedies against the principal *insurer*; and
- (3) the *firm* has adequate arrangements for identifying and recording the *policies* in relation to which the *firm* provides excess cover under an *excess policy*.

1.2 R FORM (*see next page*)

EMPLOYERS' LIABILITY REGISTER (effective date: ~~6 March 2011~~ [])

FRN (Firm Reference Number)	Name of Insurer						
Policy Number	Policy inception date	Policy end date			Name of Original Insurer		
Policyholder name							
Employer's Name 1.1	...	...	....	...	...	ERN(s) (HMRC Employer reference number (s))	...
Employer's Name 1.2	...	...	...	...	...
Employer's Name 1.3	...	...	...	...	...
...							
Policy Number 2	...	...			
Employer Name 2.1	...	...	...	...	...	ERN(s) (HMRC Employer reference number(s))	...
...							

NOTES

-
7. The ERN is the employers' reference number provided by Her Majesty's Revenue and Customs for that employer if registered for PAYE. If the employer has more than one ERN then all ERNs must be included in the register, if it is practicable to do so. Otherwise, the firm must include the ERN that applies to the largest number of employees.
-

continued

Part 2 In relation to information not required to be included

- 2.1 R A *firm carrying out policies*, in relation to which information is not required to be included in the register under *FSA rules*, must, beneath the form in 1.2R, state the following, where applicable, tailored as necessary to the *firm's* circumstances:

“We have potential liability for policies under which UK commercial lines employers’ liability cover has been provided to employers and which commenced or were renewed before 1 April 2011 and in respect of which no claims were made on or after 1 April 2011. However, we are not required to make details of those policies available in this register under *FSA rules*. Enquiries may be made about these policies by individual claimants, their authorised representatives, or insurers or their insurance intermediaries, with potential claims, by contacting [insert contact details]”

- 2.1A R A *firm* with potential liability as a co-insurer and which satisfies the requirements of 1.1AR must tailor the statement in 2.1R to include reference to the following:

- (1) that the *firm* has potential liability for *policies* under which *UK* commercial lines employers’ liability cover has been provided to employers for which the *firm* was co-insurer, but not lead insurer, but that the *firm* is not required to make details of those *policies* available in the register under *FSA rules*; and
- (2) responsibility for making information available in relation to *policies* to which (1) applies is with the lead insurer.

- 2.1B R A *firm* with potential liability under an excess *policy* and which satisfies the requirements of 1.1BR must tailor the statement in 2.1R to include reference to the following:

- (1) that the *firm* has potential liability for *policies* under which *UK* commercial lines employers’ liability cover has been provided to employers for which it provides cover only in excess of that provided by another *insurer* (and where the principal cover is for £5m or more) but that the *firm* is not required to make details of those *policies* available in the register under *FSA rules*; and
- (2) responsibility for making information available in relation to the *policy* providing the principal cover is with the principal *insurer*.

- 2.2 G The purpose of 2.1R, 2.1AR and 2.1BR is to inform users of the register that the *firm* may be potentially liable in relation to *policies* other than those in the register. However, a *firm* may include *policies* additional to those entered into, renewed, or in relation to which a claim was made, after April 2011, in the register. If it does, the statement in 2.1R, 2.1AR or 2.1BR may be amended as necessary to refer to the *policies* that are not included.

...

TP 1 Transitional Provisions

...

Employers' liability insurance: disclosure by insurers

7 R ...

8 R (1) ...

(2) For the purposes of *ICOBS* 8.4.4R(3)(a) a *firm* required to produce an employers' liability register under *ICOBS* 8.4.4R(1)(a) must obtain and submit to the FSA a director's certificate and ~~an independent assurance~~ a report prepared by an auditor required by *ICOBS* 8.4.4R(1)(c):

(a) in relation to the register as at 1 April 2012; and

(b) by 1 ~~July~~ August 2012.

TP 8R(1) applies until 1 April 2012 and TP 8R(2) applies until 1 ~~July~~ August 2012.

8A R For the purposes of the *director's* certificate required under *ICOBS* 8.4.4R(1)(b) a *firm* will be deemed to have complied with *ICOBS* 8.4.4R(1)(b) to the extent that:

(1) the *director's* certificate states that the employers' liability register as at 1 April 2012 has been properly prepared in accordance with *ICOBS* 8.4; and

(2) the *director* has made the statement in (1) on the basis that the *firm* in preparing the register has been materially compliant (as described in *ICOBS* 8.4.4R(1A)(a)) with the requirements in *ICOBS* 8.4.4R(1)(b).

TP 8AR applies until 1 August 2012.

8B R For the purposes of the report prepared by an auditor required under *ICOBS* 8.4.4R(1)(c):

(1) a *firm* will not be regarded as having breached *ICOBS* 8.4.4R(1)(c) if the *firm* has obtained and submitted to the *FSA* an independent assurance report addressing the accuracy and completeness of the employers' liability register following discussions with its auditors as to the form and content of the report, even if that report does not comply with *ICOBS* 8.4.4CR;

- (2) notwithstanding (1), a *firm* will be deemed to have complied with *ICOBS* 8.4.4R(1)(c) to the extent that the report obtained and submitted includes a detailed account of the procedures performed and the results of those procedures including, as a minimum:
- (a) a description of the underlying records from which the register is extracted;
 - (b) a description, and the results, of the tests aimed at addressing the risk that the register is not completely and accurately compiled from data held on the *firm's* underlying records, and of the method of selecting the sample and the rationale for its being representative, including the following:
 - (i) a reconciliation of the number of, and the identity of, *policies* for which information is included in the register against the number of, and the identity of, relevant *policies* for which details are contained in the underlying records and testing reconciliations to ensure that reconciling items are explained and appropriate;
 - (ii) analysis of a representative sample of relevant employers liability claims made to the *firm* to ensure claims made have been entered onto the register; and
 - (iii) analysis of a representative sample of *policies* in relation to which information appears on the register to ensure that all required information is included and that the included information is accurate compared to the information contained in the underlying records;
 - (c) for the purposes of (b)(ii) and (iii), unless (d) applies, the *firm* must adopt the following approach to determining a representative sample in relation to each set of claims made, or *policies*, for which the same systems and controls are used in producing information for the register:
 - (i) for each set of claims made or *policies*, a sample may be regarded as representative if the ratio of the minimum number in the sample to 25 is equal to the ratio of the square root of the total number of claims made or *policies* within the set to the square root of

1000, subject to a minimum of 10 *policies* or claims made; and

- (ii) for sets where the information required to be placed on the register relates to fewer than 10 *policies*, the sample may be regarded as representative if it includes all of those *policies*;
- (d) where the *firm* and the auditor consider that the approach to determining a representative sample set out in (c)(i) to (iii) are inappropriate having regard to the *firm's* particular circumstances, the report must set out the reasons for selecting a different representative sample by reference to the methods set out in (c); and
- (e) any other procedures agreed between the *firm* and the auditor as deemed necessary to be carried out by the auditor to test the extraction of information from underlying records by the *firm* for the purposes of *ICOBS* 8.4.4R(1)(a) tailored as appropriate to correspond to the *firm's* particular circumstances and the results of those procedures.

TP 8BR(1) applies until 1 August 2012.

TP 8BR(2) applies until 1 August 2012 for all *firms*, and thereafter until 1 August 2014 or, if earlier, the date upon which the *firm* first obtains a *director's* certificate which is not a qualified *director's* certificate.

- 8C G The requirement set out in 8BR(2) is for what is commonly referred to by auditors as 'agreed upon procedures' under which the auditor is not required to provide an opinion or express assurance. All *firms* will be able to provide reports based on 'agreed upon procedures', instead of a *limited assurance engagement*, up until 1 August 2012. After that only *firms* which obtain qualified *director's* certificates will be able to use agreed upon procedures, and only until (and including) 1 August 2014, or, if earlier, the date upon which they first obtained a non-qualified *director's* certificate.
- 9 G ...
- 9A R (1) For the purposes of *ICOBS* 8.4.4R(1)(a), to the extent that a *firm* is unable to include information required under *ICOBS* 8.4.4R(2)(b)(ii) solely because of a failure by a third party outside the *firm's* control, then provided that the *firm* has used, and continues to use, best endeavours to obtain that information, other than refusing to provide cover to an employer solely because it has not provided the information

requested, the *firm* will be deemed to comply with the requirements in *ICOB*S 8.4.4R(2)(b)(ii) and the corresponding parts of *ICOB*S 8 Annex 1.

- (2) For the purposes of *ICOB*S 8.4.4R(1)(b) and (1)(c), a *firm* must treat references to compliance with *ICOB*S 8.4.4R(1)(a), *ICOB*S 8.4.4R(2) and *ICOB*S 8 Annex 1 as if TP 9AR did not apply.

- 9B G The effect of TP 9AR(1) is that a *firm* will not be in breach of the requirements to include relevant information on its register to the extent that it is unable to obtain that information from third parties over which it does not exercise control. However, in order to be able to rely on this provision the *firm* will need to be able to demonstrate that it has used its best endeavours to obtain the information from the third party over the relevant time period and continues to do so, other than by refusing to provide cover to that employer solely for failure to provide relevant information. The effect of TP 9AR(2) is that even though the *firm* may not be regarded as being in breach of the underlying requirements in *ICOB*S 8.4.4R(1)(a), the *director's certificate* and report prepared by an auditor will need to be addressed at the level of compliance of the register as if TP 9AR(1) did not provide any transitional relief from the *firm* being in breach.

TP 9AR(1) and (2) and 9BG apply until 1 April 2013.

...

- 10A R For the purposes of *ICOB*S 8.4.6AR, if, as at 31 March 2012, a *firm* has obtained a *waiver* having the same effect as *ICOB*S 8 Annex 1.1.1BR, it must notify the *FSA* up to one *month* after, instead of before, the date upon which it first seeks to rely on *ICOB*S 8 Annex 1.1.1BR.

...

- 13 R For the purposes of *ICOB*S 8.4.11R(2)(a), 8.4.11R(2)(b), *ICOB*S 8.4.12AR, *ICOB*S 8 Annex 1, TP 8, TP 8B and TP 9, in relation to references to claims made in relation to *policies*:

...

- (2) if, as at 1 April 2011, a *firm's* systems ~~records~~ record claims by reference to the date the claim was created in the *firm's* systems or the date upon which it was settled, then, notwithstanding *ICOB*S 8.4.12AR, that *firm* may treat references to the date that a claim was made as a reference to the date that the claim was created in the *firm's* systems, or if applicable to the *firm*, the date that the claim was settled.

TP 13R(2) applies until 1 April ~~2012~~ 2013.

...

Schedule 2 Notification requirements

Sch 2.1

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
<u>ICOBS 8.4.4R1(b)</u> , <u>ICOBS 8.4.4R(3)</u> , <u>ICOBS 8.4.11R(2)(d)</u>	A statement satisfying the requirements of <u>ICOBS 8.4.4R(1)(b)</u>	A statement satisfying the requirements of <u>ICOBS 8.4.4R(1)(b)</u>	Obtaining a statement satisfying the requirements of <u>ICOBS 8.4.4R(1)(b)</u>	Four <i>months</i> from the date of the version of the register being commented on in accordance with <u>ICOBS 8.4.4R(3)</u> or <u>8.4.11R(2)(d)</u>
<u>ICOBS 8.4.4R1(c)</u> , <u>ICOBS 8.4.4CR</u> , <u>ICOBS 8.4.4R(3)</u> , <u>ICOBS 8.4.11R(2)(e)</u>	A report satisfying the requirements of <u>ICOBS 8.4.4CR</u>	A report satisfying the requirements of <u>ICOBS 8.4.4CR</u>	Obtaining a report satisfying the requirements of <u>ICOBS 8.4.4CR</u>	Four <i>months</i> from the date of the version of the register being reported on in accordance with <u>ICOBS 8.4.4R(3)</u> or <u>8.4.11R(2)(e)</u>
<u>ICOBS 8.4.6R</u>	...	....	...	...
<u>ICOBS 8.4.6AR</u>	That the <i>firm</i> has potential liability under an excess <i>policy</i> and satisfies the requirements and relies on the provisions in <u>ICOBS 8 Annex 1.1.1BR</u>	A statement that the <i>firm</i> has potential liability under an excess <i>policy</i> ; satisfies the requirements and relies on the provisions in <u>ICOBS 8 Annex 1.1.1BR</u>	<i>Firm</i> relies on <u>ICOBS 8 Annex 1.1.1BR</u>	Prior to reliance on <u>ICOBS 8 Annex 1.1.1BR</u>
<u>ICOBS 8.4.11R</u>	Changes to the accuracy of the contents of the	Details of the change and of the new position	Changes to the accuracy of a notification	Within one <i>month</i> of the change

	notification in <i>ICOBS</i> 8.4.6R(1) or <u><i>ICOBS</i> 8.4.6AR</u>		made under <i>ICOBS</i> 8.4.6R or <u><i>ICOBS</i></u> <u>8.4.6AR</u>	
--	--	--	---	--

CREDIT UNIONS (NORTHERN IRELAND) INSTRUMENT 2012**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 149 (Evidential provisions);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 213 (The compensation scheme);
 - (f) section 214 (General); and
 - (g) section 226 (Compulsory jurisdiction); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the FSA’s 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 March 2012.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex C
Supervision manual (SUP)	Annex D
Decision Procedure and Penalties manual (DEPP)	Annex E
Compensation sourcebook (COMP)	Annex F
Credit Unions New sourcebook (CREDS)	Annex G

Notes

- E. In Annex G (CREDS) 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 Credit Unions (Northern Ireland) Instrument 2012.

By order of the Board
21 March 2012

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. The text is not underlined.

Great Britain credit union a body corporate registered under the Industrial and Provident Societies Act 1965 as a *credit union* in accordance with the Credit Unions Act which is an *authorised person*.

Northern Ireland credit union a body corporate registered under the Credit Unions (Northern Ireland) Order 1985 which is an *authorised person* or a body corporate registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a *credit union* which is an *authorised person*.

Amend the following definitions as shown.

attached shares (in *CREDS*) means any shares in the *credit union* (other than any *deferred shares*):

- (a) (in relation to a *Great Britain credit union*) the withdrawal of which is not permitted by section 7(5) of the Credit Unions Act 1979 or (in relation to a *Northern Ireland credit union*) the withdrawal of which is not permitted by article 23(4) of the Credit Unions (Northern Ireland) Order 1985; or
- (b) (in relation to a *Great Britain credit union*) the withdrawal of which is not permitted by the terms of a loan made to a member; or
- (c) the withdrawal of which is not permitted without seeking and obtaining the permission of the committee of management of the *credit union*.

~~Paragraph~~ In relation to a *Great Britain credit union*, paragraph (c) of this definition is relevant only where the *credit union* made a loan to the holder of the shares before the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 came into force.

<i>consumer</i>	<p>...</p> <p>(4) ...</p> <p>(5) <u>(with respect to Northern Ireland credit unions and in relation to the FSA's power to make general rules, the protection of consumers objective and independent inquiries) a person within (2)(a), (2)(b), (2)(c) or (3)(b).</u></p> <p>(6) <u>(with respect to Northern Ireland credit unions and in relation to the establishment of the Consumer Panel) a person within (5) other than an authorised person.</u></p>
<i>credit union</i>	<p>a body corporate registered under the Industrial and Provident Societies Act 1965 as a credit union in accordance with the Credit Unions Act, which is an <i>authorised person</i> or a body corporate registered under the Credit Unions (Northern Ireland) Order 1985 <u>which is an authorised person or a body corporate registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union which is an authorised person.</u></p>
<i>credit unions day</i>	<p><u>(in relation to a Great Britain credit union) 1 July 2002 or (in relation to a Northern Ireland credit union) 31 March 2012.</u></p>
<i>deferred share</i>	<p>(1) ...</p> <p>(2) (in CREDS and COMP 5.3.1R(2)(cA)) <u>in relation to a Great Britain credit union, means any share of a class defined as a deferred share by section 31A of the Credit Unions Act 1979.</u></p>
<i>version 1 credit union</i>	<p>a <i>credit union</i> whose <i>Part IV permission</i> includes a <i>requirement</i> (whether for all or for particular purposes) that it must not lend more than £15,000, or such lesser amount as may be specified, in excess of a member's shareholding; in this definition a "member's shareholding" means any shares held by a member of the <i>credit union</i> in accordance with sections 5 and 7 of the Credit Unions Act 1979 <u>or articles 14 and 23 of the Credit Unions (Northern Ireland) Order 1985 (as appropriate).</u></p>

Annex B

Amendments to the Fees manual (FEES)

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

TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provisions: coming into force
...					
6	FEES 6.3.1R	R	The <i>FSCS</i> must not impose a <i>specific costs levy</i> or a <i>compensation costs levy</i> on a <i>Northern Ireland credit union</i> if that levy relates to a <i>claim against a relevant person that was in default before credit unions day</i> .	From 31 March 2012 indefinitely	For <i>Northern Ireland credit unions</i> 31 March 2012
...					

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

In this Annex, underlining indicates new text.

4.1.9 G ...

- (3) *A credit union cannot carry on home purchase activities or reversion activities because the Credit Unions Act 1979 (in relation to Great Britain credit unions) and the Credit Unions (Northern Ireland) Order 1985 (in relation to Northern Ireland credit unions) restricts the circumstances whereby *credit unions* can hold land.*

Annex D

Amendments to the Supervision manual (SUP)

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

- 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.

...	
Note 2	The annual report required from a <i>credit union</i> by <i>SUP</i> 16.12.5R must be made up for the same period as the audited accounts published by the <i>credit union</i> in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 <u>or provided in accordance with article 49 of the Credit Unions (Northern Ireland) Order 1985 (as appropriate)</u> . <i>CREDS</i> 8.2.6R(2)(a) states that the audited accounts referred to in <i>SUP</i> 16.12.5R are to be made up for the period beginning with the date of the <i>credit union's</i> registration or with the date to which the <i>credit union's</i> last annual accounts were made up, and ending on the <i>credit union's</i> most recent financial year end.
...	

...

16 Annex 15(1)G Notes on completing the Quarterly Return (CQ) for credit unions

...

General Information

The Quarterly Return (CQ) is to be completed by all *credit unions* in ~~Great Britain~~ the United Kingdom as at end March, end June, end September and end December. This form should be completed using the accruals-based accounting method.

...

'CUA 1979' means the Credit Unions Act 1979.

"CUO" means the Credit Unions Order (Northern Ireland) 1985.

...

Membership and complaints contact

page 2 of CQ

Membership

Indicate in the appropriate boxes the number of members that the *credit union* currently has in each category of membership.

“Member” refers to a member (qualifying or non-qualifying) (and over the age at which he may lawfully become a member of the *credit union* ~~under the credit union’s rules, for Great Britain credit unions~~ under the *credit union’s* rules or, for *Northern Ireland credit unions*, under the CUO or the *credit union’s* rules) who, ~~in respect of a Great Britain credit union, can save up to £10,000 or 1.5 per cent of the assets of total non-deferred shares in the Great Britain credit union, whichever is the greater, or who, in respect of a Northern Ireland credit union, can save up to £15,000 or 1.5 per cent of the total shares in the Northern Ireland credit union, whichever is the greater.~~ [A qualifying member is a person who fulfils the membership requirements: a non-qualifying member is a person who no longer fulfils the membership requirements having once done so.]

“Juvenile depositor” refers to a depositor who is a person too young to be a member of the *credit union* (for a *Great Britain credit union* under the credit union’s rules and for a *Northern Ireland credit union* under the CUO or the *credit union’s* rules), who can save up to a maximum of £10,000, or 1.5% of the total non-deferred shares in the *credit union* but cannot take out a loan from the *credit union*.

...

5B Audited reserves - other

Money that your *credit union* has set aside out of net profits (in accordance with CREDS 5.3.2R) - for example, a “revenue reserve” for unforeseen circumstances.

This will include initial capital which has not yet been spent.

Please note:

Where a revaluation reserve is included within other reserves, this should only include revaluation reserves counting towards capital under CREDS 5.2.1R(6) to CREDS 5.2.1R(8).

If money is held in a deferred share reserve by a Great Britain credit union, it should not be included within

other reserves, but reported separately in the supplementary analysis to the quarterly return.

Please refer to Chapter 5 of *CREDS*. ...

...

7F Unattached shares/juvenile deposits

...

“attached shares” are shares that act as security for a loan, or for *Great Britain credit unions* and shares that cannot be withdrawn under the terms of the loan, or, for *Great Britain credit unions* that made loans to members prior to the coming into force of the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 and *Northern Ireland credit unions*, shares that cannot be withdrawn without the permission of the committee of management.

...

NOTES ON COMPLETING SUPPLEMENTARY ANALYSIS OF THE QUARTERLY RETURN

General Information

The Supplementary Analysis of the Quarterly Return should be completed as part of the Quarterly Return by credit unions in Great Britain where they meet one or more of the following conditions at the end of the quarter:

- the credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the credit union has issued deferred shares in accordance with section 31A of the Act; or
- the credit union has admitted corporate members under section 5A of the Act.

The Supplementary Analysis of the Quarterly Return is intended to break down some of the information contained in the Quarterly Return in order to give a clearer picture of the financial position of credit unions that undertake the activities listed above.

The Credit Unions (Northern Ireland) Order 1985 does not provide for *Northern Ireland credit unions* to undertake the activities listed above. Therefore, *Northern Ireland credit unions* do not need to complete the Supplementary Analysis of the Quarterly Return.

...

16 Annex 15(2)G Notes on completing the Annual Return (CY) for credit unions

...

The Annual Return (CY) should be completed by all *credit unions* in ~~Great Britain~~ the United Kingdom at the end of their financial year ... It should be completed using the accruals-based accounting method.

...

Send the fully completed Annual Return (CY) (including a completed auditor's statement) to the Financial Services Authority in accordance with SUP 16.3.6R – SUP 16.3.13R by the date stated in the *credit union's* rules (which for a Great Britain credit union should be within 7 months of the financial year ending on or before 31 July 2012 and within 6 months of any subsequent financial year end and for a Northern Ireland credit union should be within 6 months of the financial year end). Failure to do so is a breach of your regulatory requirements, as laid down in CREDS, and may result in your *credit union* being subject to FSA sanctions.

...

'CUA 1979' means the Credit Unions Act 1979.

"CUO" means the Credit Unions Order (Northern Ireland) 1985.

...

Front page

...

A1 **Membership** ...

A “juvenile depositor” is a person who is too young to be a member of the *credit union* (for Great Britain credit unions under the credit union’s rules or, for Northern Ireland credit unions, under the CUO or the credit union’s rules), who can save up to a maximum of £10,000 or 1.5% of the total non-deferred shares in the credit union, but cannot take out a loan from the *credit union*.

Audited accounts

Delete “Yes or No” as appropriate. Audited annual accounts are required by the Friendly and Industrial and Provident Societies Act 1968 and the CUO. Attach a copy of the accounts before returning the Annual Return (CY). See *CREDS* 8.2.6R.

...

2P **Other reserves** ...

If money is held in a deferred share reserve by a Great Britain credit union, it should not be included within other reserves, but reported separately in the supplementary analysis to the annual return.

...

13F **Value of unattached shares** ...

“attached shares” are shares that act as security for a loan, ~~and~~ or for Great Britain credit unions shares that cannot be withdrawn under the terms of the loan, or, for Great Britain credit unions that made loans to members prior to the coming into force of the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 and Northern Ireland credit unions, shares that cannot be withdrawn without the permission of the committee of management.

...

14C **Interest receivable**

The amount of interest charged on loans to members ~~this should not exceed 12.68% per year.~~

...

NOTES ON COMPLETING SUPPLEMENTARY ANALYSIS OF THE ANNUAL RETURN

General Information

The Supplementary Analysis of the Annual Return should be completed as part of the Annual Return by credit unions in Great Britain where they meet one or more of the following conditions at the end of the financial year:

- the credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the credit union has issued deferred shares in accordance with section 31A of the Act;
- the credit union has admitted corporate members under section 5A of the Act; or
- the rules of the credit union limit the number of non-qualifying members of the credit union, in accordance with section 5(5) of the Act.

The Supplementary Analysis of the Annual Return is intended to break down some of the information contained in the Annual Return in order to give a clearer picture of the financial position of credit unions that undertake the activities listed above.

The Credit Unions (Northern Ireland) Order 1985 does not provide for *Northern Ireland credit unions* to undertake the activities listed above. Therefore, *Northern Ireland credit unions* do not need to complete the Supplementary Analysis of the Quarterly Return.

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

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

...

Section of the Credit Unions Act 1979	Description	Handbook reference	Decision maker
20	where the <i>FSA</i> is proposing to cancel or suspend the registration of a <i>credit union</i> or to petition for the winding up of a <i>credit union</i>		<i>RDC</i>

<u>Articles of the Credit Unions (Northern Ireland) Order 1985</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>60(1), 61(1) and 63</u>	<u>where the <i>FSA</i> is proposing to consent to the Registrar of Credit Unions for Northern Ireland cancelling or suspending the registration of a <i>Northern Ireland credit union</i>, or petitioning for the winding up of a <i>Northern Ireland credit union</i></u>		<i>RDC</i>

Annex F

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

TP 1.1 Transitional Provisions table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...					
<u>28</u>	<u>COMP 16.3</u>	<u>R</u>	<u>A Northern Ireland credit union need not comply with COMP 16.3 until 30 September 2013.</u>	<u>From 31 March 2012 until 30 September 2013</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
<u>29</u>	<u>COMP 17</u>	<u>R</u>	<u>COMP 17 does not apply to a Northern Ireland credit union until 30 September 2012.</u>	<u>From 31 March 2012 until 30 September 2012</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
<u>30</u>	<u>COMP 17.3 and COMP 17.2.7R</u>	<u>R</u>	<p><u>(1) This transitional provision applies to Northern Ireland credit unions.</u></p> <p><u>(2) If a Northern Ireland credit union operates less than 5,000 accounts held by eligible claimants, it may make or revoke an election (under COMP 17.2.7R) that the electronic SCV rules do not apply.</u></p> <p><u>(3) A Northern Ireland credit union that has made a valid election</u></p>	<u>From 31 March 2012 until 30 September 2012</u>	<u>For Northern Ireland credit unions 31 March 2012</u>

		<p><u>under (2) must provide the FSA with an SCV pre-implementation report by 30 June 2012 based on the Northern Ireland credit union's progress as at 30 June 2012 which must:</u></p> <p><u>(a) state the number of accounts held by eligible claimants as at 30 June 2012;</u></p> <p><u>(b) confirm that the Northern Ireland credit union is making the election in (2); and</u></p> <p><u>(c) state whether the Northern Ireland credit union's board of directors believes the Northern Ireland credit union will comply with the FSA's SCV requirements by 30 September 2012 and if not why not.</u></p> <p><u>(4) A Northern Ireland credit union that has not made a valid election under (2) must provide the FSA with an SCV pre-implementation report by 30 June 2012 based on the Northern Ireland credit union's progress as at 30 June 2012 which must state:</u></p> <p><u>(a) whether the Northern Ireland credit union has a plan for implementing the FSA's SCV requirements;</u></p> <p><u>(b) how the Northern Ireland credit union proposes to transfer to</u></p>		
--	--	---	--	--

			<p><u>the FSCS a single customer view for each eligible claimant including specifying the transfer method and format;</u></p> <p><u>(c) the dates the Northern Ireland credit union started implementation and plans to end implementation and whether implementation is on time;</u></p> <p><u>(d) whether the Northern Ireland credit union's board of directors believes implementation will be completed by 30 September 2012 and if not why not; and</u></p> <p><u>(e) any issues that may impact on the Northern Ireland credit union's ability to implement by 30 September 2012.</u></p>		
<u>31</u>	<u>COMP 17.3</u>	<u>R</u>	<p><u>A Northern Ireland credit union to which COMP 17 applies must provide the FSA with an SCV implementation report and an SCV report by 30 September 2012.</u></p>	<u>From 31 March 2012 until 30 September 2012</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
<u>32</u>	<u>COMP 17.3.10R and COMP 17.3.12R</u>	<u>R</u>	<p><u>(1) A Northern Ireland credit union 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) by 30 September 2012.</u></p>	<u>From 31 March 2012 until 30 September 2012</u>	<u>For Northern Ireland credit unions 31 March 2012</u>

			<p><u>(2) The FSCS must advise the FSA whether the information provided by a Northern Ireland credit union'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>		
--	--	--	--	--	--

...

Schedule 2 Notification requirements

...

2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COMP</i> 17.3.4R	...			
<u><i>COMP</i> TP 30R(2) and <i>COMP</i> 17.2.7R</u>	<u>Election or revocation of election that the <i>electronic SCV rules</i> do not apply</u>	<u>See Matter to be notified</u>	<u>See Matter to be notified</u>	<u>Immediately</u>

Annex G

Credit Unions New sourcebook (CREDS)

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

- 1.1.1 G (1) The Credit Unions New Sourcebook, *CREDS* for short, is the specialist sourcebook for *credit unions*.
- (2) ~~Northern Ireland credit unions are not covered by the *Handbook* or by *CREDS*. They are exempt from the *general prohibition* in respect of *accepting deposits*. They do not, therefore, need to be *authorised persons* if they do not carry on any *regulated activity* other than *accepting deposits* in the United Kingdom. [deleted]~~
- ...
- 2.2.4 R A *credit union* must establish, maintain and implement an up-to-date business plan approved by the committee of management and supply a copy on request to the *FSA*.
- [Note: a transitional provision applies to this rule: see *CREDS* TP 1.6.]
- ...
- 2.2.6 R A *credit union* must establish, maintain and implement an up-to-date and fully documented policies and procedures manual, and supply a copy on request to the *FSA*.
- [Note: a transitional provision applies to this rule: see *CREDS* TP 1.6.]
- ...
- 2.2.8 R A *credit union* must establish, maintain and implement a fully documented system of control.
- [Note: a transitional provision applies to this rule: see *CREDS* TP 1.6.]
- ...
- 2.2.14 G Under section 4(1) of, and Schedule 1 to, the Credit Unions Act 1979 or article 8(1) of, and Schedule 1 to, the Credit Unions (Northern Ireland) Order 1985, as appropriate, a *credit union* is required to have a committee of management. The committee of management should be competent to control the affairs of a *credit union*, and have an appropriate range of skills and experience relevant to the activities carried on by the *credit union*.
- ...
- 3.2.1 R Subject to the general limitations on its powers contained in the Credit

Unions Act 1979 or the Credit Unions (Northern Ireland) Order 1985 (as appropriate) and to the limitations contained in *CREDS* 3.2.2R and *CREDS* 3.2.3R, a *credit union* may invest its surplus funds and funds serving liquidity purposes only in the following types of *investment*:

...

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.7.]

...

- 3.2.2 R Any *securities* invested in, or loans made, in accordance with *CREDS* 3.2.1R by a *version 1 credit union* must have a maturity date of not more than 12 *months* from the date on which the *investment* is made.

[Note: transitional provisions apply to this rule: see *CREDS* TPs 1.8 and 1.9.]

- 3.2.3 R Any *securities* invested in, or loans made, in accordance with *CREDS* 3.2.1R by a *version 2 credit union* must have a maturity date of not more than five years from the date on which the *investment* is made.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.10.]

...

- 3.2.6 G (1) A *credit union* may accept a loan from another *credit union* (section 10(1) of the Credit Unions Act 1979 or article 27(1) of the Credit Unions (Northern Ireland) Order 1985 (as appropriate)).

...

...

- 3.3.7 R A *version 2 credit union* must establish, maintain and implement an up-to-date financial risk management policy statement approved by the committee of management.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.6.]

...

- 4.2.1 R (1) A *Great Britain credit union* must not permit a member to have or claim any interest in the shares of the *Great Britain credit union*, other than *deferred shares*, exceeding the greater of:

(1) £10,000; or
(a)

(2) 1.5 per cent of the *total non-deferred shares* in the *Great Britain credit union*.
(b)

(2) A Northern Ireland credit union must not permit a member to have or claim any interest in the shares of the Northern Ireland credit union exceeding the greater of:

(a) £15,000; or

(b) 1.5 per cent of the total shares in the Northern Ireland credit union.

...

4.2.4 R Shares in a Great Britain credit union must not be held in the joint names of more than two members.

4.2.4A G There is no restriction on the number of members who may jointly hold shares in a Northern Ireland credit union.

4.2.5 R (1) For the purpose only of the limit in CREDS 4.2.1R(1), the interest of a member in a joint account must be treated as 50 per cent of the shareholding in that account.

(2) For the purpose only of the limit in CREDS 4.2.1R(2), the interest of a member in a joint account must be treated as the percentage represented by that individual member as a percentage of the total number of members holding an interest in the joint account.

...

4.3.1 R (1) A credit union must not accept *deposits* except:

(a) by way of subscription for its shares from *persons* who may lawfully be admitted to membership of the *credit union* under the Credit Unions Act 1979 or the Credit Union (Northern Ireland) Order 1985 (as appropriate) and the rules of the *credit union*; or

...

(2) A credit union must not accept *deposits* exceeding the greater of £10,000 or 1.5 per cent of the *total non-deferred shares* in the *credit union* from a person who is under the age at which, by virtue of (for Great Britain credit unions) any provision of the credit union's rules, (for Northern Ireland credit unions) under article 15 of the Credit Unions (Northern Ireland) Order 1985 or any provision of the credit union's rules, or otherwise, he may lawfully become a member of the *credit union*, unless the *deposits* are held in a *CTF* in which case the *credit union* may accept a larger *deposit*.

...

4.4.1 R A credit union must at all times maintain in force a policy of insurance

complying with *CREDS* 4.4.2R.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.11.]

...

- 5.1.6 G In addition to the capital requirements set out in this chapter, section 7A of the Credit Unions Act 1979 provides that a Great Britain credit union may issue interest-bearing shares only if, among other things, its most recent year end balance sheet shows that it holds reserves of at least £50,000 or 5% of its total assets, whichever is greater.

- 5.1.7 G The Credit Unions (Northern Ireland) Order 1985 does not provide for a Northern Ireland credit union to issue interest-bearing shares or deferred shares.

...

- 5.3.3 R If, at the end of any year of account, the amount in its general reserve stands at less than 10% of its total assets, a *version 1 credit union* must transfer to its general reserve at least 20% of its profits for that year (or such lesser sum as is required to bring the amount in its general reserve up to 10% of its total assets).

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.12.]

...

- 5.3.5 R A *version 1 credit union* may not transfer from its general reserve where its general reserve stands at less than 10% of its total assets.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.12.]

...

- 6.2.4 R A *credit union* must establish, maintain and implement an up-to-date liquidity management policy statement approved by the committee of management and designed to ensure its compliance with *CREDS* 6.2.1R.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.6.]

- 7.1.2 G (1) This chapter seeks to protect the interests of *credit unions*' members in respect of loans to members under section 11 of the Credit Unions Act 1979 or article 28 of the Credit Unions (Northern Ireland) Order 1985. *Principle 4* requires *credit unions* to maintain adequate financial resources and *CREDS* 5 sets out the FSA's detailed capital adequacy requirements in respect of *credit unions*.

...

...

- 7.1.3 G The *rules and guidance* in this chapter are in addition to the provisions of (in relation to *Great Britain credit unions*) section 11 of the Credit Unions Act 1979 and (in relation to *Northern Ireland credit unions*) article 28 of the Credit Unions (Northern Ireland) Order 1985 in relation to loans made by *credit unions*. Under these provisions:
- (1) a *Great Britain credit union* may make a loan only to:
- (a) a member of the *credit union* who is an individual; and
 - (b) a corporate member of the *credit union*, if the *credit union's* rules provide that it may make loans to corporate members and making the loan would not result in the aggregate of the outstanding balances on loans made by the *credit union* to corporate members exceeding the percentage of the aggregate of the outstanding balances on all loans made by the *credit union* specified by or under section 11 of the Credit Unions Act 1979;
 - (c) other *credit unions*;
- (1A) a *Northern Ireland credit union* may make a loan only to:
- (a) a member of the *credit union* who is an individual; and
 - (b) other *credit unions*;

...

...

- 7.2.1 R A *credit union* must establish, maintain and implement an up-to-date lending policy statement approved by the committee of management that is prudent and appropriate to the scale and nature of its business, having regard to the limits outlined in *CREDS* 7.3 to *CREDS* 7.4.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.6.]

...

- 7.2.7 R (1) A *credit union* must not make a loan to:
- (a) ...
 - (b) (in the case of a *Great Britain credit union*) a relative of, or any person otherwise connected with, an officer, *approved person* or paid employee of the *credit union* on terms more favourable than those available to other members of the *credit union*;

- (c) (in the case of a Northern Ireland credit union) a member of the family of, or any person otherwise connected with, an officer, approved person or paid employee of the credit union on terms more favourable than those available to other members of the credit union.

...

- (3) “Member of the family” has the same meaning as in article 2 of the Credit Unions (Northern Ireland) Order 1985.

...

- 7.3.1 R Subject to *CREDS* 7.3.8R, a *version 1 credit union* must not lend for a period of more than five years where unsecured and ten years where secured.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.13.]

...

- 7.3.4 R Subject to *CREDS* 7.3.8R, a *version 2 credit union* must not lend for a period of more than ten years where unsecured and 25 years where secured.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.14.]

...

- 7.4.2 R An individual large *exposure* must not exceed 25% of the *credit union's* capital. In no circumstances may the aggregate total of all large *exposures* exceed 500% of the *credit union's* capital.

[Note: a transitional provision applies to this rule: see *CREDS* TP 1.15.]

...

- 8.2.1 G *SUP* 16.12.5R states that a *credit union* must submit a quarterly return. The content, reporting frequency and due date in relation to that report are shown in *CREDS* 8.2.2G. The form can be found at *SUP* 16 Annex 14(1)G.

[Note: a transitional provision applies to *SUP* 16.12.5R: see *CREDS* TP 1.17.]

...

- 8.2.3 R *SUP* 16.12.5R states that a *credit union* must submit an annual return. The content, reporting frequency and due date in relation to that report are shown in *CREDS* 8.2.4G. The form can be found at *SUP* 16 Annex 14(2)G.

...

[Note: a transitional provision applies to SUP 16.12.5R: see CREDS TP 1.18.]

...

- 8.2.6 R (1) Every *credit union* must send to the *FSA* a copy of its audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 or provided in accordance with article 49 of the Credit Unions (Northern Ireland) Order 1985.

...

...

- 9.2.1 R A *credit union* must provide the *FSA*, once a year, with a report in the format set out in *CREDS* 9 Annex 1R (Credit Union complaints return) which contains (for the relevant reporting period) information about:

...

[Note: a transitional provision applies to this rule: see CREDS TP 1.16.]

...

- 9.2.7 R For the purposes of *CREDS* 9.2.1R:
- (1) the relevant reporting period is from 1 April to 31 March each year; and
 - (2) reports are to be submitted to the *FSA* within one *month* of the end of the relevant reporting period.

[Note: a transitional provision applies to this rule: see CREDS TP 1.16.]

...

Appendix 1 Key Definitions

Note: The following key definitions relevant to CREDS are extracted from the *Glossary*.

App 1.1

attached shares means any shares in the *credit union* (other than any *deferred shares*):

- (a) (in relation to a *Great Britain credit union*) the withdrawal of which is not permitted by section 7(5) of the Credit Unions Act 1979 or (in relation to a *Northern Ireland credit union*) the withdrawal of which

is not permitted by article 23(4) of the Credit Unions (Northern Ireland) Order 1985; or

- (b) (in relation to a *Great Britain credit union*) the withdrawal of which is not permitted by the terms of a loan made to a member; or
- (c) the withdrawal of which is not permitted without seeking and obtaining the permission of the committee of management of the *credit union*.

~~Paragraph~~ In relation to a *Great Britain credit union*, paragraph (c) of this definition is relevant only where the *credit union* made a loan to the holder of the shares before the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 came into force.

deferred shares in relation to a *Great Britain credit union*, means any shares of a class defined as deferred shares by section 31A of the Credit Unions Act 1979.

...

TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provisions: dates in force	Handbook provisions: coming into force
...					
<u>5</u>	<u>CREDS TPs 1, 2, 3 and 4</u>	<u>R</u>	<u>CREDS TPs 1, 2, 3 and 4 do not apply to Northern Ireland credit unions.</u>	<u>From 31 March 2012 for as long as the relevant TPs remain in force</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
<u>6</u>	<u>CREDS 2.2.4R, CREDS 2.2.6R, CREDS 2.2.8R, CREDS 3.3.7R, CREDS 6.2.4R and CREDS 7.2.1R</u>	<u>R</u>	<u>A Northern Ireland credit union need not comply with CREDS 2.2.4R, CREDS 2.2.6R, CREDS 2.2.8R, CREDS 3.3.7R, CREDS 6.2.4R and CREDS 7.2.1R.</u>	<u>From 31 March 2012 until 31 December 2012</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
<u>7</u>	<u>CREDS 3.2.1R</u>	<u>R</u>	<u>A Northern Ireland credit union need not comply with</u>	<u>From 31 March 2012</u>	<u>For Northern</u>

			<u>CREDS 3.2.1R with respect to any types of investment invested in prior to credit unions day provided those types of investment were permitted under the Credit Unions (Northern Ireland) Order 1985 and the Credit Unions (Authorised Investments) Regulations (Northern Ireland) 1995 prior to credit unions day.</u>	<u>until 30 March 2013</u>	<u>Ireland credit unions 31 March 2012</u>
<u>8</u>	<u>CREDS 3.2.2R</u>	<u>R</u>	<u>A Northern Ireland credit union that is a version 1 credit union need not comply with CREDS 3.2.2R with respect to any securities invested in, or loans made, in accordance with CREDS 3.2.1R prior to credit unions day provided those securities or loans mature in accordance with the terms of the relevant agreement as at credit unions day. This transitional provision does not apply to any securities invested in, or loans made, in accordance with CREDS 3.2.1R prior to credit unions day that satisfy the requirements in CREDS 3.2.2R.</u>	<u>From 31 March 2012 until the maturity date of the securities invested in or loans made</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
<u>9</u>	<u>CREDS 3.2.2R</u>	<u>R</u>	<u>A Northern Ireland credit union that is a version 1 credit union need not comply with CREDS 3.2.2R with respect to any securities invested in, or loans made, in accordance with CREDS 3.2.1R using surplus funds within one year from credit unions day and which in accordance with the terms of the relevant agreement have a maturity of up to three years.</u>	<u>From 31 March 2012 until 30 March 2013</u>	<u>For Northern Ireland credit unions 31 March 2012</u>

10	<u>CREDS 3.2.3R</u>	R	<u>A Northern Ireland credit union that is a version 2 credit union need not comply with CREDS 3.2.3R with respect to any securities invested in, or loans made, in accordance with CREDS 3.2.1R prior to credit unions day provided those securities or loans mature in accordance with the terms of the relevant agreement as at credit unions day. This transitional provision does not apply to any securities invested in, or loans made, in accordance with CREDS 3.2.1R prior to credit unions day that comply with CREDS 3.2.3R.</u>	<u>From 31 March 2012 until the maturity date of the securities invested in or loans made</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
11	<u>CREDS 4.4.1R</u>	R	<u>A Northern Ireland credit union need not comply with CREDS 4.4.1R.</u>	<u>From 31 March 2012 until 30 March 2013</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
12	<u>CREDS 5.3.3R and CREDS 5.3.5R</u>	R	<u>Where the requirements of CREDS 7.5.1R, CREDS 7.5.2R and CREDS 7.5.4E would result in a Northern Ireland credit union having to make higher provision than would have been required prior to credit unions day, that Northern Ireland credit union need not comply with CREDS 5.3.3R and CREDS 5.3.5R to the extent that that Northern Ireland credit union may transfer out of its general reserve the amount of provision that is additional to the amount that would have been required prior to credit unions day. If a Northern Ireland credit union takes advantage of this transitional</u>	<u>From 31 March 2012 until the due date for submission by that Northern Ireland credit union of its next annual return</u>	<u>For Northern Ireland credit unions 31 March 2012</u>

			<p><u>provision it must advise the FSA of the amount transferred by the due date of submission for submission of its next annual return. This provision applies even where the amount standing to the Northern Ireland credit union's general reserve is, or as a result of the transfer would be, less than 10% of total assets.</u></p>		
<u>13</u>	<u>CREDS 7.3.1R</u>	<u>R</u>	<p><u>A Northern Ireland credit union that is a version 1 credit union need not comply with CREDS 7.3.1R with respect to any loan outstanding on credit unions day. That loan must be repaid in accordance with the terms as at credit unions day of the relevant loan agreement. This transitional provision does not apply to any loan outstanding on credit unions day that satisfies the requirements in CREDS 7.3.1R.</u></p>	<p><u>From 31 March 2012 until the day the loan is repaid</u></p>	<p><u>For Northern Ireland credit unions 31 March 2012</u></p>
<u>14</u>	<u>CREDS 7.3.4R</u>	<u>R</u>	<p><u>A Northern Ireland credit union that is a version 2 credit union need not comply with CREDS 7.3.4R with respect to any loan outstanding on credit unions day. That loan must be repaid in accordance with the terms as at credit unions day of the relevant loan agreement. This transitional provision does not apply to any loans outstanding on credit unions day that satisfies the requirements in CREDS 7.3.4R.</u></p>	<p><u>From 31 March 2012 until the day the loan is repaid</u></p>	<p><u>For Northern Ireland credit unions 31 March 2012</u></p>
<u>15</u>	<u>CREDS 7.4.2R</u>	<u>R</u>	<p><u>A Northern Ireland credit union need not comply with CREDS 7.4.2R with respect</u></p>	<p><u>From 31 March 2012 until 30</u></p>	<p><u>For Northern Ireland</u></p>

			to any individual large <u>exposure</u> in existence on <u>credit unions day</u> or the <u>aggregate total of all large exposures</u> in existence on <u>credit unions day</u> . Those <u>large exposures</u> must be repaid in accordance with the <u>terms of the agreement relating to the relevant large exposure</u> as at <u>credit unions day</u> . This transitional provision does not apply to any individual large <u>exposure</u> in existence on <u>credit unions day</u> or the <u>aggregate total of all large exposures</u> in existence on <u>credit unions day</u> that comply with <u>CREDS 7.4.2R</u> .	<u>March 2014</u> or the day the <u>individual large exposure</u> or the <u>aggregate total of all large exposures</u> satisfies the <u>requirements in CREDS 7.4.2R</u> if <u>earlier</u>	<u>credit unions 31 March 2012</u>
<u>16</u>	<u>CREDS 9.2.1R and CREDS 9.2.7R</u>	<u>R</u>	<u>A Northern Ireland credit union</u> need not comply with the requirement to submit a <u>return under CREDS 9.2.1R</u> until <u>30 April 2013</u> , and the <u>relevant reporting period under CREDS 9.2.7R</u> for this return is from <u>1 October 2012 to 31 March 2013</u> .	<u>From 31 March 2012</u> until <u>30 April 2013</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
<u>17</u>	<u>SUP 16.12.5R</u>	<u>R</u>	<u>A Northern Ireland credit union</u> need not comply with the requirement to submit <u>quarterly returns under SUP 16.12.5R</u> until <u>31 January 2013</u> for the period from <u>1 October to 31 December 2012</u> .	<u>From 31 March 2012</u> until <u>31 January 2013</u>	<u>For Northern Ireland credit unions 31 March 2012</u>
<u>18</u>	<u>SUP 16.12.5R</u>	<u>R</u>	<u>A Northern Ireland credit union</u> need not comply with the requirement to submit an <u>annual return under SUP 16.12.5R</u> for the year end <u>30 September 2011</u> .	<u>From 31 March 2012</u> indefinitely.	<u>For Northern Ireland credit unions 31 March 2012</u>

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (AMENDMENT NO 6)
INSTRUMENT 2012**

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 22 March 2012

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 6) Instrument 2012.

By order of the Board
21 March 2012

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Significant information to be included in the short report

- 4.5.6 G For the purpose of *COLL* 4.5.5R(1)(d) and *COLL* 4.5.5R(1)(e) the *authorised fund manager* should consider including the following as sufficient and significant information:

...

- (4) the total expense ratio at the end of the period or, in the case of a *UCITS scheme*, the ongoing charges figure together with (where appropriate) any performance-related fee payable to the *authorised fund manager* or any investment adviser, ~~as disclosed in the most up-to-date key investor information;~~

...

...

Permitted transactions (derivatives and forwards)

- 5.2.20 R ...

- (5) A transaction in a *derivative* must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more *transferable securities, approved money-market instruments, units in collective investment schemes or derivatives* provided that a sale is not to be considered as uncovered if the conditions in ~~*COLL* 5.2.22R(3) (Requirement to cover sales)~~ *COLL* 5.2.22R(1) (Requirement to cover sales), as read in accordance with the guidance at *COLL* 5.2.22AG, are satisfied.

...

...

Guidance on syndicated loans

- 5.2.35 G (1) A syndicated loan for the purposes of this *guidance* means a form of loan where a group or syndicate of parties lend money to a third party and, in return, receive interest payments during the life of the debt and a return of principal either at the end of the loan period or amortised over the life of the loan. Such loans are usually arranged through agent banks which may, among other things, maintain a record of the lenders' interest in the loan and arrange or act as a

- conduit for the interest payments. Whether an interest in a syndicated loan constitutes a *transferable security* or otherwise will depend on the terms of the relevant instrument. Where an *authorised fund manager* plans to invest *scheme property* in interests in such syndicated loans, it may wish to consider seeking professional advice as to their eligibility.
- (2) To determine whether an interest in a syndicated loan would be an eligible investment for a *UCITS scheme* in accordance with *COLL 5.2*, an *authorised fund manager* should first consider whether it constitutes a *transferable security* within the meaning of *COLL 5.2.7R* (Transferable securities) and then consider the additional eligibility criteria arising out of the *UCITS eligible assets Directive* that relate to liquidity, valuations and negotiability (see *COLL 5.2.7AR* (Investment in transferable securities)).
- (3) A *UCITS scheme* cannot lend money from its *scheme property*. Accordingly, it is unable to partake in the initial funding of a syndicated loan either as an original lender or as a person who becomes a lender as part of the primary syndication of the loan. However, we recognise that a *UCITS scheme* may be acknowledged as the lender of record as a consequence of the legal form of transfer used to purchase a loan in the secondary market, such as novation.
- (4) An instrument will not be a *transferable security* if it falls within one or more of the exclusions set out in article 77(2) of the *Regulated Activities Order*. An instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services would be an example of an exclusion.
- (5) In the *FSA*'s opinion, for an instrument to be classed as a *debenture* for the purposes of constituting a *transferable security* (see *COLL 5.2.7R(1)(b)*), there must be an instrument creating or evidencing indebtedness. A facilities agreement and a drawdown request which does not create or evidence indebtedness will not be a *debenture* for these purposes.
- (6) In the *FSA*'s view, the simple fact that a debt obligation is legally transferable (whether by way of creation, assignment or otherwise) does not necessarily make it negotiable for the purposes of *COLL 5.2.7AR(1)(e)* (Investment in transferable securities), so as to make it a permissible investment for a *UCITS scheme*. When *securities* are capable of being traded on a capital market, whether *on-exchange* or *off-exchange*, as a class and are fungible within their class, this would tend to indicate (unless the *AFM* was aware of specific evidence to the contrary) that they are negotiable.
- (7) The *FSA*'s understanding is that leveraged loans are a non-investment grade sub-set of syndicated loans and, where this is the case, *AFMs* should use similar analysis to determine whether or not

interests in such loans are eligible investments for UCITS schemes.

- (8) Where a loan falls within the Glossary definition of a transferable security, investment in such a loan in the case of a UCITS scheme is subject to the spread requirements in COLL 5.2.11R (Spread: general). AFMs also need to bear in mind that where such a transferable security does not meet the requirements of COLL 5.2.8R(3) (Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market), the scheme's overall exposure to such loans will count towards the limit in COLL 5.2.8R(4).

...

Borrowing

- 5.3.5 R (1) Cash obtained from borrowing, and borrowing which the authorised fund manager reasonably regards an eligible institution or an approved bank to be committed to provide, is not available for cover under ~~COLL 5.3.3R (Cover for transactions in derivatives and forward transactions)~~ COLL 5.3.3AR (Cover for investment in derivatives and forward transactions), except if (2) applies.

...

...

Permitted transactions (derivatives and forwards)

- 5.6.13 R ...
- (6) The authorised fund manager must ensure compliance with ~~COLL 5.3.6R (Continuing nature of limits and requirements)~~ COLL 5.3.3AR (Cover for investment in derivatives and forward transactions), COLL 5.3.3BR and COLL 5.3.3CR (Daily calculation of global exposure).

...

Guidance on syndicated loans

- 5.6.25 G (1) COLL 5.2.35G (Guidance on syndicated loans) is equally applicable to investment by a non-UCITS retail scheme in a syndicated loan.
- (2) Where a loan falls within the Glossary definition of a transferable security, investment in such a loan in the case of a non-UCITS retail scheme is subject to the spread requirements in COLL 5.6.7R (Spread: general). AFMs also need to bear in mind that where such a transferable security does not meet the requirements of COLL 5.6.5R(1) (Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme), the

scheme's overall exposure to such loans will count towards the limit in COLL 5.6.5R(2).

...

When an ICVC is to be wound up or a sub-fund terminated or wound up

7.3.4

R ...

- (4) Subject to (3) and the subsequent provisions of this section, the appropriate steps to wind up an *ICVC* or terminate a *sub-fund* under this section must be taken:

...

- (c) on the date stated in any agreement by the *FSA* in response to a request from the *directors* for the winding up of the *ICVC* or a request for the termination of the *sub-fund*; or
- (d) on the effective date of a duly approved *scheme of arrangement* which is to result in the *ICVC* ceasing to hold any *scheme property*; or
- (e) in the case of a *sub-fund*, on the effective date of a duly approved *scheme of arrangement* which is to result in the *sub-fund* ceasing to hold any *scheme property*; or
- (f) in the case of an *ICVC* that is an *umbrella*, on the date on which all of its *sub-funds* fall within (e) or have otherwise ceased to hold any *scheme property*, notwithstanding that the *ICVC* may have assets and liabilities that are not attributable to any particular *sub-fund*.

...

Documents

9.4.2

R ...

- (1A) For a section 264 *recognised scheme*, the requirement in (1) for documents to be in English applies only to the *EEA key investor information document* referred to in (1)(d).

...

CLIENT ASSETS SOURCEBOOK (RESOLUTION PACK) INSTRUMENT 2012

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 (Approved persons);
 - (2) section 138 (General rule-making power);
 - (3) section 139 (Miscellaneous ancillary matters);
 - (4) section 149 (Evidential provisions);
 - (5) section 156 (General supplementary powers); and
 - (6) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 October 2012.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Client Assets sourcebook (CASS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Client Assets Sourcebook (Resolution Pack) Instrument 2012.

By order of the Board
21 March 2012

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 definition in the appropriate alphabetical position. The text is not underlined.

CASS resolution pack those documents and records which are specified in *CASS 10.2* and *CASS 10.3*.

Amend the following as shown.

client money ...

(2A) (in *CASS 6*, *CASS 7*, ~~and~~ *CASS 7A* and *CASS 10* and, in so far as it relates to matters covered by *CASS 6*, *CASS 7*, or *COBS*) subject to the *client money rules*, *money* of any currency:

...

...

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

After CASS 9 insert the following new chapter. The text is not underlined.

10 CASS resolution pack

10.1 Application, purpose and general provisions

Application

- 10.1.1 R (1) Subject to (2) this chapter applies to a *firm* when it:
- (a) holds *financial instruments*, or is *safeguarding and administering investments*, in accordance with CASS 6; and/or
 - (b) holds *client money* in accordance with CASS 7.
- (2) This chapter does not apply to a *firm* to which CASS 6 applies merely because it is a *firm* which *arranges safeguarding and administration of assets*.

Purpose

- 10.1.2 G The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of *client money* and *safe custody assets* held by the *firm* to that *firm's* clients.

General provisions

- 10.1.3 R A *firm* falling within CASS 10.1.1R must maintain and be able to retrieve, in the manner described in this chapter, a *CASS resolution pack*.
- 10.1.4 G A *firm* is required to maintain a *CASS resolution pack* at all times when CASS 10.1.1R applies to it.
- 10.1.5 G (1) The *rules* in this chapter specify the types of documents and records that must be maintained in a *firm's* *CASS resolution pack* and the retrieval period for the pack. The *firm* should maintain the component documents of the *CASS resolution pack* in order for them to be retrieved in accordance with CASS 10.1.7R, and should not use the retrieval period to start producing these documents.
- (2) The contents of the documents that constitute the *CASS resolution*

pack will change from time to time (for example, because daily reconciliations must be included in the pack).

- (3) A *firm* is only required to retrieve the *CASS resolution pack* in the circumstances prescribed in *CASS 10.1.7R*.

10.1.6 R For the purpose of this chapter, a *firm* will be treated as satisfying a *rule* in this chapter requiring it to include a document in its *CASS resolution pack* if a member of that *firm's group* includes that document in its own *CASS resolution pack*, provided that:

- (1) that *group* member is subject to the same *rule*; and
 (2) the *firm* is still able to comply with *CASS 10.1.7R*.

10.1.7 R In relation to each document in a *firm's CASS resolution pack* a *firm* must:

- (1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and
 (2) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of an *FSA* request.

10.1.8 R Where documents are held by members of a *firm's group* in accordance with *CASS 10.1.6R*, the *firm* must have adequate arrangements in place with its *group* members which allow for delivery of the documents within the timeframe referred to in *CASS 10.1.7R*.

- 10.1.9 E (1) For the purpose of *CASS 10.1.7R*, the following documents and records should be retrievable immediately:
- (a) the document identifying the institutions referred to in *CASS 10.2.1R(2)*;
- (b) the document identifying individuals pursuant to *CASS 10.2.1R(4)*;
- (c) any written notification or trust acknowledgement letters referred to in *CASS 10.2.1R(5)*;
- (d) the most recent internal reconciliations relating to *safe custody assets* referred to in *CASS 10.3.1R(3)*;
- (e) the most recent external reconciliations relating to *safe custody assets* referred to in *CASS 10.3.1R(5)*;
- (f) the most recent internal reconciliations relating to *client money* referred to in *CASS 10.3.1R(7)*; and

- (g) the most recent external reconciliations relating to *client money* referred to in CASS 10.3.1R(9).
- (2) Where a *firm* is reliant on the continued operation of certain systems for the provision of component documents in its *CASS resolution pack*, it should have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.
- (3) Contravention of (1) or (2) may be relied upon as tending to establish contravention of CASS 10.1.7R.
- 10.1.10 G Where a *firm* anticipates that it might be the subject of an *insolvency order*, it is likely to have sought advice from an external adviser. The *firm* should make the *CASS resolution pack* available promptly, on request, to such an adviser.
- 10.1.11 R (1) A *firm* must ensure that it reviews the content of its *CASS resolution pack* on an ongoing basis to ensure that it remains accurate.
- (2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in CASS 10.2.1R, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.
- 10.1.12 G For the purpose of CASS 10.1.11R(2), an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to CASS 10.2.1R(2).
- 10.1.13 G A *firm* may hold in electronic form any document in its *CASS resolution pack* provided that it continues to be able to comply with CASS 10.1.7R and CASS 10.1.11R in respect of that document.
- 10.1.14 R The individual to whom responsibility for CASS operational oversight has been allocated under CASS 1A.3.1R or, as the case may be CASS 1A.3.1AR, must report at least annually to the *firm's governing body* in respect of compliance with the *rules* in this chapter.
- 10.1.15 G Individuals allocated functions relating to CASS operational oversight pursuant to CASS 1A.3.1R or, as the case may be, CASS 1A3.1AR are reminded that their responsibilities include compliance with the provisions in this chapter.
- 10.1.16 R A *firm* must notify the *FSA* in writing immediately if it has not complied with, or is unable to comply with, CASS 10.1.3R.

10.2 Core content requirements

- 10.2.1 R A *firm* must include within its *CASS resolution pack*:
- (1) a master document containing information sufficient to retrieve each document in the *firm's CASS resolution pack*;
 - (2) a document which identifies the institutions the *firm* has appointed (including through an *appointed representative, tied agent, field representative* or other agent):
 - (a) in the case of *client money*, for the placement of *money* in accordance with *CASS 7.4.1R* or to hold or control *client money* in accordance with *CASS 7.5.2R*; and
 - (b) in the case of *safe custody assets*, for the deposit of those assets in accordance with *CASS 6.3.1R*;
 - (3) a document which identifies each *appointed representative, tied agent, field representative* or other agent of the *firm* which receives *client money* or *safe custody assets* in its capacity as the *firm's agent*;
 - (4) a document which identifies:
 - (a) each *senior manager* and *director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* by *CASS 6* or *CASS 7*; and
 - (b) the individual to whom responsibility for *CASS operational oversight* has been allocated under *CASS 1A.3.1R* or, as the case may be, to whom the *CASS operational oversight function* has been allocated under *CASS 1A.3.1AR*;
 - (5) for each institution identified in *CASS 10.2.1R(2)*, a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the *firm* that relates to the holding of *client money* or *safe custody assets* including any written notification or trust acknowledgement letters sent or received pursuant to *CASS 7.8*;
 - (6) a document which:
 - (a) identifies each member of the *firm's group* involved in operational functions related to any obligations imposed on the *firm* under *CASS 6* or *CASS 7*, including in the case of a member that is a *nominee company*, identification as such; and

- (b) identifies each third party which the *firm* uses for the performance of operational functions related to any of the obligations imposed on the *firm* by CASS 6 or CASS 7; and
 - (c) for each *group* member identified in (a), the type of entity (such as branch, subsidiary and or *nominee company*) the *group* member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;
 - (7) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between the *firm* and each third party identified in (6)(b);
 - (8) where the *firm* relies on a third party identified in (6)(b), a document which describes how to:
 - (a) gain access to relevant information held by that third party; and
 - (b) effect a transfer of any of the *client money* or *safe custody assets* held by the *firm*, but controlled by that third party; and
 - (9) a copy of the *firm's* manual in which are recorded its procedures for the management, recording and transfer of the *client money* and *safe custody assets* that it holds.
- 10.2.2 G For the purpose of CASS 10.2.1R(4), examples of individuals within the *firm* who are critical or important to the performance of operational functions include:
- (1) those necessary to carry out both internal and external *client money* and *safe custody asset* reconciliations; and
 - (2) those in charge of client documentation for business involving *client money* and *safe custody assets*.
- 10.2.3 R For the purpose of CASS 10.2.1R(2), a *firm* must ensure that the document records:
- (1) the full name of the individual institution in question;
 - (2) the postal and email address and telephone number of that institution; and
 - (3) the numbers of all accounts opened by that *firm* with that institution.

10.3 Existing records forming part of the CASS resolution pack

- 10.3.1 R A *firm* must include, as applicable, within its *CASS resolution pack* the records required under:
- (1) CASS 6.3.1R(4) (safe custody assets: appropriateness of the firm’s selection of a third party);
 - (2) CASS 6.4.3R (firm’s use of safe custody assets);
 - (3) CASS 6.5.1R (*safe custody assets* held for each client), including internal reconciliations carried out pursuant to CASS 6.5.2R as explained in the *guidance* at CASS 6.5.4G;
 - (4) CASS 6.5.2AR (client agreements: firm’s right to use);
 - (5) CASS 6.5.6R (Reconciliations with external records);
 - (6) CASS 7.4.10R (client money: appropriateness of the firm’s selection of a third party);
 - (7) CASS 7.6.1R (client money held for each client), including internal reconciliations carried out pursuant to CASS 7.6.2R as explained in the *guidance* at CASS 7.6.6G;
 - (8) CASS 7.6.7R and CASS 7.6.8R (method of internal reconciliation of *client money* balances);
 - (9) CASS 7.6.9R (Reconciliations with external records);
 - (10) COBS 3.8.2R(2)(a) and (c) (client categorisation); and
 - (11) COBS 8.1.4R (retail and professional client agreements).
- 10.3.2 G CASS 10.3.1R does not change the record keeping requirements of the *rules* referred to therein.

...

Schedule 1 Record keeping requirements

...

Sch 1.3G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
	...				
	CASS 8.1.5R	...			

<u>CASS 10.1.3R</u>	<u>A firm's CASS resolution pack</u>	<u>The documents to which CASS 10.2 and CASS 10.3 refer</u>	<u>From the date on which a firm becomes subject to CASS 10.1.3R</u>	<u>None is specified</u>
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...

Schedule 2 Notification requirements

...

Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<u>CASS 7A.3.19R(2)</u>	...			
<u>CASS 10.1.16R</u>	<u>Whether or not a firm has complied with, or is unable to comply with, CASS 10.1.3R</u>	<u>The fact of that firm's compliance or, as the case may be, non-compliance with the rule in CASS 10.1.3R</u>	<u>Non-compliance with CASS 10.1.3R</u>	<u>Immediately (as per CASS 10.1.16R)</u>

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS
AMENDMENTS NO 5) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 149 (Evidential provisions);
 - (c) section 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. This instrument comes into force on 27 April 2012.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No 5) Instrument 2012.

By order of the Board
26 April 2012

Annex

Amendments to the Training and Competence sourcebook (TC)

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

Appendix 4E Appropriate Qualification tables

(Unless otherwise indicated all qualifications are valid if awarded by examination only)

Key for the qualification tables for activity numbers 2, 3, 4, 6, 12 and 13

a	Meets full qualification requirement up to <u>until, and on</u> and after, 1 January 2013 <u>31 December 2012</u>
b	Meets qualification requirement up to <u>until</u> 31 December 2012; and <u>On and</u> after 1 January 2013 <u>31 December 2012</u> when this must be combined with qualification gap-fill. This gap-fill constitutes additional structured continuing professional development, which need not be by examination, completed and verified by an accredited body by 31 December 2012
c	Meets qualification requirement up to <u>until</u> 31 December 2012
d + e	Meets qualification requirement up to <u>until</u> 31 December 2012

...

Qualification table for : Advising on <i>Packaged Products</i> (which are not <i>broker funds</i>) and <i>Friendly Society</i> tax-exempt policies - Activity Numbers 4 and 6 in TC Appendix 1.1.1 R		
Qualification	Qualification Provider	Key
...		
Diploma in Professional Financial Advice (NMBA – Alternative Assessment method)	...	
<u>Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on packaged products</u>	<u>CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)</u>	<u>a</u>

...		
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...

Qualification table for : Managing <i>investments</i> or Acting as a <i>Broker fund adviser</i> – Activity number 14 and 10 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute (CII)	1
Diploma in Financial Planning (must include a pass in J:10: Discretionary Investment Management paper)	Chartered Insurance Institute (CII)	4
Diploma in Regulated Financial Planning plus J10: Discretionary Investment Management paper) Certificate in Discretionary Investment Management	Chartered Insurance Institute (CII)	1
...		

...

Qualification table for : Overseeing on a day to day basis administrative functions in relation to managing <i>investments</i>		
<ul style="list-style-type: none"> - (i) arranging settlement; - (ii) monitoring and processing corporate actions; - (iii) client account administration, liaison and reporting including valuation and performance measurement; - (iv) ISA, PEP or CTF administration; - (v) Investment trust savings scheme administration. 		
Activity number 17 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
Investment Administration Qualification - PEP Administration Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
Investment Administration Qualification – ISA and PEP Administration Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
...		

...

PENSIONS (TRANSFER VALUE ANALYSIS ASSUMPTIONS) INSTRUMENT 2012

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 May 2012.

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 Pensions (Transfer Value Analysis Assumptions) Instrument 2012.

By order of the Board
26 April 2012

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

19.1 Pension transfers and opt-outs

...

19.1.3 G In particular, the comparison should:

...

- (2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme; ~~and~~
- (3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up; and
- (4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested.

19.1.4 R When a firm compares the benefits likely to be paid under a *defined benefits pension scheme* with the benefits afforded by a *personal pension scheme* or *stakeholder pension scheme* (COBS 19.1.2R(1)), it must:

(1) assume that:

(a) the annuity interest rate is the intermediate rate of return appropriate for a level or fixed rate of increase annuity in (COBS 13 Annex 2 3.1R(6)) <u>unless COBS 19.1.4BR applies</u> or the rate for annuities in payment (if less);	
...	
(e) the <u>annuity rate for post-retirement limited price increases at with maximum increases less than or equal to 3.5% or with minimum increases more than or equal to 3.5% is the rate in (a) above; otherwise it is the rate in (f) below;</u>	2.5%
(f) the index linked pensions rate is the intermediate rate of return in COBS 13 Annex 2 3.1R(6) for annuities linked to the retail prices index <u>unless COBS 19.1.4BR applies;</u>	
(g) <u>the mortality rate used to determine the annuity is based</u>	

<u>on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PCMA00 and PCFA00 and including mortality improvements derived from each of the male and female annual mortality projections models, in equal parts;</u>	
--	--

or use more cautious assumptions;

...

19.1.4A E For any year commencing 6 April, the use of the male and female annual CMI Mortality Projections Models in the series CMI(20YY-1) M [1.25%] and CMI(20YY-1) F [1.25%], where YY-1 is the year of the Model used, will tend to show compliance with COBS 19.1.4R(1)(g).

19.1.4B R Firms must apply the annual provisions at COBS 13 Annex 2 3.1R(6) on a monthly basis in any month where the yields on the 15th of the relevant month would give a rolling 12 month average annuity rate that varies by at least 0.2% from the previous rate.

....

Suitability

....

19.1.7A G When giving a personal recommendation about a pension transfer, a firm should clearly inform the retail client about the loss of the fixed benefits and the consequent transfer of risk from the defined benefits pension scheme to the retail client, including:

- (1) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme;
- (2) the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the retail client is exposed until an annuity is purchased with the proceeds of the proposed personal pension scheme or stakeholder pension scheme; and
- (3) the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the defined benefits pension scheme.

19.1.7B G In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme as sufficient in itself.

**INTEGRATED REGULATORY REPORTING (AMENDMENT NO 13)
INSTRUMENT 2012**

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 27 April 2012.

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 13) Instrument 2012.

By order of the Board
26 April 2012

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')**

...

Introduction: general notes on the RMAR

1. These notes aim to assist *firms* in completing and submitting the relevant sections of the Retail Mediation Activities Return ('RMAR').

2. The purpose of the RMAR is to provide a framework for the collection of information required by the *FSA* as a basis for its supervision activities. It also has the purpose set out in paragraph ~~16.7.3G~~ 16.12.2G of the Supervision Manual, i.e. to help the *FSA* to monitor *firms'* capital adequacy and financial soundness.

...

Scope

6. The following *firms* are required to complete the sections of the RMAR applicable to the activities they undertake as set out in SUP 16.12:

...

Application of RMAR sections

7. ~~*Firms* conducting home finance providing activity or administering a home finance transaction (including those that carry on an activity that is treated as arranging in COBS—see MCOB 1.2.12) that also conduct the above activities are required to complete the RMAR in addition to other data requirements. [deleted]~~

8. However, these *firms* are not required to complete all sections of the *RMAR*. Certain data requirements will be de-duplicated because of the separate reporting requirements imposed in relation to other ~~regulated activities~~ in the form of the *MLAR*. Broadly, a *firm* that has the ~~permission to carry on home finance providing activity or administering a home finance transaction~~ will not be subject to our proposed data requirements for financial reporting in the *RMAR* (*RMAR* sections A, B, C, D & E) For details, see ~~SUP 16.7. [deleted]~~

...

Accounting Principles

15. The following principles should be adhered to by *firms* in the submission of financial information (sections A to E).

...

(c) (i) With the exception of section J, and sections K and L from 31 December 2012, all All amounts should be shown in pounds sterling one of the reporting currencies accepted by the GABRIEL system, unless otherwise specified in the Handbook (e.g. in MIPRU 3.2.7R). Section J, and sections K and L from 31 December 2012, must be completed in pounds sterling.

(ii) A *firm* should translate assets and liabilities denominated in other currencies into pounds sterling the chosen reporting currency using the closing mid-market rate of exchange.

...

Section B: Profit & Loss Account

...

Firms that receive combined income in relation to both regulated and non-regulated activities (~~for example mortgage packagers~~) may have difficulties in separately identifying their regulated income from their non-regulated income. If this is the case, *firms* should, (a) in the first instance, ask the provider of the income for an indication of the regulated/non-regulated split; and (b) if this is not available, make an estimate of the income derived from each activity.

...

Section C: Client Money and assets

Note: *Home purchase, reversion and regulated sale and rent back activity* should be included under the existing mortgage headings in this section of the RMAR.

‘Client money’ is defined in the *Glossary*. In broad terms, *client money* includes *money* that belongs to a *client*, and is held by a *firm* in the course of carrying on *regulated activities*, for which the *firm* has responsibility for its protection. It does not include *deposits* (where the *firm* acts as deposit-taker).

The *client money rules* define further what is and is not *client money*, and set out requirements on *firms* for the proper handling of and accounting for *client money*. If a *firm* fails, there is a greater direct risk to consumers, and a greater adverse impact on market confidence, if it is a holder of *client money*.

Note 1: *firms* that only carry on *home finance mediation activity* or ~~*reinsurance mediation insurance mediation activity*~~ in respect of *reinsurance contracts* are exempt from the *client money rules*, and are not therefore required to complete this section of the RMAR (~~unless, in the case of reinsurance mediation, the *firm* has made an election under CASS 5.1.1R(3)(a)~~). However, a *firm* may make an election under CASS 5.1.1R(3) to comply with CASS 5.1 to CASS 5.6 in respect of *client money* it receives in the course of carrying on *insurance mediation activity* in relation to *reinsurance contracts*. Where a *firm* has made such an election it should also complete this section of the RMAR.

Note 2: an authorised professional ~~firms~~ *firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland must comply with the rules of ~~their~~ its designated professional body as specified in CASS 5.1.4R, and if

they do it does so, they it will be deemed to comply with the relevant sections of CASS 5.2 to CASS 5.6. These *firms* are not therefore required to complete this section of the RMAR.

Note 3: *firms* should complete all applicable fields.

Section C: guide for completion of individual fields

Have any notifiable issues been raised in relation to client money or other assets, either in the firm's last client assets audit report or elsewhere, that have not previously been notified to the FSA?	<i>SUP</i> 3.10 sets out the requirement for auditors to report annually on the <i>firm's</i> systems and controls in relation to <i>client money or custody assets</i> . Auditors and <i>firms</i> are required to report significant issues to the FSA (see <i>SUP</i> 3.8.10G and <i>SUP</i> 15.3). Therefore, if you answer 'yes' here, you should ensure that the relevant issues are notified to us.
Risk transfer	See CASS 5.2 – holding money as agent of <i>insurance undertaking</i>
Statutory Trust	See CASS 4.2 and 5.3 and <u>CASS 7.7</u>
Non-statutory Trust	See CASS 5.4
Client money credit total as at reporting Date	This should be the total of credits on the <i>firm's client money</i> account(s) as at the current date of return. These should be taken from the <i>firm's</i> ledgers.
Client money debit total as at reporting date	This should be the total of any debits on the <i>firm's client money</i> account(s) as at the current date of return. These should be taken from the <i>firm's</i> ledgers.
Net client money balance as at reporting Date	This should be the aggregate balance on the <i>firm's client money</i> account(s).
If non-statutory, has auditor's confirmation of systems and controls been obtained?	This refers to the requirement in CASS 5.4.4R(2) that the <i>firm</i> should <u>must obtain and keep current</u> , written confirmation from its auditor that <u>the firm has adequate systems and controls are in place to meet the requirements under CASS 5.4.4R(1)</u> .
Is any client money invested (other than on deposit)?	You should indicate 'yes' here if the <i>firm</i> has invested any <i>client money</i> other than in a bank account. See CASS 5.5.14R. (Note: this is only permitted for <i>client money</i> that is held in a non-statutory trust.)
Does the <i>firm</i> hold any client assets (other than client money)?	If the <i>firm</i> holds client assets and is subject to the requirements of either CASS 2 or CASS 5.8 or <u>CASS 6</u> , state 'yes' here.

...

Section E: Professional Indemnity Insurance

...

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).

...

Section F: the threshold conditions

Sub-heading: close links

This section relates to *threshold condition 3*. *Firms* should consult *COND 2.3*, as well as Chapter 11 of the Supervision Manual ('*SUP*').

~~This section of the return replaces the *close links* annual reporting requirement in *SUP 16.5.4R*, which does not now apply to those *firms* subject only to the *RMAR* for the purposes of regulatory reporting. Moreover, the existing exemptions for certain other *firms* from the existing reporting requirements in *SUP 16.5.1G* are retained.~~

Sole traders and firms which have permission to carry on *retail investment activities* only, or *firms* which have permission to carry on only one, or only both of:

- *insurance mediation activity*; or
- *home finance activity*;

and are not subject to the requirements of *SUP 16.4* or *SUP 16.5* (requirement to submit annual controllers report; or annual close links reports), will submit these reports in *RMAR* section F instead.

...

Sub-heading: controllers

...

A *UK domestic firm* other than a *UK insurance intermediary* must notify the *FSA* of any of the following events concerning the *firm*:

...

(3) an existing *controller* 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~~30% or 50%;

...

Section G: Training & Competence ('T&C')

...

~~Our approach to training and competence is set out in the Training & Competence Sourcebook ('*TC*'). There are two parts to the Sourcebook:~~

~~Chapter 1 (the Commitments) consists of *guidance* that applies to those *firms* indicated in *TC 1.1.6G* (which includes all *firms* with a *Part IV permission*). It states that the *firm's* commitments to training and competence should be that employees are competent and remain competent for the work that they do, that they are appropriately supervised, that their competence is regularly reviewed, and that the level of competence is appropriate to the nature of the business.~~

~~Chapter 2 (specific requirements for particular activities) — for those *firms* indicated in *TC 2.1.1R* who are involved in specified activities, such as *advising on investments* or on *home finance transactions* (see, generally, *TC 2.1.4R*), we have set additional training and~~

competence requirements over and above the Commitments. These extra requirements cover recruitment, training, attaining competence, (in some cases this includes a requirement for individuals to pass an examination), maintaining competence, and the supervision of individuals.

It should be noted that Chapter 2 only applies in relation to advising on *non-investment insurance contracts* where this activity is carried on with or for *retail customers*.

...

Section G: guide for completion of individual fields

...	
Number of staff that supervise others to give advice	<p>Note the requirements in the Training & Competence Sourcebook (TC 2.4, 2.6 and 2.7 <u>TC 2.1.2R, TC 2.1.3G, TC 2.1.4G and TC 2.1.5R</u>) for employees to be appropriately supervised, and also the competencies that are required for those who supervise others.</p> <p>If any of these staff carries out supervisory activities in relation to more than one business type, they should be counted in each applicable field. The ‘total’ in the right hand column field should be the actual number of applicable employees, however, rather than a total of the three columns.</p>
Number of advisers that have been assessed as competent	<p>This is a subset of the total of ‘number of staff that give advice’ above.</p> <p>See TC 2.1.4R <u>Appendix 1.1R</u> for the detailed training & competence requirements relating to individual activities.</p> <p>If staff are competent in relation to more than one business type, they should be counted in each applicable field. The ‘total’ in the right hand column field should be the actual number of applicable employees, however, rather than a total of the three columns.</p>
Number of advisers that have passed appropriate examinations	<p>This is a subset of the total in ‘number of staff that give advice’ above.</p> <p>In the case of certain activities, <i>TC 2</i> imposes requirements on <i>firms</i> in relation to their <i>employees</i> and passing examinations. See, for example, requirements relating to <i>employees engaged in advising a customer on a regulated mortgage contract for a non-business purpose</i> (<i>TC Appendix 1.1.1(20)</i>), and requirements relating to <i>employees engaged in advising on investments which are packaged products</i> (<i>TC appendix 1.1.1(4)</i>).</p> <p><u>The relevant activities to which <i>TC</i> applies and require <i>employees</i> to obtain appropriate qualifications can be found in <i>TC Appendix 1</i>. Then appropriate qualifications for these activities can be found in <i>TC Appendix 4E</i>.</u></p> <p>If staff have qualifications in relation to more than one business type, they should be counted in each applicable field. The ‘total’ in the right hand column field should be the actual number of applicable employees, however, rather than a total</p>

	of the three columns.
...	
On the basis of a fair analysis of the market	A <i>firm</i> gives recommendations on a fair analysis of the market when it has considered a <u>sufficiently</u> large number of <u>providers in the relevant sector(s) of contracts of insurance available on the market</u> (<i>ICOB 4.2.11R</i> <i>ICOBS 5.3.3R</i>).
...	

...

Section H: guide for completion of individual fields

...	
Do you give independent advice?	You should state 'yes' if the <i>firm</i> gives advice on regulated products or services that is independent of product providers or marketing groups.
...	

...

Section I: guide for completion of individual fields

...	
(ii) non-investment insurance chains	
Total non-investment insurance premium derived from retail customers	You should state here the total of premiums payable by <i>retail customers</i> during the reporting period in relation to non-investment insurance products.
Of this business, please indicate in column C the products where retail sales were passed up a chain and in column D where this business is significant (see notes above) Please also indicate in column E where the firm has dealt directly with the retail customer within the chain	You should indicate in column C for each product in which transactions have been passed up a chain. If this business is significant (see definition above) for one or more product types, this should be indicated in column D. Firms should also indicate in column E the product types for which they transact business in a chain, but directly with the customer.
(iii) dealing as agent	
Number of sales to retail customers during the reporting period where the firm dealt as agent	You should state here the number of sales during the reporting period where the <i>firm</i> dealt as agent of a product provider (i.e. with delegated authority).
Premium paid by retail customers during the reporting period where the firm dealt as agent	You should state here the total value of premiums payable by <i>retail customers</i> during the reporting period, whether annual or one-off, where the <i>firm</i> dealt as agent of a product provider (i.e. with delegated authority).
Of the total of these sales, please indicate in column F the products where the firm dealt as agent, and in column G where this business is significant (see notes above)	You should indicate in column F for each product in which the <i>firm</i> has dealt as agent, and also in column G for each product type where this business is significant.
(iv) claims handling	
If you assist in the administration and performance of contracts of insurance: Please provide: Number of claims handled on behalf of customers during the reporting period	If you are authorised to <i>assist in the administration and performance of a contract of insurance</i> on behalf of <i>customers</i> , you should state here the number of new insurance claims that have been handled on <i>customers'</i> behalf during the reporting period.
(v) Lloyd's brokers – product sales data	
% of regulated business revenue	This should be a summary of the percentages of the <i>firm's</i> revenue in relation to retail, commercial and reinsurance

	<p>business: Retail: insurance offered to individuals as opposed to commercial entities. Commercial: insurance taken out by a commercial entity (as opposed to an individual). Reinsurance: insurance protection taken out by an insurer to limit its aggregation of exposure on business written.</p> <p>Figures may be rounded to the nearest 20%, but the total should be 100%.</p>
...	

Section J: data required for calculation of fees

...

Data for fees calculations	<i>Firms</i> will need to report data for the purpose of calculating <i>FSA</i> , <i>FOS</i> and <i>FSCS</i> levies.
FSA	The relevant information required is the tariff data set out in <i>FEES</i> 4 Annex 1R Part 2 under fee blocks <u>A.12</u> , <u>A.13</u> , <u>A.18</u> and <u>A.19</u> and, in respect of fee-blocks A.12 and A.13, the tariff data set out under the definition of “annual income” in Section J of <i>SUP</i> 16 Annex 18AR as read together with the guidance on calculating and apportioning annual income below. Note that <i>firms</i> are required to report tariff data information relating to all business falling within fee blocks <u>A.12/A.13/A.18/A.19</u> and not simply that relating to retail investments.
FOS	The relevant information required is the tariff data set out in <i>FEES</i> 5 Annex 1R industry blocks 8/9, 16 and 17 and, in respect of industry blocks 16 and 17, the tariff data set out under the definition of “annual income” in Section J of <i>SUP</i> 16 Annex 18AR as read together with the guidance on calculating and apportioning annual income below.. Note that <i>firms</i> are required to report tariff data information relating to all business falling within industry blocks 8/9, 16 and 17.
FSCS	The relevant information required is the tariff data set out in sub-classes B2, C2, D2, and E2, <i>FEES</i> 6 Annex 3R. Note that <i>firms</i> are required to report tariff data information relating to all business falling within <u>sub-classes B2, C2, D2 and E2</u> , <i>FEES</i> 6 Annex 3R and not simply that relating to retail investments.

...

For reporting dates after end February 2008, *firms* should report the information in their year end ~~RMAR~~. *Firms* which do not yet have data for a full 12 months ending on their *accounting reference date* (for example if they have not traded for a complete financial year by the time of the *accounting reference date*) should complete Section J with an 'annualised' figure based on the actual income up to their *accounting reference date*. That is, such *firms* should pro-rate the actual figure as if the *firm* had been trading for 12 months up to the *accounting reference date*. So for a *firm* with 2 months of actual income of £5000 as at its *accounting reference date*, the 'annualised' figure that the *firm* should report is £30,000.

16 Annex 24R Data items for SUP 16.12

...

FSA018 UK Integrated Groups – large exposures

Exposures at the reporting date to the diverse blocks and residual block

A

1 ~~Identify the Integrated Group~~
[deleted]

...

...

FSA028 Non-EEA sub-groups

27 Do you have a non-EEA sub-group which you are reporting on behalf of?

Yes/No

If the answer to 27A above is ~~no~~ **No**, then you do not have to complete any more of this data item, but it still needs to be submitted to the FSA.

1 Is your non-EEA sub-group reporting requirement satisfied by a UK consolidated reporting requirement FSA003/~~FSA009~~?

If the answer to 1A is 'Yes', you do not have to complete the rest of this data item.

2 Is your non-EEA sub-group reporting requirement satisfied by a UK consolidation group FSA003/~~FSA009~~?

3 ~~If the answer to 2A is 'Yes', what is the reference number of the UK consolidation group?~~

...

...

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24R

...

FSA003 – Capital Adequacy validations

Internal validations

...

Validation number	Data element		
...			
<u>122</u>	<u>144A</u>	<u>=</u>	<u>108A = 0 then 144A = 0, else 144A = 15A - 108A - 142A</u>
<u>123</u>	<u>145A</u>	<u>=</u>	<u>109A = 0 then 145A = 0, else 145A = 57A - 109A - 142A</u>

...

FSA004 – Credit risk

...

Column F

Firms should report here ~~any other credit valuation adjustments for the given exposure class~~ fair value adjustments which do not relate to impairments. An example is: if a firm makes an acquisition, then the firm must make a fair value adjustment for the acquired entity. The fair value adjustment is triggered by the acquired firm's assets being valued at current fair value as a result of the acquisition. The acquired assets can be any type of asset where held on an amortised cost accounting basis.

FSA004 – Credit risk validations

Internal validations

...

Validation number	Data element		
...			
24	21A	∓	22A + 39A [deleted]
25	21B	∓	22B + 39B [deleted]
26	21C	∓	22C + 39C [deleted]
27	21D	∓	22D + 39D [deleted]
28	21E	∓	22E + 39E [deleted]
29	21F	∓	22F + 39F [deleted]
38	31A	∓	32A + 40A [deleted]
39	31B	∓	32B + 40B [deleted]
40	31C	∓	32C + 40C [deleted]
41	31D	∓	32D + 40D [deleted]

42	31E	≥	32E + 40E [deleted]
43	31F	≥	32F + 40F [deleted]
...			

...

FSA018 UK Integrated Groups – large exposures

...

General

1 Identify the UK integrated group

[To follow] [deleted]

...

FSA028 – Non-EEA sub-groups

...

1A Is your non-EEA sub-group reporting requirement satisfied by your solo-consolidated FSA003/FSA009?

The diagrams in *BIPRU 8 Annex 3G*, in conjunction with *BIPRU 8.3*, should assist firms in identifying those circumstances when a *non-EEA sub-group* exists and when a solo-consolidated FSA003 or FSA009 will satisfy the reporting requirement. Firms should answer Yes or No. Firms answering Yes do not need to complete the rest of the data elements.

2A Is your non-EEA sub-group reporting requirement satisfied by your UK consolidation group FSA003/FSA009?

The diagrams in *BIPRU 8 Annex 3G*, in conjunction with *BIPRU 8.3*, should assist firms in identifying those circumstances when a *UK consolidation group* exists and when a *UK consolidation group* FSA003 or FSA009 will satisfy the reporting requirement. Firms should answer Yes or No. Firms answering Yes should complete 3A, and then do not need to complete the rest of the data elements.

3A If the answer to 2A is 'Yes', what is the reference number of the UK consolidation group

Firms should enter the reference number used for the submission of the UK consolidation group FSA003/FSA009. [deleted]

...

FSA038 – Volumes and Type of Business

...

Delegation and extent of delegation

...

- (c) Funds under management should include the value of those parts of the managed portfolios in respect of which the responsibility for the discretionary management has been formally delegated to the *firm* (including delegations from non FSA regulated and non-UK firms).

...

Value of derivatives

The value of derivative instruments and other assets is calculated as the fair value (i.e. on a mark-to-market basis). This is not the exposure value. If the *firm* is managing an overlay portfolio where the *firm* does not manage the underlying assets, the *firm* should report the combined fair value of the overlay and the underlying investment portfolio.

...

**SUPERVISION MANUAL (PRUDENT VALUATION REPORTING)
INSTRUMENT 2012**

Powers exercised

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

Commencement

- C. This instrument comes into force on 30 June 2012.

Amendments to the Handbook

- D. The General Prudential sourcebook (GENPRU) 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 (Prudent Valuation Reporting) Instrument 2012.

By order of the Board
26 April 2012

Annex A

Amendments to the General Prudential sourcebook (GENPRU)

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

General requirements: Valuation adjustments or, in the case of an insurer or a UK ISPV, valuation adjustments or reserves

...

1.3.35 G Reconciliation differences under *GENPRU* 1.3.34R should not be reflected in the valuations under *GENPRU* 1.3 but should be disclosed to the *FSA* in prudential returns. Firms which are subject to the reporting requirement under *SUP* 16.16 should disclose those reconciliation differences in the Prudent Valuation Return which they are required to submit to the *FSA* under *SUP* 16.16.4R.

1.3.35A G *UK banks and BIPRU 730k firms* are reminded that they may, in respect of their prudent valuation assessments under *GENPRU* 1.3.4R and *GENPRU* 1.3.14R to *GENPRU* 1.3.34R, be subject to the requirement under *SUP* 16.16.4R to submit a Prudent Valuation Return to the *FSA*.

...

Core tier one capital: profit and loss account and other reserves: Losses arising from valuation adjustments (BIPRU firm only)

2.2.86 R (1) This rule applies to *trading book* valuation adjustments or reserves referred to in *GENPRU* 1.3.29R to *GENPRU* ~~1.3.35G~~ 1.3.35AG (Valuation adjustments and reserves). It applies to a *BIPRU firm*.

...

...

2.2.248 R *Trading book* profits and losses, other than those losses to which *GENPRU* 2.2.86R(2) (Valuation adjustment and reserves) refers, originating from valuation adjustments or reserves as referred to in *GENPRU* 1.3.29R to *GENPRU* ~~1.3.35G~~ 1.3.35AG (Valuation adjustments or reserves) must be included in the calculation of net interim *trading book* profits and be added to or deducted from *tier three capital resources*.

2.2.249 R *Trading book* valuation adjustments or reserves as referred to in *GENPRU* 1.3.29R to *GENPRU* ~~1.3.35~~ 1.3.35AG which exceed those made under the accounting framework to which a *firm* is subject must be treated in accordance with *GENPRU* 2.2.248R if not required to be treated under *GENPRU* 2.2.86R(2).

Annex B

Amendments to the Supervision manual (SUP)

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

After SUP 16.15 insert the following new section. The text is not underlined.

16.16 Prudent valuation reporting

Application

- 16.16.1 R This section applies to a *UK bank* or a *BIPRU 730k firm* which meets the condition in *SUP 16.16.2R*.
- 16.16.2 R The condition referred to in *SUP 16.16.1R* is that, on its last *accounting reference date*, the *firm* had balance sheet positions measured at fair value which, on a gross basis (the sum of the absolute value of each of the assets and liabilities), exceeded £3 billion.

Purpose

- 16.16.3 G (1) The purpose of this section is to set out the requirements for a *firm* specified in *SUP 16.16.1R* to report the outcomes of its prudent valuation assessments under the prudent valuation rules, in *GENPRU 1.3.4R* and *GENPRU 1.3.14R* to *GENPRU 1.3.34R*, to the *FSA* and to do so in a standard format.
- (2) The purpose of collecting this data on the prudent valuation assessments made by a *firm* under *GENPRU 1.3.4R* and *GENPRU 1.3.14R* to *GENPRU 1.3.34R* is to assist the *FSA* in assessing the capital resources of *firms*, to enable the *FSA* to gain a wider understanding of the nature and sources of measurement uncertainty in fair-valued financial instruments, and to enable comparison of the nature and level of that measurement uncertainty across *firms* and over time.

Reporting requirement

- 16.16.4 R A *firm* to which this section applies must submit to the *FSA* quarterly (on a calendar year basis and not from a *firm's accounting reference date*), within six weeks of each quarter end, a Prudent Valuation Return in respect of its fair-value assessments under *GENPRU 1.3.4R* and *GENPRU 1.3.14R* to *GENPRU 1.3.34R* in the format set out in *SUP 16 Annex 31AR*.
- 16.16.5 R Where a *firm* to which *SUP 16.16.4R* applies is a member of a *UK consolidation group*, the *firm* must comply with *SUP 16.16.4R*:
- (1) on a solo-consolidation basis if the *firm* has a *solo consolidation waiver*, or on an unconsolidated basis if the *firm* does not have a

solo consolidation waiver; and

- (2) separately, on the basis of the consolidated financial position of the *UK consolidation group*. (*Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.*)

continued

After SUP 16 Annex 30GD insert the following new annexes.

16 Annex 31AR Prudent Valuation Return

Prudent Valuation Return

	A	B	C	D	E	F	G
	Gross B/S		Net B/S	1-Day 99% VaR Equivalent	Valuation Uncertainty		Explanation
	Assets	Liabilities			Downside	Upside	
Portfolios Subject to Valuation Uncertainty Assessment							
1 Equities - Exotic							
2 Equities - Vanilla							
3 Rates - Exotic							
4 Rates - Vanilla							
5 Credit - Exotic							
6 Credit - Vanilla							
7 Commodities - Exotic							
8 Commodities - Vanilla							
9 FX - Exotic							
10 FX - Vanilla							
11 Emerging Markets							
12 Hybrid Instruments							
13 CVA							
14 DVA							
15 Other Portfolios	1						
	...						
	n						
16 Aggregate Portfolios Included							
17 Less Diversification Benefit							
18 Total							
Portfolios Excluded due to Extreme Valuation Subjectivity							
19 Portfolios Excluded	1				Proposed Capital Add-On		
	...						
	n						
20 Total Portfolios Excluded							
21 Total Value of Fair-Valued Portfolios							
22 Total Downside Valuation Uncertainty							
23 Less Regulatory Capital Offsets	1						
	...						
	n						
24 Prudent Valuation Adjustment							
25 Portfolios of Particular Interest	1						
	...						
	n						

Reconciliation to Financial Statements

	Gross B/S		Net B/S	Explanation
	Assets	Liabilities		
26 Total Value of Fair-Valued Portfolios				
27 Reconciliation to Financial Statements Amounts	l			
	...			
28 Fair-Valued Portfolios per Financial Statements	n			

Detailed Explanations

29 Definitions of Portfolio Type	
30 Portfolios Subject to Valuation Uncertainty Assessment	
31 Portfolios Excluded due to Extreme Valuation Subjectivity	
32 Portfolios of Particular Interest	
33 Reporting Currency	

16 Annex 31BG Guidance notes for data items in SUP 16 Annex 31AR

This return provides the *FSA* with a point-in-time estimate of the valuation uncertainty around a *firm's* fair-value positions in the context of the size and risk of its positions. The value of the positions at the downside end of the spread of valuation uncertainty will be equivalent to the prudent valuation of the *firm's* positions as determined using the *rules* laid out in *GENPRU* 1.3.4R and *GENPRU* 1.3.14R to 1.3.34R.

The fair values of financial instruments are represented as point estimates for the purpose of the primary financial statements. However, at the balance sheet (B/S) date it is likely that there will be a range of plausible estimates of the valuation of many financial instruments. The choice of a point estimate is influenced by a range of factors including different market data points and valuation methodologies. This range will change over time and will tend to widen for markets that are less liquid or lack transparency.

Valuation

Firms should follow their normal accounting practice wherever possible when reporting the gross and net B/S.

Consolidation

When reporting on a *UK consolidation group* basis, *firms* should where possible treat the consolidation group as a single entity (i.e. line-by-line) rather than on an aggregation basis.

Currency

Firms should report in the currency of their annual audited accounts e.g. Sterling, Euro, US Dollars, Canadian Dollars, Swedish Kroner, Swiss Francs or Yen. Figures should be reported in millions.

Data Elements

These are referred to by row first, then by column, so data element 2B will be in row 2 and column B.

Prudent Valuation Return

Column A-C Gross B/S Assets, Gross B/S Liabilities and Net B/S

The gross B/S assets, gross B/S liabilities and net B/S are the raw figures extracted from the front office systems, after fair value adjustments and adjustments taken following independent price verification, rather than the B/S amounts that would be produced under IFRS. They nevertheless allow a completeness check by reconciling back to the total fair-value positions on the B/S as set out in the 'Reconciliation to Financial Statements' table. Both assets and liabilities are input as positive balances.

The gross B/S figures give a sense of the overall size of the positions, as large uncertainty and/or VaR figures may otherwise appear inconsistent if the net B/S is small.

Column D 1-Day 99% VaR Equivalent

The VaR equivalent measure is used in the return to indicate the relative market risk in different *firms* and portfolios and to provide important context to the valuation uncertainty measures. However, as this includes risks not in VaR and VaR on non-Trading Book positions for which the fair-value option has been chosen, it will not be directly reconcilable to the market risk measures shown in financial statements or the regulatory VaR.

The split of the VaR equivalent measure between the different asset classes may be on an approximate basis due to the difficulty in fairly distributing the diversification benefit gained from trading across those asset classes.

In certain cases, e.g. non-Trading Book positions for which no VaR is currently produced, it may be allowable for a firm to use an alternative metric to VaR while still estimating the 1 day loss which is expected to occur on no more than 1% of days. If a *firm* wishes to use an alternative metric, it must be requested and agreed with the *FSA*.

Column E/F Downside/UpSide Valuation Uncertainty

Prudent valuation will constitute an assessment at a risk parameter/product level of the upper and lower ends of the range of plausible valuations at a defined confidence interval (e.g. 90th percentile) based on the judgment of management. This represents the uncertainty of the valuations on the B/S date taking into account all available market data and based on market conditions at the B/S date, using valuation methods which could reasonably be deemed appropriate for each asset or class of assets. It requires a comprehensive view of the possible valuation range for the whole product and portfolio, including the impact of different valuation techniques and models.

The ‘Downside Valuation Uncertainty’ in the return represents the amount by which the correct fair value might be lower than the ‘Net B/S’ figure supplied (that is, there is 90% confidence (or alternative confidence interval defined by the *firm*) that the actual value is greater than the ‘Net B/S’ less the ‘Downside Valuation Uncertainty’). The ‘Upside Valuation Uncertainty’ similarly represents the amount by which the correct fair value might be higher than the ‘Net B/S’ figure supplied (that is, there is 90% confidence (or alternative confidence interval defined by the *firm*) that the actual value is lower than the ‘Net B/S’ plus the ‘Upside Valuation Uncertainty’).

The prudent valuation assessment is not constrained by accounting standards. For example, the uncertainty created by large concentrated positions will be reflected in the return, whereas concentration adjustments to Level 1 positions are not allowed by accounting standards.

The uncertainty estimates at asset class level may include a diversification benefit rather than simply summing the uncertainty for each position. There is currently no formal policy on the aggregation of prudent valuation by asset class; hence *firms* should determine an approach to be assessed by the *FSA* for reasonableness.

Column G Explanation

There are a number of rows where the *firm* has a choice of whether and how many rows to add. In this case, a short description of the row will be required and this should be included in column G.

Row 1-12 Asset Class Granularity

The asset class granularity selected for the main part of the table is to avoid making the return unduly lengthy or confusing. Where particularly significant, any additional disclosures should occur through narrative tied to the 'Portfolios of Particular Interest' in row 25.

The split between 'Exotic' and 'Vanilla' positions is defined in the same way that products are categorised for the purposes of CAD2 recognition. The definition of a portfolio type is based on the regulatory classes for CAD2 recognition, split by asset class. 'Vanilla' positions are those positions referred to in *BIPRU* 7.10.21G(1) and (2) and include products with linear pay-offs in the underlying risk factor (whether securities or derivatives) and products with European, American and Bermudan put and call options (including caps, floors and swaptions). All other fair-valued positions are included within the 'Exotic' portfolios and the broad classes of positions are set out in *BIPRU* 7.10.21G(3) and (4). *BIPRU* 7.6.18R provides further granularity on the definitions used in *BIPRU* 7.10.21G.

This delineation corresponds to the way in which the instruments are traded. Where a portfolio is disclosed as 'Exotic', it may also include vanilla hedges. Although a traded portfolio should normally not be split between 'Vanilla' and 'Exotic' or between two asset classes, where a portfolio includes significant positions of a type that would normally be reported in an alternative classification and are not present to hedge other products in the portfolio, these positions should be included within that other classification.

Row 13-14 CVA and DVA

CVA and DVA are adjustments that may be made at a *firm* rather than portfolio level. Consequently, the B/S and valuation uncertainty figures may be reported on a separate line.

Row 15 Other Portfolios

There may be other cross-portfolio fair-value reserves or other portfolios not represented in rows 1-14. Additional lines should be included for each of these numbered 1 to n as shown. The figures for columns A-F should be included as for rows 1-14 and a short description of the portfolio included in column G.

Row 16 Aggregate Portfolios Included

The sum of the B/S and valuation uncertainty figures in columns A-C and E-F from rows 1-15.

Row 17 Less Diversification Benefit

The uncertainty assessments disclosed by asset class are the sum of the uncertainty measures calculated at a risk parameter/product level, before allowing for diversification/correlation benefits. As a result the sum of the individual portfolio valuation uncertainty estimates will not necessarily reflect the aggregate-level valuation uncertainty the *firm* faces at the B/S date as this does not allow for diversification benefits that will invariably exist. The diversification benefit represents the total benefit taken between portfolios when summing up for the regulatory Prudent Valuation Return. There is currently no formal policy on the *firm*-wide aggregation of prudent valuation; hence *firms* should determine an approach that would be assessed by the *FSA* for reasonableness.

Row 18 Total

The 'Aggregate Portfolios Included' from row 16 less the 'Diversification Benefit' from row 17.

Row 19 Portfolios Excluded due to Extreme Valuation Subjectivity

The 'Portfolios Excluded' section allows *firms* to scope out those portfolios where they feel that there is an absence of market data or there is some other reason why it is not possible to ascertain the plausible range of valuations with any confidence. This can be due to a one-way market in which there is limited ability to exit positions that have been entered into (e.g. PRDCs), although there may be other reasons. This portion of the disclosure is important as it clearly identifies portfolios for which there is extreme valuation subjectivity. For these portfolios, it may not be possible or meaningful to disclose VaR figures, but the gross and net B/S positions being disclosed impart important information to the users of the accounts. The *firm* should therefore propose a suitable regulatory prudent valuation adjustment that would not benefit from diversification and will be assessed for reasonableness by the *FSA*.

Additional lines should be added here for each of these portfolios numbered 1 to n as shown. A short description of the portfolio should be included in column G.

Row 20 Total Portfolios Excluded

The sum of all excluded portfolios from row 19.

Row 21 Total Value of Fair-Valued Portfolios

The sum of the gross B/S and net B/S figures in columns A-C from row 18 and row 20.

Row 22 Total Downside Valuation Uncertainty

The sum of the downside valuation uncertainty in column E from row 18 and row 20.

Row 23 Less Regulatory Capital Offsets

The 'Total Downside Valuation Uncertainty' from row 22 shows the total difference between using the accounting fair value and the regulatory prudent value for valuations of all fair-valued financial instruments positions on the B/S. In order to arrive at the net adjustment to regulatory capital that would occur from using fair value instead of prudent value, there may be several offsets that need to be taken into account. These may include, for example, the reduction in the tax liability that would occur on adjusting the valuations in the B/S and therefore reducing P&L, regulatory capital adjustments that are already taken for elements of valuation uncertainty or situations where the capital requirement for a position is already at a level such that a prudent valuation adjustment would imply a capitalisation of more than 100%.

Additional lines should be added here for each of these types of offset numbered 1 to n as shown. A short description of each type of offset should be included in column G.

Row 24 Prudent Valuation Adjustment

The 'Total Downside Valuation Uncertainty' from row 22 less the 'Regulatory Capital Offsets' from row 23.

Row 25 Portfolios of Particular Interest

The 'Portfolios of Particular Interest' section allows specific disclosures for portfolios where there is a general market interest at any particular time (as there has been with ABS and monoline positions previously) and also allows *firms* the discretion to identify those portfolios that they feel constitute significant proportions of the valuation uncertainty disclosed for the asset classes (e.g. CVAs). The responsibility for ensuring the appropriate selection of portfolios and the appropriateness of the disclosure for each of these portfolios rests with senior management of the *firms*. These portfolios form a subset of the information previously provided by asset class, rather than being in addition to the uncertainty disclosed by asset class.

Additional lines should be added for each of these portfolios numbered 1 to n as shown. The figures for columns A-F should be included as for rows 1-14 and a short description of the portfolio included in column G.

Reconciliation to Financial Statements

Row 26 Total Value of Fair-Valued Portfolios

The 'Total Value of Fair-Valued Portfolios' is copied directly from row 21 for columns A-C.

Row 27 Reconciliation to Financial Statements Amounts

There may be a number of reasons for differences between the gross and net B/S figures taken from front office systems, after fair value adjustments and adjustments taken following independent price verification, that were used in the valuation uncertainty disclosure and the gross and net B/S figures in the financial statements. The *firm* should report the reconciliation amounts and briefly state the reason for the difference. An additional line should be included for each major class of reason, for example, netting of internal trades or counterparty netting agreements.

Row 28 Fair-Valued Portfolios per Financial Statements

The sum of the 'Total Value of Fair-Valued Portfolios' in row 26 and the differences to the financial statements shown in row 27. The figures for 'Gross B/S Assets', 'Gross B/S Liabilities' and 'Net B/S' (columns A-C) should equal the total fair-valued assets and liabilities in the *firm's* financial statements.

Row 29 Definitions of Portfolio Type

This is a narrative box which allows the *firm* to define the positions that are included in certain portfolios, e.g. Emerging Markets, Hybrid Instruments or Other Portfolios the *firms* has chosen to disclose in row 15.

Row 30 Portfolios Subject to Valuation Uncertainty Assessment

This is a narrative box allowing *firms* to choose to provide some narrative such as outlining the most material methodologies that underlie a significant proportion of the calculation of valuation uncertainty.

Row 31 Portfolios Excluded due to Extreme Valuation Subjectivity

This is a narrative box which allows the *firm* to provide details of each ‘Portfolio Excluded due to Extreme Valuation Subjectivity’ the *firm* has chosen to disclose in row 19. Information provided should include, but not necessarily be limited to, a description of the products and why an effective assessment of valuation uncertainty cannot be performed, details of the extent to which the portfolio is classified as AFS or fair-value option in the Banking Book and a historical description of how the portfolio was built up together with a description of what the strategy is for the portfolio for the future (e.g. whether there is still new trading or whether this is a legacy portfolio being sold off over time).

Row 32 Portfolios of Particular Interest

This is a narrative box which allows the *firm* to provide details of each ‘Portfolio of Particular Interest’ the *firm* has chosen to disclose in row 25. Information provided should include, but not necessarily be limited to, a description of the products, details of the extent to which the portfolio is classified as AFS or fair-value option in the Banking Book, why it is of particular interest, the basis of the methodology used to calculate the uncertainty and a historical description of how the portfolio was built up together with a description of what the strategy is for the portfolio for the future (e.g. whether there is still new trading or whether this is a legacy portfolio being sold off over time).

Row 33 Reporting Currency

This is a box in which the *firm* should declare the reporting currency used.

Internal Validations

Validation Number	Data Element		Data Element(s)
1	1C	=	1A-1B
2	2C	=	2A-2B
3	3C	=	3A-3B
4	4C	=	4A-4B
5	5C	=	5A-5B
6	6C	=	6A-6B
7	7C	=	7A-7B
8	8C	=	8A-8B
9	9C	=	9A-9B
10	10C	=	10A-10B
11	11C	=	11A-11B
12	12C	=	12A-12B
13	13C	=	13A-13B
14	14C	=	14A-14B
15	15C	=	15A-15B
16	16A	=	1A+2A+3A+4A+5A+6A+7A+8A+9A+10A+11A+12A+13A+14A+Sum(15A)
17	16B	=	1B+2B+3B+4B+5B+6B+7B+8B+9B+10B+11B+12B+13B+14B+Sum(15B)
18	16C	=	16A-16B
19	16E	=	1E+2E+3E+4E+5E+6E+7E+8E+9E+10E+11E+12E+13E+14E+Sum(15E)
20	16F	=	1F+2F+3F+4F+5F+6F+7F+8F+9F+10F+11F+12F+13F+14F+Sum(15F)
21	18A	=	16A
22	18B	=	16B
23	18C	=	18A-18B
24	18E	=	16E-17E
25	18F	=	16F-17F
26	19C	=	19A-19B
27	20A	=	Sum(19A)
28	20B	=	Sum(19B)
29	20C	=	20A-20B
30	20E	=	Sum(19E)
31	21A	=	18A+20A
32	21B	=	18B+20B
33	21C	=	21A-21B
34	22E	=	18E+20E
35	24E	=	22E-Sum(23E)
36	25C	=	25A-25B
37	26A	=	21A
38	26B	=	21B
39	26C	=	26A-26B
40	27C	=	27A-27B
41	28A	=	26A+Sum(27A)
42	28B	=	26B+Sum(27B)
43	28C	=	28A-28B

External Validations

There are no external validations for this data item.

Amend the following as shown.

Schedule 2 Notification requirements

...

Sch 2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 16.14.5G	...			
<u><i>SUP</i> 16.16.4R</u>	<u>Reporting - Prudent Valuation Return - UK banks and BIPRU 730k firms which meet the condition in SUP 16.16.2R.</u>	<u>The items listed in the form contained in SUP 16 Annex 31AR.</u>	<u>Quarterly (the quarter ends are 31 March, 30 June, 30 September and 31 December).</u>	<u>Six weeks</u>
...				

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (MASTER-FEEDER)
INSTRUMENT 2012**

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 27 April 2012.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C

Citation

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Master-Feeder) Instrument 2012.

By order of the Board
26 April 2012

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>feeder NURS</i>	<p>a <i>non-UCITS retail scheme</i> which:</p> <p>(a) does not operate as:</p> <p style="padding-left: 40px;">(i) a <i>FAIF</i>; or</p> <p style="padding-left: 40px;">(ii) a <i>feeder fund</i>; or</p> <p style="padding-left: 40px;">(iii) a <i>scheme dedicated to units in a single property authorised investment fund</i>; and</p> <p>(b) is <i>dedicated to units</i> in either:</p> <p style="padding-left: 40px;">(i) a single <i>qualifying master scheme</i>; or</p> <p style="padding-left: 40px;">(ii) a single <i>sub-fund</i> of a <i>qualifying master scheme</i> that is an <i>umbrella</i>; and</p> <p>which, in the case of either (i) or (ii), is:</p> <p style="padding-left: 40px;">(A) a <i>UCITS</i>; or</p> <p style="padding-left: 40px;">(B) a <i>non-UCITS retail scheme</i>; or</p> <p style="padding-left: 40px;">(C) a <i>recognised scheme</i>.</p>
<i>qualifying master scheme</i>	<p>where a <i>feeder NURS</i> is <i>dedicated to units</i> in a single <i>collective investment scheme</i>, which meets the requirements in <i>COLL 5.6.26R(1)</i>, that <i>collective investment scheme</i>.</p>

Amend the following as shown.

<i>fund of alternative investment funds</i>	<p>an <i>authorised fund</i> whose <i>instrument constituting the scheme</i> contains the statement in <i>COLL 3.2.6R(7C)</i> (Table: contents of the <i>instrument constituting the scheme</i>) that it is a <i>fund of alternative investment funds</i>.</p> <p><u>a <i>non-UCITS retail scheme</i>, or a <i>sub-fund</i> of a <i>non-UCITS retail scheme</i> which is an <i>umbrella</i> whose <i>authorised fund manager</i> operates, or proposes to operate, it in accordance with the investment and borrowing powers in <i>COLL 5.7</i> (Investment powers and borrowing limits for <i>NURS</i> operating as <i>FAIFs</i>).</u></p>
---	--

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

13.3 Contents of a key features document

...

13.3.3 R ...

Feeder NURS

13.3.4 R A key features document for a feeder NURS must include:

- (1) a statement identifying it as such a scheme;
- (2) information specific to the feeder NURS and its qualifying master scheme which enables investors to understand the qualifying master scheme's key particulars; and
- (3) a description and explanation of any material differences between the risk profile of the feeder NURS and that of the qualifying master scheme.

13.3.5 G When producing the key features document, the authorised fund manager of the feeder NURS should have due regard to the provisions in COLL 4.6.8R (Contents of the simplified prospectus) in terms of additional information appropriate to a feeder NURS and its qualifying master scheme. In particular, the appropriate charges information required by COBS 13.4.1R and COBS 13 Annex 3 (Charges) should represent the aggregate of the charges of the feeder NURS and its qualifying master scheme as disclosed in the feeder NURS' most up-to-date prospectus.

Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

1.2 Types of authorised fund

Types of authorised fund

1.2.1 R An application for an *authorisation order* must propose that the *scheme* be one of the following types:

...

(2) a *non-UCITS retail scheme*, including:

(a) a *non-UCITS retail scheme* operating as a *fund of alternative investment funds (FAIF)*; ~~or~~ and

(b) a *non-UCITS retail scheme* which is an *umbrella with sub-funds* operating as:

(i) *FAIFs*;

(ii) standard *non-UCITS retail schemes*; or

(iii) a mixture of (i) and (ii); or

...

...

Types of authorised fund - explanation

1.2.2 G ...

(2) *Non-UCITS retail schemes* are *schemes* that do not comply with all the conditions set out in the *UCITS Directive*. Such *schemes* could become *UCITS schemes* provided they are changed, so as to comply with the conditions set out in the *UCITS Directive*. *Non-UCITS retail schemes* operating as *FAIFs* have wider powers to invest in *collective investment schemes* than other *non-UCITS retail schemes*.

(2A) A *non-UCITS retail scheme* may also be structured as an *umbrella with sub-funds* operating as:

(a) *FAIFs*;

(b) standard *non-UCITS retail schemes*; or

(c) a mixture of (a) and (b).

In these cases, rules relating to investment powers and borrowing limits apply to each sub-fund as they would to a scheme.

...

...

3.2 The instrument constituting the scheme

...

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)

...	
	Funds of alternative investment funds
7C	For a non UCITS retail scheme operating as a FAIF, a statement that it is a fund of alternative investment funds.
	Feeder UCITS
7D	For a feeder UCITS, a statement that it is a feeder UCITS and as such will permanently invest at least 85% in value of the scheme property in units of a single master UCITS.
...	

...

4.2 Pre-sale notifications

...

4.2.3A R ...

Feeder NURS: provision of the prospectus of the qualifying master scheme

4.2.3B R (1) The authorised fund manager of a feeder NURS must, where requested by an investor or the FSA, provide such person with a copy of the prospectus of its qualifying master scheme free of charge.

(2) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the prospectus of the qualifying master scheme may be provided in a durable medium other than paper, or by means of a website that meets the website conditions.

...

Table: contents of the prospectus

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

...	
Authorised fund	
2	A description of the <i>authorised fund</i> including:
...	
(f)	for an <i>ICVC</i> , the maximum and minimum sizes of its capital; and
(g)	the circumstances in which it may be wound up under the <i>rules</i> and a summary of the procedure for, and the rights of <i>unitholders</i> under, such a winding up; <u>and</u>
(h)	<u>if it is not an <i>umbrella</i>, a statement that it is a <i>feeder UCITS</i>, a <i>feeder NURS</i>, or a <i>fund of alternative investment funds</i>, where that is the case.</u>
...	
<u>Umbrella Schemes</u>	
<u>2B</u>	<u>For a <i>UCITS scheme</i> or <i>non-UCITS retail scheme</i> which is an <i>umbrella</i>, a statement detailing whether each specific <i>sub-fund</i> is a <i>feeder UCITS</i>, a <i>feeder NURS</i> or a <i>fund of alternative investment funds</i>, as appropriate.</u>
Investment objectives and policy	
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :
...	
(ka)	where a <i>scheme</i> is a <i>feeder scheme</i> (other than a <i>feeder UCITS</i> <u>or</u> a <i>feeder NURS</i>), which (in respect of investment in <i>units</i> in <i>collective investment schemes</i>) is <i>dedicated</i> to <i>units</i> in a single <i>collective investment scheme</i> , details of the master <i>scheme</i> and the minimum (and, if relevant, maximum) investment that the <i>feeder scheme</i> may make in it;
...	
...	
Funds of alternative investment funds	

22B	For a <i>non-UCITS retail scheme</i> operating as a <i>FAIF</i> , a statement that it is a <i>fund of alternative investment funds</i> .	
...		
<u>Information on a feeder NURS</u>		
25B	In the case of a <i>feeder NURS</i> , the following information:	
	(a)	a declaration that the <i>feeder NURS</i> is a feeder of a particular <i>qualifying master scheme</i> and as such is <i>dedicated to units</i> in a single <i>qualifying master scheme</i> and the minimum (and, if relevant, maximum) investment that the <i>feeder NURS</i> may make in its <i>qualifying master scheme</i> ;
	(b)	the investment objective and policy of the <i>feeder NURS</i> , including its risk profile; and whether the performance records of the <i>feeder NURS</i> and the <i>qualifying master scheme</i> are identical, or to what extent and for which reasons they differ, including a description of how the balance of the <i>scheme property</i> which is not invested in <i>units</i> of the <i>qualifying master scheme</i> is invested in accordance with <i>COLL 5.6.7R(6A)</i> (Spread: general);
	(c)	a brief description of the <i>qualifying master scheme</i> , its organisation, its investment objective and policy, including the risk profile, and an indication of how the <i>prospectus</i> of the <i>qualifying master scheme</i> may be obtained;
	(d)	how the <i>unitholders</i> may obtain further information on the <i>qualifying master scheme</i> ;
	(e)	a description of all remuneration or reimbursement of costs payable by the <i>feeder NURS</i> by virtue of its investment in <i>units</i> of the <i>qualifying master scheme</i> , as well as the aggregate charges of the <i>feeder NURS</i> and the <i>qualifying master scheme</i> ; and
	(f)	a description of the tax implications of the investment into the <i>qualifying master scheme</i> for the <i>feeder NURS</i> .
...		

4.3 Approvals and notifications

...

Change events relating to feeder UCITS and feeder NURS

- 4.3.11 R Where the *authorised fund manager* of either a *UCITS scheme* which is a *feeder UCITS* or a *feeder NURS* is notified of any change in respect of its *master UCITS* or *qualifying master scheme* which has the effect of a change to the *feeder UCITS* or *feeder NURS*, the *authorised fund manager* must:

- (1) classify it as a fundamental change, significant change or a notifiable change to the *feeder UCITS* or *feeder NURS* in accordance with the *rules* in this section; and
- (2)
 - (a) for a fundamental change, obtain approval from the *unitholders* by way of an *extraordinary resolution*; or
 - (b) for a significant change, give written notice to *unitholders* of that change; or
 - (c) for a notifiable change, comply with *COLL* 4.3.8R (Notifiable changes).

4.3.12 R The actions required by *COLL* 4.3.11R(2)(a) and (b) must be carried out as soon as reasonably practicable after the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* has been informed of the relevant change to the *master UCITS* or *qualifying master scheme*.

- 4.3.13 G
- (1) The *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should assess the change to the *master UCITS* or *qualifying master scheme* in terms of its impact on the *feeder UCITS* or *feeder NURS*. For example, a change to the investment objective and policy of the *master UCITS* or *qualifying master scheme* that alters its risk profile would constitute a fundamental change for the *feeder UCITS* or *feeder NURS*. In order for the *feeder UCITS* or *feeder NURS* to continue investing in the *master UCITS* or *qualifying master scheme*, the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *master UCITS* or *qualifying master scheme*. For a *feeder UCITS* this should be done in accordance with *COLL* 11.2.2R (Application for approval of an investment in a master UCITS).
 - (2) Not all changes affecting the *master UCITS* or *qualifying master scheme* will have the same significance for the *feeder UCITS* or *feeder NURS* and its *unitholders*. For example, a change to how the *prices* of the *units* in the *master UCITS* or *qualifying master scheme* are published might not be a significant change for the *feeder UCITS* or *feeder NURS* if the *prices* of its own *units* continue to be published in the same way.
 - (3) Where the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* receives insufficient notice of the intended change to the *master UCITS* or *qualifying master scheme* to be able to seek the prior approval of *unitholders* to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the *feeder UCITS* or *feeder NURS*.

...

4.5 Reports and accounts

...

Contents of a short report

4.5.5 R ...

(1A) The short report of a *UCITS scheme* which is a *feeder UCITS* must also include:

(a) in relation to each *annual accounting period* only, a statement on the aggregate charges of the *feeder UCITS* and the *master UCITS*;

...

[**Note:** article 63(2) of the *UCITS Directive*]

(1B) The short report of a *feeder NURS* must also include:

(a) in relation to each *annual accounting period* only, a statement on the aggregate charges of the *feeder NURS* and its *qualifying master scheme*;

(b) a description of how the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* can be obtained; and

(c) where the *qualifying master scheme* is a *UCITS scheme* or *non-UCITS retail scheme*, a description of how the annual and half-yearly short reports of its *qualifying master scheme* can be obtained.

...

...

Contents of the annual long report

4.5.7 R ...

(5) ...

[**Note:** article 63(2) of the *UCITS Directive*]

(6) An annual long report of a *feeder NURS* must also include:

(a) a statement on the aggregate charges of the *feeder NURS* and its

qualifying master scheme; and

- (b) a description of how the annual long report (or nearest equivalent document for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* can be obtained.

Contents of the half-yearly long report

4.5.8 R

(4) ...

[**Note:** article 63(2) of the second subparagraph of the *UCITS Directive*]

- (5) The half-yearly long report of a *feeder NURS* must also include a description of how the half-yearly and annual long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* can be obtained.

...

4.5.15 R ...

[**Note:** articles 63(3) and 63(5) of the *UCITS Directive*]

Provision of annual and half-yearly long reports for qualifying master schemes of feeder NURS

4.5.16 R (1) The *authorised fund manager* of a *feeder NURS* must, where requested by an investor or the *FSA*, provide to such *person* copies of the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* free of charge.

- (2) Except where an investor requests paper copies or the use of *electronic communications* is not appropriate, the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* may be provided in a *durable medium* other than paper, or by means of a website that meets the *website conditions*.

4.6 Simplified Prospectus provisions

...

Contents of the simplified prospectus

4.6.8 R This table belongs to the rule on production and publication of a simplified prospectus (*COLL* 4.6.2R and *COLL* 4.6.6R)

Contents of simplified prospectus

...			
(23)	... of the <i>simplified prospectus</i> ;		
<u>Additional information for a feeder NURS: Objectives and investment policy</u>			
(24)	(a)	<u>where the <i>scheme</i> is a <i>feeder NURS</i>, in the description of objectives and investment policy, information about the proportion of the <i>feeder NURS</i>' assets which is invested in the <i>qualifying master scheme</i>; and</u>	
	(b)	<u>a description of the <i>qualifying master scheme</i>'s objectives and investment policy, supplemented by:</u>	
		(i)	<u>an indication that the investment returns of the <i>feeder NURS</i> will be very similar to those of the <i>qualifying master scheme</i>; or</u>
		(ii)	<u>an explanation of how and why the investment returns of the <i>feeder NURS</i> and <i>qualifying master scheme</i> may differ;</u>
<u>Additional information for a feeder NURS: Risk profile</u>			
(25)	(a)	<u>a description and explanation of any material differences between the risk profile of the <i>feeder NURS</i> and that of the <i>qualifying master scheme</i>; and</u>	
	(b)	<u>details of:</u>	
		(i)	<u>any liquidity risk; and</u>
		(ii)	<u>the relationship between purchase and redemption arrangements for the <i>qualifying master scheme</i> and <i>feeder NURS</i>;</u>
<u>Additional information for a feeder NURS: Practical information</u>			
(26)	<u>where the <i>scheme</i> is a <i>feeder NURS</i>, information specific to the <i>feeder NURS</i>, including:</u>		
	(a)	<u>a statement that the following <i>documents</i> of the <i>qualifying master scheme</i> are available to <i>unitholders</i> of the <i>feeder NURS</i> upon request, and details of how they may be obtained:</u>	
		(i)	<u>the <i>prospectus</i>;</u>
		(ii)	<u>A</u>
			<u>the <i>key investor information document</i>; or</u>
			<u>B</u>
			<u>where the <i>authorised fund manager</i> of the <i>qualifying master scheme</i> has a dispensation in the form of a <i>general waiver</i> by consent so that it may provide a <i>key investor information document</i> as modified by the <i>general waiver direction</i>, that document (a '<i>NURS KII document</i>'); or</u>

		<u>C</u>	<u>the key features document; or</u>
		<u>D</u>	<u>the simplified prospectus; or</u>
		<u>E</u>	<u>the nearest equivalent document for a <i>qualifying master scheme</i> that is a <i>recognised scheme</i>;</u>
		(iii)	<u>the annual and half-yearly long reports (or nearest equivalent documents for a <i>qualifying master scheme</i> that is a <i>recognised scheme</i>); and</u>
		(iv)	<u>where the <i>qualifying master scheme</i> is a <i>UCITS scheme</i> or <i>non-UCITS retail scheme</i>, its annual and half-yearly short reports;</u>
	(b)		<u>where the <i>qualifying master scheme</i> is not established in the <i>United Kingdom</i>, and where this may affect the <i>feeder NURS</i>' tax treatment, a statement to this effect;</u>
<u>Feeder NURS: past performance presentations</u>			
(27)	(a)		<u>any past performance presentation in the document of the <i>feeder NURS</i> must be specific to the <i>feeder NURS</i> and must not reproduce the performance record of the <i>qualifying master scheme</i>;</u>
	(b)		<u>the requirement in (a) does not apply where the <i>feeder NURS</i>:</u>
		(i)	<u>shows the past performance of its <i>qualifying master scheme</i> as a benchmark; or</u>
		(ii)	<u>was launched as a <i>feeder NURS</i> at a later date than the <i>qualifying master scheme</i> and where a simulated performance which is based on the past performance of the <i>qualifying master scheme</i> is shown for the years before the <i>feeder NURS</i> existed; or</u>
		(iii)	<u>has a performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart of the relevant years, with any material change labelled.</u>
General Note			
...			

...

5.6 Investment powers and borrowing limits for non-UCITS retail schemes

...

5.6.3 R (1) ...

(1A) For a feeder NURS, (1) applies only to the extent that the feeder NURS invests in assets other than units of its qualifying master scheme.

...

...

Spread: general

5.6.7 R ...

(6) Except for a *feeder fund*, a *feeder NURS* or a *scheme dedicated to units* in a single *property authorised investment fund*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.

(6A) *Schemes* which (in respect of investment in *units* in *collective investment schemes*) are *dedicated to units* in a single *property authorised investment fund* or *qualifying master scheme* must, in addition to the investment in the *property authorised investment fund* or *qualifying master scheme*, only hold cash or *near cash* to maintain sufficient liquidity to enable the *scheme* to meet its commitments, such as *redemptions*. *Schemes* may also use techniques and instruments for the purpose of *efficient portfolio management*, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

...

...

Investment in collective investment schemes

5.6.10 R A non-UCITS retail scheme, except for a feeder NURS (which must instead comply with COLL 5.6.26R), must not invest in units in a collective investment scheme (second scheme) unless the second scheme meets each of the requirements at (1) to (5):

...

...

5.6.24 R ...

(2) A *sub-fund* may invest in or dispose of *units* of another *sub-fund* of the same *umbrella* (the second *sub-fund*) only if the following conditions are satisfied:

...

(b) the conditions in COLL 5.2.16R (Investment in other group

schemes) and *COLL 5.6.11R* (Investment in associated collective investment schemes) are complied with (for the purposes of this *rule*, *COLL 5.2.16R* and *COLL 5.6.11R* are to be read as modified by *COLL 5.6.11R(2)*); ~~and~~

- (c) not more than 35% in value of the investing or disposing *sub-fund* is to consist of *units* of the second *sub-fund*; and
- (d) the investing or disposing *sub-fund* must not be a *feeder NURS* to the second *sub-fund*.

...

Qualifying collective investment schemes for feeder NURS

5.6.26 R The authorised fund manager of a feeder NURS must ensure that the feeder NURS does not invest in the qualifying master scheme, unless the qualifying master scheme meets both of the requirements in (1) and (2):

- (1) the qualifying master scheme:
 - (a) satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive; or
 - (b) is a recognised scheme; or
 - (c) is a non-UCITS retail scheme; and
- (2) where the qualifying master scheme is an umbrella, the provisions in COLL 5.6.7R (Spread: general) apply to each sub-fund as if it were a separate scheme.

5.7 Investment powers and borrowing limits for NURS operating as FAIFs

...

Purpose

5.7.2 G ...

- (2) ~~Some examples~~ One example of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* operating as *FAIFs* ~~are~~ is the power to: invest up to 100% of the value of the scheme property in schemes to which COLL 5.7.7R (Investment in collective investment schemes) applies.
 - (a) ~~invest up to 100% of the value of the scheme property in schemes captured by COLL 5.7.7R; and~~
 - (b) ~~invest in a single master scheme.~~

...

Non-UCITS retail schemes that are umbrellas with FAIF sub-funds

5.7.12 R In relation to a non-UCITS retail scheme which is an umbrella comprised of sub-funds which are:

(1) FAIFs; or

(2) a mixture of FAIFS and standard non-UCITS retail schemes;

the provisions in this section apply to each sub-fund operating as a FAIF as they would to a separate scheme.

...

7.2 Suspension and restart of dealings

...

Temporary suspension of units of a master UCITS or qualifying master scheme

7.2.1A R Where:

(1) an authorised fund manager of a UCITS scheme which is a master UCITS or a qualifying master scheme temporarily suspends the issue, cancellation, sale and redemption of its units, whether at its own initiative or at the request of the FSA; or

(2) an operator of an EEA UCITS scheme which is a master UCITS or a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of its Home State regulator; or

(3) an authorised fund manager of a non-UCITS retail scheme which is a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of the FSA; or

(4) the operator of a recognised scheme which is a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units whether at its own initiative or at the request of its regulator;

the authorised fund manager of each of its feeder UCITS (which is a UCITS scheme) or feeder NURS is entitled to suspend the issue, cancellation, sale or redemption of its units for the same period of time as the master UCITS or qualifying master scheme.

[**Note:** article 60(3) of the *UCITS Directive*]

...

After COLL 12 insert the following new chapter. This text is not underlined.

13 Operation of feeder NURS

13.1 Introduction

Application

13.1.1 R This chapter applies to:

- (1) the *authorised fund manager* of a *feeder NURS*;
- (2) an *ICVC* that is a *feeder NURS*;
- (3) the *authorised fund manager* of a *UCITS scheme* or *non-UCITS retail scheme* which operates as a *qualifying master scheme* to a *feeder NURS*; and
- (4) (in the case of *COLL 13.2.6R* (Inducements) only) any *person* acting on behalf of either the *feeder NURS* or the *authorised fund manager* of the *feeder NURS*.

Purpose

13.1.2 G This chapter sets out various obligations, additional to those found elsewhere in the *Handbook*, that *persons* listed in *COLL 13.1.1R* must comply with in relation to the operation of a *feeder NURS* and its *qualifying master scheme*.

13.2 Operational requirements for feeder NURS

Application

13.2.1 R This section applies as follows:

- (1) *COLL 13.2.2R* to *COLL 13.2.6R* apply to the *authorised fund manager* of a *feeder NURS*;
- (2) *COLL 13.2.6R* also applies to:
 - (a) an *ICVC* that is a *feeder NURS*; and
 - (b) any *person* acting on behalf of either the *feeder NURS* or the *authorised fund manager* of the *feeder NURS*; and
- (3) *COLL 13.2.7R* applies to the *authorised fund manager* of a *UCITS scheme* or a *non-UCITS retail scheme* which operates as a *qualifying master scheme* to a *feeder NURS*.

Pre-investment requirements of the authorised fund manager of a feeder NURS

- 13.2.2 R Before investing in the *qualifying master scheme*, the *authorised fund manager* of the *feeder NURS* must:
- (1) be satisfied on reasonable grounds that the *authorised fund manager* can obtain from the *qualifying master scheme* all the information necessary to comply on an ongoing basis with the *rules* in *COLL*;
 - (2) having consulted with the *depository* of the *feeder NURS*, be satisfied on reasonable grounds that the *depository* of the *feeder NURS* can obtain from the *qualifying master scheme*, the *operator* of the *qualifying master scheme* or the *depository* of the *qualifying master scheme* all the information necessary to comply with its duties under *COLL* 6.6.4R (General duties of the depository); and
 - (3) where the *qualifying master scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*, inform the *authorised fund manager* of the *qualifying master scheme* of the date on which the *feeder NURS* will begin to invest into the *qualifying master scheme* as a *feeder NURS*.

Ownership of units in a feeder NURS

- 13.2.3 R The *authorised fund manager* of a *feeder NURS* must take reasonable care to ensure that its *units* are not owned, including beneficially owned, by the *qualifying master scheme*.

Charges made by the qualifying master scheme or its operator to a feeder NURS on investment or disposal

- 13.2.4 R
- (1) Where the *operator* of a *qualifying master scheme* or the *authorised fund manager* of a *qualifying master scheme* imposes any charge which is, or is equivalent in effect to, a *preliminary charge* or *redemption charge* on the *feeder NURS* for the acquisition or disposal of *units* in the *qualifying master scheme*, the *authorised fund manager* of the *feeder NURS* must pay to the *feeder NURS* an amount equal to such *charge* within four *business days* following the relevant acquisition or disposal.
 - (2) In this *rule*, where the *operator* of a *qualifying master scheme* or *authorised fund manager* of a *qualifying master scheme* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the *qualifying master scheme* which is, or is equivalent in effect to, a *dilution levy* made in accordance with *COLL* 6.3.8R (Dilution) or *SDRT provision* made in accordance with *COLL* 6.3.7R (SDRT Provision), it is to be treated as part of the *price* of the *units* and not as part of any *preliminary charge* or *redemption charge* referred to in (1).

Avoidance of opportunities for market timing

- 13.2.5 R The *authorised fund manager* of a *feeder NURS* must take appropriate measures to co-ordinate the timing of the *feeder NURS*' net asset value calculation and publication with those of its *qualifying master scheme*,

including the publication of *dealing prices*, in order to avoid market timing of their *units*, and prevent arbitrage opportunities.

Inducements

13.2.6 R Where, in connection with an investment in the *units* of the *qualifying master scheme*, a distribution fee, commission or other monetary benefit is received by:

- (1) a *feeder NURS*; or
- (2) an *authorised fund manager* of a *feeder NURS*; or
- (3) any *person* acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the *scheme property* of the *feeder NURS* within four *business days* of receipt of that *fee*, commission or other monetary benefit.

Obligations to unitholders of a qualifying master scheme

13.2.7 R Where the *qualifying master scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*, the *authorised fund manager* of the *qualifying master scheme* must not, if it would unfairly prejudice the interests of *unitholders* of the *qualifying master scheme* other than the *feeder NURS*, provide or make available information to the *authorised fund manager* of the *feeder NURS* without at the same time also providing or making available that information to the *unitholders* of the *qualifying master scheme* other than the *feeder NURS*.

Amend the following as shown.

Schedule 2 Notification requirements

...

Sch G 1 Notification requirements
2.2

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COLL</i> 4.2.3AR(1)(b)	...			
<i>COLL</i> 4.2.3BR(1)	<u>Prospectus of the <i>qualifying master scheme</i> of a <i>feeder</i></u>	<u>Copy provided</u>	<u>Upon request by the <i>FSA</i></u>	<u>Immediate</u>

	<u>NURS</u>			
...				
<i>COLL</i> 4.5.15R(1)(b)	...			
<u><i>COLL</i></u> <u>4.5.16R(1)</u>	<u>Annual and half-yearly long report (or nearest equivalent documents for a <i>qualifying master scheme</i> that is a <i>recognised scheme</i>) of the <i>qualifying master scheme</i> of a <i>feeder NURS</i></u>	<u>Copy provided</u>	<u>Upon request by the <i>FSA</i></u>	<u>Immediate</u>
...				

PERIODIC FEES (2012/2013) AND OTHER FEES INSTRUMENT 2012

- 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 99 (Fees);
 - (b) section 101 (Part 6 rules: general provisions);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 234 (Industry Funding);
 - (f) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority);
 - (g) paragraph 12 of Part 2 (Funding) of Schedule 1A (Further provision about the Consumer Financial Education Body); and
 - (h) paragraphs 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI);
 - (2) 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);
 - (3) the following provisions of the Electronic Money Regulations 2011 (SI 2011/99):
 - (a) regulation 49 (Reporting requirements);
 - (b) regulation 59 (Costs of supervision); and
 - (c) regulation 60 (Guidance); and
 - (4) the following powers and related provisions in the Regulated Covered Bond Regulations 2008 (SI 2008/346):
 - (a) regulations 18, 20, 24 and 25 (notification requirements);
 - (b) regulation 42 (Guidance);
 - (c) regulation 46 and paragraph 5 of Schedule 1 (fees).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 June 2012.

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 Periodic Fees (2012/2013) and Other Fees Instrument 2012.

By order of the Board
24 May 2012

Annex A**Amendments to the Glossary of definitions**

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

issuer

...

- (5) (in *RCB* and *FEES* ~~3~~ 1 to 4, where applicable) (as defined in Regulation 1(2) of the *RCB Regulations*) a person which issues a *covered bond*.

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) ...
- (2) *FEES* 1, 2 and 4 apply to:
 - ...
 - (i) under the Disclosure Rules and Transparency Rules (*DTR*) every *issuer* of *shares*, depositary receipts and securitised derivatives; ~~and~~
 - ...
 - (k) every *fee-paying electronic money issuer*; and
 - (l) every issuer of a regulated covered bond.

...

...

3 Annex 8R Fees payable for authorisation as an authorised payment institution or registration as a small payment institution, including notification fees, in accordance with the Payment Services Regulations

Authorisation and registration fees payable

Application type for authorisation, or registration <u>and notification</u> under Part 2 of the <i>Payment Services Regulations</i>	Amount payable
...	
(4) <i>authorised payment institution</i> - where, <u>at the time the application is made</u> , the applicant has or intends to have <u>use</u> between 2,500 and 5,000 <i>agents</i>	<p>£12,500</p> <p><u>£3 for each <i>agent</i> registered with the FSA at the time of application.</u></p> <p><u>This fee is in addition to any fee due under paragraph (2) or (3) of</u></p>

	this table.
(5) <i>authorised payment institution</i> – where, during the course of the <i>FSA</i> financial year (12 months ending 31 March), the applicant <i>firm</i> notifies the <i>FSA</i> of any changes to the list of <i>agents</i> it has registered since authorisation has or intends to have more than 5,000 <i>agents</i>	<p>£25,000</p> <p>£3 for each change notified to the <i>FSA</i> during the <i>FSA</i> financial year.</p> <p>No fee is due under paragraph (5) if the total number of notifications to the <i>FSA</i> during the <i>FSA</i> financial year numbers 100 or less.</p>

3 Annex Special Project Fee for restructuring 9R

...		
(11) R	Table of hourly rates:	
	FSA pay grade	Hourly rate (£)
	Administrator	25 <u>30</u>
	Associate	50 <u>55</u>
	Technical Specialist	85 <u>100</u>
	Manager	90 <u>110</u>
	Any other person employed by the <i>FSA</i>	135 <u>160</u>
...		

3 Annex Fees payable for authorisation as an authorised electronic money institution 10R or registration as a small electronic money institution or variation thereof, including notification fees, in accordance with the Electronic Money Regulations

Authorisation, registration and variation fees payable

Application type for authorisation, registration, or variation or <u>notification</u> under Part 2 of the <i>Electronic Money Regulations</i>	Amount payable
--	----------------

...	
<u>(3) electronic money institution - where, at the time the application is made, the applicant intends to use agents</u>	<u>£3 for each agent registered with the FSA at the time of application.</u> <u>This fee is in addition to any fees due under paragraph (1) or (2) of this table.</u>
<u>(4) electronic money institution – where, during the course of the FSA financial year (12 months ending 31 March), the firm notifies the FSA of any changes to the list of agents it has registered since its authorisation</u>	<u>£3 for each change notified to the FSA during the FSA financial year.</u> <u>No fee is due under paragraph (4) if the total number of notifications to the FSA during the FSA financial year numbers 100 or less.</u>

...

Background

4.1.4 G ...

(3) The periodic fees for *fee-paying payment service providers*, ~~and~~ *fee-paying electronic money issuers* and issuers of regulated covered bonds 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*.

...

4.2.7C R ...

4.2.7D R If an issuer of a regulated covered bond becomes registered after 31 December its valuation date will be calculated in the manner described in FEES 4 Annex 11R Part 4.

...

4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
All <i>firms</i> reporting transactions in <i>securities derivatives</i> to the FSA in

accordance with SUP 17, and market operators who provide facilities for trading in securities derivatives.			
<u>Any issuer of a regulated covered bond.</u>	<u>FEES 4 Annex 11R</u>	<p>(1) Unless (2) applies, on or before the relevant dates specified in <u>FEES 4.3.6R</u></p> <p>(2) If an event specified in column 4 occurs during the course of a financial year, 30 days after the occurrence of that event or, if later, the dates specified in <u>FEES 4.3.6R</u></p>	<u>A person becomes registered as an issuer of a regulated covered bond</u>

...

Time of payment

- 4.3.6 R (1) If the *firm's or regulated covered bond issuer's* periodic fee for the previous financial year was at least £50,000, ~~the firm~~ it must pay:
- ...
- (2) If the *firm's or regulated covered bond issuer's* periodic fee for the previous financial year was less than £50,000, ~~the firm~~ it must pay the periodic fee due in full by 1 July in the financial year to which that sum relates.

...

...

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

...

Part 2
...

Activity group	Tariff base
<p>...</p> <p>A.7</p>	<p>...</p> <p>...</p> <p>Notes on FuM</p> <p>...</p> <p><u>(f) If the <i>firm</i> is managing an overlay portfolio of <i>derivative</i> instruments and the underlying assets are managed by itself or a <i>firm</i> within the same <i>group</i> that has not reported them separately to the <i>FSA</i>, or by a <i>firm</i> outside its <i>group</i>, then it should calculate the value of the <i>derivatives</i> and other assets as prescribed in the <i>guidance</i> in FSA038 in SUP 16 Annex 25G.</u></p> <p><u>If the underlying assets are managed by another <i>firm</i> within the same <i>group</i> who has reported their value separately to the <i>FSA</i>, then to avoid double-counting within the <i>group</i>, the calculation must be restricted to the exposure of the overlay.</u></p>

...

4 Annex 2R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013

Part 1

This table shows the tariff rates applicable to each fee block

...			
Activity group	Fee payable		
A.1	Band width (£ million of Modified Eligible Liabilities (MELs))	Fee (£/£m or part £m of MELs)	
		Column 1 General Periodic fee	
	>10 – 140	33.44 <u>40.30</u>	

	>140 – 630	33.44	40.30	
	>630 – 1,580	33.44	40.30	
	>1,580 – 13,400	41.80	50.37	
	>13,400	55.18	66.49	
	...			
A.2	Band width (No. of mortgages and/or home finance transactions)	Fee (£/mortgage)		
	>50 - 130	1.79	1.80	
	>130 – 320	1.79	1.80	
	>320 – 4,570	1.79	1.80	
	>4, 570 – 37,500	1.79	1.80	
	>37,500	1.79	1.80	
A.3	Gross premium income (GPI)	Column 1 General periodic fee	Column 2 Solvency 2 Implementation fee	Column 3 Solvency 2 Special Project fee
	Minimum fee (£)	Not applicable	25.00	25.00
	Band Width (£ million of GPI)	Fee (£/£m or part £m of GPI)		
	>0.5 – 10.5	505.51 647.01	119.38 45.93	127.57 59.66
	>10.5 – 30	505.51 647.01	119.38 45.93	127.57 59.66
	>30 – 245	505.51 647.01	119.38 45.93	127.57 59.66
	>245 – 1,900	505.51 647.01	119.38 45.93	127.57 59.66
	>1,900	505.51 647.01	119.38 45.93	127.57 59.66
	PLUS			
	Gross technical	Column 1 General	Column 2 Solvency 2	Column 3 Solvency 2

	liabilities (GTL)	Periodic fee	Implementation fee	Special Project fee
	Band Width (£ million of GTL)	Fee (£/£m or part £m of GTL)		
	>1 – 12.5	26.82 <u>34.44</u>	6.42 <u>2.42</u>	7.25 <u>3.59</u>
	>12.5 – 70	26.82 <u>34.44</u>	6.42 <u>2.42</u>	7.25 <u>3.59</u>
	>70 – 384	26.82 <u>34.44</u>	6.42 <u>2.42</u>	7.25 <u>3.59</u>
	>384 – 3,750	26.82 <u>34.44</u>	6.42 <u>2.42</u>	7.25 <u>3.59</u>
	>3,750	26.82 <u>34.44</u>	6.42 <u>2.42</u>	7.25 <u>3.59</u>
	...			
A.4	Adjusted annual gross premium income (AGPI)	Column 1 General Periodic fee	Column 2 Solvency 2 Implementation fee	Column 3 Solvency 2 Special Project fee
	Minimum fee (£)	Not applicable	25.00	25.00
	Band Width (£ million of AGPI)	Fee (£/£m or part £m of AGPI)		
	>1 – 5	628.82 <u>806.72</u>	147.39 <u>68.13</u>	151.35 <u>69.03</u>
	>5 – 40	628.82 <u>806.72</u>	147.39 <u>68.13</u>	151.35 <u>69.03</u>
	>40 – 260	628.82 <u>806.72</u>	147.39 <u>68.13</u>	151.35 <u>69.03</u>
	>260 – 4,000	628.82 <u>806.72</u>	147.39 <u>68.13</u>	151.35 <u>69.03</u>
	>4,000	628.82 <u>806.72</u>	147.39 <u>68.13</u>	151.35 <u>69.03</u>
	PLUS			
	Mathe- matical reserves (MR)	Column 1 General Periodic fee	Column 2 Solvency 2 Implementation fee	Column 3 Solvency 2 Special Project fee
	Minimum	Not applicable	25.00	25.00

	fee (£)			
	Band Width (£ million of MR)	Fee (£/£m or part £m of MR)		
	>1 –20	13.44 <u>17.73</u>	3.10 <u>1.52</u>	3.06 <u>1.44</u>
	>20 – 270	13.44 <u>17.73</u>	3.10 <u>1.52</u>	3.06 <u>1.44</u>
	>270 – 7,000	13.44 <u>17.73</u>	3.10 <u>1.52</u>	3.06 <u>1.44</u>
	>7,000 – 45,000	13.44 <u>17.73</u>	3.10 <u>1.52</u>	3.06 <u>1.44</u>
	>45,000	13.44 <u>17.73</u>	3.10 <u>1.52</u>	3.06 <u>1.44</u>
A.5	Band Width (£ million of Active Capacity (AC))	Fee (£/£m or part £m of AC)		
	>50 – 150	56.34 <u>61.02</u>		
	>150 – 250	56.34 <u>61.02</u>		
	>250 – 500	56.34 <u>61.02</u>		
	>500 – 1,000	56.34 <u>61.02</u>		
	>1,000	56.34 <u>61.02</u>		
A.6	Flat fee	1,419,112.28 <u>1,565,615.52</u>		
	PLUS			
	Solvency 2 Special Project Flat fee (£)	975,000 <u>682,500</u>		
	PLUS			
	Solvency 2 Implementation Flat fee (£)	331,238.49 <u>149,517.37</u>		
A.7	For class 1(C), (2) and (3) <i>firms</i> :			
	Band Width (£ million of Funds under Management (FuM))	Fee (£/£m or part £m of FuM)		
	>10 – 150	6.80 <u>8.66</u>		

	>150 – 2,800	6.80 <u>8.66</u>
	>2,800 – 17,500	6.80 <u>8.66</u>
	>17,500 – 100,000	6.80 <u>8.66</u>
	>100,000	6.80 <u>8.66</u>
	...	
...	...	
A.9	Band Width (£ million of Gross Income (GI))	Fee (£/£m or part £m of GI)
	>1 – 4.5	1,380.85 <u>1,350.30</u>
	>4.5 – 17	1,380.85 <u>1,350.30</u>
	>17 – 145	1,380.85 <u>1,350.30</u>
	>145 – 750	1,380.85 <u>1,350.30</u>
	>750	1,380.85 <u>1,350.30</u>
A.10	Band Width (No. of traders)	Fee (£/trader)
	2 – 3	3,565.73 <u>5,133.71</u>
	4 – 5	3,565.73 <u>5,133.71</u>
	6 – 30	3,565.73 <u>5,133.71</u>
	31 – 180	3,565.73 <u>5,133.71</u>
	>180	3,565.73 <u>5,133.71</u>
...		
A.12	Band Width (No. of persons)	Fee (£/person)
	2 – 5	757.17 <u>591.58</u>
	6 – 35	757.17 <u>591.58</u>
	36 – 175	757.17 <u>591.58</u>
	176 – 1,600	757.17 <u>591.58</u>
	>1,600	757.17 <u>591.58</u>

	For a <i>professional firm</i> in A.12 the fee is calculated as above less 10%.	
A.13	For class (2) <i>firms</i> :	
	Band Width (No. of persons)	Fee (£/person)
	2 – 3	1,290.54 <u>1,191.47</u>
	4 – 30	1,290.54 <u>1,191.47</u>
	31 – 300	1,290.54 <u>1,191.47</u>
	301 – 2,000	1,290.54 <u>1,191.47</u>
	>2,000	1,290.54 <u>1,91.47</u>
	...	
A.14	Band Width (No. of persons)	Fee (£/person)
	2 – 4	2,809.83 <u>1,742.49</u>
	5 – 25	2,809.83 <u>1,742.49</u>
	26 – 80	2,809.83 <u>1,742.49</u>
	81 – 199	2,809.83 <u>1,742.49</u>
	>199	2,809.83 <u>1,742.49</u>
...		
A.18	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100 – 180	13.12 <u>14.33</u>
	>180 – 1,000	13.12 <u>14.33</u>
	>1,000 – 12,500	13.12 <u>14.33</u>
	>12,500 – 50,000	13.12 <u>14.33</u>
	>50,000	13.12 <u>14.33</u>
A.19	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)

	>100 –325	1.94 <u>1.68</u>
	>325 – 10,000	1.94 <u>1.68</u>
	>10,000 – 50,750	1.94 <u>1.68</u>
	>50,750 – 250,000	1.94 <u>1.68</u>
	>250,000	1.94 <u>1.68</u>
B. Market operators	£35,000 <u>£40,250</u>	
B. Service companies	Bloomberg LP	£45,000 <u>£51,750</u>
	LIFFE Services Ltd	£35,000 <u>£40,250</u>
	[row deleted]	
	OMGEO Ltd	£35,000 <u>£40,250</u>
	Reuters Ltd	£45,000 <u>£51,750</u>
	Swapswire Ltd	£35,000 <u>£40,250</u>
...		

...

Part 2

This table shows the permitted deductions that apply where financial penalties are received by the *FSA* under sections 66, 123 and 206 of the *Act* and regulation 42 of the *Money Laundering Regulations*:

Activity group	Amount of deduction
Part 1A (minimum fee)	16.8% <u>1.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.1	17.0% <u>8.3%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.2	20.8% <u>17.8%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.3	16.9% <u>4.3%</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 Special Project fee (as defined in Part 1) or Solvency 2 Implementation fee as applicable under Part 5.

A.4	16.9% <u>4.8%</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 Special Project fee (as defined in Part 1) or Solvency 2 Implementation fee as applicable under Part 5.
A.5	16.8% <u>1.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.6	16.8% <u>1.2%</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 Special Project flat fee or Solvency 2 Implementation flat fee (as defined in Part 1).
A.7	18.1% <u>26.6%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.9	16.8% <u>33.9%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.10	18.6% <u>12.8%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.12	21.7% <u>42.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.13	17.7% <u>11.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.14	20.4% <u>26.6%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.18	18.2% <u>24.8%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.19	17.3% <u>8.3%</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 Special Project fee for *firms* falling into fee block A3 or A4.

(1)	...
(2)	The Solvency 2 Special Project fee is only payable by a <i>firm</i> if it meets the conditions in Part 5 and the <u>either of the</u> conditions set out in paragraph (3) of this part.
	...

(3)	The conditions are that:	
	(a)	before 1 April 2011 <u>2012</u> the <i>firm</i> , or a member of the group of which the <i>firm</i> is also a member (in either case, ‘the recipient’), received a written communication from the <i>FSA</i> that it has met the criteria for entry into pre-Internal Model Approval Process status (‘pre-IMAP’); and <u>the recipient remains in pre-IMAP status on 1 April 2012; or</u>
	(b)	the recipient remains in pre-IMAP status on 1 April 2011. <u>before 1 April 2013 the <i>firm</i> makes a written application to the <i>FSA</i> for internal model approval under the <i>Solvency 2 Directive</i> where:</u>
	(i)	<u>the application is made on or after the date from which the <i>FSA</i> is required under the <i>Solvency 2 Directive</i> to consider internal model approvals from a <i>firm</i>; and</u>
	(ii)	<u>the <i>firm</i> has not otherwise paid a <i>Solvency 2 Special Project Fee</i> in respect of the <i>FSA</i> financial year ending on 31 March 2013.</u>
...		

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)	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).	
(2)	The conditions in this paragraph are:	
	(a)	...
	(b)	the <i>firm</i> has not notified the <i>FSA</i> before the start of the financial year 2011/12 <u>2012/13</u> that it intends to migrate out of the <i>United Kingdom</i> for regulatory purposes before the <i>Solvency 2 Directive</i> is implemented;
	(c)	...
	(d)	it was in one or both of the insurance fee blocks at the start of the financial year 2011/12 <u>2012/13</u> ;
	...	
...		

...

4 Annex 4R **Periodic fees in relation to collective investment schemes payable for the period 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013**

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>	585 <u>580</u>	1-2	1	585 <u>580</u>
		3-6	2.5	1,463 <u>1,450</u>
		7-15	5	2,925 <u>2,900</u>
		16-50	11	6,435 <u>6,380</u>
		>50	22	12,870 <u>12,760</u>
Section 272 of the <i>Act</i>	2,380 <u>2,360</u>	1-2	1	2,380 <u>2,360</u>
		3-6	2.5	5,950 <u>5,900</u>
		7-15	5	11,900 <u>11,800</u>
		16-50	11	26,180 <u>25,960</u>
		>50	22	52,360 <u>51,920</u>

Fees are charged according to the number of funds or *sub-funds* operated by a *firm* as at 31 March ~~2011~~ 2012 ...

4 Annex 5R **Periodic fees for designated professional bodies payable in relation to the period 1 April 2012 to 31 March 2013**

Table of fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date
The Law Society of England & Wales	...	...
	£31,660 <u>£28,235</u>	1 September 2011 <u>2012</u>
The Law Society of Scotland	£13,990 <u>£13,080</u>	1 July 2011 <u>2012</u>
The Law Society of Northern Ireland	£12,920 <u>£12,500</u>	1 July 2011 <u>2012</u>
The Institute of Actuaries	£10,110 <u>£10,090</u>	1 July 2011 <u>2012</u>

The Institute of Chartered Accountants in England and Wales	£ 24,660 <u>£22,340</u>	1 July 2011 <u>2012</u>
The Institute of Chartered Accountants of Scotland	£ 11,200 <u>£11,030</u>	1 July 2011 <u>2012</u>
The Institute of Chartered Accountants in Ireland	£ 10,650 <u>£10,560</u>	1 July 2011 <u>2012</u>
The Association of Chartered Certified Accountants	£ 16,980 <u>£15,960</u>	1 July 2011 <u>2012</u>
The Council for Licensed Conveyancers	£ 11,230 <u>£11,080</u>	1 July 2011 <u>2012</u>
Royal Institution of Chartered Surveyors	£ 13,800 <u>£13,360</u>	1 July 2011 <u>2012</u>

...

4 Annex 6R Periodic fees for recognised investment exchanges, recognised clearing houses and recognised auction platforms payable in relation to the period 1 April 2012 to 31 March 2013

...

Part 1 - Periodic fees for UK recognised clearing houses and recognised investment exchanges

Name of UK recognised body	Amount payable	Due date
Euroclear UK & Ireland Limited	...	...
	£ 275,000 <u>£410,500</u>	1 September 2011 <u>2012</u>
ICE Futures Europe Ltd	...	...
	£ 245,000 <u>£365,500</u>	1 September 2011 <u>2012</u>
LIFFE Administration and Management	...	...
	£ 350,000 <u>£510,500</u>	1 September 2011 <u>2012</u>
LCH Clearnet Limited	...	...
	£ 325,000 <u>£545,000</u>	1 September 2011 <u>2012</u>
The London Metal Exchange Limited	...	...

	£212,500 £319,500	1 September 2011 <u>2012</u>
London Stock Exchange plc	...	
	£280,000 £427,000	1 September 2011 <u>2012</u>
PLUS Markets Plc	...	
	£85,000 £127,500	1 September 2011 <u>2012</u>
European Central Counterparty Limited	...	..
	£167,500 £203,000	1 September 2011 <u>2012</u>
ICE Clear Europe Limited	...	
	£265,000 £416,500	1 September 2011 <u>2012</u>
Chicago Mercantile Exchange Clearing Europe	...	
	£275,000 £275,500	1 September 2011 <u>2012</u>
...		

...

Part 2 - Periodic fees for overseas recognised bodies

Name of overseas recognised body	Amount payable	Due date
The Chicago Mercantile Exchange (CME) (ROIE)	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>
Chicago Board of Trade	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>
EUREX (Zurich)	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>
National Association of Securities and Dealers Automated Quotations (NASDAQ)	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>
New York Mercantile Exchange Inc.	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>
The Swiss Stock Exchange	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>

Sydney Futures Exchange Limited	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>
ICE Futures US Inc	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>
NYSE Liffe US	£40,000 <u>£50,000</u>	1 July 2011 <u>2012</u>
SIS x-clear AG	£100,000 <u>£125,000</u>	1 July 2011 <u>2012</u>
Eurex Clearing AG	£70,000 <u>£85,000</u>	1 July 2011 <u>2012</u>
ICE Clear US Inc	£70,000 <u>£85,000</u>	1 July 2011 <u>2012</u>
Chicago Mercantile Exchange (CME) (ROCH)	£100,000 <u>£125,000</u>	1 July 2011 <u>2012</u>
European Multi-Lateral Clearing Facility	£100,000 <u>£125,000</u>	1 July 2011 <u>2012</u>
Cassa di Compensazione e Garanzia (CC&G)	£70,000 <u>£85,000</u>	1 July 2011 <u>2012</u>
LCH Clearnet SA	£100,000 <u>£125,000</u>	1 July 2011 <u>2012</u>
<u>Green Exchange (ROIE)</u>	<u>£50,000</u>	<u>1 July 2012</u>
...		

4 Annex 7R Periodic fees in relation to the Listing Rules for the period 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013

Fee type	Fee amount
Annual fees for the period 1 April 2011 <u>2012</u> to 31 March 2012 <u>2013</u>	
...	<p>(1) For all <i>issuers</i> of <i>securitised derivatives</i>, depository receipts and global depository receipts the fees payable are set out in Table 1.</p> <p>(2) For all other <i>issuers</i>, fees to be determined according to market capitalisation, as at the last <i>business day</i> of the November prior to the <i>FSA</i> financial year in which the fee is payable, are as set out in Table 2. The fee is calculated as follows:</p> <p>(a) the relevant minimum fee; plus</p>

	(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche. Where issuers have more than one type of share in issue, the highest market capitalisation of all of its securities in issue is used. (3) ...
...	
<u>No fee is due under this annex in relation to regulated covered bonds. FEES 4 Annex 11R sets out the fees due in relation to regulated covered bonds.</u>	

Table 1

~~The Annual Fees annual fee for issuers of securitised derivatives, depository receipts and global depository receipts is £4,200.~~

Issuer	Fee amount
Issuers of securitised derivatives	£3,700
Issuers of depository receipts and global depository receipts	£4,440

Table 2

Tiered annual fees for all other issuers

Fee payable	
Minimum Fee (£)	3,700 <u>4,200</u>
£ million of Market Capitalisation as at the last <i>business day</i> of the November prior to the <i>FSA</i> financial year in which the fee is payable	Fee (£/£m of part £m of Market Capitalisation as at the last <i>business day</i> of the November prior to the <i>FSA</i> financial year in which the fee is payable)
0 – 100	0
> 100 – 250	23.593356 <u>26.778459</u>
> 250 – 1,000	9.436716 <u>10.710673</u>
> 1,000 – 5,000	5.808686 <u>6.592859</u>
> 5,000 – 25,000	0.141692 <u>0.160820</u>

> 25,000	0.045777 <u>0.051957</u>
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There is deducted from the fee specified in this Annex ~~4.7%~~ 1.8% of the fee payable to take into account financial penalties received by the *FSA* under section 91 of the *Act* in the previous financial year.

4 Annex 8R Periodic fees in relation to the disclosure rules and transparency rules for the period 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013

Annual fees for the period 1 April 2011 <u>2012</u> to 31 March 2012 <u>2013</u>	
...	

Table 1

Annual fees for non-listed issuers of securitised derivatives, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers of securitised derivatives</i>	£2,960 <u>£3,360</u>
<i>Issuers of depositary receipts and global depositary receipts</i>	£3,552 <u>£2,688</u>

Table 2

Fee payable	
Minimum Fee (£)	2,960 <u>3,360</u>
£ million of Market Capitalisation <u>as at the last business day of the November prior to the FSA financial year in which the fee is payable</u>	Fee (£/£m of part £m of Market Capitalisation <u>as at the last business day of the November prior to the FSA financial year in which the fee is payable</u>)
0 – 100	0
> 100 – 250	18.874685 <u>21.422767</u>
> 250 – 1,000	7.549373 <u>8.568538</u>
> 1,000 – 5,000	4.646949 <u>5.274287</u>

> 5,000 – 25,000	0.113353 <u>0.128656</u>
> 25,000	0.036622 <u>0.041565</u>

There is deducted from the fee specified in this Annex ~~4.7%~~ 1.8% of the fee payable to take into account financial penalties received by the *FSA* under section 91 of the *Act* in the previous financial year.

4 Annex 9R **Periodic fees in respect of securities derivatives for the period from 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013**

Part 1

...

For the purposes of this Annex, a “relevant contract” is any contract entered into or settled by *firms* on or through LIFFE or Eurex Clearing AG in *securities derivatives* and the “relevant period” is 1 January ~~2010~~ 2011 to 31 December ~~2010~~ 2011 inclusive.

The fee shown in the table below for *firms* (but not *market operators*) will be subject to a deduction of ~~16.7%~~ 1.2%, 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	£585 <u>£595</u>
1,001 - 100,000	£2,950 <u>£2,995</u>
100,001 - 1,000,000	£8,875 <u>£9,000</u>
1,000,001 - 5,000,000	£21,300 <u>£21,600</u>
5,000,001 - 20,000,000	£37,750 <u>£38,280</u>
>20,000,000	£57,500 <u>£58,300</u>
Fee amount for <i>market operators</i>	
<i>Market operators</i> providing facilities for trading in <i>securities derivatives</i> that do not identify those <i>securities derivatives</i>	£11,000 <u>£11,150</u>

using an <i>International Securities Identity Number</i> .
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4 Annex 10R **Periodic fees for MTF operators payable in relation to the period 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013**

Name of <i>MTF</i> operator	Fee payable (£)	Due date 1 July 2011 2012
Barclays Bank Plc	4,000 <u>5,000</u>	
Baltic <u>Exchange</u> Derivatives Trading Ltd	20,000 <u>23,500</u>	
BATS Trading Ltd	80,000 <u>109,000</u>	
BGC Brokers L.P	4,000 <u>5,000</u>	
Cantor Index Limited	8,000 <u>10,000</u>	
Chi-X Europe Limited	130,000 <u>175,000</u>	
EuroMTS Limited	30,000 <u>35,500</u>	
GFI Brokers Limited	4,000 <u>5,000</u>	
GFI Securities Limited	4,000 <u>5,000</u>	
ICAP Electronic Broking Limited	6,250 <u>7,800</u>	
ICAP Energy Limited	4,000 <u>5,000</u>	
ICAP Europe Limited	4,000 <u>5,000</u>	
ICAP Shipping Tanker Derivatives Limited	4,000 <u>5,000</u>	
ICAP Securities Limited	4,000 <u>5,000</u>	
ICAP WCLK Limited	4,000 <u>5,000</u>	
J.P.Morgan Cazenove Limited	4,000 <u>N/A</u>	
Liquidnet Europe Limited	70,000 <u>83,000</u>	
MF Global UK Limited	4,000 <u>N/A</u>	
My Treasury Limited	4,000 <u>5,000</u>	
<u>iSWAP Euro Ltd</u>	<u>5,000</u>	

Nomura <u>International Plc</u>	4,000 <u>5,000</u>	
<u>Credit Agricole Cherveux International</u>	<u>5,000</u>	
Sigma X MTF	4,000	
SmartPool Trading Limited	22,500 <u>26,500</u>	
TFS-ICAP Limited	4,000 <u>5,000</u>	
Tradeweb Europe Limited	13,000 <u>16,000</u>	
Tradition (UK) Limited	4,000 <u>5,000</u>	
Tradition Financial Services Limited	4,000 <u>5,000</u>	
Tullett Prebon (Europe) Limited	4,000 <u>5,000</u>	
Tullett Prebon (Securities) Limited	4,000 <u>5,000</u>	
Turquoise Global Holdings Ltd	140,000 <u>165,500</u>	
<u>Goldman Sachs International</u>	<u>5,000</u>	
UBS Ltd	4,000 <u>5,000</u>	
...	<p>In the case of an <i>EEA firm</i> that:</p> <p>(a) has not carried on the activity of <i>operating a multilateral trading facility</i> in the <i>UK</i> at any time in the calendar year ending 31 December 2009 <u>2011</u>; and</p> <p>(b) notifies the <i>FSA</i> of that fact by the end of March 2010 <u>2012</u>;</p> <p>the fee is zero.</p> <p>.....</p> <p>In any other case £3,500 <u>£4,400</u></p>	<p>...</p> <p>In any other case, 1 July 2011 <u>2012</u></p>
	There is deducted from the fee specified in this Annex 16.7% <u>9.3%</u> of the fee payable to take into account financial penalties received by the <i>FSA</i> under section	

66, 123 and 206 of the <i>Act</i> in the previous financial year.

4 Annex 11R **Periodic fees in respect of payment services carried on by fee-paying payment service providers under the Payment Services Regulations and electronic money issuance by fee-paying electronic money issuers under the Electronic Money Regulations and issuance of regulated covered bonds by issuers in relation to the period 1 April ~~2011~~ 2012 to 31 March ~~2012~~ 2013**

...

Part 1B – Method for calculating the periodic fee where the firm is both a fee-paying payment service provider and a fee-paying electronic money issuer

...

<u>Part 1C – Method for calculating the fee for an issuer of a regulated covered bond</u>

<u>The issuance of <i>regulated covered bonds</i> by <i>issuers</i> is linked to activity group G.15 in this annex. The periodic fees for <i>issuers</i> of <i>regulated covered bonds</i> is calculated by multiplying the tariff base relevant to G.15 in Part 3 of <i>FEES</i> 4 Annex 11R by the appropriate rates applying to each tranche of the tariff base as indicated in the table at Part 5.</u>

...

Part 3

This table indicates the tariff base for each fee-block. The tariff base is the means by which the <i>FSA</i> measures the ‘amount of business’ conducted by <i>fee-paying payment service providers</i> , and <i>fee-paying electronic money issuers</i> <u>and <i>issuers of regulated covered bonds</i></u> .

Activity group	Tariff base
...	
G.10	Average outstanding electronic money as defined under regulation 2(1) of the <i>Electronic Money Regulations</i> . This is the average total amount of financial liabilities related to <i>electronic money</i> in issue at the end of each calendar day over the preceding twelve calendar months (which is the period ending on the date set out under Part 4), calculated on the first calendar day of each calendar month and applied for that calendar month (£million). This tariff base applies for the period 2012/13.
G.11	...
<u>G.15</u>	<u><i>Regulated covered bonds</i> issued in the 12 months ending on the valuation date and valued as at the valuation date.</u>

Part 4 – Valuation period

This table indicates the valuation date for each fee-block. A *fee-paying payment service provider*, ~~and~~ a *fee-paying electronic money issuer* and a regulated covered bond issuer can calculate tariff data by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.

Activity group	Valuation date
...	
G.11	...
G.15	<p><u>(1) The last day of the financial quarter during which the issuer became registered as an issuer in the FSA financial year (the 12 months ending 31 March).</u></p> <p><u>(2) For subsequent FSA financial years, 31 December unless (3) applies.</u></p> <p><u>(3) If the issuer became registered as an issuer between 1 January and 31 March inclusive, 31 March in respect of the FSA financial year immediately following the FSA financial year during which it became registered and 31 December in respect of all further FSA financial years.</u></p> <p><u>A reference to a financial quarter in this box means any of the following periods: 1 April to 30 June inclusive, 1 July to 30 September inclusive, 1 October to 31 December inclusive or 1 January to 31 March inclusive.</u></p>

Part 5 – Tariff rates

Activity group	Fee payable in relation to 2011/12 2012/13	
G.2	Minimum fee (£)	400
	£ million or part £m of Modified Eligible Liabilities (MELS)	Fee (£/£m or part £m of MELS)
	> 0.1	0.45265 <u>0.29055</u>
	> 0.25	0.45265 <u>0.29055</u>
	> 1.0	0.45265 <u>0.29055</u>
	> 10.0	0.45265 <u>0.29055</u>
	> 50.0	0.45265 <u>0.29055</u>
	> 500.0	0.45265 <u>0.29055</u>

G.3	Minimum fee (£)	400
	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)
	> 100	0.29950 <u>0.19415</u>
	> 250	0.29950 <u>0.19415</u>
	> 1000	0.29950 <u>0.19415</u>
	> 10,000	0.29950 <u>0.19415</u>
	> 50,000	0.29950 <u>0.19415</u>
	> 500,000	0.29950 <u>0.19415</u>
...		
G.10	Minimum fee (£)	1,500
	£million or part £m of average outstanding electronic money (AOEM)	Fee (£/£m or part £m of AOEM)
	>5.0	150.00 <u>180.00</u>
G.11	£1,000 <u>£1,000</u>	
<u>G.15</u>	<u>Minimum fee for the first registered programme</u>	<u>£83,590</u>
	<u>Minimum fee for all subsequent registered programmes</u>	<u>75% of minimum fee for first registered programme</u>
	<u>£million or part £m of regulated covered bonds issued in the 12 months ending on the valuation date.</u>	<u>Fee (£/£m or part £m of regulated covered bonds issued in the 12 months ending on the valuation date)</u>
	<u>>0.00</u>	<u>10.28</u>
<p><u>For the purposes of calculating fees, any regulated covered bonds denominated in a currency other than sterling must be converted into sterling at the applicable exchange rate set out below.</u></p> <p><u>Where an exchange rate hedging agreement was entered into in connection with the issuance of regulated covered bonds denominated in a currency other than sterling, the applicable exchange rate for those regulated cover bonds is the exchange rate stipulated in the exchange rate hedging agreement.</u></p>		

	<p><u>An exchange rate hedging agreement is any agreement entered into to hedge the market risk relating to fluctuations in exchange rates.</u></p> <p><u>In all other cases, the applicable exchange rate is the daily spot rate available on the Bank of England’s Statistical Interactive Database (the “Bank of England exchange rate”) applying on the valuation date. If the valuation date is not a <i>business day</i>, then the applicable exchange rate is the Bank of England exchange rate applying on the first <i>business day</i> following the valuation date.</u></p>
--	--

Part 6 – Permitted deductions for financial penalties pursuant to regulation 85 of the *Payment Services Regulations*, ~~and~~ regulation 51 of the *Electronic Money Regulations* and regulation 34 of the *RCB Regulations*, as applicable.

Fee-paying payment service providers, ~~and~~ *fee-paying electronic money issuers* and issuers of regulated covered bonds may make deductions as provided in this Part.

Activity group	Nature of deduction	Amount of deduction
G.2	Financial penalties received	0.1% <u>0.0%</u>
G.3	Financial penalties received	0.1% <u>0.0%</u>
G.4	Financial penalties received	0.1% <u>0.0%</u>
G.5	Financial penalties received	0.1% <u>0.0%</u>
G.10	Financial penalties received	0.1% <u>0.0%</u>
G.11	Financial penalties received	0.1% <u>0.0%</u>
<u>G.15</u>	<u>Financial penalties received</u>	<u>0.0%</u>

...

5 Financial Ombudsman Service Funding

...

5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for ~~2011/12~~ 2012/13

Introduction: annual budget

1. The *annual budget* for ~~2011/12~~ 2012/13 approved by the FSA is ~~£127.9m~~ £191.1m.

2. The total amount expected to be raised through the *general levy* in ~~2011/12~~ 2012/13 will be ~~£42.7m~~ £17.7m (net of ~~£1.8m~~ £1.5m to be raised from consumer

credit firms).

Compulsory jurisdiction – general levy

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> , <i>home finance administrators</i> (excluding <i>firms</i> in block 14) and <i>dormant account fund operators</i>	...	£0.0643648 <u>£0.0331</u> per relevant account, subject to a minimum levy of £100
2-Insurers - general (excluding <i>firms</i> in blocks 13 & 15)	...	£0.21626 <u>£0.10</u> per £1,000 of relevant annual gross premium income, subject to a minimum levy of £100
3-The <i>Society</i> (of Lloyd's)	...	£48,116 <u>£20,000</u> to be allocated by the <i>Society</i>
4-Insurers - life (excluding <i>firms</i> in block 15)	...	£0.038445 <u>£0.0146</u> 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>)	...	Levy of £485 <u>£200</u>
6-Operators, trustees and depositaries of collective investment schemes and operators of personal pension schemes or stakeholder pension schemes	...	Levy of £120 <u>£50</u>
7-Dealers as principal	...	Levy of £125 <u>£50</u>
8-Advisory <i>arrangers</i> , dealers or brokers holding and controlling <i>client money</i> and/or assets	...	£36.98 <u>£15</u> per relevant <i>approved person</i> subject to a minimum levy of £35
9-Advisory <i>arrangers</i> , dealers or brokers not holding and controlling	...	£30.02 <u>£10</u> per relevant <i>approved person</i> subject to a minimum levy of £35

<i>client money</i> and/or assets		
10-Corporate finance advisers	...	Levy of £130 <u>£50</u>
11- <i>fee-paying payment service providers</i> (but excluding <i>firms</i> in any other Industry block except Industry block 18)	...	£0.040854 <u>£0.0153</u> per £1,000 of relevant income subject to a minimum levy of £75
	...	Levy of £150 <u>£50</u>
12-	N/A for 2010/11 <u>2012/13</u>	
13-Cash plan health providers	...	Levy of £125 <u>£50</u>
14- <i>Credit unions</i>	...	Levy of £125 <u>£50</u>
15- <i>Friendly societies</i> whose tax-exempt business represents 95% or more of their total relevant business	...	Levy of £125 <u>£50</u>
16- <i>Home finance providers, advisers and arrangers</i> (excluding <i>firms</i> in blocks 13, 14 & 15)	...	Levy of £110 <u>£60</u>
17-General insurance mediation (excluding <i>firms</i> in blocks 13, 14 & 15)	...	£1.649277 <u>£0.362</u> per £1,000 of <i>annual income</i> (as defined in <i>MIPRU</i> 4.3) relating to <i>firm's relevant business</i> subject to a minimum levy of £85
18- <i>fee-paying electronic money issuers</i>	For all <i>fee-paying electronic money issuers</i> except for <i>small electronic money institutions</i> , average outstanding <i>electronic money</i> , as described in <i>FEES</i> 4 Annex 11R Part 3. This tariff base applies for the period 2012/13. For <i>small electronic</i>	£180 <u>£0.0466 per £1,000 of average outstanding electronic money subject to a minimum levy of £75</u> <u>£180</u> <u>£50</u>

	<i>money institutions, a flat fee</i>	
--	---------------------------------------	--

...

...

7 Annex 1R **CFEB levies for the period from 1 April 2011 2012 to 31 March 2012 2013**

Part 1

This table shows the *CFEB levies* applicable to each activity group (fee-block)

Activity Group	<i>CFEB levy payable</i>			
A.1	<u>Column 1</u> <u>Money advice levy</u>		<u>Column 2</u> <u>Debt advice levy</u> <u>(Notes 3 – 6)</u>	
	Band Width (£ million of Modified Eligible Liabilities (MELs))	Fixed sum (£/£m or part £m of MELs)	<u>Bandwidth</u> (£ million of <u>unsecured debt</u>)	<u>Fixed sum (£/£m or part £m of unsecured debt)</u>
	> 10 - 140	5.04 <u>5.30</u>	≥0	<u>48.00</u>
	> 140 - 630	5.04 <u>5.30</u>		
	>630 - 1,580	5.04 <u>5.30</u>		
	>1,580 - 13,400	5.04 <u>5.30</u>		
	>13,400	5.04 <u>5.30</u>		
	Note 1 In respect of <u>Column 1, Money advice levy only</u> , For 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, this levy is calculated as above less 30%.			
A.2	<u>Column 1</u> <u>General levy</u>		<u>Column 2</u> <u>Debt advice levy</u> <u>(Notes 5 – 6)</u>	

	Band Width (no. of mortgages and/or <i>home finance transactions</i>)	Fixed sum (£/mortgage)	Bandwidth (£ million of secured debt)	Fixed sum (£/£m or part £m of secured debt)
	>50 – 130	0.142 <u>0.142</u>	<u>≥0</u>	<u>24.37</u>
	>130 – 320	0.142 <u>0.142</u>		
	>320 – 4,570	0.142 <u>0.142</u>		
	>4, 570 – 37,500	0.142 <u>0.142</u>		
	>37,500	0.142 <u>0.142</u>		
A.3	Gross premium income (GPI)			
	Band Width (£ million of GPI)	Fixed sum (£/£m or part £m of GPI)		
	>0.5 – 10.5	55.74 <u>57.52</u>		
	>10.5 - 30	55.74 <u>57.52</u>		
	>30 - 245	55.74 <u>57.52</u>		
	>245 - 1, 900	55.74 <u>57.52</u>		
	>1,900	55.74 <u>57.52</u>		
	PLUS			
	Gross technical liabilities (GTL)			
	Band Width (£ million of GTL)	Fixed sum (£/£m of part £m of GTL)		
	>1 – 12.5	3.01 <u>3.07</u>		
	>12.5 - 70	3.01 <u>3.07</u>		
	>70 - 384	3.01 <u>3.07</u>		
	>384 - 3,750	3.01 <u>3.07</u>		
	>3,750	3.01 <u>3.07</u>		
A.4	Adjusted annual gross premium income (AGPI)			

	Band Width (£ million of AGPI)	Fixed sum (£/£m or part £m of AGPI)
	>1 - 5	72.65 <u>74.61</u>
	>5 - 40	72.65 <u>74.61</u>
	>40 - 260	72.65 <u>74.61</u>
	>260 - 4,000	72.65 <u>74.61</u>
	>4,000	72.65 <u>74.61</u>
	PLUS	
	Mathematical reserves (MR)	
	Band Width (£ million of MR)	Fixed sum (£/£m or part £m of MR)
	>1 - 20	1.57 <u>1.64</u>
	>20 - 270	1.57 <u>1.64</u>
	>270 - 7,000	1.57 <u>1.64</u>
	>7,000 - 45,000	1.57 <u>1.64</u>
	>45,000	1.57 <u>1.64</u>
A.5	Band Width (£ million of Active Capacity (AC))	Fixed sum (£/£m or part £m of AC)
	>50 - 150	5.63 <u>5.69</u>
	>150 - 250	5.63 <u>5.69</u>
	>250 - 500	5.63 <u>5.69</u>
	>500 - 1,000	5.63 <u>5.69</u>
	>1,000	5.63 <u>5.69</u>
A.6	Flat levy	£159,941.90 <u>£169,333.29</u>
A.7	For class 1(C), (2) and (3) <i>firms</i> :	
	Band Width (£ million of Funds under Management (FuM))	Fixed sum (£/£m of part £m of FuM)
	>10 - 150	0.79 <u>0.84</u>

	>150 - 2,800	0.79 <u>0.84</u>
	>2,800 - 17,500	0.79 <u>0.84</u>
	>17,500 - 100,000	0.79 <u>0.84</u>
	>100,000	0.79 <u>0.84</u>
	...	
A.9	Band Width (£ million of Gross Income (GI))	Fixed sum (£/£m of part £m of GI)
	>1 - 4.5	83.73 <u>84.56</u>
	>4.5 - 17	83.73 <u>84.56</u>
	>17 - 145	83.73 <u>84.56</u>
	>145 - 750	83.73 <u>84.56</u>
	>750	83.73 <u>84.56</u>
A.10	Band Width (no. of traders)	Fixed sum (£/trader)
	2 - 3	318.75 <u>349.48</u>
	4 - 5	318.75 <u>349.48</u>
	6 - 30	318.75 <u>349.48</u>
	31 - 180	318.75 <u>349.48</u>
	>180	318.75 <u>349.48</u>
A.12	Band Width (no. of persons)	Fixed sum (£/person)
	2 - 5	43.13 <u>45.59</u>
	6 - 35	43.13 <u>45.59</u>
	36 - 175	43.13 <u>45.59</u>
	176 - 1,600	43.13 <u>45.59</u>
	>1,600	43.13 <u>45.59</u>
	...	
A.13	For class (2) firms	

	Band Width (no. of persons)	Fixed sum (£/person)
	2 – 3	160.79 <u>147.11</u>
	4 - 30	160.79 <u>147.11</u>
	31 - 300	160.79 <u>147.11</u>
	301 - 2,000	160.79 <u>147.11</u>
	>2,000	160.79 <u>147.11</u>
	...	
A.14	Band Width (no. of persons)	Fixed sum (£/person)
	2 – 4	126.34 <u>128.22</u>
	5 - 25	126.34 <u>128.22</u>
	26 - 80	126.34 <u>128.22</u>
	81 - 199	126.34 <u>128.22</u>
	>199	126.34 <u>128.22</u>
A.18	Band Width (£ thousands of Annual Income (AI))	Fixed sum (£/£ thousand or part £ thousand of AI)
	>100 - 180	1.36 <u>1.67</u>
	>180 - 1,000	1.36 <u>1.67</u>
	>1,000 - 12,500	1.36 <u>1.67</u>
	>12,500 - 50,000	1.36 <u>1.67</u>
	>50,000	1.36 <u>1.67</u>
A.19	Band Width (£ thousands of Annual Income (AI))	Fixed sum (£/£ thousand or part £ thousand of AI)
	>100 - 325	0.256 <u>0.249</u>
	>325 - 10,000	0.256 <u>0.249</u>
	>10,000 - 50,750	0.256 <u>0.249</u>
	>50,750 - 250,000	0.256 <u>0.249</u>
	>250,000	0.256 <u>0.249</u>

G.3	<u>Minimum fee (£)</u>	<u>10</u>
	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)
	>100	0.04787 <u>0.04430</u>
	>250	0.04787 <u>0.04430</u>
	>1,000	0.04787 <u>0.04430</u>
	>10,000	0.04787 <u>0.04430</u>
	>50,000	0.04787 <u>0.04430</u>
	>500,000	0.04787 <u>0.04430</u>
G.4	A flat fee of £10 <u>£10</u>	
G.10	<u>Minimum fee (£)</u>	<u>10</u>
	£ million or part £m of average outstanding electronic money (AOEM)	Fee (£/£m or part £m of AOEM)
	> 5.0	12.00 <u>13.10</u>
...		
Notes		
...		
<p><u>(3) The tariff base for column 2 in activity group A.1:</u></p> <p><u>for credit unions:</u></p> <p><u>the total sterling value of all loans LESS total sterling value of any residential loans.</u></p> <p><u>for banks and building societies:</u></p> <p><u>the sterling value of all outstanding loans to individuals in the UK, excluding bridging loans and loans secured on dwellings and land.</u></p> <p><u>The firm must include:</u></p> <p>(a) <u>any credit card lending;</u></p> <p>(b) <u>any charge card lending, even if the outstanding balance has to be paid off in full at the end of each charging period;</u></p>		

(c) any other loans and advances to individuals that are not bridging loans or secured on dwellings or land;

provided that the *firm* only includes data that it is required to include in entries 29DB3A3 and 29DB3A4 of Form BE (that is, the Additional Sectoral Details Return that is completed to provide information by banks and building societies to the Bank of England).

(4) The valuation date for column 2 in activity group A.1 is the 31 December before the start of the period to which the fee applies or, if earlier, the date of the valuation as disclosed by the Form BE or other annual return made in the calendar year prior to the 31 December.

(5) The tariff base for column 2 in activity group A.2 is the sterling value of any residential loans to individuals being the sum of gross unsecuritised and securitised balances (applying the definitions of “Unsecuritised balances” and “Securitised balances” set out in SECTION A: BALANCE SHEET of SUP 16 Annex 19BG).

(6) The valuation date for column 2 in activity group A.2 is the 31 December before the start of the period to which the fee applies or, if earlier, the date of the valuation as disclosed by the annual return made in the calendar year prior to the 31 December.

COMPENSATION SOURCEBOOK (DEPOSIT-TAKING FIRMS' DISCLOSURE REQUIREMENTS) INSTRUMENT 2012

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 31 August 2012.

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 (Deposit-taking Firms' Disclosure Requirements) Instrument 2012.

By order of the Board
24 May 2012

Annex

Amendments to the Compensation sourcebook (COMP)

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

After COMP 16.3, insert the following new section.

16.4 Compensation information: branches and websites

Application

- 16.4.1 R (1) This section applies to:
- (a) a *UK domestic firm* in relation to each *branch* in the *EEA* at which it *accepts deposits*;
 - (b) an *EEA firm* or a *non-EEA firm* in relation to each *branch* in the *EEA* at which it *accepts deposits*.
- (2) In this section, references to “compensation sticker” and “compensation poster” are references to the relevant sticker and poster set out in *COMP 16 Annex 1R*.
- (3) In this section, references to “compensation leaflet” are:
- (a) in the case of a *UK domestic firm*, references to the *FSCS’s* standard leaflet with respect to its protection of *deposits*;
 - (b) in the case of an *EEA firm*, references to a leaflet with respect to the protection of *deposits* by the compensation scheme of its *Home State* where such a leaflet is provided electronically and in English by the relevant scheme or, where a leaflet is not available, a link to the *Home State* scheme’s website.

Branches

- 16.4.2 R A *firm* that *accepts deposits* under a single brand or trading name must prominently display the compensation sticker and compensation poster in each *branch* in the following ways:
- (1) displaying the compensation sticker or compensation poster in the *branch* window; and
 - (2) displaying:
 - (a) the compensation sticker at each cashier window or desk; and
 - (b) the compensation poster inside the *branch*.
- 16.4.3 R A *firm* that *accepts deposits* under multiple brands or trading names must prominently display the compensation sticker and compensation poster in

each *branch* in the following ways:

- (1) displaying the compensation poster in the *branch* window; and
- (2) displaying:
 - (a) the compensation sticker at each cashier window or desk; and
 - (b) the compensation poster inside the *branch*.

- 16.4.4 R Where the physical design of the *branch* means that it is not possible to comply with any of the requirements of *COMP* 16.4.2R and *COMP* 16.4.3R, a *firm* must display the compensation sticker or the compensation poster in an alternative place in the *branch* that has equal prominence.

Websites

- 16.4.5 R A *firm* that *accepts deposits* under a single brand or trading name must, on pages of its website where it advertises new accounts operated by any of its *branches*, in a way that best brings the information to depositors' attention:
- (1) display prominently (in electronic form) the compensation sticker; and
 - (2) provide from the sticker an electronic link to the compensation leaflet.
- 16.4.6 R A *firm* that *accepts deposits* under multiple brands or trading names must, on pages of its website where it advertises new accounts operated by any of its *branches*, in a way that best brings the information to depositors' attention:
- (1) display prominently (in electronic form) the compensation poster; and
 - (2) provide from the poster an electronic link to the compensation leaflet.
- 16.4.7 G The *FSA* considers that if information required to be disclosed under *COMP* 16.4.5R and *COMP* 16.4.6R is displayed prominently on the front page of the *firm's* website or a pop-up box upon logging on to the website, the requirement to communicate in a way that best brings the information to depositors' attention will have been satisfied.
- 16.4.8 G The *FSA* considers that a *UK domestic firm* will comply with *COMP* 16.4.2R, *COMP* 16.4.3R, *COMP* 16.4.4R, *COMP* 16.4.5R or *COMP* 16.4.6R if it displays the relevant compensation sticker and/or compensation poster produced by the *FSCS* in accordance with the requirements of those *rules*.

Request for further information

- 16.4.9 R A *firm* must immediately provide the compensation leaflet to any *person* that requests further information about deposit protection.

Language

- 16.4.10 R A *UK domestic firm* that accepts *protected deposits* through an overseas *branch* may provide the information required by this section in the local language (which may be either the compensation sticker, poster or leaflet in that language or the *firm's* own translation of that sticker, poster or leaflet).

16 Annex 1R Content of compensation sticker and poster

- 1 The compensation stickers must contain the following statements only:

UK domestic firms and non-EEA firms

- (1) “Your eligible deposits with [insert name of firm] are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. Any deposits you hold above the £85,000 limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk.”

As an alternative, for *credit unions* that *accept deposits* under a single brand or trading name:

“Your eligible deposits are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. Any deposits you hold above the £85,000 limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk”

Incoming EEA firms

- (2) “Your eligible deposits with [insert name of firm] are protected up to a total of 100,000 euro by [insert name of compensation scheme] the [insert home state of compensation scheme] deposit protection scheme and are not protected by the UK Financial Services Compensation Scheme. Any deposits you hold above the 100,000 euro limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme].”

- 2 The compensation posters must contain the following statements only:

UK domestic firms and non-EEA firms

- (1) Firms that *accept deposits* under a single brand or trading name

“Your eligible deposits with [insert name of firm] are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. Any deposits you hold above the £85,000 limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk.”

As an alternative, for *credit unions* that *accept deposits* under a single brand or trading name:

“Your eligible deposits are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. Any deposits you hold above the £85,000 limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk”

(2) Firms that *accept deposits* under multiple brands or trading names

“Your eligible deposits with [insert name of firm] are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit protection scheme. This limit is applied to the total of any deposits you have with the following: [insert names of brands as appropriate]. Any total deposits you hold above the £85,000 limit between these brands are not covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk”

Incoming EEA firms

(3) *Incoming EEA firms* that *accept deposits* under a single brand or trading name

“Your eligible deposits with [insert name of firm] are protected up to a total of 100,000 euro by [insert name of compensation scheme] the [insert home state of compensation scheme] deposit protection scheme and are not protected by the UK Financial Services Compensation Scheme. Any deposits you hold above the 100,000 euro limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme].”

(4) *Incoming EEA firms* that *accept deposits* under multiple brands or trading names

“Your eligible deposits with [insert name of firm] are protected up to a total of 100,000 euro by [insert name of compensation scheme] the [insert home state of compensation scheme] deposit protection scheme and are not protected by the UK Financial Services Compensation Scheme. This limit is applied to the total of any deposits you have with the following: [insert names of brands as appropriate]. Any total deposits above the 100,000 euro

limit are not covered.

Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme].”

- 3 Each of the statements in 1 and 2 must appear as written with the first and second statements on separate lines. The second statement must appear in smaller font.

**PERIODIC FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)
(2012/2013) INSTRUMENT 2012**

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 2012.

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) (2012/2013) Instrument 2012.

By order of the Board
24 May 2012

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 ~~2011~~ 2012 TO 31 MARCH ~~2012~~ 2013

Part 1

Periodic fee payable by Registered Societies (on 30 June ~~2011~~ 2012)

This fee is not payable by a *credit union*.

Transaction	Total assets (£'000s)	Amount payable (£)
Periodic fee	0 - 50	55
	> 50 to 100	110
	> 100 to 250	180
	> 250 to 1,000	235
	> 1,000	425

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.

PROSPECTUS DIRECTIVE AMENDING DIRECTIVE INSTRUMENT 2012**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 79 (Listing particulars and other documents);
- (3) section 84 (Matters which may be dealt with by prospectus rules);
- (4) section 85 (Prohibition of dealing etc in transferable securities without approved prospectus);
- (5) section 87 (Election to have prospectus);
- (6) section 87A (Criteria for approval of prospectus by competent authority);
- (7) section 87G (Supplementary prospectus);
- (8) section 89A (Transparency rules);
- (9) section 89B (Provision of voteholder information);
- (10) section 89C (Provision of information by issuers of transferable securities);
- (11) section 89D (Notification of voting rights held by issuer);
- (12) section 89F (Transparency rules: interpretation etc);
- (13) section 89G (Transparency rules: other supplementary provisions);
- (14) section 96 (Obligations of issuers of listed securities);
- (15) section 96C (Suspension of trading);
- (16) section 99 (Fees);
- (17) section 101 (Part 6 rules: general provisions);
- (18) section 138 (General rule-making power);
- (19) section 156 (General supplementary powers);
- (20) section 157(1) (Guidance); and
- (21) 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 July 2012.

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

Notes

- E. In Annex D 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 Prospectus Directive Amending Directive Instrument 2012.

By order of the Board
20 June 2012

Annex A

Amendments to the Glossary of definitions

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

<u>annual information update</u>	(in PR) the document referred to in PR 5.2.1R .
<u>Home State</u>	<p>...</p> <p>(9) (in DTR)</p> <p>(a) in the case of an <i>issuer</i> of debt securities <u>securities</u> the denomination per unit of which is less than EUR 1 000 or an issuer <u>issuer</u> of <i>shares</i>:</p> <p>(i) where the <i>issuer</i> is incorporated in the <i>EEA</i>, the <i>EEA State</i> in which it has its registered office;</p> <p>(ii) where the <i>issuer</i> is incorporated in a third country, the <i>EEA State</i> in which it is required to file the annual information with the competent authority in accordance with Article 10 referred to in point (iii) of article 2(1)(m) of Directive 2003/71/EC.</p> <p>...</p> <p>...</p>
<u>key information</u>	<p>(in PR) (as defined in section 87A(9) and (10) of the <i>Act</i>) the <u>information which is essential to enable investors to understand the transferable securities to which the prospectus relates and decide whether to consider the offer further. The key information must include:</u></p> <p>(a) <u>the essential characteristics of, and risks associated with, the issuer and any guarantor, including their assets, liabilities and financial positions;</u></p> <p>(b) <u>the essential characteristics of, and risks associated with, investment in the transferable securities, including any rights attaching to the securities;</u></p> <p>(c) <u>the general terms of the offer, including an estimate of the expenses charged to an investor by the issuer and the person offering the securities to the public, if not the issuer;</u></p> <p>(d) <u>details of the admission to trading; and</u></p>

- (e) the reasons for the offer and proposed use of the proceeds.
- person discharging managerial responsibilities* (in accordance with section 96B(1) of the Act):
- (a) a *director* of an *issuer*:
- (i) (...)
- (ii) not registered in the *United Kingdom* or any other *EEA State* but has requested or approved admission of its shares to trading on a *regulated market* and ~~who is required to file annual information in relation to shares in the United Kingdom in accordance with Article 10 of the Prospectus Directive~~ for whom the United Kingdom is its Home Member State; or
- (b) ...
- qualified investor* (in *PR*) (as defined in section 86(7) of the Act) in relation to an offer of transferable securities:
- (a) ~~any entity within the meaning of Article 2(1)(c)(i), (ii) or (iii) of the prospectus directive~~ a person or entity described in points (1) to (4) of Section I of Annex II to MiFID, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with MiFID; or
- (b) ~~an investor registered on the register maintained by the competent authority under section 87R of the Act~~ a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to MiFID and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to MiFID; or
- (c) ~~an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the purposes of the prospectus directive~~ a person who is an eligible counterparty in accordance with article 24 of MiFID and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II of MiFID; or
- (d) a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with article 71(6)

of MiFID.

register

- (1) ~~(in *PR*) the register of qualified investors maintained by the FSA under section 87R of the Act. [deleted]~~

...

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

4.2 Contents and format of listing particulars

...

Minimum information to be included

- 4.2.4 R The following minimum information from the *PD Regulation* must be included in *listing particulars*:
- (1) for an issue of bonds including bonds convertible into the *issuer's shares* or exchangeable into a third party *issuer's shares* or derivative *securities*, irrespective of the denomination of the issue, the minimum information required by the *schedules* applicable to debt and derivative ~~securities~~ *securities* with a denomination per unit of at least ~~50,000~~ 100,000 euros;
- ...
- (3) for an issue of *asset-backed securities*, irrespective of the denomination per unit of the issue, the minimum information required by the *schedules* and *building blocks* applicable to *asset-backed securities* with a denomination per unit of at least ~~50,000~~ 100,000 euros;
 - (4) for an issue of *certificates representing shares*, irrespective of the denomination per unit of the issue, the *schedule* applicable to depositary receipts over shares with a denomination per unit of at least ~~50,000~~ 100,000 euros (except that item 13.2 (relating to profit forecasts) in Annex 10 is not to apply);
- ...

Annex C

Amendments to the Prospectus Rules sourcebook (PR)

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

1.2 Requirement for a prospectus and exemptions

Requirement for a prospectus

- 1.2.1 U Sections 85 and 86 of the *Act* provide for when a *prospectus* approved by the
K FSA will be required:

...			
86	Exempt offers to the public		
	(1)	A person does not contravene section 85(1) if –	
		(a)	the offer is made to or directed at qualified investors only;
		(b)	the offer is made to or directed at fewer than 150 persons, other than qualified investors, per EEA State;
		(c)	the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least 50,000 <u>100,000</u> euros (or an equivalent amount);
		(d)	the transferable securities being offered are denominated in amounts of at least 50,000 <u>100,000</u> euros (or equivalent amounts); or
		(e)	the total consideration for the transferable securities being offered <u>in the EEA states</u> cannot exceed 100,000 euros (or an equivalent amount); or
		(f)	<u>the offer falls within subsection (1A).</u>
	(1A)	<u>An offer (“the current offer”) falls within this subsection where transferable securities are resold or placed through a financial intermediary where:</u>	
		(a)	<u>the transferable securities have previously been the subject of one or more offers to the public;</u>
		(b)	<u>in respect of one or more of those previous offers, any of paragraphs (a) to (e) of subsection (1) applied;</u>

		(c)	<u>a prospectus is available for the securities which has been approved by a competent authority no earlier than 12 months before the date the current offer is made; and</u>
		(d)	<u>the issuer or other person who was responsible for drawing up the prospectus has given written consent to the use of the prospectus for the purpose of the current offer.</u>
	(2)	Where –	
		(a)	a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within Article 2.1(e)(i) of the prospectus directive <u>point (1) of Section 1 of Annex II to the markets in financial instruments directive</u> to act as his agent; and
		(b)	the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client’s behalf without reference to the client,
		an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.	
	...		
	(7)	<u>“Qualified investor” in relation to an offer of transferable securities, means -</u>	
		(a)	an entity falling within Article 2.1(e)(i), (ii) or (iii) of the prospectus directive <u>a person described in points (1) to (4) of Section I of Annex II to the markets in financial instruments directive, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;</u>
		(b)	an investor registered on the register maintained by the [FSA] under section 87R <u>a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to that directive and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;</u>
		(c)	an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the

		<u>purposes of the prospectus directive a person who is recognised as an eligible counterparty in accordance with article 24 of that directive and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II of that directive;</u>
	(d)	<u>a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with article 71(6) of that directive.</u>
(8)		<u>In subsection (7) “relevant firm” means an investment firm or credit institution acting in connection with the offer.</u>
(9)		<u>Investment firms and credit institutions must communicate their classification of their clients as being or not being qualified investors on request to an issuer, subject to complying with the Data Protection Act 1998 or any directly applicable EU legislation relating to data protection.</u>
(10)		<u>In subsections (8) and (9) –</u> <u>“credit institution” means -</u> <u>(a) a credit institution authorised under the banking consolidation directive; or</u> <u>(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in an EEA State.</u>

Exempt securities - offers of securities to the public

1.2.2 R In accordance with section 85(5)(b) of the *Act*, section 85(1) of the *Act* does not apply to *offers* of the following types of *transferable securities*:

...

- (3) *transferable securities* offered, allotted or to be allotted in connection with a merger or division, if a document is available containing information which is regarded by the *FSA* as being equivalent to that of the *prospectus*, taking into account the requirements of *EU* legislation;
- (4) ~~shares offered, allotted or to be allotted free of charge~~ dividends paid out to existing shareholders, ~~and dividends paid out~~ in the form of shares of the same class as the shares in respect of which the dividends are paid, if a document is made available containing information on the number and nature of the shares and the reasons

for and details of the ~~offer~~ offer;

- (5) *transferable securities* offered, allotted or to be allotted to existing or former directors or employees by their employer ~~which has transferable securities already admitted to trading~~ or by an affiliated undertaking, ~~if a document is made available containing information on the number and nature of the transferable securities and the reasons for and details of the offer. if:~~
- (a) the company has its head office or registered office in the EU, provided a document is made available containing information on the number and nature of the transferable securities and the reasons for and details of the offer; or
 - (b) the company is established outside the EU and has transferable securities that are admitted to trading, provided a document is made available containing information on the number and nature of the transferable securities and the reasons for and details of the offer; or
 - (c) the company is established outside the EU and has transferable securities admitted to trading on a third country market provided that:
 - (i) a document is made available containing adequate information, including the number and nature of the transferable securities; and
 - (ii) the reasons for and details of the offer in a language customary in the sphere of international finance; and
 - (iii) the European Commission has adopted an equivalence decision for the purpose of article 4(1) of the PD regarding the third country market concerned.

[**Note:** article 4(1) PD]

Exempt securities - admission to trading on a regulated market

- 1.2.3 R In accordance with section 85(6)(b) of the *Act*, section 85(2) of the *Act* does not apply to the *admission to trading* of the following types of *transferable securities*:
- ...
- (4) *transferable securities* offered, allotted or to be allotted in connection with a merger or a division, if a document is available containing information which is regarded by the *FSA* as being equivalent to that of the *prospectus*, taking into account the requirements of *EU* legislation;

...

...

2.1 General contents of prospectus

- 2.1.1 UK Sections 87A(2), (2A), (3) and (4) of the *Act* provide for the general contents of a *prospectus*:

(2)	The necessary information is the information necessary to enable investors to make an informed assessment of–	
	(a)	the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and
	(b)	the rights attaching to the transferable securities.
<u>(2A)</u>	<u>If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.</u>	
(3)	The necessary information must be presented in a form which is comprehensible and easy to analyse.	
(4)	The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer <u>and any delegated acts adopted by the Commission under article 7(1) of the <i>prospectus directive</i>.</u>	

Summary

- 2.1.2 UK Sections 87A(5) and (6) of the *Act* set out the requirement for a *summary* to be included in a *prospectus*:

(5)	The prospectus must include a summary (unless the transferable securities in question are ones in relation to which prospectus rules provide that a summary is not required).
(6)	The summary must, briefly and in non-technical language convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the transferable securities to which the prospectus relates <u>convey concisely, in non-technical language and in an appropriate structure, the key information relevant to the securities which are the subject of the prospectus and, when read with the rest of the prospectus, must be an aid to investors considering whether to invest in the securities.</u>

When a summary is not required

- 2.1.3 R In accordance with section 87A(5) of the *Act*, a *summary* is not required for a *prospectus* relating to *non-equity transferable securities* that have a denomination of at least ~~50,000~~ 100,000 Euros euros (or an equivalent amount) if the *prospectus* relates to an *admission to trading*. [Note: article 5.2 PD]

Contents of summary

...

- 2.1.5 G ~~The *summary* should generally not exceed 2 500 words. [Note: recital 21 PD] [deleted]~~

...

- 2.1.7 R The *summary* must also contain a warning to the effect that:

...

- (4) civil liability attaches to those *persons* who are responsible for the *summary* including any translation of the *summary*, but only if the *summary* is misleading, inaccurate or inconsistent when read together with the other parts of the *prospectus* or it does not provide, when read together with the other parts of the *prospectus*, key information in order to aid investors when considering whether to consider an offer further as set out in section 90(12) of the *Act*.

[Note: ~~article~~ articles 5.2 and 6.2 PD]

2.2 Format of prospectus

...

- 2.2.5 R If PR 2.2.4R applies, the *securities note* must provide information that would normally be provided in the *registration document* ~~if where~~ there has been a material change or recent development which could affect an investor's assessments assessment since the latest updated *registration document*, ~~or any supplementary prospectus~~, was approved, unless such information is provided in a supplementary prospectus. The *securities note* and *summary* shall be subject to a separate approval. [Note: article 12.2 PD]

...

2.4 Incorporation by reference

Incorporation by reference

- 2.4.1 R (1) Information may be incorporated in the *prospectus* by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of the *Home State* or filed with or notified to it in accordance with the *prospectus directive* or ~~titles IV and V of *CARD*~~ the *TD*. [**Note:** article 11.1 *PD*]
- (2) ~~In particular under paragraph (1), information may be incorporated by reference to information contained or referred to in an annual information update. [**Note:** article 11.1 *PD*] [deleted]~~
- 2.4.2 G Information under ~~titles IV and V of *CARD*~~ the *TD* that may be incorporated by reference includes, for example, ~~instruments of incorporation or statutes of a company~~, annual accounts and annual reports, interim management statements, equivalent information made available to markets in the United Kingdom, and half yearly reports, ~~listing particulars and supplementary listing particulars~~. [**Note:** for full details refer to these titles of *CARD*]
- 2.4.3 R Information incorporated by reference must be the ~~latest~~ most recent available to the *issuer*, *offeror* or *person* requesting admission. [**Note:** article 11.1 *PD*]

...

2.5 Omission of information

...

Omission of information from prospectus

- 2.5.1A UK Section 87A(2A) of the Act provides that information about certain guarantors may be omitted from a prospectus:

<u>87A</u>	<u>(2A)</u>	<u>If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.</u>
------------	-------------	--

...

3.2 Filing and publication of prospectus

...

- 3.2.4 R A *prospectus* is deemed to be made available to the public for the purposes of *PR* 3.2.1R to *PR* 3.2.3R when published either:

...

- (3) in ~~an~~ electronic form on the *issuer's* website ~~and~~ or, if applicable, on the website of the financial intermediaries placing or selling the *transferable securities*, including paying agents; or

...

3.2.4A R A person requesting admission and drawing up a prospectus in accordance with PR 3.2.4R(1) or (2) must also publish their prospectus electronically in accordance with PR 3.2.4R(3).

[Note: article 14.2 PD]

...

3.4 Supplementary prospectus

3.4.1 UK Section 87G of the *Act* provides that:

...	
(3)	...
(3A)	<u>But where the prospectus relates both to an offer of transferable securities to the public and the admission of those securities to trading on a regulated market, subsection (3) does not apply and the relevant period beings when the prospectus is approved and ends with the later of -</u>
	(a) <u>the closure of the offer to the public to which the prospectus relates; or</u>
	(b) <u>the time when trading in those securities on a regulated market begins.</u>
...	

Amendments to summary

3.4.2 R *A supplementary prospectus* must also if necessary include an amendment or supplement to the *summary*, and any translations of the *summary*, to take into account the new information. **[Note: article 16.1PD]**
Note: ~~Section~~ Sections 87Q(4) and (5) of the *Act* ~~sets~~ set out the rights of investors to withdraw their acceptances after a *supplementary prospectus* is published.

4.1 Use of languages

Language

...

- 4.1.4 R If *admission to trading* of *non-equity transferable securities* whose denomination per unit amounts to at least ~~50,000~~ 100,000 euros (or an equivalent amount) is sought in the *United Kingdom* or in one or more other *EEA States*, the *prospectus* must be drawn up in either a language accepted by the competent authorities of the *Home State* and *Host States* or in a language customary in the sphere of international finance, at the choice of the *issuer*, *offeror* or *person* requesting admission (as the case may be). [**Note:** article 19.4 PD]

...

5.1 Validity of prospectus

- 5.1.1 R A *prospectus* is valid for 12 months after its ~~publication~~ approval for an *offer* or an *admission to trading*, provided that the *prospectus* is updated by a *supplementary prospectus* (if required) under section 87G of the *Act*. [**Note:** article 9.1 PD]

...

- 5.1.4 R A registration document is valid for a period of up to 12 months after it is filed and approved, provided that it has been updated in accordance with *PR 2.2.5R* and PR 3.4.2R. [**Note:** article 9.4 PD]

Delete the whole of PR 5.2 (Annual information update). The deleted text is not shown.

Amend the following as shown.

5.3 Certificate of approval

- 5.3.1 UK Sections 87H and 87I of the *Act* provide:

...

Prospectus approved in another EEA State			
87I	...		
	(1A)	<u>If the competent authority supplies a certificate of approval to the competent authority of the specified EEA state, it must also supply a copy of that certificate to -</u>	
		(a)	<u>the person who made the request under this</u>

			<u>section; and</u>
		(b)	<u>ESMA.</u>
	...		
	(5)	The [FSA] must comply with a request under this section–	
		(a)	if the prospectus has been approved before the request is made, within 3 working days beginning with the date of the request <u>the date the request is received</u> ; or
		...	

Delete the whole of PR 5.4. The deleted text is not shown.

Amend the following as shown.

App 1.1 Relevant definitions

...	
<i>annual information update</i>	the document referred to in PR 5.2.1R
...	
<i>CARD</i>	<i>Consolidated Admission and Reporting Directive</i>
<i>company</i>	<u>any body corporate.</u>
...	
<i>issuer</i>	...
<u><i>key information</i></u>	<u>(in PR) (as defined in section 87A(9) and (10) of the Act) the information which is essential to enable investors to understand the transferable securities to which the prospectus relates and decide whether to consider the offer further. The key information must include:</u>
	(a) <u>the essential characteristics of, and risks associated with, the issuer and any guarantor, including their assets, liabilities and financial positions;</u>
	(b) <u>the essential characteristics of, and risks associated with, investment in the transferable securities,</u>

		<u>including any rights attaching to the securities;</u>
	(c)	<u>the general terms of the offer, including an estimate of the expenses charged to an investor by the issuer and the offeror, if not the issuer;</u>
	(d)	<u>details of the admission to trading; and</u>
	(e)	<u>the reasons for the offer and proposed use of the proceeds.</u>
<i>qualified investor</i>		(in <i>PR</i>) (as defined in section 86(7) of the Act) in relation to an offer of <u>transferable securities</u> :
	(a)	any entity within the meaning of Article 2(1)(e)(i), (ii) or (iii) of the <i>prospectus directive</i> a person or entity described in points (1) to (4) of Section I of Annex II to <i>MiFID</i>, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with <i>MiFID</i>; or
	(b)	an investor registered on the register maintained by the competent authority under section 87R of the Act a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to <i>MiFID</i> and has not subsequently, but before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II of <i>MiFID</i>; or
	(c)	an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the purposes of the <i>prospectus directive</i> a person who is recognised as an eligible counterparty in accordance with article 24 of <i>MiFID</i> and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II of <i>MiFID</i>; or
	(d)	<u>a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with article 71(6) of <i>MiFID</i>.</u>
<i>register</i>		register of <i>qualified investors</i> maintained by the FSA under

	section 87R of the <i>Act</i> .
--	---------------------------------

Sch 4 Powers exercised

Sch 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 87R (Register of investors)
	...

Annex D

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

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

1.1.1 R The *disclosure rules* apply as follows:

...

(4) *DTR 3 applies to a non-EEA state issuer which is required to file, with the FSA, annual information in relation to shares in accordance with Article 10 of the Prospectus Directive with the United Kingdom as its Home Member State.*

...

4.4 Exemptions

...

Debt issuers

4.4.2 R The *rules* on annual financial reports in *DTR 4.1* (including *DTR 4.1.7R(4)*), half-yearly financial reports (*DTR 4.2*) and interim management statements (*DTR 4.3*) do not apply to an *issuer* that issues exclusively *debt securities admitted to trading* the denomination per unit of which is at least ~~50,000~~ 100,000 Euros euros (or an equivalent amount).

[**Note:** article 8(1)(b) of the *TD* and article 45(1) of the *Audit Directive*]

...

6.1 Information requirements for issuers of shares and debt securities

...

Information about meetings and payment of interest - debt security issuers

...

6.1.15 R If only holders of *debt securities* whose denomination per unit amounts to at least ~~50,000~~ 100,000 Euros euros (or an equivalent amount) are to be invited to a meeting, the *issuer* may choose as a venue any *EEA State*, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that *EEA State*. [**Note:** article 18(3) of the *TD*]

...

6.2 Filing information and use of language

...

Language

...

6.2.8 R If *transferable securities* whose denomination per unit amounts to at least ~~50,000~~ 100,000 Euros euros (or an equivalent amount) are *admitted to trading* in the *United Kingdom* or in one or more *EEA States*, *regulated information* must be disclosed to the public in either a language accepted by the competent authorities of the *Home State* and *Host States* or in a language customary in the sphere of international finance, at the choice of the *issuer* or of the *person* who, without the *issuer's* consent, has requested such admission.

[Note: article 20(6) of the *TD*]

TP 1 Disclosure and transparency rules

Transitional Provisions

(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
...					
19	<u>DTR 4.1, DTR 4.2 and DTR 4.3</u>	R	<u>The rules on annual financial reports (DTR 4.1), half-yearly financial reports (DTR 4.2) and interim management statements (DTR 4.3) do not apply to issuers of exclusively debt securities the denomination per unit of which is at</u>	<u>From 1 July 2012 for as long as the debt securities to which (19) applies are outstanding</u>	<u>1 July 2012</u>

			<p><u>least 50,000 euros or in the case of <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is at the date of the issue equivalent to at least 50,000 euros which have already been <i>admitted to trading on a regulated market in the EU</i> before 31 December 2010.</u></p> <p><u>[Note: article 8.1 TD]</u></p>		
<u>20</u>	<u>DTR 6.1.15</u>	<u>R</u>	<p><u>Where only holders of <i>debt securities</i> whose denomination per unit amount to at least 50,000 euros or for <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is equivalent to 50,000 euros at the date of issue, are to be invited to a meeting, the <i>issuer</i> may choose as a venue any <i>EEA State</i>, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that <i>EEA State</i>, and only where those <i>debt securities</i> have already been admitted to trading</u></p>	<p><u>From 1 July 2012 for as long as the <i>debt securities</i> to which (20) applies are outstanding.</u></p>	<u>1 July 2012</u>

			<p>on a regulated market in the EU before 31 December 2010.</p> <p>[Note: article 18 TD]</p>		
<u>21</u>	<u>DTR 6.2.8</u>	<u>R</u>	<p>Where <i>debt securities</i> whose denomination per unit amount to at least 50,000 euro, or for <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is equivalent to 50,000 euros at the date of issue, and such <i>debt securities</i> are admitted to trading in one or more EEA States, regulated information must be disclosed to the public in either a language accepted by the competent authorities of the <i>Home State</i> and <i>Host States</i> or in a language customary in the sphere of international finance, at the choice of the <i>issuer</i> or of the <i>person</i> who, without the <i>issuer's</i> consent, has requested such admission.</p> <p>[Note: article 20 TD]</p>	<p>From 1 July 2012 for as long as the <i>debt securities</i> to which (21) applies are outstanding.</p>	<u>1 July 2012</u>

HANDBOOK ADMINISTRATION (NO 26) INSTRUMENT 2012**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. Except as provided below, this instrument comes into force on 1 July 2012:
- (1) Annex H (COBS) comes into force on 2 July 2012;
 - (2) Part 2 of Annex N (COMP) comes into force on 31 August 2012;
 - (3) Part 2 of Annex M (SUP) comes into force on 29 September 2012; and
 - (4) Part 3 of Annex M (SUP) comes into force on 31 December 2012.

Amendments to the Handbook

- D. The modules 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
Threshold Conditions (COND)	Annex C
Fit and Proper Test for Approved Persons (FIT)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex G
Conduct of Business sourcebook (COBS)	Annex H
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex I
Banking: Conduct of Business sourcebook (BCOBS)	Annex J
Client Assets sourcebook (CASS)	Annex K
Market Conduct sourcebook (MAR)	Annex L
Supervision manual (SUP)	Annex M
Compensation sourcebook (COMP)	Annex N
Collective Investment Schemes sourcebook (COLL)	Annex O
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex P
Listing Rules sourcebook (LR)	Annex Q
Prospectus Rules sourcebook (PR)	Annex R

Citation

- E. This instrument may be cited as the Handbook Administration (No 26) Instrument 2012.

By order of the Board
28 June 2012

Annex A

Amendments to the Glossary of definitions

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

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

<i>ESMA</i>	European Securities and Markets Authority.
<i>Rehabilitation Exceptions Orders</i>	the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

Amend the following as shown.

<i>designated investment business</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business: ... (1a) ... (1b) <u>providing basic advice on a stakeholder product (article 52B);</u> ... (o) providing basic advice on a stakeholder product (article 52B). <u>[deleted]</u>
<i>entering into a home reversion plan</i>	the <i>regulated activity</i> , specified in article 63B(1) of the <i>Regulated Activities Order</i> , which is in summary: entering into a <i>home reversion plan</i> as provider, or acquiring any obligations or rights (including his interest in land) of the plan provider under a <i>home purchase reversion plan</i> entered into by him on or after 6 April 2007.
<i>investment services and activities</i>	any of the services and activities listed in Section A of Annex I to MiFID relating to any financial instrument, that is: (a) reception and transmission of orders in relation to one or more financial instruments; (b) execution of orders on behalf of clients;

- ~~(c) *dealing on own account;*~~
- ~~(d) *portfolio management;*~~
- ~~(e) *the making of a personal recommendation;*~~
- ~~(f) *underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;*~~
- ~~(g) *placing of financial instruments without a firm commitment basis;*~~
- ~~(h) *operation of multilateral trading facilities.*~~

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

Annex B

Amendments to the Principles for Businesses (PRIN)

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

3 Rules about application

3.1 Who?

...

- 3.1.2 G ~~SYSC App 1~~, *COBS 1 Annex 1* and the territorial *guidance* in *PERG 13.6* all contain *guidance* that is relevant to the reservation of responsibility to a *Home State regulator* referred to in *PRIN 3.1.1R(1)*.

Annex C

Amendments to the Threshold Conditions (COND)

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

2.5 Threshold condition 5: Suitability

...

Conducting business with integrity and in compliance with proper standards

2.5.6 G In determining whether a *firm* will satisfy, and continue to satisfy, threshold condition 5 in respect of conducting its business with integrity and in compliance with proper standards, the relevant matters, as referred to in *COND* 2.5.4G(2), may include but are not limited to whether:

(1) ...

(2) the *firm* has been convicted, or is connected with a *person* who has been convicted, of any criminal offence; this must include, where provided for by the ~~Exceptions Order~~ Rehabilitation Exceptions Orders to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence ~~whether or not in the United Kingdom or other offences~~ under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, ~~and~~ ~~or~~ other financial services, insolvency, consumer credit companies, insurance, ~~and~~ consumer protection, *money laundering*, market manipulation ~~or~~ and insider dealing, whether or not in the United Kingdom;

...

Annex D

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

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

2.1 Honesty, integrity and reputation

...

- 2.1.3 G The matters referred to in *FIT* 2.1.1G to which the *FSA* will have regard include, but are not limited to:
- (1) whether the *person* has been convicted of any criminal offence; this must include, where provided for by the ~~Exceptions Order~~ *Rehabilitation Exceptions Orders* to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence ~~whether or not in the *United Kingdom* or other offences~~ under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, ~~and~~ ~~or~~ other financial services, insolvency, consumer credit companies, insurance, ~~and~~ consumer protection, *money laundering*, market manipulation ~~or~~ and *insider dealing*, whether or not in the *United Kingdom*;

...

Annex E**Amendments to the General Provisions (GEN)**

In this Annex, underlining indicates new text.

Use of defined expressions

2.2.6 G Expressions with defined meanings appear in italics in the *Handbook*, unless otherwise stated in individual sourcebooks or manuals.

...

2.2.9 G Unless the context otherwise requires or unless otherwise stated in a particular sourcebook or manual, where italics have not been used, an expression bears its natural meaning (subject to the Interpretation Act 1978; see *GEN* 2.2.11R to *GEN* 2.2.12G).

Annex F

Amendments to the Fees manual (FEES)

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

1.1 Application and Purpose

...

1.1.1A G FEES Appendix 1 applies to all persons required to pay a fee or any other amount to the FSA under the Unauthorised Mutuals Registration Fees Rules, as made by the Fees (Unauthorised Mutual Societies Registration) Instrument 2002 (FSA 2002/4) and amended from time to time.

...

1.1.2 R This manual applies in the following way:

...

(6) FEES Appendix 1 applies to every:

(a) registered society; or

(b) sponsoring body; or

(c) person who submits a proposal for the registration of a registered society;

each as defined in FEES Appendix 1.

...

Late Payments

2.2.1 R If a *person* does not pay the total amount of a periodic fee (~~including fees relating to transaction reports to the FSA using the FSA's Transaction Reporting System (see SUP 17)~~), ...

...

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(t) A <i>firm</i> , a third party acting on a <i>firm's</i>	£100,000	Having received its application, within 30

<p>behalf, an operator of a <i>regulated market</i> or an operator of an <i>MTF</i> applying to the <i>FSA</i> to report <i>transaction reports</i> directly to the <i>FSA</i> other than through the <i>FSA's</i> Transaction Reporting System (see <i>FEES 4.2.11R</i> and <i>FEES 4 Annex 3R</i> for the fees payable for <i>firms</i> using the <i>FSA's</i> Transaction Reporting System).</p>		<p>days after the <i>FSA</i> has notified the applicant that it is to commence testing of the applicant's systems.</p>
<p>...</p>		

...

4.1.4 G ...

- (2) ~~The provision of the Transaction Reporting System facilities for *firms* reporting transactions under *SUP 17* incurs costs to the *FSA*. These costs depend upon the amount the facility is used. Accordingly the income which the *FSA* receives from these transactions reporting fees will be set and accounted for separately from the fee block tariffs, and are set out in *FEES 4 Annex 3R*. [deleted]~~

...

...

4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
<p>...</p>			
<p>Any <i>firm</i> which reports transactions to the <i>FSA</i> using the <i>FSA's</i> Direct Reporting</p>	<p><i>FEES 4 Annex 3R</i></p>	<p>(1) For transaction charges, the first working day of each <i>month</i> (2) For licence</p>	<p>Not applicable</p>

System or FSA's Transaction Reporting System (see SUP 17)		fees and enrolment charges, by the date set out on the relevant invoice	
...			

...

Delete 4 Annex 3R (Transaction reporting fees). The deleted text is not shown.

After FEES 7 (CFEB levies) insert the following new appendix. The text is not underlined.

[Editor's Note: The text of this appendix is taken from the Fees (Unauthorised Mutual Societies Registration) Instrument 2002 (FSA 2002/4) as subsequently amended. The "Transitional Arrangements", originally included as section 4 of the rules made by that instrument, have been omitted as they have expired; they are not therefore shown here. The appendix includes 5 annexes.]

Appendix 1 Unauthorised Mutuals Registration Fees Rules

1.1 Introduction

Application

- 1.1.1 R These rules apply to every:
- (1) *registered society;*
 - (2) *sponsoring body;*
 - (3) *person who submits a proposal for the registration of a registered society.*
- 1.1.2 G The purpose of these rules is to set out the requirements for *registered societies* and *sponsoring bodies* to pay periodic and application fees which, together, will provide the funding for the FSA's functions in respect of the registrant-only fee block (Category F). This set of rules is in respect of the registration functions relating to registered societies transferred to the FSA by Part XXI (Mutual Societies) of the Financial Services and Markets Act 2000 ('the Act'), other than friendly societies authorised under section 31 of the Act.

Background

- 1.1.3 G Most of the detail of the periodic fees which will be payable by *registered societies* is set out in Annex 1R to these rules, the provisions of which will vary from one financial year to another. Accordingly, a revised Annex 1R

will come into force, following consultation, for each financial year. Most of the detail of the application fees which will be payable by *registered societies* and *sponsoring bodies* is set out in Annex 1AR, the provisions of which may not change each year.

- 1.1.4 G Annex 2G to these rules contains further information on the fees applicable to *registered societies* under these rules.
- 1.1.5 G The periodic fee set for *registered societies* is a tiered fee, which is payable annually. The amount payable is dependent upon the *total assets* declared by the *registered society* in the most recent *annual return* required to be filed with the *FSA*.
- 1.1.6 G The application fee payable to register a new society is a tiered fee: the amount payable for registration of a new society is dependent on whether the rules are based on a free draft or on *model rules*. Further, where *model rules* are used in the case of the registration of a new society other than a credit union, then the number of amendments made to the *model rules* will affect the fee. The application fee payable by a *sponsoring body* for a new set of *model rules* is a flat fee.
- 1.1.7 G In these rules:
- (1) an “R” in the margin or heading indicates that the provision is a rule, which creates binding obligations;
 - (2) a “G” in the margin or heading indicates that the provision is guidance, which is designed to throw light on a particular aspect of these rules, but which is not binding nor an exhaustive description of a *person's* obligations.

Glossary of definitions

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

1.2 Periodic Fees

General

- 1.2.1 R A *registered society* must pay to the *FSA*, in full and without deduction, the periodic fee applicable to it under Annex 1R for a financial year during which, or part of which, the society is registered, except as provided for in 1.2.5R and 1.2.6R.
- 1.2.2 R [deleted]

Methods of payment

- 1.2.3 R A *registered society* must pay its periodic fee by one of the methods specified in Annex 1R.

Due dates

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

Exceptions

- 1.2.5 R A *registered society* is not required to pay the periodic fee for the financial year in which it is first registered.
- 1.2.5A R A *registered society* which has not been required to file an *annual return* before the commencement of a given fee year must pay the lowest periodic fee for a *registered society* specified in Annex 1R for that year.
- 1.2.5B R If a *registered society* fails to file an *annual return* by the date it is required to be filed:
- (1) the *total assets* used to determine the amount of the periodic fee payable by the *registered society* will be that shown in the *annual return* last filed with the *FSA* or its predecessor; and
 - (2) the *registered society* must pay an administrative fee equal to the lower of the periodic fee payable by the *registered society* under Annex 1R for that year, and £250.
- 1.2.6 R If a *registered society* ceases to be a *registered society* on or after 1 April in a particular financial year, but before an invoice for the periodic fee payable under 1.2.1R for the financial year in which the society ceases to be a *registered society* has been issued by the *FSA*, the periodic fee payable by that *registered society* under 1.2.1R is the amount of the periodic fee under Annex 1R for the immediately preceding financial year.
- 1.2.7 R [deleted]

Extension of time

- 1.2.8 R A *registered society* need not pay a periodic fee on the date which it is due under the relevant provision in these rules, if:
- (1) that date falls during a period during which circumstances of the sort set out in Annex 3R (Emergencies) exist, and that *registered society* has reasonable grounds to believe that those circumstances impair its ability to pay the fee, in which case it must pay on or before the fifth *business day* after the end of that period; or
 - (2) that date would otherwise fall on or before the 30th *day* after the date on which the *FSA* has sent written notification to that *registered society* of the fee payable on that date, in which case it must pay on or before the 30th *day* after the date on which the *FSA* sends the notification.

Late payment

- 1.2.9 R If a *registered society* does not pay the total amount of a periodic fee or a fee payable under 1.4.2R on the date on which it is due under the relevant provisions of these rules, that *registered society* must pay an additional amount as follows:
- (1) if the fee is not paid in full before the due date, an administrative fee of £250; plus
 - (2) if the fee is not paid in full before the end of 15 days after the due date, interest on any unpaid part of the fee at the rate of 5% per annum above the Bank of England's repo rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.
- 1.2.10 G The *FSA* expects to issue invoices for periodic fees at least 30 days before the date on which they fall due. Accordingly, it will generally be the case that a *registered society* will have at least 30 days from the issue of the invoice before an administrative fee becomes payable, and at least 45 days before any interest becomes payable.
- 1.2.11 G If a *sponsoring body* does not pay the required periodic fee for a set of *model rules* by the due date, the rules will cease to be *model rules* and applications for the registration of societies that use the rules will be charged by the *FSA* as if the rules were a free draft.

Amending model rules

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

Refunds

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

1.3 Application Fees

General

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

Method of payment

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

Due dates

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

Refunds

- 1.3.7 G The *FSA* will not refund application fees under any circumstances.
- 1.3.8 G Paragraph 1.3.7G applies also in the case of applications that are not proceeded with where a fee has been paid in advance.

Annex 1R Periodic Fees payable for the period 1 April 2012 to 31 March 2013

Part 1 Periodic fee payable by Registered Societies (on 30 June 2012)

This fee is not payable by a *credit union*.

Transaction	Total assets (£'000s)	Amount payable (£)
Periodic fee	0 to 50	55
	> 50 to 100	110
	> 100 to 250	180
	> 250 to 1,000	235
	> 1,000	425

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.

Annex 1AR Application Fees payable**Part 1 Application fees payable to register a new society other than a credit union**

Transaction	Amount payable (£)
Application using <i>model rules</i> without any amendment to the model	40
Application using <i>model rules</i> with between 1 and 6 amendments to the model	120
Application using <i>model rules</i> with between 7 and 10 amendments to the model	350
Application using <i>model rules</i> with 11 or more amendments to the model, or using free draft rules	950

Part 2 Application fees payable by sponsoring bodies

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

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

Part 3 Method of payment of application fees

Payment method	Additional amount or discount applicable
Cheque	None

Annex 2G Further information on fees**Purpose**

- 1 The purpose of this annex is to set out further information on fees applicable to *registered societies* which form the registrant-only fee block (Category F).

Background

- 2 Paragraph 17 of Schedule 1 to the *Act* enables the *FSA* to charge fees to cover its expenses in carrying out its functions.
- 3 The fees payable by *registered societies* will vary from one financial year to another and will reflect the *FSA's* funding requirement for the registrant-only fee block.
- 4 For periodic fees, the key components of the fee mechanism are:

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

5 The *FSA* defines fee blocks so that they will depend, for the most part, upon the regulated activities included in the permission held by firms, with a separate fee block for mutual societies which do not conduct regulated activities (registrants). By basing fee blocks on categories of business, the *FSA* aims to minimise cross-sector subsidies. The funding requirement for the registrant-only fee block will accordingly reflect only the cost of the registration function plus a share of corporate overheads. It will not include any indirect regulatory overheads.

Recovery of fees

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

Annex 3R Emergencies

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

- (1) If any emergency arises which:
 - (a) could not have been avoided by the *registered society* taking all reasonable steps;
 - (b) makes it impracticable for a *registered society* to comply with a particular rule; and

- (c) is outside the control of the *registered society*, its members and its employees;

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

- (2) Paragraph (1) applies only for so long as:
- (a) the consequences of the emergency continue; and
- (b) the *registered society* can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the rule.
- (3) A *registered society* must notify the *FSA* as soon as practicable of the emergency and of the steps it is taking or proposes to take to deal with the consequences of the emergency.
- (4) A *registered society* should continue to keep the *FSA* informed of the steps it is taking under 1.2.8(a)R. In the context of 1.2.8(a)R, an action is not practicable if it involves a *registered society* going to unreasonable lengths.

Annex 4R Glossary of definitions

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

Expression	Definition
<i>Act</i>	The Financial Services and Markets Act 2000.
<i>amendment to model rules</i>	(In Annex 1R) any number of changes to a single numbered rule and its sub-clauses (however described) represents a single amendment to model rules; the provision of information in respect of a name, an address, or a number, or any text which is added to a <i>model rule</i> in a space specifically provided in the <i>model rule</i> for the addition of such text, will not be regarded as an amendment to model rules.
<i>annual return</i>	The annual return required to be submitted to the <i>FSA</i> under s.43 of the Friendly Societies Act 1974 or s.39 of the Industrial and Provident Societies Act 1965.
<i>business day</i>	In rule 1.2.8R, any day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in that part of the United Kingdom in which the <i>registered society</i> has its registered office.

<i>day</i>	A period of 24 hours beginning at midnight.	
<i>FSA</i>	The Financial Services Authority.	
<i>model rules</i>	A set of rules:	
	(a)	which a <i>sponsoring body</i> has provided to the <i>FSA</i> ;
	(b)	in relation to which the <i>sponsoring body</i> has paid all relevant fees due under these rules; and
	(c)	which complies with the provisions of the Industrial and Provident Societies Acts 1965 and 1967, the Friendly and Industrial and Provident Societies Act 1968 and the Friendly Societies Acts 1974 and 1992, as appropriate; or
	(d)	the Credit Unions Act 1979;
	(a list of <i>model rules</i> which satisfy (a) and (b) and, in the <i>FSA's</i> view, satisfy (c), is available from the Mutual Societies Registration department at the <i>FSA</i>).	
<i>person</i>	(In accordance with the Interpretation Act 1978) any person, natural or legal, including a body of persons corporate or unincorporated.	
<i>registered society</i>	A society registered under the Industrial & Provident Societies Acts, the Credit Unions Act 1979, the Superannuation and Other Trust Funds (Validation) Act 1927, or the Friendly Societies Act 1974; which is not authorised for the purposes of section 31 of the <i>Act</i> .	
<i>sponsoring body</i>	A body which publishes, or which proposes to publish, <i>model rules</i> for <i>registered societies</i> .	
<i>total assets</i>	The figure shown in the <i>annual return</i> against the heading 'Total Assets' or, where there is no such heading, the value of the gross assets shown in the balance sheet of the firm.	

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.

- 3.72 R A firm's absolute minimum requirement is:
- ...
- (ea) for a dematerialised instruction transmitter: £50,000;
- (f) for a *broad scope firm* other than one within (b) to (e ea) above:
£100,000;~~or~~
- ~~(g) for a dematerialised instruction transmitter: £50,000.~~

Annex H

Amendments to the Conduct of Business sourcebook (COBS)

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

Comes into force on 2 July 2012

4.12 Unregulated collective investment schemes

...

4.12.1 R ...

(4)

Promotion to:	Promotion of an unregulated collective investment scheme which is:
...	
<p>Category 3 person <i>A person</i> who is eligible to participate in a scheme constituted under:</p> <p>(1) ...</p> <p>(2) section 24 of the Charities Act 1993 <u>section 96 of the Charities Act 2011</u>; or</p> <p>(3) ...</p>	...
...	

...

TP 1 Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
1.9	COBS 3	R	<p>(1) A new <i>client</i> that could have been correctly categorised as an <i>intermediate customer</i> under the rules in force on 31 October 2007;</p> <p>(a) may be treated as an <i>elective professional client</i> if it could have been categorised as an expert</p>	From 1 November 2007 to 30 June 2008	1 November 2007

			<p>private customer that had been categorised as an intermediate customer in accordance with COB 4.1.9R on the basis of its experience and understanding; or</p> <p>(b) otherwise may be treated as a per se professional client, subject to (3) below).</p> <p>(2) A firm may categorise as an eligible counterparty or a per se professional client any new client that could have been correctly categorised as a market counterparty under the rules in force on 31 October 2007, provided that the firm may only treat the client as an eligible counterparty for the purposes of eligible counterparty business.</p> <p>(3) Clients categorised under COBS TP 1.9 must be dealt with in accordance with the relevant procedures and notifications in COBS 3.</p> <p>(4) This rule only applies in relation to business that is not MiFID or equivalent third country business. Expired</p>		
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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.-1	COBS 4	R	<p>A firm communicating other than in relation to MiFID business is not required to comply with the financial promotion rules in relation to any financial promotion that:</p> <p>(1) is in writing and was designed to be communicated for longer than three months in similar form;</p> <p>(2) was subject to, and complied with, the relevant rules in COB 3 that were in force on or before 31 October 2007 (or was exempt</p>	1 November 2007 to 31 October 2008	1 November 2007

			from them); and (3) continues to be fair, clear and not misleading. <u>Expired</u>		
...					
2.2B	<i>COBS 6.3 (Disclosing information about services, fees and commission— packaged products)</i>	R	<i>A firm may use the keyfacts logo on an initial disclosure document, a combined initial disclosure document or menu that complied with the rules in COBS 6.3 in effect on 6 August 2008. <u>Expired</u></i>	From 6 August 2008 until 31 August 2009	6 August 2008
2.2C	<i>COBS 6.3 (Disclosing information about services, fees and commission— packaged products)</i>	R	<i>Under GEN 5.1.5R and COBS 6.3.4R, a firm may not use the keyfacts logo on a document designed to comply with disclosure requirements in COBS unless it is a services and costs disclosure document or a combined initial disclosure document prepared in accordance with COBS 6.3 and the relevant COBS 6 annexes. TP 2.2BR allows a firm to use the equivalent documents produced under the COBS rules in effect at 5 August 2008 for a transitional period. <u>Expired</u></i>	From 6 August 2008 until 31 August 2009	6 August 2008
2.3	<i>COBS 10.1.2R</i>	R	<i>For business which is not MiFID or equivalent third country business, compliance with COB 3.9.5R(2) (Prohibited types of direct offer financial promotion) as it was in force on 31 October 2007 is treated as compliance with COBS 10.1.2R (arranging or dealing in certain derivatives and warrants for retail clients). <u>Expired</u></i>	From 1 November 2007 to 31 May 2008	1 November 2007
2.4	<i>COBS 10.1.2R</i>	G	<i>This transitional (COBS 2.3R) relates to non-MiFID or equivalent third country business arising out of a direct offer financial promotion of a derivative or warrant (or both) for a retail client. This would include, for example, sports or political spread betting. For such business, a firm may begin to comply with the new appropriateness rules at any time within six months of 1 November so long as, in the meantime, it complies with COB 3.9.5R(2). <u>Expired</u></i>	From 1 November 2007 to 31 May 2008	1 November 2007
2.4A	<i>COBS 11.2</i>	R	<i>COB 7.5, as it was in force on 31</i>	From 1	1 November

			October 2007, continues to apply (and COBS 11.2 will not apply) during the transitional period to a <i>firm</i> when executing a customer order in a <i>designated investment</i> when such business is not <i>MiFID</i> or equivalent <i>third country</i> business unless the <i>firm</i> decides to comply with COBS 11.2 before 1 May 2008. <u>Expired</u>	November 2007 to 30 April 2008	2007
2.4B	COBS 11.2	G	The effect of TP 2.4AR is that for a <i>firm</i> which carries on the activities set out in TP 2.4AR COB 7.5 will continue to apply until 1 May 2008 (and COBS 11.2 will not apply), unless the <i>firm</i> decides to comply with COBS 11.2 before 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.4AR applies must comply with the best execution provisions in COBS 11.2. <u>Expired</u>	From 1 November 2007 to 30 April 2008	1 November 2007
2.4C	COBS 11.2	R	If a <i>firm</i> carrying out the activities set out in TP 2.4AR decides to comply with COBS 11.2 before 1 May 2008: (1) it must make a record of the date of the decision and the date from which it is to be effective; and (2) from the effective date it must comply with COBS 11.2. <u>Expired</u>	From 1 November 2007 to 30 April 2008	1 November 2007
2.4D	COBS 11.2	R	COBS 11.2 (Best execution) does not apply to a <i>client</i> order for the purchase of or sale of <i>units</i> in a <i>regulated collective investment scheme</i> from or to the <i>operator</i> of that <i>scheme</i> which is not <i>MiFID</i> or equivalent <i>third country</i> business <u>Expired</u>	From 1 May 2008 to 31 October 2008	1 May 2008
2.4E	COBS 12.2 and COBS 12.3	R	COB 7.16, as it was in force on 31 October 2007, continues to apply (and COBS 12.2 and COBS 12.3 will not apply during the transitional period) to a <i>firm</i> which is not a <i>MiFID investment firm</i> or a <i>third country investment firm</i> which prepares <i>investment research</i> for publication or distribution to its <i>clients</i> unless the <i>firm</i> decides to comply with COBS 12.2 and COBS 12.3 sooner than 1 May 2008. <u>Expired</u>	From 1 November 2007 to 30 April 2008	1 November 2007

2.4F	COBS 12.2 and COBS 12.3	G	<p>The effect of TP 2.4ER is that for a <i>firm</i> which is not a <i>MiFID investment firm</i> or <i>third country investment firm</i> carrying on the activities set out in the transitional rule TP 2.4ER COB 7.16 will continue to apply (and COBS 12.2 and COBS 12.3 will not apply) until 1 May 2008, unless the <i>firm</i> decides to comply with COBS 12.2 and COBS 12.3 before 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.4ER applies must comply with the investment research provisions in COBS 12.2 and COBS 12.3. <u>Expired</u></p>	From 1 November 2007 to 30 April 2008	1 November 2007
2.4G	COBS 12.2 and COBS 12.3	R	<p>If a <i>firm</i> carrying out the activities set out in TP 2.4ER decides to comply with COBS 12.2 and COBS 12.3 before 1 May 2008:</p> <p>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</p> <p>(2) from the effective date it must comply with COBS 12.2 and COBS 12.3. <u>Expired</u></p>	From 1 November 2007 to 30 April 2008	1 November 2007
2.5	COBS 13	R	<p>(1) A <i>firm</i> is not required to prepare a <i>key features document</i>, a <i>key features illustration</i> or the <i>Consolidated Life Directive information</i> for a product if:</p> <p>(a) the rules would have required the <i>firm</i> to prepare <i>key features</i> for the product if they were still in force; and</p> <p>(b) the <i>firm</i> prepares <i>key features</i> in accordance with the rules as if they were still in force.</p> <p>(2) A <i>firm</i> is not required to prepare a <i>standardised deterministic projection</i> or an <i>alternative projection</i> for a product in accordance with COBS 13.5.1R or COBS 13.5.2R if the <i>firm</i> prepares its <i>projections</i> for <i>life policies</i>, <i>key features schemes</i>, <i>simplified prospectus schemes</i> and <i>stakeholder pensions schemes</i> in accordance with the rules as if they were still in force.</p> <p>(3) For the purposes of this rule, “the rules” are the <i>rules</i> on product disclosure and the</p>	From 1 November 2007 until 31 October 2008	1 November 2007

			customer's right to cancel or withdraw (<i>COB 6</i>) that were in force on 31 October 2007. <u>Expired</u>		
2.6	<i>COBS 14.1</i> and <i>COBS 14.2</i>	R	<p>A <i>firm</i> is not required to prepare a <i>key features document</i>, a <i>key features illustration</i> or the <i>Consolidated Life Directive information</i> for a product if:</p> <p>(1) the rules would have required the <i>firm</i> to prepare a <i>key features document</i> for that product if they were still in force;</p> <p>(2) the <i>firm</i> is satisfied, on reasonable grounds, that providing a <i>key features document</i> in accordance with the rules, as if they were still in force will not cause:</p> <p>(a) a <i>client</i> to suffer any prejudice; or</p> <p>(b) the <i>firm</i> to breach its obligations under one or more of the <i>Principles</i>; and</p> <p>(3) the <i>firm</i> provides a <i>key features document</i> for the product in accordance with the rules as if they were still in force.</p> <p>For these purposes, "the rules" means the <i>rules</i> on product disclosure and the customer's right to cancel or withdraw (<i>COB 6</i>) that were in force on 31 October 2007. <u>Expired</u></p>	From 1 November 2007 until 31 October 2008	1 November 2007
2.6A	<i>COBS 14.1</i> and <i>COBS 14.2</i>	R	<p>(1) A <i>firm</i> is not required to provide a <i>key investor information document</i> or <i>EEA key investor information document</i> to a <i>client</i> in accordance with <i>COBS 14.2</i> and <i>COBS 14.3</i> in relation to the proposed sale of a <i>unit</i> in a <i>UCITS</i>, if instead it meets the requirements of the <i>rules</i> of the <i>Handbook</i> as at 30 June 2011 in relation to the preparation, offering and provision of a <i>simplified prospectus</i> or <i>EEA simplified prospectus</i>, as if those <i>rules</i> were still in force in relation to the <i>UCITS</i>.</p> <p>(2) Paragraph (1) does not apply where:</p> <p>(a) in the case of a <i>management company</i>, it has already published</p>	From 1 July 2011 to 30 June 2012	1 July 2011

			<p>a <i>key investor information document</i> or an <i>EEA key investor information document</i>; or</p> <p>(b) in the case of any other <i>firm</i>, the document in (a) has already been provided to it in accordance with the requirements of <i>COBS 14.2</i>;</p> <p>in respect of the <i>UCITS</i> or <i>sub-fund</i> or class of <i>units</i> of the <i>scheme</i>, in relation to which a sale of <i>units</i> is proposed.</p> <p>[Note: article 118(2) of the <i>UCITS Directive</i>]</p> <p><u>Expired</u></p>		
2.7	<i>COBS 15</i>	R	<p>Cancellation</p> <p>(1) In relation to a contract concluded before 1 November 2007 the previous cancellation rules (<i>COB 6.7</i>) continue to apply.</p> <p>(2) In relation to a contract concluded on or after 1 November 2007 any pre-contract disclosure made before that date complies with the requirements of this sourcebook is to be treated for the purposes of <i>COBS 15</i> as if made under this sourcebook. <u>Expired</u></p>	1 November 2007 for 6 months	From 1 November 2007
...					
2.8A	<i>COBS 18</i>	R	<p><i>COB</i>, as it was in force on 31 October 2007, continues to apply (and <i>COBS</i> will not apply) to the following activities and <i>firms</i> (as the case may be) in relation to business which is not <i>MiFID</i> or equivalent <i>third country business</i> and <i>COBS</i> does not apply during the transitional period unless the <i>firm</i> decides to comply with <i>COBS</i> before 1 May 2008:</p> <p>(1) <i>Energy market activity</i> and <i>oil market activity</i>;</p> <p>(2) activities referred to in the <i>general application rule</i> related to:</p> <p>(a) <i>commodity futures</i>;</p> <p>(b) <i>commodity options</i>;</p> <p>(c) <i>contracts for differences</i> related to an underlying <i>commodity</i>; or</p> <p>(d) other <i>futures</i> or <i>contracts for</i></p>	From 1 November 2007 to 30 April 2008	1 November 2007

			<p><i>differences</i> which are not related to <i>commodities</i>, financial instruments or cash, which is not <i>energy market activity</i> or <i>oil market activity</i>;</p> <p>(3) <i>corporate finance business</i>;</p> <p>(4) a <i>firm</i> which is an <i>operator</i> of a <i>collective investment scheme</i>;</p> <p>(5) <i>Lloyd's market activities</i>;</p> <p>(6) <i>depositories</i>;</p> <p>(7) <i>OPS firms</i>. <u>Expired</u></p>		
2.8B	COBS 18	G	<p>The effect of TP 2.8AR is that for <i>firm</i> carrying on the activities set out in the transitional rule TP 2.8AR <i>COB</i> will continue to apply (and <i>COBS</i> will not apply) until 1 May 2008, unless the <i>firm</i> decides to comply with <i>COBS</i> before 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.8AR applies must comply with <i>COBS</i> as set out in <i>COBS 18</i>. <u>Expired</u></p>	From 1 November 2007 to 30 April 2008	1 November 2007
2.8C	COBS 18	R	<p>If a <i>firm</i> carrying out the activities set out in TP 2.8AR decides to comply with <i>COBS</i> sooner than 1 May 2008:</p> <p>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</p> <p>(2) subject to TP 2.8DR, from the effective date it must comply with <i>COBS</i> as set out in the relevant parts of <i>COBS 18</i>. <u>Expired</u></p>	From 1 November 2007 to 30 April 2008	1 November 2007
2.8D	COBS 18	G	[deleted]		
2.8E	COBS 18	R	<p>A decision by a <i>firm</i> carrying out activities set out in TP 2.8AR to comply with <i>COBS</i> before 1 May 2008 must be made in relation to all the <i>COBS</i> provisions applicable to it. The <i>firm</i> may not 'cherry pick'. <u>Expired</u></p>	From 1 November 2007 to 30 April 2008	1 November 2007
...					
2.16	COBS 9.4.10G; COBS 13 Annex 2; COBS 13 Annex 3; COBS 14.2.1R	R	<p>A <i>firm</i> which anticipates the coming into force of the Finance Act 2011 by carrying on any <i>regulated activity</i> in relation to a drawdown pension (as defined in paragraph 4 of Schedule 28 to the Finance Act 2004) must act as if</p>	6 April 2011 until the coming into force of the Finance Act 2011	6 April 2011

			the amendments to the <i>Handbook</i> set out in Annex A and Annex B Part 1 to the Pensions (Annuitisation and Withdrawals) (Amendment) Instrument 2011 (FSA 2011/19) were in force. <u>Expired</u>		
2.17	<i>COBS</i> 9.4.10G; <i>COBS</i> 13 Annex 2; <i>COBS</i> 13 Annex 3; <i>COBS</i> 14.2.1R	G	A <i>firm</i> intending to anticipate the coming into force of the Finance Act 2011 by carrying on any <i>regulated activity</i> in relation to a drawdown pension (as defined in paragraph 4 of Schedule 28 to the Finance Act 2004) should satisfy itself that it would be acting lawfully in so doing. <u>Expired</u>	6 April 2011 until the coming into force of the Finance Act 2011	6 April 2011
...					
2.20	<i>COBS</i> 20.2.28R	R	<i>Firms</i> which continue to effect new <i>contracts of insurance</i> in reliance on decisions made by the <i>firm's governing body</i> complying with <i>COBS</i> 20.2.28R prior to 1 April 2012 are deemed to be compliant with <i>COBS</i> 20.2.28R until 1 July 2012. <u>Expired</u>	From 1 April 2012 to 1 July 2012	1 April 2012
...					
2.22	<i>COBS</i> 20.5.1R to <i>COBS</i> 20.5.5R	R	<i>Firms'</i> existing governance arrangements are deemed to comply with the provisions in <i>COBS</i> 20.5.1R to <i>COBS</i> 20.5.5R until 1 July 2012. <u>Expired</u>	From 1 April 2012 to 1 July 2012	1 April 2012

Annex I

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.

TP 1 Transitional Provisions

TP 1.1 ...

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provisions: dates in force	(6) Handbook provisions: coming into force
...					
9	<i>MCOB 5.6.9R and MCOB 9.4.13R</i>	R	A firm may continue to comply with MCOB 5.6.9R and MCOB 9.4.13R as they applied before amendment by the Mortgages: Conduct of Business Sourcebook (Amendment No 3) Instrument 2006 <u>Expired</u>	31 October 2006 to 31 October 2007	31 October 2006
10	<i>MCOB 4 Annex 1R, MCOB 4 Annex 2R, MCOB 5 Annex 1R, MCOB 8 Annex 1R and MCOB 9 Annex 1R</i>	R	Key facts logo A firm may continue to use a keyfacts logo which is not accompanied by a regulatory mark (®). <u>Expired</u>	From 6 November 2006 to 6 November 2007	6 November 2006
11	<i>MCOB 4.4.1R, MCOB 4.4.7R and MCOB 4.10.2R</i>	R	A firm may use a combined initial disclosure document prepared in accordance with the rules in COBS 6.3 and COBS 6 Annex 2 in effect at 5 August 2008. <u>Expired</u>	From 6 August 2008 until 31 August 2009	6 August 2008
12	<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>	R	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. <u>Expired</u>	From 6 February 2009 to 6 February 2012	6 February 2009
13	<i>MCOB 13.3.9R</i>	R	A firm which complies with MCOB 13.3.9R as it applied on 24 June 2010 need not comply with MCOB 13.3.9R as it applies from 25 June 2010. <u>Expired</u>	25 June 2010 to 25 December 2010	25 June 2010
14	<i>MCOB 5.6.2R, MCOB 5.6.65R, MCOB 5.6.145R and</i>	R	A firm may continue to use an illustration that has been prepared in accordance with the rules in	From 6 April 2011 to 5 July	6 April 2011

	<i>MCOB 5 Annex 1R</i>		<i>MCOB 5.6</i> in effect at 5 April 2011. <u>Expired</u>	2011	
15	<i>MCOB 9.4.2R</i> , <i>MCOB 9 Annex 1R</i> and <i>MCOB 9 Annex 2R</i>	R	A <i>firm</i> may continue to use an <i>illustration</i> that has been prepared in accordance with the <i>rules</i> in <i>MCOB 9.4</i> in effect at 5 April 2011. <u>Expired</u>	From 6 April 2011 to 5 July 2011	6 April 2011
16	<i>MCOB 13.4.R(1)</i>	R	A <i>firm</i> which complies with <i>MCOB 13.4.1R(1)</i> as it applied on 5 April 2011 need not comply with <i>MCOB 13.4.1R(1)</i> as it applies from 6 April 2011. <u>Expired</u>	From 6 April 2011 to 5 July 2011	6 April 2011

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 provisions: dates in force	(6) Handbook provisions: coming into force
1	Every <i>rule</i> in <i>MCOB</i> unless the context otherwise requires and subject to any more specific transitional provision relating to the matter.	R	(1) If, in relation to <i>home purchase activities</i> , <i>home reversion activities</i> , or the communication of a <i>financial promotion</i> of a <i>home purchase plan</i> or <i>home reversion plan</i> , the application of any provision in <i>MCOB</i> is dependent on the occurrence of a series of events, the provision applies with respect to the events that occur on or after 6 April 2007. <u>Expired</u>	From 6 April 2007 for six months	6 April 2007
2		G	(1) For example, if a <i>customer</i> submits an application for a <i>home purchase plan</i> or a <i>home reversion plan</i> before 6 April 2007, a <i>firm</i> responding to that application on or after 6 April 2007 will not be required to comply with the relevant disclosure requirements in <i>MCOB 5</i> . However, the <i>firm</i> will have to comply with the requirements in <i>MCOB</i> when taking any further action (such as issuing an offer) regarding the application on or after 6 April 2007. (2) In relation to a <i>home reversion plan</i> , an <i>offer document</i> may have to be issued under transitional provision 1R even though no <i>illustration</i> has been give out		

			(because that part of the transaction occurred before 6 April 2007). In such cases, the suitably adapted <i>illustration</i> required as part of an <i>offer document</i> would need to omit: (a) the required text regarding comparing the <i>offer document</i> with the <i>illustration</i> previously given to the <i>customer</i> (see <i>MCOB 6.4.4R(4)(b)</i>); and (b) Section 2 of the <i>illustration</i> entirely. <u>Expired</u>		
3		G	<i>MCOB</i> applies to <i>home purchase plans</i> and <i>home reversion plans</i> entered into on or after 6 April 2007. <i>PERG 14</i> contains <i>guidance</i> on the variation of plans entered into before 6 April 2007. <u>Expired</u>		
4	<i>MCOB 3.8A.3R(1)</i>	R	(1) A <i>non real time financial promotion</i> of a <i>home reversion plan</i> communicated: (a) in a directory (or similar publication) that is updated annually; (b) otherwise than in (a); on or after 6 April 2007 where the deadline for submission for communication was before that date does not need to describe a <i>home reversion plan</i> as a 'home reversion plan'. <u>Expired</u>	(1)(a) from the later of 6 April 2007 or the date of first communication, for one year; (1)(b) from 6 April 2007 for three months.	6 April 2007
5	<i>MCOB 9.4.2R</i> , <i>MCOB 9.4.5R</i> , <i>MCOB 9.4.18R</i> and <i>MCOB 9 Annex 1R</i>	R	A <i>firm</i> may continue to use an <i>illustration</i> that has been prepared in accordance with the <i>rules</i> in <i>MCOB 9.4</i> in effect at 5 February 2009. <u>Expired</u>	From 6 February 2009 to 6 February 2010	6 February 2009
6	<i>MCOB 9.4.2R</i> , <i>MCOB 9.4.5R</i> , <i>MCOB 9.4.133R</i> and <i>MCOB 9 Annex 2R</i>	R	A <i>firm</i> may continue to use an <i>illustration</i> that has been prepared in accordance with the <i>rules</i> in <i>MCOB 9.4</i> in effect at 5 February 2009. <u>Expired</u>	From 6 February 2009 to 6 February 2010	6 February 2009

TP 3.1 Transitional Provisions for sale and rent back agreements

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provisions: dates in force	(6) Handbook provisions: coming into force
-----	--	-----	----------------------------	---	--

1	Every <i>rule</i> in <i>MCOB</i> unless the context otherwise requires and subject to any more specific transitional provision relating to the matter.	R	<p>(1) If, in relation to <i>regulated sale and rent back activities</i>, or the communication of a <i>financial promotion</i> relating to a <i>regulated sale and rent back agreement</i>, provisions in <i>MCOB</i> are dependent on the occurrence of a series of events, the provision applies with respect to the events that occur on or after 30 June 2010.</p> <p>(2) Paragraph (1) is without prejudice to provisions in <i>MCOB</i> that applied before 30 June 2010 to <i>regulated sale and rent back firms</i> that held an interim authorisation or an interim variation of permission to conduct <i>regulated sale and rent back activity</i> in accordance with article 23 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342) that had been granted by the <i>FSA</i>. <u>Expired</u></p>	From 30 June 2010 for 4 weeks	30 June 2010
2	-	G	For example if a <i>customer</i> has not entered into a <i>regulated sale and rent back agreement</i> before 30 June 2010, a <i>regulated sale and rent back firm</i> will have to comply with the requirements in <i>MCOB</i> when taking any further action (such as issuing a written pre offer document (Stage One) with cooling off period (<i>MCOB</i> 6.9)). <u>Expired</u>		
3	-	G	<i>MCOB</i> applies to <i>regulated sale and rent back agreements</i> entered into on or after 1 July 2009. <i>PERG</i> 14.4A contains <i>guidance</i> on the variation of plans entered into before 1 July 2009). <u>Expired</u>		
4	<i>MCOB</i> 3.8B.4R; <i>MCOB</i> 3.8B.5R	R	<p>(1) A <i>non real time financial promotion</i> of a <i>regulated sale and rent back agreement</i> communicated:</p> <p>(a) in a directory (or similar publication) that is update annually;</p> <p>(b) otherwise than in (a);</p> <p>on or after 30 June 2010 where the deadline for submission for communication was before that date.</p>	<p>(1)(a) from the later of 30 June 2010 or the date of first communication, for one year;</p> <p>(1)(b) from 30 June 2010 for three months.</p>	30 June 2010

Annex J

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

TP 1 Transitional Provision

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
1	<i>BCOBS</i>	R	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. Expired	1 November 2009 to 1 May 2010	1 November 2009
2	<i>BCOBS 4.1.1R</i>	R	Until midnight on 1 May 2010, a firm need not have regard to <i>BCOBS 4.1.2G(3)(c)</i> or (4) in interpreting and applying <i>BCOBS 4.1.1R</i>. Expired	1 November 2009 to 1 May 2010	1 November 2009
3	<i>BCOBS 4.1.1R</i>	G	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. Expired	1 November 2009 to 1 May 2010	1 November 2009
4	<i>BCOBS 4.1.1R</i>	R	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 <i>BCOBS 4.1.2G(5)</i> or <i>BCOBS 4.1.2G(6)</i> in interpreting and applying <i>BCOBS 4.1.1R</i>. Expired	1 November 2009 to 1 May 2010	1 November 2009
5	<i>BCOBS 5.1.13R</i>	R	With respect to funds credited to an account of a banking customer	1 November 2009 to 1	1 November 2009

			before midnight on 1 February 2010, a <i>firm</i> need not comply with <i>BCOBS 5.1.13R</i> . <u>Expired</u>	February 2010	
6	<i>BCOBS 4.1.1R</i>	R	A <i>firm</i> need not have regard to <i>BCOBS 4.1.4AG</i> in interpreting and applying <i>BCOBS 4.1.1R</i> until 6 September 2011. <u>Expired</u>	6 March 2011 to 6 September 2011	6 March 2011
7	The changes to <i>BCOBS 4.2.2G</i> set out in the Banking: Conduct of Business Sourcebook (Amendment No 3) Instrument 2011	R	A <i>firm</i> need not have regard to the changes referred to in column (2) in interpreting and applying <i>BCOBS 4.1.1R</i> or <i>BCOBS 4.2.1R</i> until 31 December 2011. <u>Expired</u>	6 May 2011 to 31 December 2011	6 May 2011

Annex K

Amendments to the Client Assets sourcebook (CASS)

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

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
...					
4	CASS 5.1.5AR	R	A firm will satisfy the requirements of this paragraph, and money is client money, notwithstanding that an insurance undertaking which is the firm's counterparty to an agreement required by CASS 5.1.5AR has not given written consent to its interests under the trusts (or in Scotland agency) in CASS 5.3.2R or CASS 5.4.7R being subordinated to the interests of the firm's other clients. <u>Expired</u>	14 January 2005 for 6 months	14 January 2005
5	CASS 5.3.2R	R	The interests of a firm's clients which are insurance undertakings will rank equally with the interests of the firm's other clients. <u>Expired</u>	14 January 2005 for 6 months	14 January 2005
6	CASS 5.4.7R	R	A firm will satisfy the requirements of this rule notwithstanding that the deed referred to in CASS 5.8.3R provides that money (and if appropriate designated investments) are held on terms which provide for the interests of the firm's clients which are the insurance undertakings to rank equally with the interests of the firm's other clients. <u>Expired</u>	14 January 2005 for 6 months	14 January 2005
7	CASS 5.5.65R	R	A firm may for the purpose of calculating its client money resource disregard any money which the firm had before 14 January 2005 transferred to an intermediate broker in	14 January 2005 for 12 months	14 January 2005

			circumstances analogous to those described in CASS 5.5.84R . <u>Expired</u>		
...					

Annex L

Amendments to the Market Conduct sourcebook (MAR)

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

6.8 Liquid market for shares, share class, standard market size and relevant market

...

6.8.5	EU	1.	A share admitted to trading on a <i>regulated market</i> shall be considered to have a liquid market if the share is traded daily, with a free float of <u>not</u> less than EUR 500 million, ...
		...	

...

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
...					
2	MAR 6	R	An investment firm, which is authorised by the FSA, must notify the FSA in writing by 1 December 2007 if at 1 November 2007 it is a systematic internaliser in respect of shares admitted to trading on a regulated market. <u>Expired</u>	From 1 November 2007 to 2 December 2007	1 November 2007

Annex M

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 1 July 2012

3.3 Appointment of auditors

...

Appointment by firm

3.3.2 R A *firm* to which this section applies (see SUP 3.1) must:

...

(2) notify the *FSA*, without delay, on the form in SUP 15 Ann ~~2R~~ 3R (Standing data form) ...

...

(5) notify the *FSA* of the appointment of an auditor, on the form in SUP 15 Ann ~~2R~~ 3R (Standing data form) ...

...

10 Approved persons

...

10 Annex 1G Frequently asked questions

	Question	Answer
	Requirements of the regime	
	...	
11A	Should these checks include a check of criminal records?	It is for senior management to decide what checks should be made. In deciding if it is necessary to carry out a check of criminal records, the <i>firm</i> should consider that the <i>FSA</i> does not routinely carry out these checks during the approval process. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of

		<p>the Order) <i>Rehabilitation Exceptions Orders</i>, the FSA and the industry also have a right to ask about <u>the spent criminal convictions specified in those Orders</u>, as well as <u>any unspent, criminal convictions, for employment purposes about in order to assess the suitability of candidates</u> for <i>approved person</i> status (see section 5 of the relevant Form A (Application to perform controlled functions under the approved persons regime)). Note also the provisions of <i>EG 6</i> (Publicity).</p>
...		

16.12 Integrated Regulatory Reporting

...

Regulatory Activity Group 1

...

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 <i>UK banks and building societies</i>	Solo consolidated <i>UK banks and building societies</i>	Report on a <i>UK consolidation group</i> or, as applicable, <i>defined liquidity group</i> basis by <i>UK banks and building societies</i>	Other members of <i>RAG 1</i>
...				
FSA020				Half yearly
FSA021				Half yearly
FSA022				Half yearly
FSA023				Half yearly

FSA024				Half yearly
FSA025				Half yearly
FSA026				Half yearly
...				
...				

- 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>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
...						
FSA020					<i>30 business days</i>	
FSA021					<i>30 business days</i>	
FSA022					<i>30 business days</i>	
FSA023					<i>30 business days</i>	
FSA024					<i>30 business days</i>	
FSA025					<i>30 business days</i>	
FSA026					<i>30 business days</i>	
...						
...						

...

- 16.12.15 R The applicable *data items* referred to in *SUP* 16.12.4R according to type of *firm* are set out in the table below:

Description of data item	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>BIPRU firms</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>

...								
Balance sheet	...	...	...	...	...	...	...	FSA029 (note 16)
Income statement	...	...	...	...	...	...	...	FSA030 (note 16)
...								
...								

...

Part 2: Comes into force on 29 September 2012

16 Annex 28AD Small Payment Institution Return

...

2 Please report the total value of these transactions (this figured must be entered in Euro)

000s

...

16 Annex 28BG Notes on Completing FSA057 (Payment Services Directive Transactions)

...

2A Insert the total value of all transactions made during the calendar year. ... since your firm was FSA-registered.)

“The figure should be rounded to single units and entered in Euros, and rounded to the nearest thousand—e.g. 1,000,250.50 is entered as 1000 For example, €1,234,567.50 should be entered as €1,234,567.”

Part 3: Comes into force on 31 December 2012

10 Annex 9R Form G: The Retail Investment Adviser Complaints Alert Form

...

**Form G: Retail Investment Adviser – Complaints Alert Form
(all fields are mandatory except where indicated)**

This form relates to ~~rule:~~ SUP 10.13.20AR

...

*Individual details can be found on the FSA Register under the individual tab. If you are unable to identify the retail investment adviser’s IRN please contact the FSA at RIAnotifications@fsa.gov.uk Customer Contact Centre on 0845 606 1234 for assistance.

...

...

16 Annex 18AR Retail Mediation Activities Return (‘RMAR’)

...

SECTION G: Training and Competence

...

What types of advice were provided?

(tick all that apply)

	Mortgage	Non-Inv Insurance	Retail Investment products
15 Independent			<u>Yes/No</u>
8 Independent (whole of market plus option of fee-only)	<u>Yes/No</u>		
9 Whole of market (without fee-only option)	<u>Yes/No</u>		
10 On the basis of a fair analysis of the market		<u>Yes/No</u>	
11 Restricted / Multi-tie (the products of a limited number of providers)	<u>Yes/No</u>	<u>Yes/No</u>	<u>Yes/No</u>
12 Restricted = / Single-tie (the products of one provider)	<u>Yes/No</u>	<u>Yes/No</u>	<u>Yes/No</u>
16 Restricted (limited types of products)			<u>Yes/No</u>

...

SECTION K: Adviser charges ...

...

Retail clients paying for ongoing advice services

Number

[delete cell]

8 Number of ~~Retail~~ retail clients paying for ongoing advice services at the end of the

...

reporting period

- 9 Number of ~~Retail~~ retail clients who started ...
paying for ongoing advice services during
the reporting period
- 10 Number of ~~Retail~~ retail clients who stopped ...
paying for ongoing advice services during
the reporting period

What types of adviser charging structures are offered?

	<i>Independent Advice</i>		<i>Restricted Advice</i>		Typical charging structure (tick all that apply)
	Minimum	Maximum	Minimum	Maximum	
11 Initial <i>adviser charge</i> per hour (£)					<u>Yes/No</u>
12 Initial <i>adviser charge</i> as percentage of investment (%)					<u>Yes/No</u>
13 Initial adviser charge <i>adviser charge</i> as a fixed fee (£)					<u>Yes/No</u>
14 Initial adviser charge <i>adviser charge</i> as a combined charging structure (£)					<u>Yes/No</u>
15 Ongoing <i>adviser charges</i> per hour (£)					<u>Yes/No</u>
16 Ongoing <i>adviser charge</i> as percentage of investment (%)					<u>Yes/No</u>
17 Ongoing adviser charge <i>adviser charge</i> as a fixed fee (£)					<u>Yes/No</u>
18 Ongoing <i>adviser charge</i> as a combined charging structure (£)					<u>Yes/No</u>

SECTION L: Consultancy charges ...

...

Types of consultancy charges in typical scheme (~~tick all that apply~~)

% of employer	% of member	% of fund (annual)	Flat amount	Other
---------------	-------------	--------------------	-------------	-------

	contributions	contributions	management charge)	per member	
10 Active members	<u>Yes/No</u>	<u>Yes/No</u>	<u>Yes/No</u>	<u>Yes/No</u>	<u>Yes/No</u>
11 Deferred members			<u>Yes/No</u>	<u>Yes/No</u>	<u>Yes/No</u>

...

16 Annex 18BG Notes for Completion of the Retail Mediation Activities Return ('RMAR')

...

Section G: Training & Competence ('T&C')

...

Section G: guide for completion of individual fields

...	
What types of advice were provided? (tick all that apply).	If staff provide more than one type of advice (for example, they restrict their product range by <i>product provider</i> and type of product), or in relation to more than one business type (i.e. <i>home finance transaction</i> advising, advising on <i>non-investment insurance contracts</i> , or <i>retail investment products</i>), tick all that apply. For each type of advice, the <i>firm</i> should indicate whether or not staff have provided advice on that basis / <u>business type</u> .
...	
Restricted / Multi-tie = (the products of a limited number of providers)	A <i>firm</i> provides advice on products selected from a limited number of provider firms. <i>Restricted advice</i> applies to advice on <i>retail investment products</i> . Multi-tie applies to <i>insurance mediation activity</i> and <i>home finance mediation activity</i> .
Restricted / Single-tie = (the products of one provider)	A <i>firm</i> provides advice on products selected from one provider firm only. <i>Restricted advice</i> applies to advice on <i>retail investment products</i> . Single-tie applies to <i>insurance mediation activity</i> and <i>home finance mediation activity</i> .
Restricted = (limited types of products)	A <i>firm</i> provides advice on limited types of products.

...

Section K: Adviser charges

...

Section K: guide for completion of individual fields

...	
Retail clients paying for ongoing advice services	
<i>Retail</i> Number of <i>retail clients</i> paying for ongoing advice services (row 8)	This should be the number of <i>retail clients</i> paying for ongoing advice services (i.e. paying ongoing <i>adviser charges</i>) at the end of the reporting period.
<i>Retail</i> Number of <i>retail clients</i> who start <u>started</u> paying for ongoing advice services (row 9)	This should be the number of <i>retail clients</i> who began paying for an ongoing advice service (i.e. paying ongoing <i>adviser charges</i>) during the reporting period.
<i>Retail</i> Number of <i>retail clients</i> paying who stop <u>stopped</u> paying for ongoing advice services (row 10)	This should be the number of <i>retail clients</i> who stopped paying for ongoing advice service (i.e. paying ongoing <i>adviser charges</i>) during the reporting period.
...	
Typical charging structure (tick all that apply)	If a <i>firm</i> has more than one charging structure, it should report all charging structures and indicate what the typical charging structure is for initial and ongoing services. If the adviser charging structures typically offered are split evenly between the different charging types (per hour, percentage of investment, fixed fee or combined) for initial and/or ongoing advice services, tick <u>report</u> the charging structures that are relevant.

Section L: Consultancy charges

...

Section L: guide for completion of individual fields

Retail investment revenue from either or both group personal pension scheme and group stakeholder pension scheme fee and consultancy charges	
...	
Charging structures offered to active and deferred members of <i>group personal pension schemes</i> and <i>group stakeholder pension schemes</i>	Only those fields relevant to the <i>firm's</i> typical charging structure should be completed. (Tick all that apply).

...

Annex N

Amendments to the Compensation sourcebook (COMP)

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

Part 1: Comes into force on 1 July 2012

12 Calculating compensation

...

12.6 Quantification: trustees, operators of pension schemes, persons winding up pension schemes, personal representatives, agents, and joint claims

...

12.6.2A R If a claimant has a *claim* as:

- (1) as the trustee of a *small self-administered scheme* or an *occupational pension scheme* of an employer which is not a *large company, large partnership* or *large mutual association* or the trustee or *operator* of, or the *person* carrying on the *regulated activity* of *winding up, a stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*;
- (2) for one or more members of a pension scheme (or, where relevant, the beneficiary of any member) whose benefits are *money-purchase benefits*;

the *FSCS* must treat the member or members (or, where relevant, the beneficiary of any member) as having the *claim*, and not the claimant.

Part 2: Comes into force on 31 August 2012

16 Disclosure requirements for firms that accept deposits

...

16.4 Compensation information: branches and websites

16.4.1 R (1) This section applies to:

...

- (b) an *EEA firm* or a *non-EEA firm* in relation to each *branch* in the ~~EEA~~ UK at which it *accepts deposits*;

...

Annex O

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

8 Annex 1R Qualified Investor Schemes: eligible investors

...

(4)

Issue or transfer of units to:	Issue or transfer of units (see Note 1) in a qualified investment scheme which is:
...	
Category 3 person A <i>person</i> who is eligible to participate in a scheme constituted under: (1) ... (2) section 24 of the Charities Act 1993 <u>section 96 of the Charities Act 2011</u> ; or (3)
...	

...

Annex P

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

4.2D **Suspension and removal of financial instruments from trading**

...

4.2D.3 G Under section 313C(1) of the *Act*, if the *FSA* exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading, it must as soon as reasonably practicable:

...

(2) inform *ESMA* and the competent authorities of all other *EEA States* of its decision.

...

6A **Removal of passport rights from EEA market operator**

...

6A.2.4 G If the *FSA* exercises this prohibition power it must at the earliest opportunity notify the Commission and *ESMA* of the action taken in relation to the operator.

Annex Q

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text.

Appendix 1

specified investment any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments):

...

(ob) *home reversion plan* (article 63B(3));

(oc) *home purchase plan* (article 63F(3));

(od) *regulated sale and rent back agreement* (article 63J(3));

Annex R

Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text.

5.3 Certificate of approval

5.3.1 UK Sections 87H and 87I of the *Act* provide:

Prospectus approved in another EEA State		
87H	(1)	A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has <u>notified ESMA and provided the competent authority with -</u> ...
	...	
	<u>(3A)</u>	<u>The competent authority must publish on its website a list of certificates of approval provided to it in accordance with this section.</u>
	<u>(3B)</u>	<u>The list referred to in subsection (3A) must -</u>
		<u>(a)</u> <u>be kept up-to-date;</u>
		<u>(b)</u> <u>retain items on it for a period of at least 12 months;</u> <u>and</u>
		<u>(c)</u> <u>include hyperlinks to any certificate of approval and prospectus published on the website of -</u>
		<u>(i)</u> <u>the competent authority of the EEA State which provided the certificate;</u>
		<u>(ii)</u> <u>the issuer; or</u>
		<u>(iii)</u> <u>the regulated market where admission to trading is sought.</u>
	...	

Provision of information to host Member State
--

87I	...	
-----	-----	--

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS
AMENDMENTS NO 6) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 149 (Evidential provisions);
 - (c) section 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. This instrument comes into force on 29 June 2012.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No 6) Instrument 2012.

By order of the Board
28 June 2012

Annex

Amendments to the Training and Competence sourcebook (TC)

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

Appendix 4E Appropriate Qualification tables

...

Qualification table for : Advising on (but not dealing in) <i>securities</i> (which are not <i>stakeholder pension schemes</i> <u>schemes</u> , <i>personal pension schemes</i> or <i>broker funds</i>) – Activity number 2 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
London Stock Exchange Full Membership Exams (<u>and other regional stock exchanges as merged with London Stock Exchange</u>) - where candidates hold three or four papers or have both the Stock Exchange Practice and Techniques of Investment papers	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment; Formerly the Securities & Investment Institute)	b
...		
ACI Diploma	ACI	d
<u>ACI Diploma (when it is accompanied with appropriate qualification modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>ACI</u>	<u>a</u>
...		

Qualification table for : Advising on (but not dealing in) <i>Derivatives</i> – Activity number 3 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
Certified International Wealth Manager	...	
<u>CIIA Qualification (when it is accompanied with appropriate qualification modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>Association of Certified International Investment Analysts (ACIIA)</u>	<u>a</u>
...		
London Stock Exchange Full Membership Exams (<u>and other regional stock exchanges as merged with London Stock Exchange</u>) – where candidates hold three or four papers or have both the Stock Exchange Practice and Techniques of Investment papers	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment; Formerly the Securities & Investment Institute)	b
...		
ACI Diploma	ACI	d

ACI Diploma (when it is accompanied with appropriate qualification modules covering regulation & ethics, investment principles & risk and personal taxation)	ACI	a
...		

Qualification table for : Advising on <i>Packaged Products</i> (which are not <i>broker funds</i>) and <i>Friendly Society</i> tax-exempt policies - Activity Numbers 4 and 6 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
London Stock Exchange Full Membership Exams (and other regional stock exchanges as merged with London Stock Exchange) – where candidates hold three or four papers or have both the Stock Exchange Practice and Techniques of Investment papers	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment; Formerly the Securities & Investment Institute)	b
BA (Hons) Financial Services, Planning and Management	...	
Diploma in Regulated Retirement Advice	Pensions Management Institute	a
...		

Qualification table for : Advising on, and dealing in <i>Securities</i> (which are not <i>stakeholder pension schemes</i> or <i>broker funds</i>) – Activity number 12 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
London Stock Exchange Full Membership Exams (and other regional stock exchanges as merged with London Stock Exchange) – where candidates hold three or four papers or have both the Stock Exchange Practice and Techniques of Investment papers	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment; Formerly the Securities & Investment Institute)	b
...		
ACI Diploma	ACI	d
ACI Diploma (when it is accompanied with appropriate qualification modules covering regulation & ethics, investment principles & risk and personal taxation)	ACI	a
...		

Qualification table for : Advising on and dealing with or for clients in <i>Derivatives</i> - Activity Number 13 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
Certified International Wealth Manager	...	
CIIA Qualification (when it is accompanied with appropriate qualification modules covering regulation & ethics, investment principles & risk and personal	Association of Certified International Investment Analysts (ACIIA)	a

taxation)		
...		
Financial Futures and Options paper of the Diploma	The Chartered Institute for Securities & Investment (Formerly the Securities & Investments Institute)	a d
...		
London Stock Exchange Full Membership Exams (and other regional stock exchanges as merged with London Stock Exchange) – where candidates hold three or four papers or have both the Stock Exchange Practice and Techniques of Investment papers	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment; Formerly the Securities & Investment Institute)	b
...		
ACI Diploma	ACI	d
ACI Diploma (when it is accompanied with appropriate qualification modules covering regulation & ethics, investment principles & risk and personal taxation)	ACI	a
...		

...

Qualification table for : Managing investments or Acting as a Broker fund adviser - Activity Number 14 and 10 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
London Stock Exchange Full Membership Exams (and other regional stock exchanges as merged with London Stock Exchange) – where candidates hold three or four papers or have both the Stock Exchange Practice and Techniques of Investment papers	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment; Formerly the Securities & Investment Institute)	1
...		
Fellow or Associate by examination (must include Investment Paper E (Syllabus in force until 1998))	Faculty or Institute of Actuaries	1
Fellow or Associate or where the individual has passed all of the following modules CT1, CT2, CT4, CT5, CT6, CT7 and CT8	Faculty or Institute of Actuaries	1
...		

...

**LIQUIDITY STANDARDS (MISCELLANEOUS AMENDMENTS NO 6)
INSTRUMENT 2012**

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 July 2012.

Amendments to the Handbook

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) 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 Liquidity Standards (Miscellaneous Amendments No 6) Instrument 2012.

By order of the Board
28 June 2012

Annex A

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

12.3 **Liquidity risk management**

...

- 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 (weekly for a *low frequency liquidity reporting firm* and a *simplified ILAS BIPRU firm*) 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 (or weekly as applicable) reporting of applicable *data items* even if there is no *firm-specific liquidity stress* or *market liquidity stress* and none is expected.

Annex B

Amendments to the Supervision manual (SUP)

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

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 1

16.12.5 R ...

...	
Note 21	Note 20 applies, except that paragraph <u>paragraphs (3), (4) and (5)</u> does do not apply, meaning that <i>material currencies</i> must not be recorded separately.
...	

...

Regulated Activity Group 3

...

16.12.11 R ...

...	
Note 30	Note 29 applies, except that paragraph <u>paragraphs (3), (4) and (5)</u> does do not apply, meaning that <i>material currencies</i> must not be recorded separately.
...	

...

Regulated Activity Group 4

...

16.12.15 R ...

...	
Note 27	Note 26 applies, except that paragraph <u>paragraphs (3), (4) and (5)</u> does do not apply, meaning that <i>material currencies</i> must not be recorded separately.

...	
-----	--

...

Regulated Activity Group 7

...

16.12.22A R ...

Note 20	Note 19 applies, except that paragraph <u>paragraphs (3), (4) and (5) does do</u> not apply, meaning that <i>material currencies</i> must not be recorded separately.
...	

...

Regulated Activity Group 8

...

16.12.25A R ...

Note 25	Note 24 applies, except that paragraph <u>paragraphs (3), (4) and (5) does do</u> not apply, meaning that <i>material currencies</i> must not be recorded separately.
...	

...

16 Annex 24R Data items for SUP 16.12R

FSA050

**FSA050
Liquidity Buffer Qualifying Securities**

Issuer	A Market value of identifiable securities or security baskets
--------	--

1 Australia

--

2	Austria	
...	...	
22	Other	
23	Supranational(s) <u>Designated multilateral development bank(s)</u>	
...	...	

FSA052

**FSA052
Pricing Data**

Wholesale Liabilities (Raised during the week or month ending with the reporting date)

...

PROSPECTUS REGULATION (AMENDMENT) INSTRUMENT 2012

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 84 (Matters which may be dealt with by prospectus rules);
 - (3) section 87A (Criteria for approval of prospectus by competent authority);
 - (4) section 87B (Exemptions from disclosure);
 - (5) section 101 (Part 6 rules: general provisions);
 - (6) section 138 (General rule-making power);
 - (7) section 156 (General supplementary powers);
 - (8) section 157(1) (Guidance); and
 - (9) schedule 7 (The Authority as Competent Authority for Part 6).
- 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 July 2012.

Amendments to the Handbook

- D. The Prospectus Rules sourcebook (PR) is amended in accordance with the Annex to this instrument.

Non-FSA legislative text

- E. (1) In the Annex to this instrument, the legislative text marked "EU" in the margin is included for the convenience of readers but does not form part of the legislative text made by the Financial Services Authority.
- (2) Although European Union Legislation is reproduced in this instrument, only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

Notes

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

Citation

- G. This instrument may be cited as the Prospectus Regulation (Amendment) Instrument 2012.

By order of the Board
28 June 2012

Annex

Amendments to the Prospectus Rules sourcebook (PR)

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

Contents of summary

- 2.1.4 EU Article 24 of the *PD Regulation* provides for how the contents of the *summary* are to be determined:

Content of the summary of <u>the prospectus, and of the base prospectus and of the individual issue</u>	
The issuer, the offeror or the person asking for admission to trading on a regulated market shall determine on its own the detailed content of the summary to the prospectus or base prospectus referred to in [section 87A of the Act].	
<u>1</u>	<p><u>The issuer, the offeror or the person asking for the admission to trading on a regulated market shall determine the detailed content of the summary referred to in Article 5(2) of Directive 2003/71/EC in accordance with this Article.</u></p> <p><u>A summary shall contain the key information items set out in Annex XXII. Where an item is not applicable to a prospectus, such item shall appear in the summary with the mention "not applicable". The length of the summary shall take into account the complexity of the issuer and of the securities offered, but shall not exceed 7% of the length of a prospectus or 15 pages, whichever is the longer. It shall not contain cross-references to other parts of the prospectus.</u></p> <p><u>The order of the sections and of the elements of Annex XXII shall be mandatory. The summary shall be drafted in clear language, presenting the key information in an easily accessible and understandable way. Where an issuer is not under an obligation to include a summary in a prospectus pursuant to Article 5(2) of Directive 2003/71/EC, but produces an overview section in the prospectus, this section shall not be entitled "Summary" unless the issuer complies with all disclosure requirements for summaries laid down in this Article and Annex XXII.</u></p>
<u>2</u>	<u>The summary of the base prospectus may contain the following information:</u>
	(a) <u>information included in the base prospectus;</u>

	(b)	<u>options for information required by the securities note schedule and its building block(s);</u>
	(c)	<u>information required by the securities note schedule and its building block(s) left in blank for later insertion in the final terms.</u>
3		<u>The summary of the individual issue shall provide the key information of the summary of the base prospectus combined with the relevant parts of the final terms. The summary of the individual issue shall contain the following:</u>
	(a)	<u>the information of the summary of the base prospectus which is only relevant to the individual issue;</u>
	(b)	<u>the options contained in the base prospectus which are only relevant to the individual issue as determined in the final terms;</u>
	(c)	<u>the relevant information given in the final terms which has been previously left in blank in the base prospectus.</u>
		<u>Where the final terms relate to several securities which differ only in some very limited details, such as the issue price or maturity date, one single summary of the individual issue may be attached for all those securities, provided the information referring to the different securities is clearly segregated.</u> <u>The summary of the individual issue shall be subject to the same requirements as the final terms and shall be annexed to them.</u>

[Note: See transitional provisions in Regulation (EU) No 486/2012]

...

2.2 Format of prospectus

...

2.2.10 EU Articles 25 and 26 of the *PD Regulation* provide for the format of *prospectuses* and base prospectuses:

Format of the prospectus	
25.1	
...	
4.	...

	[see LR-PR 3.1.1R(3)]
5.	<p>Where the summary of a prospectus must be supplemented according to [section 87G of the <i>Act</i>], the issuer, the offeror or the person asking for admission to trading on a regulated market shall decide on a case-by-case basis whether to integrate the new information in the original summary by producing a new summary, or to produce a supplement to the summary.</p> <p>If the new information is integrated in the original summary, the issuer, the offeror or the person asking for admission to trading on a regulated market shall ensure that investors can easily identify the changes, in particular by way of footnotes.</p> <p><u>In any case, a new filing of final terms and summary of the individual issue annexed thereto corresponding to offers made prior to the production of a new summary or a supplement to the summary shall not be required.</u></p>

Format of the base prospectus and its related final terms	
26.1	...
...	
3.	<p>[...]</p> <p>[see LR PR 3.1.1R(3)]</p>
...	
	[Paragraph 5 is deleted in its entirety and is replaced by the text shown below. The deleted text is not shown struck through.]
5.	<p><u>The final terms shall be presented in the form of a separate document or be included in the base prospectus. The final terms shall be prepared in an easily analysable and comprehensible form.</u></p> <p><u>The items of the relevant securities note schedule and its building blocks, which are included in the base prospectus shall not be reproduced in the final terms.</u></p> <p><u>The issuer, the offeror or the person asking for admission to trading on a regulated market may include any of the additional information set out in Annex XXI in the final terms.</u></p> <p><u>A clear and prominent statement shall be inserted in the final terms indicating:</u></p>
	<p>(a) <u>that the final terms have been prepared for the purpose of Article 5(4) of Directive 2003/71/EC and must be read in conjunction with the base prospectus and its supplement(s);</u></p>

	(b)	<u>where the base prospectus and its supplement(s) are published in accordance with Article 14 of Directive 2003/71/EC;</u>
	(c)	<u>that in order to get the full information both the base prospectus and the final terms must be read in conjunction;</u>
	(d)	<u>that a summary of the individual issue is annexed to the final terms.</u>
		<u>The final terms may include the signature of the legal representative of the issuer or the person responsible for the prospectus according to the relevant national law or the signature of both.</u>
5a		<u>The final terms and the summary of the individual issue shall be drawn up in the same language respectively as the approved version of the form of the final terms of the base prospectus and as the summary of the base prospectus.</u>
		<u>When the final terms are communicated to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, in accordance with Article 5(4) of Directive 2003/71/EC, the following language rules shall apply to the final terms and the annexed summary:</u>
	(a)	<u>where the summary of the base prospectus is to be translated pursuant to Article 19 of Directive 2003/71/EC, the summary of the individual issue annexed to the final terms shall be subject to the same translation requirements as the summary of the base prospectus;</u>
	(b)	<u>where the base prospectus is to be translated pursuant to Article 19 of Directive 2003/71/EC, the final terms and the summary of the individual issue annexed thereto, shall be subject to the same translation requirements as the base prospectus.</u>
		<u>The issuer shall communicate those translations, together with the final terms, to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States.</u>
...		

[Note: See transitional provisions in Regulation (EU) No 486/2012]

2.2.11 EU The PD Regulation provides for categories of information to be included in the base prospectus and final terms.

<u>Categories of information in the base prospectus and the final terms</u>		
2a	1	<u>The categories set out in Annex XX shall determine the degree of flexibility by which the information can be given in the base prospectus or the final terms. The categories shall be defined as follows:</u>
		(a) <u>'Category A' means the relevant information which shall be included in the base prospectus. This information cannot be left in blank for later insertion in the final terms;</u>
		(b) <u>'Category B' means that the base prospectus shall include all the general principles related to the information required, and only the details which are unknown at the time of the approval of the base prospectus can be left in blank for later insertion in the final terms;</u>
		(c) <u>'Category C' means that the base prospectus may contain a reserved space for later insertion for the information which was not known at the time of the approval of the base prospectus. Such information shall be inserted in the final terms.</u>
	2	<u>Where the conditions of Article 16(1) of Directive 2003/71/EC apply, a supplement shall be required.</u>
		<u>Where those conditions do not apply, the issuer, the offeror or the person asking for admission to trading on a regulated market shall publish a notice of the change.</u>

[Note: See transitional provisions in Regulation (EU) No 486/2012]

2.3 Minimum information to be included in a prospectus

Minimum information

2.3.1 EU Articles 3 to 23 of the *PD Regulation* provide for the minimum information to be included in a *prospectus*:
Note: the Annexes (including *schedules* and *building blocks*) referred to in these articles are set out for information in *PR App 3*.

<p>Article 3 Minimum information to be included in a prospectus</p>	
<p>[The text of Article 3 is deleted in its entirety and is replaced by the text shown below. The deleted text is not shown struck through.]</p>	
<p><u>A prospectus shall be drawn up by using one or a combination of the schedules and building blocks set out in this Regulation.</u></p>	
<p><u>A prospectus shall contain the information items required in Annexes I to XVII and Annexes XX to XXIX depending on the type of issuer or issues and securities involved. Subject to Article 4a(1), a competent authority shall not request that a prospectus contains information items which are not included in Annexes I to XVII or Annexes XX to XXIX.</u></p>	
<p><u>In order to ensure conformity with the obligation referred to in Article 5(1) of Directive 2003/71/EC, the competent authority of the home Member State, when approving a prospectus in accordance with Article 13 of that Directive, may, on a case by case basis, require the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market to be completed, for each of the information items.</u></p>	
<p><u>Where the issuer, the offeror or the person asking for the admission to trading on a regulated market is required to include a summary in a prospectus, in accordance with Article 5(2) of Directive 2003/71/EC, the competent authority of the home Member State, when approving the prospectus in accordance with Article 13 of that Directive, may, on a case by case basis, require certain information provided in the prospectus, to be included in the summary.</u></p>	

...

<p>Article 4a Share registration document schedule in cases of complex financial history or significant financial commitment</p>	
...	
2.	<p>[Paragraph 4a (2) is deleted in its entirety and is replaced by the text shown below. The deleted text is not shown struck through.]</p> <p><u>The competent authority shall base any request pursuant to the first subparagraph of paragraph 1 on the requirements set out in item 20.1 of Annex I, item 15.1 of Annex XXIII, item 20.1 of Annex XXV, item 11.1 of Annex XXVII and item 20.1 of Annex XXVIII as regards the content of financial information and the applicable accounting and auditing principles, subject to any modification which is appropriate in view of any of the following factors:</u></p>

...		
[Amend the following text as shown]		
4.	...	
	(a)	<p>its entire business undertaking at the time that the prospectus is drawn up is not accurately represented in the historical financial information which it is required to provide under item 20.1 of Annex I;</p> <p><u>its entire business undertaking at the time that the prospectus is drawn up is not accurately represented in the historical financial information which it is required to provide under item 20.1 of Annex I, item 15.1 of Annex XXIII, item 20.1 of Annex XXV, item 11.1 of Annex XXVII and item 20.1 of Annex XXVIII;</u></p>
	...	
...		
6.		<p>For the purposes of paragraph 5 of this Article, and of item 20.2 of Annex I, a significant gross change means a variation of more than 25%, relative to one or more indicators of the size of the issuer's business, in the situation of an issuer.</p> <p><u>For the purposes of paragraph 5 of this Article, and of item 20.2 of Annex I, item 15.2 of Annex XXIII and item 20.2 of Annex XXV, a significant gross change means a variation of more than 25%, relative to one or more indicators of the size of the issuer's business, in the situation of an issuer.</u></p>

...

Article 7

Debt and derivative securities registration document schedule for securities with a denomination per unit of less than EUR ~~50 000~~ 100 000

For the debt and derivative securities registration document concerning securities which are not covered in Article 4 with a denomination per unit of less than EUR ~~50 000~~ 100 000 or, where there is no individual denomination, securities that can only be acquired on issue for less than EUR ~~50 000~~ 100 000 per security, information shall be given in accordance with the schedule set out in Annex IV.

Article 8

Securities note schedule for debt securities with a denomination per unit of less than EUR ~~50 000~~ 100 000

1.	For the securities note for debt securities with a denomination per unit of less than EUR 50 000 <u>100 000</u> information shall be given in accordance with the schedule set out in Annex V.
2.	...

Article 9 Guarantees building block	
...	
<u>Item 3 of Annex VI shall not apply where a Member State acts as guarantor.</u>	

...

Article 12 Debt and derivative securities registration document schedule for securities with a denomination per unit of at least EUR 50 000 <u>100 000</u>	
For the debt and derivative securities registration document concerning securities which are not covered in Article 4 with a denomination per unit of at least EUR 50 000 <u>100 000</u> or, where there is no individual denomination, securities that can only be acquired on issue for at least EUR 50 000 <u>100 000</u> per security, information shall be given in accordance with the schedule set out in Annex IX.	

...

Article 16 Securities note schedule for debt securities with a denomination per unit of at least EUR 50 000 <u>100 000</u>	
1.	For the securities note for debt securities with a denomination per unit of at least EUR 50 000 <u>100 000</u> information shall be given in accordance with the schedule set out in Annex XIII.
2.	...

...

Article 21 Combination of schedules and building blocks	
...	
2.	...
	(1) ...

	(2)	debt and derivative securities registration document schedule for securities with a denomination per unit of less than EUR 50 000 100 000;
	(3)	debt and derivative securities registration document schedule for securities with a denomination per unit at least EUR 50 000 .100 000
3.		<u>The issuer, the offeror and the person asking for admission to trading on a regulated market may choose to draw up a prospectus in accordance with the proportionate schedules set out in Annexes XXIII to XXIX instead of the schedules set out in Annexes I, III, IV, IX, X and XI as described in the second subparagraph provided that the respective conditions laid down in Articles 26a, 26b and 26c are fulfilled.</u>
		<u>Where the issuer, the offeror and the person asking for admission to trading on a regulated market makes that choice:</u>
	(a)	<u>the reference to Annex I in Annex XVIII shall be read as a reference to Annexes XXIII or XXV;</u>
	(b)	<u>the reference to Annex III in Annex XVIII shall be read as a reference to Annex XXIV;</u>
	(c)	<u>the reference to Annex IV in Annex XVIII shall be read as a reference to Annex XXVI;</u>
	(d)	<u>the reference to Annex IX in Annex XVIII shall be read as a reference to Annex XXVII;</u>
	(e)	<u>the reference to Annex X in Annex XVIII shall be read as a reference to Annex XXVIII;</u>
	(f)	<u>the reference to Annex XI in Annex XVIII shall be read as a reference to Annex XXIX.</u>

Article 22

Minimum information to be included in a base prospectus and its related final terms

- | | |
|----|---|
| 1. | <p>[Article 22 (1) is deleted in its entirety and is replaced by the text shown below. The deleted text is not shown struck through.]</p> <p><u>A base prospectus shall be drawn up using one or a combination of schedules and building blocks provided for in this Regulation according to the combinations for various types of securities set out in Annex XVIII.</u></p> |
|----|---|

	<p><u>A base prospectus shall contain the information items required in Annexes I to XVII, Annex XX and Annexes XXIII to XXIX depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in this Regulation. A competent authority shall not request that a base prospectus contains information items which are not included in Annexes I to XVII, Annex XX or Annexes XXIII to XXIX.</u></p>
	<p><u>In order to ensure conformity with the obligation referred to in Article 5(1) of Directive 2003/71/EC, the competent authority of the home Member State, when approving a base prospectus in accordance with Article 13 of that Directive, may, on a case by case basis, require the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market to be completed for each of the information items.</u></p>
	<p><u>Where the issuer, the offeror or the person asking for the admission to trading on a regulated market is required to include a summary in a base prospectus, in accordance with Article 5(2) of Directive 2003/71/EC, the competent authority of the home Member State, when approving the base prospectus in accordance with Article 13 of that Directive, may, on a case-by-case basis, require certain information provided in the base prospectus to be included in the summary.</u></p>
1a.	<p><u>The base prospectus may contain options with regard to information categorised as Category A, Category B and Category C, required by the relevant securities note schedules and building blocks, and set out in Annex XX. The final terms shall determine which of these options is applicable to the individual issue, by referring to the relevant sections of the base prospectus or by replicating such information.</u></p>
...	
4.	<p>The final terms attached to a base prospectus shall only contain the information items from the various securities note schedules according to which the base prospectus is drawn up.</p> <p><u>The final terms attached to a base prospectus shall only contain the following:</u></p>
(a)	<p><u>within the various securities notes schedules according to which the base prospectus is drawn up, the information items in Categories B and C listed in Annex XX. When an item is not applicable to a prospectus, the item shall appear in the final terms with the mention "not applicable;</u></p>

	(b)	<u>on a voluntary basis, any “additional information” set out in Annex XXI;</u>
	(c)	<u>any replication of, or reference to options already provided for in the base prospectus which are applicable to the individual issue.</u>
	<u>The final terms shall not amend or replace any information in the base prospectus.</u>	
5.	...	
	1a.	<u>a section containing a template, the "form of the final terms", which has to be filled out for each individual issue;</u>
	...	
...		
7.	<p>...</p> <p><u>Where the issuer needs to prepare a supplement concerning information in the base prospectus that relates to only one or several specific issues, the right of investors to withdraw their acceptances pursuant to Article 16(2) of Directive 2003/71/EC shall only apply to the relevant issues and not to any other issues of securities under the base prospectus.</u></p>	

[**Note:** See transitional provisions in Regulation (EU) No 486/2012]

...

...

2.3.1A EU Articles 26a, 26b and 26c respectively provide for a proportionate disclosure regime for rights issues (as defined by the *PD Regulation*); for small and medium-sized enterprises and *companies* with reduced market capitalisation; and for issues by *credit institutions* referred to in Article 1 (2) (j) of the *PD*.

<u>Proportionate schedule for rights issues</u>		
<u>26a</u>	<u>1.</u>	<u>The proportionate schedules set out in Annexes XXIII and XXIV shall apply to rights issues, provided that the issuer has shares of the same class already admitted to trading on a regulated market or a multilateral trading facility as defined in point 15 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council.</u>

	2.	<u>Issuers whose shares of the same class are already admitted to trading on a multilateral trading facility can only make use of the schedules set out in Annexes XXIII and XXIV when the rules of that multilateral trading facility contain the following:</u>	
		(a)	<u>provisions requiring issuers to publish annual financial statements and audit reports within six months after the end of each financial year, half yearly financial statements within four months after the end of the first six months of each financial year and make public inside information as defined in point 1 of the first paragraph of Article 1 of Directive 2003/6/EC pursuant to Article 6 of that Directive;</u>
		(b)	<u>provisions requiring issuers to make the reports and information referred to in point (a) available to the public by publishing them on their websites;</u>
		(c)	<u>provisions preventing insider dealing and market manipulation in accordance with Directive 2003/6/EC.</u>
	3.	<u>A statement at the beginning of the prospectus shall indicate clearly that the rights issue is addressed to shareholders of the issuer and that the level of disclosure of the prospectus is proportionate to that type of issue.</u>	

	<u>Proportionate schedules for small and medium-sized enterprises and companies with reduced market capitalisation</u>
26b	<u>The proportionate schedules set out in Annexes XXV to XXVIII shall apply when securities issued by small and medium-sized enterprises and companies with reduced market capitalisation are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.</u>
	<u>However, small and medium-sized enterprises and companies with reduced market capitalisation may instead choose to draw up a prospectus in accordance with the schedules set out Annexes I to XVII and XX to XXIV.</u>

	<u>Proportionate requirements for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC</u>
26c	<u>Credit institutions issuing securities referred to in Article 1(2)(j) of Directive 2003/71/EC that draw up a prospectus in accordance with Article 1(3) of that Directive may choose to include in their prospectus historical financial information covering only the last financial year, or such shorter period that the issuer has been in operation, in accordance with Annex XXIX to this Regulation.</u>

...

3.3.6 EU Article 34 of the PD Regulation also provides for the inclusion of a warning where no prospectus is required in accordance with the PD:

<u>Article 34</u>
<u>Where no prospectus is required in accordance with Directive 2009/71/EC, any advertisement shall include a warning to that effect unless the issuer, the offeror or the person asking for admission to trading on a regulated market chooses to publish a prospectus which complies with Directive 2003/71/EC and this Regulation.</u>

...

Appendix 3 Schedules and Building Blocks and Table of Combinations of Schedules and Building Blocks

App 3.1.1EU The following *schedules* and *building blocks* and tables of combinations are copied from the *PD Regulation*.

...

ANNEX IV

Minimum Disclosure Requirements for the Debt and Derivative Securities Registration Document (schedule)

(Debt and derivative securities with a denomination per unit of less than EUR ~~50 000~~ 100 000)

...

ANNEX V

Minimum Disclosure Requirements for the Securities Note related to Debt securities (schedule)

(Debt securities with a denomination per unit of less than EUR ~~50 000~~ 100 000)

...	
-----	--

4.7	<p>[Paragraph 4.7 is deleted in its entirety and is replaced by the text shown below. The deleted text is not shown struck through.]</p> <p><u>The nominal interest rate and provisions relating to interest payable:</u></p> <ul style="list-style-type: none"> - <u>the date from which interest becomes payable and the due dates for interest,</u> - <u>the time limit on the validity of claims to interest and repayment of principal.</u> <p><u>Where the rate is not fixed, a statement setting out the type of underlying and a description of the underlying on which it is based and of the method used to relate the underlying and the rate and an indication where information about the past and the further performance of the underlying and its volatility can be obtained.</u></p> <ul style="list-style-type: none"> - <u>a description of any market disruption or settlement disruption events that affect the underlying,</u> - <u>adjustment rules with relation to events concerning the underlying,</u> - <u>name of the calculation agent.</u> <p><u>If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident.</u></p>
...	

...

ANNEX VII

Minimum Disclosure Requirements for Asset Backed Securities Registration Document (schedule)

...

...	
8.2 bis	<p>This paragraph may be used only for issues of asset-backed securities having a denomination per unit of at least EUR 50 000 <u>100 000</u>.</p> <p>...</p>
...	

ANNEX VIII

Minimum Disclosure Requirements for Asset Backed Securities additional Building Block

...	
2.2.11	<p>...</p> <p>(a) information relating to each obligor as if it were an issuer drafting a Registration Document for debt and derivative securities with an individual denomination of at least EUR 50 000 <u>100 000</u>;</p> <p>...</p>
...	

ANNEX IX

Minimum Disclosure Requirements for the Debt and Derivative securities Registration Document (schedule)

(Debt and derivative securities with a denomination per unit of less than EUR ~~50 000~~ 100 000)

...

ANNEX X

Minimum Disclosure Requirements for the Depository Receipts issued over shares (schedule)

...

...	
20.1 bis	This paragraph may be used only for issues of depository receipts having a denomination per unit of at least EUR 50 000 <u>100 000</u>
...	

...

ANNEX XII

Minimum Disclosure Requirements for the Securities Note for derivative securities (schedule)

...

...	
4.1.2	A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities have a denomination per unit of at least EUR 50 000 <u>100 000</u> or can only be acquired for at least EUR 50 000 <u>100 000</u> per security. ...
...	

ANNEX XIII

Minimum Disclosure Requirements for the Securities Note for debt securities with a denomination per unit of less than EUR ~~50 000~~ 100 000

...

...	
	[Paragraph 4.8 is deleted in its entirety and is replaced by the text shown below. The deleted text is not shown struck through.]
4.8	<u>The nominal interest rate and provisions relating to interest payable:</u> - <u>the date from which interest becomes payable and the due dates for</u>

	<p><u>interest.</u></p> <ul style="list-style-type: none"> - <u>the time limit on the validity of claims to interest and repayment of principal.</u> <p><u>Where the rate is not fixed, a statement setting out the type of underlying and a description of the underlying on which it is based and of the method used to relate the underlying and the rate:</u></p> <ul style="list-style-type: none"> - <u>a description of any market disruption or settlement disruption events that affect the underlying.</u> - <u>adjustment rules with relation to events concerning the underlying.</u> - <u>name of the calculation agent.</u>
--	---

...

ANNEX XV

Minimum disclosure requirements for the registration document for securities issued by collective investment undertakings of the closed-end type (schedule)

...

...	
2.2	<p>...</p> <p>(i) information relating to each underlying issuer/collective investment undertaking/counterparty as if it were an issuer for the purposes of the minimum disclosure requirements for the share Registration Document schedule (in the case of (a)) or minimum disclosure requirements for the registration document schedule for securities issued by collective investment undertaking of the closed-end type (in the case of (b)) or the minimum disclosure requirements for the debt and derivative securities with an individual denomination per unit of at least EUR 50 000 <u>100 000</u> Registration Document schedule (in the case of (c)); or</p> <p>...</p>
...	

...

ANNEX XVIII

Table of combinations

ANNEX XVIII	REGISTRATION DOCUMENT					
	Schedules					Building block
TYPES OF SECURITIES	SHARE	DEBT AND DERIVATIVE (EUR 50 000 <u>100 000</u>)	DEBT AND DERIVATIVE (EUR 50 000 <u>100 000</u>)	ASSET BACKED SEC.	BANKS DEBT AND DERIVATIVE	PUB FORM INFORMATION

Shares (preference shares, redeemable shares, shares with preferential subscription rights; etc...)						
Bonds (vanilla bonds, income bonds, structured bonds, etc...) with a denomination of less than EUR 50 000 <u>100 000</u>						
Bonds (vanilla bonds, income bonds, structured bonds, etc...) with a denomination of at least EUR 50 000 <u>100 000</u>						
...						

ANNEX XVIII	REGISTRATION DOCUMENT		
	Schedules		
TYPES OF SECURITIES	COLLECTIVE INVESTMENT UNDERTAKING OF THE CLOSED-END TYPE	STATES AND THEIR REGIONAL AND LOCAL AUTHORITIES	PUBLIC INTERNATIONAL BODIES/Debt securities guaranteed by a member state of the OECD
Shares (preference shares, redeemable shares, shares with preferential subscription rights; etc...)			

Bonds (vanilla bonds, income bonds, structured bonds, etc...) with a denomination of less than EUR 50 000 <u>100 000</u>			
Bonds (vanilla bonds, income bonds, structured bonds, etc) with a denomination of at least EUR 50 000 <u>100 000</u>			
...			

ANNEX XVIII	SECURITIES NOTE						
	SCHEDULES				ADDITIONAL BUILDING BLOCKS		
TYPES OF SECURITIES	SHARE	DEBT (< EUR 50 000 <u>100 000</u>)	DEBT (> or = EUR 50 000 <u>100 000</u>)	DERIVATIVES SEC.	GUARANTEES	ASSET BACKED SEC	UNDELYING SHARE
Shares (preference shares, redeemable shares, shares with preferential subscription rights; etc...)							
Bonds (vanilla bonds, income bonds, structured bonds, etc...) with a denomination of less							

than EUR 50 000 100 000							
Bonds (vanilla bonds, income bonds, structured bonds, etc...) with a denominat ion of at least EUR 50 000 100 000							
...							

...

ANNEX XX**List of securities note schedules and building block(s)**

	<u>ANNEX V</u>	<u>INSTRUCTIONS</u>
<u>1.</u>	<u>PERSONS RESPONSIBLE</u>	
<u>1.1.</u>	<u>All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.</u>	<u>Category A</u>
<u>1.2.</u>	<u>A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</u>	<u>Category A</u>
<u>2.</u>	<u>RISK FACTORS</u>	
<u>2.1.</u>	<u>Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed 'Risk</u>	<u>Category A</u>

	<u>Factors’.</u>	
<u>3.</u>	<u>KEY INFORMATION</u>	
<u>3.1.</u>	<u>Interest of natural and legal persons involved in the issue/offer</u>	
	<u>A description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest.</u>	<u>Category C</u>
<u>3.2.</u>	<u>Reasons for the offer and use of proceeds</u>	
	<u>Reasons for the offer if different from making profit and/or hedging certain risks. Where applicable, disclosure of the estimated total expenses of the issue/offer and the estimated net amount of the proceeds. These expenses and proceeds shall be broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed.</u>	<u>Category C</u>
<u>4.</u>	<u>INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ADMITTED TO TRADING</u>	
<u>4.1.</u>	<u>(i) A description of the type and the class of the securities being offered and/or admitted to trading, (ii) the ISIN (International Security Identification Number) or other such security identification code.</u>	<u>Category B</u> <u>Category C</u>
<u>4.2.</u>	<u>Legislation under which the securities have been created</u>	<u>Category A</u>
<u>4.3.</u>	<u>(i) An indication of whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. (ii) In the latter case, name and address of the entity in charge of keeping the records.</u>	<u>Category A</u> <u>Category C</u>
<u>4.4.</u>	<u>Currency of the securities issue</u>	<u>Category C</u>
<u>4.5.</u>	<u>Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.</u>	<u>Category A</u>
<u>4.6.</u>	<u>A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.</u>	<u>Category B</u>
<u>4.7.</u>	<u>(i) Nominal interest rate</u>	<u>Category C</u>
	<u>(ii) Provisions relating to interest payable</u>	<u>Category B</u>

	<u>(iii) The date from which interest becomes payable</u>	<u>Category C</u>
	<u>(iv) The due dates for interest</u>	<u>Category C</u>
	<u>(v) The time limit on the validity of claims to interest and repayment of principal</u>	<u>Category B</u>
	<u>Where the rate is not fixed.</u>	
	<u>(vi) statement setting out the type of underlying</u>	<u>Category A</u>
	<u>(vii) description of the underlying on which it is based</u>	<u>Category C</u>
	<u>(viii) and of the method used to relate the two</u>	<u>Category B</u>
	<u>(ix) an indication where information about the past and the further performance of the underlying and its volatility can be obtained</u>	<u>Category C</u>
	<u>(x) Description of any market disruption or settlement disruption events that affect the underlying</u>	<u>Category B</u>
	<u>(xi) Adjustment rules with relation to events concerning the underlying</u>	<u>Category B</u>
	<u>(xii) Name of the calculation agent</u>	<u>Category C</u>
	<u>(xiii) If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident.</u>	<u>Category B</u>
<u>4.8.</u>	<u>(i) maturity date</u> <u>(ii) arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating amortisation terms and conditions</u>	<u>Category C</u> <u>Category B</u>
<u>4.9.</u>	<u>(i) An indication of yield</u>	<u>Category C</u>
	<u>(ii) Describe the method whereby that yield is calculated in summary form.</u>	<u>Category B</u>
<u>4.10.</u>	<u>Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where the public may have access to the contracts relating to these forms of representation.</u>	<u>Category B</u>
<u>4.11.</u>	<u>In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created</u>	<u>Category C</u>

	<u>and/or issued.</u>	
<u>4.12.</u>	<u>In the case of new issues, the expected issue date of the securities.</u>	<u>Category C</u>
<u>4.13.</u>	<u>A description of any restrictions on the free transferability</u>	<u>Category A</u>
<u>4.14.</u>	<u>In respect of the country of registered office of the issuer and the country(ies) where the offer being made or admission to trading is being sought:</u> <ul style="list-style-type: none"> • <u>information on taxes on the income from the securities withheld at source</u> • <u>indication as to whether the issuer assumes responsibility for the withholding of taxes at source</u> 	<u>Category A</u>
<u>5.</u>	<u>TERMS AND CONDITIONS OF THE OFFER</u>	
<u>5.1.</u>	<u>Conditions , offer statistics, expected timetable and action required to apply for the offer</u>	
<u>5.1.1.</u>	<u>Conditions to which the offer is subject</u>	<u>Category C</u>
<u>5.1.2.</u>	<u>Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.</u>	<u>Category C</u>
<u>5.1.3.</u>	<u>(i) The time period, including any possible amendments, during which the offer will be open</u> <u>(ii) description of the application process.</u>	<u>Category C</u> <u>Category C</u>
<u>5.1.4.</u>	<u>A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.</u>	<u>Category C</u>
<u>5.1.5.</u>	<u>Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest)</u>	<u>Category C</u>
<u>5.1.6.</u>	<u>Method and time limits for paying up the securities and for delivery of the securities</u>	<u>Category C</u>
<u>5.1.7.</u>	<u>A full description of the manner and date in which results of the offer are to be made public.</u>	<u>Category C</u>
<u>5.1.8.</u>	<u>The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised</u>	<u>Category C</u>
<u>5.2.</u>	<u>Plan of distribution and allotment</u>	
<u>5.2.1.</u>	<u>(i) The various categories of potential investors to which the securities are offered</u>	<u>Category A</u>
	<u>(ii) If the offer is being made simultaneously in the</u>	<u>Category C</u>

	<u>markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.</u>	
<u>5.2.2.</u>	<u>Process for notification to applicants of the amount allotted and the indication whether dealing may begin before notification is made</u>	<u>Category C</u>
<u>5.3.</u>	<u>Pricing</u>	
<u>5.3.1.</u>	<u>(i) An indication of the expected price at which the securities will be offered or</u>	<u>Category C</u>
	<u>(ii) the method of determining the price and the process for its disclosure</u>	<u>Category B</u>
	<u>(iii) Indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.</u>	<u>Category C</u>
<u>5.4.</u>	<u>Placing and Underwriting</u>	
<u>5.4.1.</u>	<u>Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.</u>	<u>Category C</u>
<u>5.4.2.</u>	<u>Name and address of any paying agents and depository agents in each country</u>	<u>Category C</u>
<u>5.4.3.</u>	<u>Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under 'best efforts' arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.</u>	<u>Category C</u>
<u>5.4.4.</u>	<u>When the underwriting agreement has been or will be reached.</u>	<u>Category C</u>
<u>6.</u>	<u>ADMISSION TO TRADING AND DEALING ARRANGEMENTS</u>	
<u>6.1.</u>	<u>(i) An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved.</u>	<u>Category B</u>
	<u>(ii) If known, give the earliest dates on which the securities will be admitted to trading</u>	<u>Category C</u>

6.2.	<u>All regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading</u>	<u>Category C</u>
6.3.	<u>Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.</u>	<u>Category C</u>
7.	<u>ADDITIONAL INFORMATION</u>	
7.1.	<u>If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.</u>	<u>Category C</u>
7.2.	<u>An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report</u>	<u>Category A</u>
7.3.	<u>Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.</u>	<u>Category A</u>
7.4.	<u>Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.</u>	<u>Category C</u>
7.5.	<u>(i) Credit ratings assigned to an issuer at the request or with the co-operation of the issuer in the rating process and brief explanation of the meaning of the rating if this has previously been published by the rating provider</u>	<u>Category A</u>
	<u>(ii) Credit ratings assigned to securities at the request or with the co-operation of the issuer in the rating process and brief explanation of the meaning of the rating if this has previously been published by the rating provider</u>	<u>Category C</u>
	<u>ANNEX XII</u>	<u>INSTRUCTIONS</u>
1.	<u>PERSONS RESPONSIBLE</u>	

1.1.	<u>All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.</u>	<u>Category A</u>
1.2.	<u>A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</u>	<u>Category A</u>
2.	<u>RISK FACTORS</u>	
2.1.	<u>Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed 'risk factors'. This must include a risk warning to the effect that investors may lose the value of their entire investment or part of it, as the case may be, and/or, if the investor's liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect</u>	<u>Category A</u>
3.	<u>KEY INFORMATION</u>	
3.1.	<u>Interest of natural and legal persons involved in the issue/offer</u>	
	<u>A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest</u>	<u>Category C</u>
3.2.	<u>Reasons for the offer and use of proceeds when different from making profit and/or hedging certain risks</u>	
	<u>If reasons for the offer and use of proceeds are disclosed provide the total net proceeds and an estimate of the total expenses of the issue/offer.</u>	<u>Category C</u>
4.	<u>INFORMATION CONCERNING THE SECURITIES TO BE OFFERED AND ADMITTED TO TRADING</u>	

4.1.	<u>Information concerning the securities</u>	
4.1.1.	<u>(i) A description of the type and the class of the securities being offered and/or admitted to trading.</u>	<u>Category B</u>
	<u>(ii) the ISIN (International Security Identification Number) or other such security identification code.</u>	<u>Category C</u>
4.1.2.	<u>A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident unless the securities have a denomination per unit of at least EUR 100 000 or can only be acquired for at least EUR 100 000 per security.</u>	<u>Category B</u>
4.1.3.	<u>Legislation under which the securities have been created.</u>	<u>Category A</u>
4.1.4.	<u>(i) An indication of whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form.</u> <u>(ii) In the latter case, name and address of the entity in charge of keeping the records.</u>	<u>Category A</u> <u>Category C</u>
4.1.5.	<u>Currency of the securities issue</u>	<u>Category C</u>
4.1.6.	<u>Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.</u>	<u>Category A</u>
4.1.7.	<u>A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of said rights.</u>	<u>Category B</u>
4.1.8.	<u>In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.</u>	<u>Category C</u>
4.1.9.	<u>The issue date of the securities</u>	<u>Category C</u>
4.1.1 0.	<u>A description of any restrictions on the free transferability of the securities</u>	<u>Category A</u>
4.1.1 1.	<u>(i) The expiration date of the derivative securities</u> <u>(ii) The exercise date or final reference date</u>	<u>Category C</u> <u>Category C</u>
4.1.1 2.	<u>A description of the settlement procedure of the derivative securities</u>	<u>Category B</u>
4.1.1 3.	<u>(i) A description of how any return on derivative securities takes place (see footnote in Regulation)</u>	<u>Category B</u> <u>Category C</u>

	<p><u>(ii) the payment or delivery date</u></p> <p><u>(iii) the way it is calculated</u></p>	<u>Category B</u>
<p><u>4.1.1</u> <u>4.</u></p>	<p><u>In respect of the country of registered office of the issuer and the country(ies) where the offer being made or admission to trading is being sought:</u></p> <ul style="list-style-type: none"> • <u>information on taxes on the income from the securities withheld at source</u> • <u>indication as to whether the issuer assumes responsibility for the withholding of taxes at source</u> 	<u>Category A</u>
<u>4.2.</u>	<u>Information concerning the underlying</u>	
<u>4.2.1.</u>	<u>The exercise price or the final reference price of the underlying</u>	<u>Category C</u>
<u>4.2.2.</u>	<p><u>A statement setting out the type of the underlying an indication where information about the past and the further performance of the underlying and its volatility can be obtained</u></p> <p><u>(i) where the underlying is a security</u></p> <ul style="list-style-type: none"> • <u>the name of the issuer of the security</u> • <u>the ISIN (international security identification number) or other such security identification code</u> <p><u>(ii) where the underlying is an index</u></p> <ul style="list-style-type: none"> • <u>the name of the index</u> • <u>a description of the index if it is composed by the issuer.</u> • <u>If the index is not composed by the issuer, where information about the index can be obtained</u> <p><u>(iii) where the underlying is an interest rate</u></p> <ul style="list-style-type: none"> • <u>a description of the interest rate</u> <p><u>(iv) others</u></p> <ul style="list-style-type: none"> • <u>Where the underlying does not fall within the categories specified above the securities note shall contain equivalent information.</u> <p><u>(v) where the underlying is a basket of underlyings</u></p> <ul style="list-style-type: none"> • <u>disclosure of the relevant weightings of each underlying in the basket</u> 	<p><u>Category A</u></p> <p><u>Category C</u></p> <p><u>Category C</u></p> <p><u>Category C</u></p> <p><u>Category C</u></p> <p><u>Category A</u></p> <p><u>Category C</u></p> <p><u>Category C</u></p> <p><u>Category C</u></p> <p><u>Category C</u></p>
<u>4.2.3.</u>	<u>A description of any market disruption or settlement disruption events that affect the underlying</u>	<u>Category B</u>
<u>4.2.4.</u>	<u>Adjustment rules with relation to events concerning the underlying.</u>	<u>Category B</u>

<u>5.</u>	<u>TERMS AND CONDITIONS OF THE OFFER</u>	
<u>5.1.</u>	<u>Conditions, offer statistics, expected timetable and action required to apply for the offer</u>	
<u>5.1.1.</u>	<u>Conditions to which the offer is subject</u>	<u>Category C</u>
<u>5.1.2.</u>	<u>Total amount of the issue/offer; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.</u>	<u>Category C</u>
<u>5.1.3.</u>	<u>(i) The time period, including any possible amendments, during which the offer will be open</u> <u>(ii) description of the application process.</u>	<u>Category C</u> <u>Category C</u>
<u>5.1.4.</u>	<u>Details of the minimum and/or maximum amount of application, (whether in number of securities or aggregate amount to invest)</u>	<u>Category C</u>
<u>5.1.5.</u>	<u>Method and time limits for paying up the securities and for delivery of the securities</u>	<u>Category C</u>
<u>5.1.6.</u>	<u>A full description of the manner and date in which results of the offer are to be made public.</u>	<u>Category C</u>
<u>5.2.</u>	<u>Plan of distribution and allotment</u>	
<u>5.2.1.</u>	<u>(i) The various categories of potential investors to which the securities are offered</u> <u>(ii) If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.</u>	<u>Category A</u> <u>Category C</u>
<u>5.2.2.</u>	<u>Process for notification to applicants of the amount allotted and the indication whether dealing may begin before notification is made</u>	<u>Category C</u>
<u>5.3.</u>	<u>Pricing</u>	
<u>5.3.1.</u>	<u>(i) An indication of the expected price at which the securities will be offered or</u>	<u>Category C</u>
	<u>(ii) the method of determining the price and the process for its disclosure</u>	<u>Category B</u>
	<u>(iii) indicate the amount of any expenses and taxes specifically charged to the subscriber or purchaser.</u>	<u>Category C</u>
<u>5.4.</u>	<u>Placing and Underwriting</u>	
<u>5.4.1.</u>	<u>Name and address of the coordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.</u>	<u>Category C</u>

<u>5.4.2.</u>	<u>Name and address of any paying agents and depository agents in each country</u>	<u>Category C</u>
<u>5.4.3.</u>	<u>Entities agreeing to underwrite the issue on a firm commitment basis, and entities agreeing to place the issue without a firm commitment or under 'best efforts' arrangements. Where not all of the issue is underwritten, a statement of the portion not covered</u>	<u>Category C</u>
<u>5.4.4.</u>	<u>When the underwriting agreement has been or will be reached.</u>	<u>Category C</u>
<u>5.4.5.</u>	<u>Name and address of a calculation agent.</u>	<u>Category C</u>
<u>6.</u>	<u>ADMISSION TO TRADING AND DEALING ARRANGEMENTS</u>	
<u>6.1.</u>	<u>(i) An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance shall be mentioned, without creating the impression that the admission to trading necessarily will be approved.</u>	<u>Category B</u>
	<u>(ii) If known, give the earliest dates on which the securities will be admitted to trading</u>	<u>Category C</u>
<u>6.2.</u>	<u>All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading</u>	<u>Category C</u>
<u>6.3.</u>	<u>Name and address of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.</u>	<u>Category C</u>
<u>7.</u>	<u>ADDITIONAL INFORMATION</u>	
<u>7.1.</u>	<u>If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.</u>	<u>Category C</u>
<u>7.2.</u>	<u>An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.</u>	<u>Category A</u>
<u>7.3.</u>	<u>Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest, if any, in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with</u>	<u>Category A</u>

	<u>the consent of that person who has authorised the contents of that part of the Securities Note.</u>	
7.4.	<u>Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the issuer shall identify the source(s) of the information</u>	<u>Category C</u>
7.5.	<u>An indication in the prospectus whether or not the issuer intends to provide post-issuance information. Where the issuer has indicated that it intends to report such information, the issuer shall specify in the prospectus what information will be reported and where such information can be obtained.</u>	<u>Category C</u>
	<u>ANNEX XIII</u>	<u>INSTRUCTIONS</u>
1.	<u>PERSONS RESPONSIBLE</u>	
1.1.	<u>All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.</u>	<u>Category A</u>
1.2.	<u>A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case, the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</u>	<u>Category A</u>
2.	<u>RISK FACTORS</u>	
	<u>Prominent disclosure of risk factors that are material to the securities admitted to trading in order to assess the market risk associated with these securities in a section headed 'Risk factors'.</u>	<u>Category A</u>
3.	<u>KEY INFORMATION</u>	
	<u>Interest of natural and legal persons involved in the issue</u>	
	<u>A description of any interest, including conflicting</u>	<u>Category C</u>

	<u>ones, that is material to the issue, detailing the persons involved and the nature of the interest.</u>	
4.	<u>INFORMATION CONCERNING THE SECURITIES TO BE ADMITTED TO TRADING</u>	
4.1.	<u>Total amount of securities being admitted to trading.</u>	<u>Category C</u>
4.2.	<u>(i) A description of the type and the class of the securities being offered and/or admitted to trading,</u>	<u>Category B</u>
	<u>(ii) the ISIN (International Security Identification Number) or other such security identification code.</u>	<u>Category C</u>
4.3.	<u>Legislation under which the securities have been created</u>	<u>Category A</u>
4.4.	<u>(i) An indication of whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form.</u> <u>(ii) In the latter case, name and address of the entity in charge of keeping the records.</u>	<u>Category A</u> <u>Category C</u>
4.5.	<u>Currency of the securities issue</u>	<u>Category C</u>
4.6.	<u>Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.</u>	<u>Category A</u>
4.7.	<u>A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.</u>	<u>Category B</u>
4.8.	<u>(i) Nominal interest rate</u>	<u>Category C</u>
	<u>(ii) Provisions relating to interest payable</u>	<u>Category B</u>
	<u>(iii) The date from which interest becomes payable</u>	<u>Category C</u>
	<u>(iv) The due dates for interest</u>	<u>Category C</u>
	<u>(v) The time limit on the validity of claims to interest and repayment of principal</u>	<u>Category B</u>
	<u>Where the rate is not fixed</u>	
	<u>(vi) Statement setting out the type of the underlying</u>	<u>Category A</u>
	<u>(vii) description of the underlying on which it is based</u>	<u>Category C</u>
	<u>(viii) and of the method used to relate the two</u>	<u>Category B</u>
	<u>(ix) Description of any market disruption or</u>	<u>Category B</u>

	<u>settlement disruption events that affect the underlying</u>	
	<u>(x) Adjustment rules with relation to events concerning the underlying</u>	<u>Category B</u>
	<u>(xi) Name of the calculation agent</u>	<u>Category C</u>
4.9.	<u>(i) maturity date</u> <u>(ii) arrangements for the amortisation of the loan, including the repayment procedures. Where advance amortisation is contemplated, on the initiative of the issuer or of the holder, it shall be described, stipulating amortisation terms and conditions</u>	<u>Category C</u> <u>Category B</u>
4.10.	<u>(i) An indication of yield</u>	<u>Category C</u>
4.11.	<u>Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where the public may have access to the contracts relating to these forms of representation.</u>	<u>Category B</u>
4.12.	<u>A statement of the resolutions, authorisations and approvals by virtue of which the securities have been created and/or issued.</u>	<u>Category C</u>
4.13.	<u>The issue date of the securities</u>	<u>Category C</u>
4.14.	<u>A description of any restrictions on the free transferability of the securities</u>	<u>Category A</u>
5.	<u>ADMISSION TO TRADING AND DEALING ARRANGEMENTS</u>	
5.1.	<u>(i) Indication of the market where the securities will be traded and for which prospectus has been published.</u> <u>(ii) If known, give the earliest dates on which the securities will be admitted to trading.</u>	<u>Category B</u> <u>Category C</u>
5.2.	<u>Name and address of any paying agents and depository agents in each country.</u>	<u>Category C</u>
6.	<u>EXPENSE OF THE ADMISSION TO TRADING</u>	
	<u>An estimate of the total expenses related to the admission to trading</u>	<u>Category C</u>
7.	<u>ADDITIONAL INFORMATION</u>	
7.1.	<u>If advisors are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.</u>	<u>Category C</u>
7.2.	<u>An indication of other information in the Securities Note which has been audited or reviewed by auditors and where auditors have produced a report.</u>	<u>Category A</u>

	<u>Reproduction of the report or, with permission of the competent authority, a summary of the report.</u>	
7.3.	<u>Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.</u>	<u>Category A</u>
7.4.	<u>Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information</u>	<u>Category C</u>
7.5.	<u>(i) Credit ratings assigned to an issuer at the request or with the co-operation of the issuer in the rating process</u>	<u>Category A</u>
	<u>(ii) Credit ratings assigned to securities at the request or with the co-operation of the issuer in the rating process</u>	<u>Category C</u>
	<u>ANNEX VIII</u>	<u>INSTRUCTIONS</u>
1.	<u>THE SECURITIES</u>	
1.1.	<u>The minimum denomination of an issue.</u>	<u>Category C</u>
1.2.	<u>Where information is disclosed about an undertaking/obligor which is not involved in the issue, provide a confirmation that the information relating to the undertaking/obligor has been accurately reproduced from information published by the undertaking/obligor. So far as the issuer is aware and is able to ascertain from information published by the undertaking/obligor no facts have been omitted which would render the reproduced information misleading.</u> <u>In addition, identify the source(s) of information in the Securities Note that has been reproduced from information published by an undertaking/obligor.</u>	<u>Category C</u> <u>Category C</u>
2.	<u>THE UNDERLYING ASSETS</u>	
2.1.	<u>Confirmation that the securitised assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities.</u>	<u>Category A</u>

<u>2.2.</u>	<u>In respect of a pool of discrete assets backing the issue:</u>	
<u>2.2.1.</u>	<u>The legal jurisdiction by which the pool of assets is governed</u>	<u>Category C</u>
<u>2.2.2.</u>	<u>(a) In the case of a small number of easily identifiable obligors, a general description of each obligor</u>	<u>Category A</u>
	<u>(b) In all other cases, a description of: the general characteristics of the obligors; and the economic environment,</u> <u>as well as global statistical data referred to the securitised assets.</u>	<u>Category B</u> <u>Category C</u>
<u>2.2.3.</u>	<u>the legal nature of the assets</u>	<u>Category C</u>
<u>2.2.4.</u>	<u>the expiry or maturity date(s) of the assets</u>	<u>Category C</u>
<u>2.2.5.</u>	<u>the amount of the assets</u>	<u>Category C</u>
<u>2.2.6.</u>	<u>loan to value ratio or level of collateralisation</u>	<u>Category C</u>
<u>2.2.7.</u>	<u>the method of origination or creation of the assets, and for loans and credit agreements, the principal lending criteria and an indication of any loans which do not meet these criteria and any rights or obligations to make further advances</u>	<u>Category B</u>
<u>2.2.8.</u>	<u>an indication of significant representations and collaterals given to the issuer relating to the assets</u>	<u>Category C</u>
<u>2.2.9.</u>	<u>any rights to substitute the assets and a description of the manner in which and the type of assets which may be so substituted; if there is any capacity to substitute assets with a different class or quality of assets a statement to that effect together with a description of the impact of such substitution</u>	<u>Category B</u>
<u>2.2.10.</u>	<u>a description of any relevant insurance policies relating to the assets. Any concentration with one insurer must be disclosed if it is material to the transaction</u>	<u>Category B</u>
<u>2.2.11.</u>	<u>Where the assets comprise obligations of 5 or fewer obligors which are legal persons or where an obligor accounts for 20 % or more of the assets, or where an obligor accounts for a material portion of the assets, so far as the issuer is aware and/or is able to ascertain from information published by the obligor(s) indicate either of the following:</u>	
	<u>(a) information relating to each obligor as if it were an issuer drafting a registration document for debt and derivative securities with an individual denomination of at least EUR 100 000</u>	<u>Category A</u>

	<u>(b) if an obligor or guarantor has securities already admitted to trading on a regulated or equivalent market or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.</u>	<u>Category C</u>
<u>2.2.1</u> <u>2.</u>	<u>If a relationship exists that is material to the issue, between the issuer, guarantor and obligor, details of the principal terms of that relationship</u>	<u>Category C</u>
<u>2.2.1</u> <u>3.</u>	<u>Where the assets comprise obligations that are not traded on a regulated or equivalent market, a description of the principal terms and conditions of the obligations</u>	<u>Category B</u>
<u>2.2.1</u> <u>4.</u>	<u>Where the assets comprise equity securities that are admitted to trading on a regulated or equivalent market indicate the following:</u>	
	<u>(a) a description of the securities</u>	<u>Category C</u>
	<u>(b) a description of the market on which they are traded including its date of establishment, how price information is published, an indication of daily trading volumes, information as to the standing of the market in the country and the name of the market's regulatory authority</u>	<u>Category C</u>
	<u>(c) the frequency with which prices of the relevant securities, are published.</u>	<u>Category C</u>
<u>2.2.1</u> <u>5.</u>	<u>Where more than ten (10) per cent of the assets comprise equity securities that are not traded on a regulated or equivalent market, a description of those equity securities and equivalent information to that contained in the schedule for share registration document in respect of each issuer of those securities</u>	<u>Category A</u>
<u>2.2.1</u> <u>6.</u>	<u>Where a material portion of the assets are secured on or backed by real property, a valuation report relating to the property setting out both the valuation of the property and cash flow/income streams. Compliance with this disclosure is not required if the issue is of securities backed by mortgage loans with property as security, where there has been no revaluation of the properties for the purpose of the issue, and it is clearly stated that the valuations quoted are as at the date of the original initial mortgage loan origination</u>	<u>Category A</u>
<u>2.3.</u>	<u>In respect of an actively managed pool of assets backing the issue</u>	
<u>2.3.1.</u>	<u>equivalent information to that contained in items 2.1 and 2.2 to allow an assessment of the type, quality, sufficiency and liquidity of the asset types in the portfolio which will secure the issue</u>	<u>see items 2.1 and 2.2</u>

<u>2.3.2.</u>	<u>the parameters within which investments can be made, the name and description of the entity responsible for such management including a description of that entity's expertise and experience, a summary of the provisions relating to the termination of the appointment of such entity and the appointment of an alternative management entity, and a description of that entity's relationship with any other parties to the issue</u>	<u>Category B</u>
<u>2.4.</u>	<u>Where an issuer proposes to issue further securities backed by the same assets, a prominent statement to that effect and unless those further securities are fungible with or are subordinated to those classes of existing debt, a description of how the holders of that class will be informed</u>	<u>Category C</u>
<u>3.</u>	<u>STRUCTURE AND CASH FLOW</u>	
<u>3.1.</u>	<u>Description of the structure of the transaction, including, if necessary, a structure diagram</u>	<u>Category A</u>
<u>3.2.</u>	<u>Description of the entities participating in the issue and description of the functions to be performed by them</u>	<u>Category A</u>
<u>3.3.</u>	<u>Description of the method and date of the sale, transfer, novation or assignment of the assets or of any rights and/or obligations in the assets to the issuer or, where applicable, the manner and time period in which the proceeds from the issue will be fully invested by the issuer</u>	<u>Category B</u>
<u>3.4.</u>	<u>An explanation of the flow of funds including:</u>	
<u>3.4.1.</u>	<u>how the cash flow from the assets will meet the issuer's obligations to holders of the securities, including, if necessary, a financial service table and a description of the assumptions used in developing the table</u>	<u>Category B</u>
<u>3.4.2.</u>	<u>information on any credit enhancements, an indication of where material potential liquidity shortfalls may occur and the availability of any liquidity supports and indication of provisions designed to cover interest/principal shortfall risks</u>	<u>Category B</u>
<u>3.4.3.</u>	<u>without prejudice to item 3.4.2, details of any subordinated debt finance</u>	<u>Category C</u>
<u>3.4.4.</u>	<u>an indication of any investment parameters for the investment of temporary liquidity surpluses and description of the parties responsible for such investment</u>	<u>Category B</u>
<u>3.4.5.</u>	<u>how payments are collected in respect of the assets</u>	<u>Category B</u>
<u>3.4.6.</u>	<u>the order of priority of payments made by the issuer</u>	<u>Category A</u>

	<u>to the holders of the class of securities in question</u>	
3.4.7.	<u>details of any other arrangements upon which payments of interest and principal to investors are dependent</u>	<u>Category A</u>
3.5.	<u>the name, address and significant business activities of the originators of the securitised assets</u>	<u>Category C</u>
3.6.	<u>Where the return on, and/or repayment of the security is linked to the performance or credit of other assets which are not assets of the issuer, items 2.2 and 2.3 are necessary</u>	<u>See items 2.2 and 2.3</u>
3.7.	<u>the name, address and significant business activities of the administrator, calculation agent or equivalent, together with a summary of the administrator's/calculation agents responsibilities, their relationship with the originator or the creator of the assets and a summary of the provisions relating to the termination of the appointment of the administrator/calculation agent and the appointment of an alternative administrator/calculation agent</u>	<u>Category C</u>
3.8.	<u>the names and addresses and brief description of:</u>	
	<u>(a) any swap counterparties and any providers of other material forms of credit/liquidity enhancement</u>	<u>Category A</u>
	<u>(b) the banks with which the main accounts relating to the transaction are held.</u>	<u>Category C</u>
4.	<u>POST ISSUANCE REPORTING</u>	
4.1.	<u>Indication in the prospectus whether or not it intends to provide post-issuance transaction information regarding securities to be admitted to trading and the performance of the underlying collateral. Where the issuer has indicated that it intends to report such information, specify in the prospectus what information will be reported, where such information can be obtained, and the frequency with which such information will be reported</u>	<u>Category C</u>
	<u>ANNEX XIV</u>	<u>INSTRUCTIONS</u>
1.	<u>Description of the underlying share</u>	
1.1.	<u>Describe the type and the class of the shares</u>	<u>Category A</u>
1.2.	<u>Legislation under which the shares have been or will be created</u>	<u>Category A</u>
1.3.	<u>Indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records</u>	<u>Category A</u>

<u>1.4.</u>	<u>Indication of the currency of the shares issue</u>	<u>Category A</u>
<u>1.5.</u>	<p><u>A description of the rights, including any limitations of these, attached to the securities and procedure for the exercise of those rights:</u></p> <p>— <u>Dividend rights:</u></p> <p>— <u>fixed date(s) on which the entitlement arises,</u></p> <p>— <u>time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,</u></p> <p>— <u>dividend restrictions and procedures for non resident holders,</u></p> <p>— <u>rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments,</u></p> <p>— <u>Voting rights.</u></p> <p>— <u>Pre-emption rights in offers for subscription of securities of the same class.</u></p> <p>— <u>Right to share in the issuer's profits.</u></p> <p>— <u>Rights to share in any surplus in the event of liquidation.</u></p> <p>— <u>Redemption provisions.</u></p> <p>— <u>Conversion provisions.</u></p>	<u>Category A</u>
<u>1.6.</u>	<u>In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the shares have been or will be created and/or issued and indication of the issue date.</u>	<u>Category C</u>
<u>1.7.</u>	<u>Where and when the shares will be or have been admitted to trading</u>	<u>Category C</u>
<u>1.8.</u>	<u>Description of any restrictions on the free transferability of the shares</u>	<u>Category A</u>
<u>1.9.</u>	<u>Indication of the existence of any mandatory takeover bids/or squeeze-out and sell-out rules in relation to the shares</u>	<u>Category A</u>
<u>1.10.</u>	<u>Indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated</u>	<u>Category A</u>
<u>1.11.</u>	<u>Impact on the issuer of the underlying share of the exercise of the right and potential dilution effect for the shareholders.</u>	<u>Category C</u>
<u>2.</u>	<u>When the issuer of the underlying is an entity belonging to the same group, the information to provide on this issuer is the one required by the share registration document schedule</u>	<u>Category A</u>

	<u>ANNEX VI</u>	<u>INSTRUCTIONS</u>
<u>1.</u>	<u>Nature of the Guarantee</u>	
	<p><u>A description of any arrangement intended to ensure that any obligation material to the issue will be duly serviced, whether in the form of guarantee, surety, Keep well Agreement, Mono-line Insurance policy or other equivalent commitment (hereafter referred to generically as 'guarantees' and their provider as 'guarantor' for convenience).</u></p> <p><u>Without prejudice to the generality of the foregoing, such arrangements encompass commitments to ensure obligations to repay debt securities and/or the payment of interest and the description shall set out how the arrangement is intended to ensure that the guaranteed payments will be duly serviced.</u></p>	<u>Category B</u>
<u>2.</u>	<u>Scope of the Guarantee</u>	
	<p><u>Details shall be disclosed about the terms and conditions and scope of the guarantee. Without prejudice to the generality of the foregoing, these details should cover any conditionality on the application of the guarantee in the event of any default under the terms of the security and the material terms of any mono-line insurance or keep well agreement between the issuer and the guarantor. Details must also be disclosed of any guarantor's power of veto in relation to changes to the security holder's rights, such as is often found in Mono-line Insurance.</u></p>	<u>Category B</u>
<u>3.</u>	<u>Information to be disclosed about the guarantor</u>	
	<p><u>The guarantor must disclose information about itself as if it were the issuer of that same type of security that is the subject of the guarantee.</u></p>	<u>Category A</u>
<u>4.</u>	<u>Documents on display</u>	
	<p><u>Indication of the places where the public may have access to the material contracts and other documents relating to the guarantee.</u></p>	<u>Category A</u>

ANNEX XXIList of additional information in final terms

<u>ADDITIONAL INFORMATION</u>
<u>Example(s) of complex derivatives securities as referred to in recital 18 of the Prospectus Regulation</u>
<u>Additional provisions, not required by the relevant securities note, relating to the underlying</u>

<u>Country(ies) where the offer(s) to the public takes place</u>
<u>Country(ies) where admission to trading on the regulated market(s) is being sought</u>
<u>Country(ies) into which the relevant base prospectus has been notified</u>
<u>Series Number</u>
<u>Tranche Number</u>

ANNEX XXII

Disclosure requirements in summaries**Guide to using the Tables:**

1. Summaries are constructed on a modular basis according to the Annexes from this Regulation on which the prospectus has been based. For example, the summary for a share prospectus would disclose the information required for the Elements for Annexes I and III.
2. Each summary will be made up of five tables as detailed below.
3. The order of the sections A-E is mandatory. Within each of the sections the elements shall be disclosed in the order they appear in the Tables.
4. Where an element is not applicable to a prospectus the element should appear in the summary with the mention "not applicable".
5. To the extent required by an element, descriptions should be brief.
6. Summaries should not contain cross-references to specific parts of the prospectus.
7. Where a prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100 000 in accordance with either or both of Annexes IX or XIII and a summary is required by a Member State in accordance with Articles 5(2) and 19(4) of Directive 2003/71/EC, or is produced on a voluntary basis, the disclosure requirements for the summary in relation to Annexes IX and XIII are as set out in the Tables. Where an issuer is not under an obligation to include a summary in a prospectus but wishes to produce some overview section in the prospectus, it should ensure that it is not titled "summary" unless it complies with all the disclosure requirements for summaries.

Section A – Introduction and warnings

<u>Annexes</u>	<u>Element</u>	<u>Disclosure requirement</u>
<u>All</u>	<u>A.1</u>	<u>Warning that:</u> <ul style="list-style-type: none"> • <u>[this] summary should be read as introduction to the prospectus;</u> • <u>any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;</u>

		<ul style="list-style-type: none"> • <u>where a claim relating to the information contained in [the] prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and</u> • <u>civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.</u>
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Section B – Issuer and any guarantor

<u>Annexes</u>	<u>Element</u>	<u>Disclosure requirement</u>
<u>1, 4, 7, 9, 11</u>	<u>B.1</u>	<u>The legal and commercial name of the issuer.</u>
<u>1, 4, 7, 9, 11</u>	<u>B.2</u>	<u>The domicile and legal form of the issuer, the legislation under which the issuer operates and its country of incorporation.</u>
<u>1</u>	<u>B.3</u>	<u>A description of, and key factors relating to, the nature of the issuer's current operations and its principal activities, stating the main categories of products sold and/or services performed and identification of the principal markets in which the issuer competes.</u>
<u>1</u>	<u>B.4a</u>	<u>A description of the most significant recent trends affecting the issuer and the industries in which it operates.</u>
<u>4, 11</u>	<u>B.4b</u>	<u>A description of any known trends affecting the issuer and the industries in which it operates.</u>
<u>1, 4, 9, 11</u>	<u>B.5</u>	<u>If the issuer is part of a group, a description of the group and the issuer's position within the group.</u>
<u>1</u>	<u>B.6</u>	<u>In so far as is known to the issuer, the name of any person who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest.</u> <u>Whether the issuer's major shareholders have different voting rights if any.</u> <u>To the extent known to the issuer, state whether the issuer is directly or indirectly owned or</u>

		<u>controlled and by whom and describe the nature of such control.</u>
<u>1</u>	<u>B.7</u>	<p><u>Selected historical key financial information regarding the issuer, presented for each financial year of the period covered by the historical financial information, and any subsequent interim financial period accompanied by comparative data from the same period in the prior financial year except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.</u></p> <p><u>This should be accompanied by a narrative description of significant change to the issuer's financial condition and operating results during or subsequent to the period covered by the historical key financial information.</u></p>
<u>1, 2</u>	<u>B.8</u>	<p><u>Selected key pro forma financial information, identified as such.</u></p> <p><u>The selected key pro forma financial information must clearly state the fact that because of its nature, the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the company's actual financial position or results.</u></p>
<u>1, 4, 9, 11</u>	<u>B.9</u>	<u>Where a profit forecast or estimate is made, state the figure.</u>
<u>1, 4, 9, 11</u>	<u>B.10</u>	<u>A description of the nature of any qualifications in the audit report on the historical financial information.</u>
<u>3</u>	<u>B.11</u>	<u>If the issuer's working capital is not sufficient for the issuer's present requirements an explanation should be included.</u>
<u>4, 9, 11</u>	<u>B.12</u>	<p><u>Use only the first paragraph of B.7, plus:</u></p> <ul style="list-style-type: none"> • <u>A statement that there has been no material adverse change in the prospects of the issuer since the date of its last published audited financial statements or a description of any material adverse change.</u> • <u>A description of significant changes in the financial or trading position subsequent to the period covered by the historical financial information.</u>
<u>4, 9, 11</u>	<u>B.13</u>	<u>A description of any recent events particular to the issuer which are to a material extent relevant to the evaluation of the issuer's solvency.</u>
<u>4, 9, 11</u>	<u>B.14</u>	<u>B.5 plus:</u>

		<u>"If the issuer is dependent upon other entities within the group, this must be clearly stated."</u>
<u>4, 9, 11</u>	<u>B.15</u>	<u>A description of the issuer's principal activities.</u>
<u>4, 7, 9, 11</u>	<u>B.16</u>	<u>Use only the final paragraph of B.6</u>
<u>5, 13</u>	<u>B.17</u>	<u>Credit ratings assigned to an issuer or its debt securities at the request or with the co-operation of the issuer in the rating process.</u>
<u>6</u>	<u>B.18</u>	<u>A description of the nature and scope of the guarantee.</u>
<u>6</u>	<u>B.19</u>	<u>Section B information about the guarantor as if it were the issuer of the same type of security that is the subject of the guarantee. Therefore provide such information as required for a summary for the relevant annex.</u>
<u>7</u>	<u>B.20</u>	<u>A statement whether the issuer has been established as a special purpose vehicle or entity for the purpose of issuing asset backed securities.</u>
<u>7</u>	<u>B.21</u>	<u>A description of the issuer's principal activities including a global overview of the parties to the securitisation program including information on the direct or indirect ownership or control between those parties.</u>
<u>7</u>	<u>B.22</u>	<u>Where, since the date of incorporation or establishment, an issuer has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect.</u>
<u>7</u>	<u>B.23</u>	<u>Use only the first paragraph of B.7</u>
<u>7</u>	<u>B.24</u>	<u>A description of any material adverse change in the prospects of the issuer since the date of its last published audited financial statements.</u>
<u>8</u>	<u>B.25</u>	<u>A description of the underlying assets including:</u> <ul style="list-style-type: none"> • <u>confirmation that the securitised assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities</u> • <u>a description of the general characteristics of the obligors and in the case of a small number of easily identifiable obligors, a general description of each obligor</u> • <u>a description of the legal nature of the</u>

		<p><u>assets</u></p> <ul style="list-style-type: none"> • <u>loan to value ratio or level of collateralisation</u> • <u>Where a valuation report relating to real property is included in the prospectus, a description of the valuation.</u>
<u>8</u>	<u>B.26</u>	<u>In respect of an actively managed pool of assets backing the issue a description of the parameters within which investments can be made, the name and description of the entity responsible for such management including a brief description of that entity's relationship with any other parties to the issue.</u>
<u>8</u>	<u>B.27</u>	<u>Where an issuer proposes to issue further securities backed by the same assets a statement to that effect.</u>
<u>8</u>	<u>B.28</u>	<u>A description of the structure of the transaction, including, if necessary, a structure diagram.</u>
<u>8</u>	<u>B.29</u>	<u>A description of the flow of funds including information on swap counterparties and any other material forms of credit/liquidity enhancements and the providers thereof.</u>
<u>8</u>	<u>B.30</u>	<u>The name and a description of the originators of the securitised assets.</u>
<u>10</u>	<u>B.31</u>	<p><u>Information about the issuer of the underlying shares:</u></p> <ul style="list-style-type: none"> • <u>B.1</u> • <u>B.2</u> • <u>B.3</u> • <u>B.4</u> • <u>B.5</u> • <u>B.6</u> • <u>B.7</u> • <u>B.9</u> • <u>B.10</u> • <u>D.4</u>
<u>10</u>	<u>B.32</u>	<p><u>Information about the issuer of the depository receipts:</u></p> <ul style="list-style-type: none"> • <u>"Name and registered office of the issuer of the depository receipts."</u> • <u>"Legislation under which the issuer of the depository receipts operates and legal form which it has adopted</u>

		<u>under the legislation."</u>
<u>15</u>	<u>B.33</u>	<p><u>The following information from Annex 1:</u></p> <ul style="list-style-type: none"> • <u>B.1</u> • <u>B.2</u> • <u>B.5</u> • <u>B.6</u> • <u>B.7</u> • <u>B.8</u> • <u>B.9</u> • <u>B.10</u> • <u>C.3</u> • <u>C.7</u> • <u>D.2</u>
<u>15</u>	<u>B.34</u>	<u>A description of the investment objective and policy, including any investment restrictions, which the collective investment undertaking will pursue with a description of the instruments used.</u>
<u>15</u>	<u>B.35</u>	<u>The borrowing and/or leverage limits of the collective investment undertaking. If there are no such limits, include a statement to that effect.</u>
<u>15</u>	<u>B.36</u>	<u>A description of the regulatory status of the collective investment undertaking together with the name of any regulator in its country of incorporation.</u>
<u>15</u>	<u>B.37</u>	<u>A brief profile of a typical investor for whom the collective investment undertaking is designed.</u>
<u>15</u>	<u>B.38</u>	<p><u>Where the main body of the prospectus discloses that more than 20% of the gross assets of the collective investment undertaking may be:</u></p> <p><u>(a) invested, directly or indirectly, in a single underlying asset, or</u></p> <p><u>(b) invested in one or more collective investment undertakings which may in turn invest more than 20% of gross assets in other collective investment undertakings, or</u></p> <p><u>(c) exposed to the creditworthiness or solvency of any one counterparty</u></p> <p><u>the identity of the entity should be disclosed together with a description of the exposure (e.g. counter-party) as well as information on the market in which its securities are admitted.</u></p>

<u>15</u>	<u>B.39</u>	<p><u>Where a collective investment undertaking may invest in excess of 40% of its gross assets in another collective investment undertaking the summary should briefly explain either:</u></p> <p><u>(a) the exposure, the identity of the underlying collective investment undertaking, and provide such information as would be required in a summary note by that collective investment undertaking; or</u></p> <p><u>(b) where the securities issued by an underlying collective investment undertaking have already been admitted to trading on a regulated or equivalent market, the identity of the underlying collective investment undertaking.</u></p>
<u>15</u>	<u>B.40</u>	<p><u>A description of the applicant's service providers including the maximum fees payable.</u></p>
<u>15</u>	<u>B.41</u>	<p><u>The identity and regulatory status of any investment manager, investment advisor, custodian, trustee or fiduciary (including and delegated custody arrangements).</u></p>
<u>15</u>	<u>B.42</u>	<p><u>A description of how often the net asset value of the collective investment undertaking will be determined and how such net asset value will be communicated to investors.</u></p>
<u>15</u>	<u>B.43</u>	<p><u>In the case of an umbrella collective investment undertaking, a statement of any cross liability that may occur between classes or investment in other collective investment undertaking.</u></p>
<u>15</u>	<u>B.44</u>	<p><u>B.7 plus:</u></p> <ul style="list-style-type: none"> • <u>"Where a collective investment undertaking has not commenced operations and no financial statements have been made up as at the date of the registration document, a statement to that effect."</u>
<u>15</u>	<u>B.45</u>	<p><u>A description of the collective investment undertaking's portfolio.</u></p>
<u>15</u>	<u>B.46</u>	<p><u>An indication of the most recent net asset value per security (if applicable).</u></p>
<u>16</u>	<u>B.47</u>	<p><u>A description of the issuer, including:</u></p> <ul style="list-style-type: none"> • <u>The legal name of the issuer and a description of the issuer's position within the national government framework.</u> • <u>The legal form of the issuer.</u> • <u>Any recent events relevant to the evaluation of the issuer's solvency.</u>

		<ul style="list-style-type: none"> • <u>A description of the issuer's economy including its structure with details of its main sectors.</u>
<u>16</u>	<u>B.48</u>	<u>A description/the key facts of public finance and trade information for the two fiscal years prior to the date of the prospectus. With a description of any significant changes to that information since the end of the last fiscal year.</u>
<u>17</u>	<u>B.49</u>	<u>A description of the issuer, including:</u> <ul style="list-style-type: none"> • <u>The legal name of the issuer and a description of the issuer's legal status.</u> • <u>The legal form of the issuer.</u> • <u>A description of the issuer's purpose and functions.</u> • <u>The sources of funding, guarantees and other obligations owed to the issuer by its members.</u> • <u>Any recent events relevant to the evaluation of the issuer's solvency.</u>
<u>17</u>	<u>B.50</u>	<u>Selected key historical financial information covering the latest two financial years. This should be accompanied by a description of any significant changes to the issuer's financial position since the last audited financial information.</u>

Section C – Securities

<u>Annexes</u>	<u>Element</u>	<u>Disclosure requirement</u>
<u>3, 5, 12, 13</u>	<u>C.1</u>	<u>A description of the type and the class of the securities being offered and/or admitted to trading, including any security identification number.</u>
<u>3, 5, 12, 13</u>	<u>C.2</u>	<u>Currency of the securities issue.</u>
<u>1</u>	<u>C.3</u>	<u>The number of shares issued and fully paid and issued but not fully paid.</u> <u>The par value per share, or that the shares have not par value.</u>
<u>3</u>	<u>C.4</u>	<u>A description of the rights attached to the securities.</u>
<u>3, 5, 12, 13</u>	<u>C.5</u>	<u>A description of any restrictions on the free transferability of the securities.</u>
<u>3</u>	<u>C.6</u>	<u>An indication as to whether the securities offered are or will be the object of an</u>

		<u>application for admission to trading on a regulated market and the identity of all the regulated markets where the securities are or are to be traded.</u>
<u>1</u>	<u>C.7</u>	<u>A description of dividend policy.</u>
<u>5, 12, 13</u>	<u>C.8</u>	<u>C.4 plus:</u> <ul style="list-style-type: none"> • <u>"including ranking"</u> • <u>"including limitations to those rights"</u>
<u>5, 13</u>	<u>C.9</u>	<u>C.8 plus:</u> <ul style="list-style-type: none"> • <u>"the nominal interest rate"</u> • <u>"the date from which interest becomes payable and the due dates for interest"</u> • <u>"where the rate is not fixed, description of the underlying on which it is based"</u> • <u>"maturity date and arrangements for the amortisation of the loan, including the repayment procedures"</u> • <u>"an indication of yield"</u> • <u>"name of representative of debt security holders"</u>
<u>5</u>	<u>C.10</u>	<u>C.9 plus:</u> <ul style="list-style-type: none"> • <u>"if the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident"</u>
<u>5, 12</u>	<u>C.11</u>	<u>An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question.</u>
<u>8</u>	<u>C.12</u>	<u>The minimum denomination of an issue.</u>
<u>10</u>	<u>C.13</u>	<u>Information about the underlying shares:</u> <ul style="list-style-type: none"> • <u>C.1</u> • <u>C.2</u> • <u>C.3</u>

		<ul style="list-style-type: none"> • <u>C.4</u> • <u>C.5</u> • <u>C.6</u> • <u>C.7</u>
<u>10</u>	<u>C.14</u>	<p><u>Information about the depository receipts:</u></p> <ul style="list-style-type: none"> • <u>C.1</u> • <u>C.2</u> • <u>C.4</u> • <u>C.5</u> • <u>"Describe the exercise of and benefit from the rights attaching to the underlying shares, in particular voting rights, the conditions on which the issuer of the depository receipts may exercise such rights, and measures envisaged to obtain the instructions of the depository receipt holders – and the right to share in profits and any liquidations surplus which are not passed on to the holder of the depository receipt."</u> • <u>"Description of the bank or other guarantee attached to the depository receipt and intended to underwrite the issuer's obligations."</u>
<u>12</u>	<u>C.15</u>	<u>A description of how the value of the investment is affected by the value of the underlying instrument(s), unless the securities have a denomination of at least EUR 100 000.</u>
<u>12</u>	<u>C.16</u>	<u>The expiration or maturity date of the derivative securities – the exercise date or final reference date.</u>
<u>12</u>	<u>C.17</u>	<u>A description of the settlement procedure of the derivative securities.</u>
<u>12</u>	<u>C.18</u>	<u>A description of how the return on derivative securities takes place.</u>
<u>12</u>	<u>C.19</u>	<u>The exercise price or the final reference price of the underlying.</u>
<u>12</u>	<u>C.20</u>	<u>A description of the type of the underlying and where the information on the underlying can be found.</u>
<u>13</u>	<u>C.21</u>	<u>Indication of the market where the securities will be traded and for which prospectus has been published.</u>

<u>14</u>	<u>C.22</u>	<p><u>Information about the underlying share:</u></p> <ul style="list-style-type: none"> • <u>"A description of the underlying share."</u> • <u>C.2</u> • <u>C.4 plus the words "... and procedure for the exercise of those rights".</u> • <u>"Where and when the shares will be or have been admitted to trading."</u> • <u>C.5</u> • <u>"Where the issuer of the underlying is an entity belonging to the same group, the information to provide on this issuer is the information required by the share registration document. Therefore provide such information required for a summary for Annex 1."</u>
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Section D – Risks

<u>Annexes</u>	<u>Element</u>	<u>Disclosure requirement</u>
<u>1</u>	<u>D.1</u>	<u>Key information on the key risks that are specific to the issuer or its industry</u>
<u>4, 7, 9, 11, 16, 17</u>	<u>D.2</u>	<u>Key information on the key risks that are specific to the issuer.</u>
<u>3, 5, 13</u>	<u>D.3</u>	<u>Key information on the key risks that are specific to the securities.</u>
<u>10</u>	<u>D.4</u>	<p><u>Information about the issuer of the underlying shares:</u></p> <ul style="list-style-type: none"> • <u>D.2</u>
<u>10</u>	<u>D.5</u>	<p><u>Information about the depository receipts:</u></p> <ul style="list-style-type: none"> • <u>D.3</u>
<u>12</u>	<u>D.6</u>	<p><u>D.3 plus:</u></p> <ul style="list-style-type: none"> • <u>"This must include a risk warning to the effect that investors may lose the value of their entire investment or part of it, as the case may be, and/or, if the investor's liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect."</u>

Section E – Offer

<u>Annexes</u>	<u>Element</u>	<u>Disclosure requirement</u>
<u>3, 10</u>	<u>E.1</u>	<u>The total net proceeds and an estimate of the total expenses of the issue/offer, including estimated expenses charged to the investor by the issuer or the offeror.</u>
<u>3, 10</u>	<u>E.2a</u>	<u>Reasons for the offer, use of proceeds, estimated net amount of the proceeds.</u>
<u>5, 12</u>	<u>E.2b</u>	<u>Reasons for the offer and use of proceeds when different from making profit and/or hedging certain risks.</u>
<u>3, 5, 10, 12</u>	<u>E.3</u>	<u>A description of the terms and conditions of the offer.</u>
<u>3, 5, 10, 12, 13</u>	<u>E.4</u>	<u>A description of any interest that is material to the issue/offer including conflicting interests.</u>
<u>3, 10</u>	<u>E.5</u>	<u>Name of the person or entity offering to sell the security.</u> <u>Lock-up agreements: the parties involved; and indication of the period of the lock up.</u>
<u>3, 10</u>	<u>E.6</u>	<u>The amount and percentage of immediate dilution resulting from the offer.</u> <u>In the case of a subscription offer to existing equity holders, the amount and percentage of immediate dilution if they do not subscribe to the new offer.</u>
<u>All</u>	<u>E.7</u>	<u>Estimated expenses charged to the investor by the issuer or the offeror.</u>

ANNEX XXIII

Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for Rights Issues

<u>1. PERSONS RESPONSIBLE</u>
<u>1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.</u>
<u>1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such</u>

<p><u>is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</u></p>
<p><u>2. STATUTORY AUDITORS</u></p>
<p><u>2.1. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).</u></p>
<p><u>2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.</u></p>
<p><u>3. RISK FACTORS</u></p>
<p><u>Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed "Risk Factors".</u></p>
<p><u>4. INFORMATION ABOUT THE ISSUER</u></p>
<p><u>4.1. The legal and commercial name of the issuer</u></p>
<p><u>4.2. Investments</u></p>
<p><u>4.2.1. A description, (including the amount) of the principal investments made since the end of the period covered by the latest published audited financial statements and up to the date of the registration document.</u></p>
<p><u>4.2.2. A description of the issuer's principal investments that are in progress, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external)</u></p>
<p><u>4.2.3. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.</u></p>
<p><u>5. BUSINESS OVERVIEW</u></p>
<p><u>5.1. Principal Activities</u></p> <p><u>A brief description of the issuer's operations and principal activities and of any significant changes impacting these operations and activities since the end of the period covered by the latest published audited financial statements, including an indication of any significant new products and services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development.</u></p>
<p><u>5.2. Principal Markets</u></p> <p><u>A brief description of the principal markets in which the issuer competes and of any significant changes impacting these markets since the end of period covered by the the latest published audited financial statements.</u></p>
<p><u>5.3. Where the information given pursuant to items 5.1. and 5.2. has been influenced by extraordinary factors since the end of period covered by the the latest published audited financial statements, mention that fact.</u></p>
<p><u>5.4. If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licenses,</u></p>

<u>industrial, commercial or financial contracts or new manufacturing processes.</u>
<u>5.5. The basis for any statements made by the issuer regarding its competitive position.</u>
<u>6. ORGANISATIONAL STRUCTURE</u>
<u>6.1. If the issuer is part of a group, a brief description of the group and the issuer's position within the group.</u>
<u>7. TREND INFORMATION</u>
<u>7.1. The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document.</u>
<u>7.2. Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.</u>
<u>8. PROFIT FORECASTS OR ESTIMATES</u>
<u>If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 8.1 and 8.2:</u>
<u>8.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.</u> <u>There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.</u>
<u>8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.</u>
<u>8.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information</u>
<u>8.4. If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.</u>
<u>9. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT</u>
<u>9.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:</u> <u>(a) members of the administrative, management or supervisory bodies;</u> <u>(b) partners with unlimited liability, in the case of a limited partnership with a</u>

<p><u>share capital;</u></p> <p><u>(c) founders, if the issuer has been established for fewer than five years; and</u></p> <p><u>(d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business.</u></p> <p><u>The nature of any family relationship between any of those persons.</u></p>
<p><u>In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information:</u></p> <p><u>(a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;</u></p> <p><u>(b) any convictions in relation to fraudulent offences for at least the previous five years;</u></p> <p><u>(c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years;</u></p> <p><u>(d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.</u></p> <p><u>If there is no such information to be disclosed, a statement to that effect is to be made.</u></p>
<p>9.2. <u>Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests</u></p> <p><u>Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 9.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.</u></p> <p><u>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 9.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.</u></p> <p><u>Details of any restrictions agreed by the persons referred to in item 9.1 on the disposal within a certain period of time of their holdings in the issuer's securities.</u></p>
<p><u>10. REMUNERATION AND BENEFITS</u></p>
<p><u>In case of issuers not listed on a regulated market and in relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 9.1.</u></p>

<p><u>10.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.</u></p> <p><u>That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country or when the issuer has already publicly disclosed that information.</u></p>
<p><u>10.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.</u></p>
<p><u>11. BOARD PRACTICES</u></p>
<p><u>In case of issuers not listed on a regulated market and in relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 9.1. :</u></p>
<p><u>11.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.</u></p>
<p><u>11.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.</u></p>
<p><u>11.3. Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.</u></p>
<p><u>11.4. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.</u></p>
<p><u>12. EMPLOYEES</u></p>
<p><u>12.1. Shareholdings and stock options with respect to each person referred to in points (a) and (d) of the first subparagraph of item 9.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.</u></p>
<p><u>12.2. Description of any arrangements for involving the employees in the capital of the issuer.</u></p>
<p><u>13. MAJOR SHAREHOLDERS</u></p>
<p><u>13.1. In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.</u></p>
<p><u>13.2. Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.</u></p>
<p><u>13.3. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such</u></p>

<p><u>control and describe the measures in place to ensure that such control is not abused.</u></p>
<p><u>13.4. A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.</u></p>
<p><u>14. RELATED PARTY TRANSACTIONS</u></p>
<p><u>If International Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document :</u></p> <p><u>(a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</u></p> <p><u>(b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</u></p> <p><u>If international Financial Reporting Standards adopted according to the Regulation (EC) No 1606/200 apply to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information have been published.</u></p>
<p><u>15. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</u></p>
<p><u>15.1. Historical Financial Information</u></p> <p><u>Audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation and the audit report. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 12 months, or the entire period for which the issuer has been in operation, whichever is the shorter. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the European Union.</u></p> <p><u>For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</u></p> <p><u>The audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.</u></p> <p><u>If the issuer has been operating in its current area of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the European Union. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of</u></p>

<p><u>Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. This historical financial information must be audited.</u></p> <p><u>If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:</u></p> <p>(a) <u>balance sheet;</u></p> <p>(b) <u>income statement;</u></p> <p>(c) <u>a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners;</u></p> <p>(d) <u>cash flow statement;</u></p> <p>(e) <u>accounting policies and explanatory notes</u></p> <p><u>The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State or an equivalent standard.</u></p>
<p><u>15.2. Pro forma financial information</u></p> <p><u>In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.</u></p> <p><u>This requirement will normally be satisfied by the inclusion of pro forma financial information.</u></p> <p><u>This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.</u></p> <p><u>Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.</u></p>
<p><u>15.3. Financial statements</u></p> <p><u>If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.</u></p>
<p><u>15.4 Auditing of historical annual financial information</u></p>
<p><u>15.4.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.</u></p>
<p><u>15.4.2. Indication of other information in the registration document which has been audited by the auditors.</u></p>
<p><u>15.4.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.</u></p>
<p><u>15.5. Age of latest financial information</u></p>
<p><u>15.5.1. The last year of audited financial information may not be older than one of the</u></p>

<p><u>following:</u></p> <p><u>(a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;</u></p> <p><u>(b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.</u></p>
<p><u>15.6. Interim and other financial information</u></p>
<p><u>15.6.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.</u></p>
<p><u>15.6.2. If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year.</u></p> <p><u>The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.</u></p>
<p><u>15.7. Dividend policy</u></p> <p><u>A description of the issuer's policy on dividend distributions and any restrictions thereon.</u></p>
<p><u>15.7.1. The amount of the dividend per share for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.</u></p>
<p><u>15.8. Legal and arbitration proceedings</u></p> <p><u>Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.</u></p>
<p><u>15.9. Significant change in the issuer's financial or trading position</u></p> <p><u>A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.</u></p>
<p><u>16. ADDITIONAL INFORMATION</u></p>
<p><u>16.1. Share Capital</u></p> <p><u>The following information as of the date of the most recent balance sheet included in the historical financial information:</u></p>
<p><u>16.1.1. The amount of issued capital, and for each class of share capital:</u></p> <p><u>(a) the number of shares authorised;</u></p>

<p><u>(b) the number of shares issued and fully paid and issued but not fully paid;</u></p> <p><u>(c) the par value per share, or that the shares have no par value; and</u></p> <p><u>(d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.</u></p>
<p><u>16.1.2. If there are shares not representing capital, state the number and main characteristics of such shares.</u></p>
<p><u>16.1.3. The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.</u></p>
<p><u>16.1.4. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.</u></p>
<p><u>16.1.5. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.</u></p>
<p><u>17. MATERIAL CONTRACTS</u></p>
<p><u>A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the last year immediately preceding publication of the registration document.</u></p> <p><u>A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.</u></p>
<p><u>18. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST</u></p>
<p><u>18.1. Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.</u></p>
<p><u>18.2. Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.</u></p>
<p><u>19. DOCUMENTS ON DISPLAY</u></p>
<p><u>A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:</u></p> <p><u>(a) the memorandum and articles of association of the issuer;</u></p> <p><u>(b) all reports, letters, and other documents, historical financial information,</u></p>

valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document.

An indication of where the documents on display may be inspected, by physical or electronic means.

ANNEX XXIV

Proportionate Schedule for Minimum Disclosure Requirements for the Share Securities Note for Rights Issues

<u>1. PERSONS RESPONSIBLE</u>
1.1. <u>All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.</u>
1.2. <u>A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</u>
<u>2. RISK FACTORS</u>
<u>Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed "Risk Factors".</u>
<u>3. KEY INFORMATION</u>
3.1 <u>Working capital Statement</u> <u>Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed.</u>
3.2 <u>Capitalisation and indebtedness</u> <u>A statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness.</u>
3.3 <u>Interest of natural and legal persons involved in the issue/offer</u> <u>A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.</u>
3.4 <u>Reasons for the offer and use of proceeds</u>

	<u>Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.</u>
4.	<u>INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING</u>
4.1	<u>A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.</u>
4.2	<u>Legislation under which the securities have been created.</u>
4.3	<u>An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.</u>
4.4	<u>Currency of the securities issue.</u>
4.5	<u>A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.</u> <u>Dividend rights:</u> <u>– Fixed date(s) on which the entitlement arises,</u> <u>– Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,</u> <u>– Dividend restrictions and procedures for non-resident holders,</u> <u>– Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments.</u> <u>Voting rights.</u> <u>Pre-emption rights in offers for subscription of securities of the same class.</u> <u>Right to share in the issuer's profits.</u> <u>Rights to share in any surplus in the event of liquidation.</u> <u>Redemption provisions.</u> <u>Conversion provisions.</u>
4.6	<u>A statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.</u>
4.7	<u>The expected issue date of the securities</u>
4.8	<u>A description of any restrictions on the free transferability of the securities</u>
4.9	<u>In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought:</u> <u>- Information on taxes on the income from the securities withheld at source,</u> <u>- Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.</u>

<u>5. TERMS AND CONDITIONS OF THE OFFER</u>
<u>5.1 Conditions, offer statistics, expected timetable and action required to apply for the offer</u>
<u>5.1.1. Conditions to which the offer is subject.</u>
<u>5.1.2. Total amount of the issue/offer.</u>
<u>5.1.3. The time period, including any possible amendments, during which the offer will be open and description of the application process.</u>
<u>5.1.4. An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.</u>
<u>5.1.5. A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.</u>
<u>5.1.6. Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).</u>
<u>5.1.7. An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.</u>
<u>5.1.8. Method and time limits for paying up the securities and for delivery of the securities.</u>
<u>5.1.9. A full description of the manner and date in which results of the offer are to be made public.</u>
<u>5.1.10. The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.</u>
<u>5.2 Allotment</u>
<u>5.2.1. To the extent known to the issuer, an indication of whether major shareholders or members of the issuer's management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.</u>
<u>5.2.2. Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.</u>
<u>5.3 Pricing</u>
<u>5.3.1. An indication of the price at which the securities will be offered. If the price is not known or if there is no established and/or liquid market for the securities, indicate the method for determining the offer price, including a statement as to who has set the criteria or is formally responsible for the determination. Indication of the amount of any expenses and taxes specifically charged to the subscriber or purchaser.</u>
<u>5.3.2. Process for the disclosure of the offer price.</u>
<u>5.3.3. If the issuer's equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, indication of the basis for the issue price if the issue is for cash, together with the reasons for and beneficiaries of such restriction or</u>

<u>withdrawal.</u>
5.4. Placing and Underwriting
5.4.1 <u>Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place</u>
5.4.2 <u>Name and address of any paying agents and depository agents in each country.</u>
5.4.3. <u>Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.</u>
5.4.4. <u>When the underwriting agreement has been or will be reached.</u>
<u>6. ADMISSION TO TRADING AND DEALING ARRANGEMENTS</u>
6.1 <u>An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.</u>
6.2 <u>All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.</u>
6.3 <u>If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought, securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number and characteristics of the securities to which they relate.</u>
6.4 <u>Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.</u>
<u>7. LOCK-UP AGREEMENTS</u>
7.1 <u>Lock-up agreements</u> <u>The parties involved.</u> <u>Content and exceptions of the agreement.</u> <u>Indication of the period of the lock up.</u>
<u>8. EXPENSE OF THE ISSUE/OFFER</u>
8.1. <u>The total net proceeds and an estimate of the total expenses of the issue/offer.</u>
<u>9. DILUTION</u>

9.1	<u>The amount and percentage of immediate dilution resulting from the issue/offer.</u>
9.2.	<u>The amount and percentage of immediate dilution if they do not subscribe to the new offer.</u>
10.	<u>ADDITIONAL INFORMATION</u>
10.1.	<u>If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.</u>
10.2.	<u>An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.</u>
10.3.	<u>Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Securities Note.</u>
10.4.	<u>Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.</u>

ANNEX XXV

Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for SMEs and companies with reduced market capitalisation

1.	<u>PERSONS RESPONSIBLE</u>
1.1.	<u>All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.</u>
1.2.	<u>A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</u>
2.	<u>STATUTORY AUDITORS</u>
2.1.	<u>Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).</u>

2.2.	<u>If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.</u>
3.	<u>SELECTED FINANCIAL INFORMATION</u>
3.1.	<u>Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information.</u> <u>The selected historical financial information must provide the key figures that summarise the financial condition of the issuer.</u>
3.2.	<u>If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.</u>
4.	<u>RISK FACTORS</u>
	<u>Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed "Risk Factors".</u>
5.	<u>INFORMATION ABOUT THE ISSUER</u>
5.1.	<u>History and Development of the Issuer</u>
5.1.1.	<u>the legal and commercial name of the issuer;</u>
5.1.2.	<u>the place of registration of the issuer and its registration number;</u>
5.1.3.	<u>the date of incorporation and the length of life of the issuer, except where indefinite</u>
5.1.4.	<u>the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);</u>
5.1.5.	<u>the important events in the development of the issuer's business.</u>
5.2.	<u>Investments</u>
5.2.1.	<u>A description, (including the amount) of the issuer's principal investments for each financial year for the period covered by the historical financial information up to the date of the registration document.</u>
5.2.2.	<u>A description of the issuer's principal investments that are in progress, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external).</u>
5.2.3.	<u>Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments and the anticipated sources of funds needed to fulfill these commitments.</u>
6.	<u>BUSINESS OVERVIEW</u>
6.1.	<u>Principal Activities</u> <u>A brief description of the issuer's operations and principal activities and of any significant changes impacting these operations and activities since latest two published audited financial statements, including an indication of any significant new products and services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development.</u>
6.2.	<u>Principal Markets</u>

	<u>A brief description of the principal markets in which the issuer competes and of any significant changes impacting these markets since latest two published audited financial statements.</u>
6.3.	<u>Where the information given pursuant to items 6.1. and 6.2. has been influenced by extraordinary factors, mention that fact.</u>
6.4.	<u>If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licenses, industrial, commercial or financial contracts or new manufacturing processes.</u>
6.5.	<u>The basis for any statements made by the issuer regarding its competitive position.</u>
7.	<u>ORGANISATIONAL STRUCTURE</u>
7.1.	<u>If the issuer is part of a group, a brief description of the group and the issuer's position within the group.</u>
7.2.	<u>If not included in the financial statements, a list of the issuer's significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.</u>
8.	<u>PROPERTY, PLANTS AND EQUIPMENT</u>
8.1.	<u>A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.</u>
9.	<u>OPERATING AND FINANCIAL REVIEW</u>
	<u>The issuer must disclose the following information if the Annual Reports, presented and prepared in accordance with Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC for the periods covered by the historical financial information, are not included in or annexed to the prospectus:</u>
9.1.	<u>Financial Condition</u> <u>To the extent not covered elsewhere in the registration document, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.</u>
9.2.	<u>Operating Results</u>
9.2.1.	<u>Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.</u>
9.2.2.	<u>Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.</u>
9.2.3.	<u>Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.</u>
10.	<u>CAPITAL RESOURCES</u>
10.1.	<u>An explanation of the sources and amounts of and a narrative description of the issuer's cash flows;</u>
10.2.	<u>Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.</u>

<u>11. RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES</u>
<u>Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.</u>
<u>12. TREND INFORMATION</u>
<u>12.1. The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document.</u>
<u>12.2. Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.</u>
<u>13. PROFIT FORECASTS OR ESTIMATES</u>
<u>If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 13.1 and 13.2:</u>
<u>13.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.</u> <u>There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.</u>
<u>13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.</u>
<u>13.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information</u>
<u>13.4. If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.</u>
<u>14. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT</u>
<u>14.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:</u> <u>(a) members of the administrative, management or supervisory bodies;</u> <u>(b) partners with unlimited liability, in the case of a limited partnership with a share capital;</u> <u>(c) founders, if the issuer has been established for fewer than five years; and</u> <u>(d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business.</u> <u>The nature of any family relationship between any of those persons.</u> <u>In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the</u>

<p><u>following information:</u></p> <p>(a) <u>the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;</u></p> <p>(b) <u>any convictions in relation to fraudulent offences for at least the previous five years;</u></p> <p>(c) <u>details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years;</u></p> <p>(d) <u>details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.</u></p> <p><u>If there is no such information to be disclosed, a statement to that effect is to be made.</u></p>
<p>14.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests</p> <p><u>Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 14.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.</u></p> <p><u>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.</u></p> <p><u>Details of any restrictions agreed by the persons referred to in item 14.1 on the disposal within a certain period of time of their holdings in the issuer's securities.</u></p>
<p>15. REMUNERATION AND BENEFITS</p>
<p><u>In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1.</u></p>
<p>15.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.</p> <p><u>That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country or when the issuer has already publicly disclosed that information.</u></p>
<p>15.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.</p>
<p>16. BOARD PRACTICES</p>
<p><u>In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of item 14.1.</u></p>
<p>16.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.</p>
<p>16.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.</p>
<p>16.3. Information about the issuer's audit committee and remuneration committee, including</p>

	<u>the names of committee members and a summary of the terms of reference under which the committee operates.</u>
16.4	<u>A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.</u>
17.	<u>EMPLOYEES</u>
17.1.	<u>Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.</u>
17.2.	<u>Shareholdings and stock options with respect to each person referred to in points (a) and (d) of the first subparagraph of item 14.1, provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.</u>
17.3.	<u>Description of any arrangements for involving the employees in the capital of the issuer.</u>
18.	<u>MAJOR SHAREHOLDERS</u>
18.1.	<u>In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.</u>
18.2.	<u>Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.</u>
18.3.	<u>To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.</u>
18.4.	<u>A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.</u>
19.	<u>RELATED PARTY TRANSACTIONS</u>
	<p><u>If International Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document:</u></p> <p><u>(a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</u></p> <p><u>(b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.</u></p> <p><u>If international Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 apply to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information have been published.</u></p>

<p><u>20. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</u></p>
<p><u>20.1. Historical Financial Information</u></p> <p><u>A statement that audited historical financial information covering the latest two financial years (or such shorter period that the issuer has been in operation) have been prepared according to Regulation (EC) No 1606/2002, or, if not applicable, to a Member State national accounting standards for issuers from the European Union, and where own and consolidated financial statements as the case may be can be obtained.</u></p> <p><u>The audit report in respect of each year must be included.</u></p> <p><u>For third country issuers, a statement that such financial information have been prepared and audited according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards, and where it can be obtained. If such financial information is not equivalent to these standards, a statement that it has been prepared in the form of restated financial statements, and where it can be obtained.</u></p>
<p><u>20.2. Pro forma financial information</u></p> <p><u>In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.</u></p> <p><u>This requirement will normally be satisfied by the inclusion of pro forma financial information.</u></p> <p><u>This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.</u></p> <p><u>Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.</u></p>
<p><u>20.3 Auditing of historical annual financial information</u></p>
<p><u>20.3.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.</u></p>
<p><u>20.3.2. Indication of other information in the registration document which has been audited by the auditors.</u></p>
<p><u>20.3.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.</u></p>
<p><u>20.4. Age of latest financial information</u></p>
<p><u>20.4.1. The last year of audited financial information may not be older than one of the following:</u></p> <p><u>(a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;</u></p> <p><u>(b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.</u></p>
<p><u>20.5. Interim and other financial information</u></p>
<p><u>20.5.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, a statement in that respect must be included in the registration document, and where it can be obtained. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must be</u></p>

	<u>included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.</u>
20.6.	<u>Dividend policy</u> <u>A description of the issuer's policy on dividend distributions and any restrictions thereon.</u>
20.6.1	<u>The amount of the dividend per share for each financial year for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.</u>
20.7.	<u>Legal and arbitration proceedings</u> <u>Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.</u>
20.8.	<u>Significant change in the issuer's financial or trading position</u> <u>A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.</u>
21.	<u>ADDITIONAL INFORMATION</u>
21.1.	<u>Share Capital</u> <u>The following information as of the date of the most recent balance sheet included in the historical financial information:</u>
21.1.1.	<u>The amount of issued capital, and for each class of share capital:</u> <u>(a) the number of shares authorised;</u> <u>(b) the number of shares issued and fully paid and issued but not fully paid;</u> <u>(c) the par value per share, or that the shares have no par value; and</u> <u>(d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.</u>
21.1.2.	<u>If there are shares not representing capital, state the number and main characteristics of such shares.</u>
21.1.3.	<u>The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.</u>
21.1.4.	<u>The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.</u>
21.1.5.	<u>Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.</u>
21.1.6.	<u>Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.</u>
21.1.7.	<u>A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.</u>
21.2.	<u>Memorandum and Articles of Association</u>

21.2.1.	<u>A description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.</u>
21.2.2.	<u>A summary of any provisions of the issuer's articles of association, statutes, charter or bylaws with respect to the members of the administrative, management and supervisory bodies.</u>
21.2.3.	<u>A description of the rights, preferences and restrictions attaching to each class of the existing shares.</u>
21.2.4.	<u>A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.</u>
21.2.5.	<u>A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.</u>
21.2.6.	<u>A brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.</u>
21.2.7.	<u>An indication of the articles of association, statutes, charter or bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.</u>
21.2.8.	<u>A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaw governing changes in the capital, where such conditions are more stringent than is required by law.</u>
22.	<u>MATERIAL CONTRACTS</u>
	<p><u>A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document.</u></p> <p><u>A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.</u></p>
23.	<u>THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST</u>
23.1.	<u>Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.</u>
23.2.	<u>Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.</u>
24.	<u>DOCUMENTS ON DISPLAY</u>
	<p><u>A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:</u></p> <p><u>(a) the memorandum and articles of association of the issuer;</u></p> <p><u>(b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of</u></p>

<p>which is included or referred to in the registration document;</p> <p>(c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.</p> <p>An indication of where the documents on display may be inspected, by physical or electronic means.</p>
25. INFORMATION ON HOLDINGS
<p>Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses</p>

ANNEX XXVI

Proportionate Schedule for Minimum Disclosure Requirements for the Debt and Derivative Securities <100 000 EUR Registration Document for SMEs and companies with reduced market capitalisation) (see footnote in Regulation)

1. PERSONS RESPONSIBLE
2. STATUTORY AUDITORS
3. SELECTED FINANCIAL INFORMATION
4. RISK FACTORS
5. INFORMATION ABOUT THE ISSUER
6. BUSINESS OVERVIEW
7. ORGANISATIONAL STRUCTURE
8. TREND INFORMATION
9. PROFIT FORECASTS OR ESTIMATES
10. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES
11. BOARD PRACTICES
12. MAJOR SHAREHOLDERS
<p>13. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</p> <p>13.1 <u>Historical Financial Information</u></p> <p><u>A statement that audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation) have been prepared according to Regulation (EC) No 1606/2002, or, if not applicable, to a Member State national accounting standards for issuers from the European Union, and where own and consolidated financial statements as the case may be can be obtained.</u></p> <p><u>The audit report must be included.</u></p> <p><u>For third country issuers, a statement that such financial information have been prepared and audited according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards, and where it can</u></p>

<p>be obtained. If such financial information is not equivalent to these standards, a statement that it has been prepared in the form of restated financial statements, and where it can be obtained.</p> <p>13.2 Auditing of historical annual financial information</p> <p>13.2.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.</p> <p>13.2.2. Indication of other information in the registration document which has been audited by the auditors.</p> <p>13.2.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.</p> <p>13.3. Interim and other financial information</p> <p>If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, a statement in that respect must be included in the registration document and where it can be obtained. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.</p> <p>13.4. Legal and arbitration proceedings</p> <p>Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.</p> <p>13.5. Significant change in the issuer's financial or trading position</p> <p>A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.</p>
14. ADDITIONAL INFORMATION
15. MATERIAL CONTRACTS
16. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST
17. DOCUMENTS ON DISPLAY

ANNEX XXVII

Proportionate Schedule for Minimum Disclosure Requirements for the Debt and Derivative Securities $\geq 100\ 000$ EUR Registration Document for SMEs and companies with reduced market capitalisation (schedule)(see footnote in Regulation)

1. PERSONS RESPONSIBLE
2. STATUTORY AUDITORS
3. RISK FACTORS
4. INFORMATION ABOUT THE ISSUER
5. BUSINESS OVERVIEW

<u>6. ORGANISATIONAL STRUCTURE</u>
<u>7. TREND INFORMATION</u>
<u>8. PROFIT FORECASTS OR ESTIMATES</u>
<u>9. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES</u>
<u>10. MAJOR SHAREHOLDERS</u>
<u>11. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</u>
<p><u>11.1 Historical Financial Information</u></p> <p><u>A statement that audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation) have been prepared according to Regulation (EC) No 1606/2002, or, if not applicable, to a Member State national accounting standards for issuers from the European Union, and where own and consolidated financial statements as the case may be can be obtained.</u></p> <p><u>The audit report must be included.</u></p> <p><u>For third country issuers, a statement that such financial information have been prepared and audited according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards, and where it can be obtained. If such financial information is not equivalent to these standards, a statement that it has been prepared in the form of restated financial statements, and where it can be obtained.</u></p> <p><u>11.2 Auditing of historical annual financial information</u></p> <p><u>11.2.1. A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.</u></p> <p><u>11.2.2. Indication of other information in the registration document which has been audited by the auditors.</u></p> <p><u>11.2.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.</u></p> <p><u>11.3. Interim and other financial information</u></p> <p><u>If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, a statement in that respect must be included in the registration document and where it can be obtained. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.</u></p> <p><u>11.4. Legal and arbitration proceedings</u></p> <p><u>Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.</u></p> <p><u>11.5. Significant change in the issuer's financial or trading position</u></p> <p><u>A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.</u></p>
<u>12. MATERIAL CONTRACTS</u>
<u>13. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND</u>

<u>DECLARATIONS OF ANY INTEREST</u>
<u>14. DOCUMENTS ON DISPLAY</u>

ANNEX XXVIII

Proportionate Schedule for Minimum Disclosure Requirements for the Depositary Receipts issued over shares for SMEs and companies with reduced market capitalisation (see footnote in Regulation)

<u>1. PERSONS RESPONSIBLE</u>
<p><u>1.1. All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer's administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.</u></p>
<p><u>1.2. A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</u></p>
<u>2. STATUTORY AUDITORS</u>
<p><u>2.1. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).</u></p>
<p><u>2.2. If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.</u></p>
<u>3. SELECTED FINANCIAL INFORMATION</u>
<p><u>3.1. Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information. The selected historical financial information must provide the key figures that summarise the financial condition of the issuer.</u></p>
<p><u>3.2. If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.</u></p>
<u>4. RISK FACTORS</u>
<p><u>Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed "Risk Factors".</u></p>
<u>5. INFORMATION ABOUT THE ISSUER</u>
<p><u>5.1. History and Development of the Issuer</u></p>
<p><u>5.1.1. the legal and commercial name of the issuer;</u></p>

5.1.2.	<u>the place of registration of the issuer and its registration number;</u>
5.1.3.	<u>the date of incorporation and the length of life of the issuer, except where indefinite</u>
5.1.4.	<u>the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);</u>
5.1.5.	<u>the important events in the development of the issuer's business.</u>
5.2.	<u>Investments</u>
5.2.1.	<u>A description, (including the amount) of the issuer's principal investments for each financial year for the period covered by the historical financial information up to the date of the prospectus.</u>
5.2.2.	<u>A description of the issuer's principal investments that are currently in progress, including the distribution of these investments geographically (home and abroad) and the method of financing (internal or external);</u>
5.2.3.	<u>"Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments and the anticipated sources of funds needed to fulfill these commitments."</u>
6.	<u>BUSINESS OVERVIEW</u>
6.1.	<u>Principal Activities</u>
6.1.1.	<u>A brief description of the issuer's operations and principal activities and of any significant changes impacting these operations and activities since latest two published audited financial statements, including an indication of any significant new products and services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development.</u>
6.2.	<u>Principal Markets</u> <u>A brief description of the principal markets in which the issuer competes and of any significant changes impacting these markets since latest two published audited financial statements.</u>
6.3.	<u>Where the information given pursuant to items 6.1. and 6.2. has been influenced by extraordinary factors, mention that fact.</u>
6.4.	<u>If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent, on patents or licenses, industrial, commercial or financial contracts or new manufacturing processes.</u>
6.5.	<u>The basis for any statements made by the issuer regarding its competitive position.</u>
7.	<u>ORGANISATIONAL STRUCTURE</u>
7.1.	<u>If the issuer is part of a group, a brief description of the group and the issuer's position within the group.</u>
8.	<u>PROPERTY, PLANTS AND EQUIPMENT</u>
8.1.	<u>A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.</u>
9.	<u>OPERATING AND FINANCIAL REVIEW</u>
	<u>The issuer must disclose the following information if the Annual Reports, presented and prepared in accordance with Article 46 of Directive 78/660/EEC and Article 36 of</u>

<p><u>Directive 83/349/EEC for the periods covered by the historical financial information, are not included in or annexed to the prospectus:</u></p>
<p>9.1. Financial Condition</p> <p><u>To the extent not covered elsewhere in the registration document, provide a description of the issuer's financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer's business as a whole.</u></p>
<p>9.2. Operating Results</p>
<p>9.2.1. Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected.</p>
<p>9.2.2. Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.</p>
<p>9.2.3. Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.</p>
<p>10. CAPITAL RESOURCES</p>
<p>10.1. An explanation of the sources and amounts of and a narrative description of the issuer's cash flows:</p>
<p>10.2. Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations.</p>
<p>11. RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES</p>
<p><u>Where material, provide a description of the issuer's research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.</u></p>
<p>12. TREND INFORMATION</p>
<p>12.1. The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document.</p>
<p>12.2. Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.</p>
<p>13. PROFIT FORECASTS OR ESTIMATES</p>
<p><u>If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 13.1 and 13.2:</u></p>
<p>13.1. A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.</p> <p><u>There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast.</u></p>

<p><u>13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.</u></p>
<p><u>13.3. The profit forecast or estimate must be prepared on a basis comparable with the historical financial information</u></p>
<p><u>13.4. If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.</u></p>
<p><u>14. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES AND SENIOR MANAGEMENT</u></p>
<p><u>14.1. Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:</u></p> <p><u>(a) members of the administrative, management or supervisory bodies;</u></p> <p><u>(b) partners with unlimited liability, in the case of a limited partnership with a share capital;</u></p> <p><u>(c) founders, if the issuer has been established for fewer than five years; and</u></p> <p><u>(d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and experience for the management of the issuer's business.</u></p> <p><u>The nature of any family relationship between any of those persons.</u></p> <p><u>In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information:</u></p> <p><u>(a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;</u></p> <p><u>(b) any convictions in relation to fraudulent offences for at least the previous five years;</u></p> <p><u>(c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years;</u></p> <p><u>(d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.</u></p> <p><u>If there is no such information to be disclosed, a statement to that effect is to be made.</u></p>

<p><u>14.2. Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests</u></p> <p><u>Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 14.1, and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.</u></p> <p><u>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.</u></p>
<p><u>15. REMUNERATION AND BENEFITS</u></p>
<p><u>In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1.</u></p>
<p><u>15.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.</u></p> <p><u>This information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country or when the issuer has already publicly disclosed that information.</u></p>
<p><u>15.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.</u></p>
<p><u>16. BOARD PRACTICES</u></p>
<p><u>In relation to the issuer's last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of item 14.1:</u></p>
<p><u>16.1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.</u></p>
<p><u>16.2. Information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.</u></p>
<p><u>16.3. Information about the issuer's audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.</u></p>
<p><u>16.4. A statement as to whether or not the issuer complies with its country's of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.</u></p>
<p><u>17. EMPLOYEES</u></p>
<p><u>17.1. Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.</u></p>
<p><u>17.2. Shareholdings and stock options with respect to each person referred to in points (a) and (d) of the first subparagraph of item 14.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.</u></p>

17.3.	<u>Description of any arrangements for involving the employees in the capital of the issuer.</u>
18.	<u>MAJOR SHAREHOLDERS</u>
18.1.	<u>In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.</u>
18.2.	<u>Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.</u>
18.3.	<u>To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.</u>
18.4.	<u>A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.</u>
19.	<u>RELATED PARTY TRANSACTIONS</u>
	<p><u>"If International Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 do not apply to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document:</u></p> <p><u>(a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.</u></p> <p><u>(b) The amount or the percentage to which related party transactions form part of the turnover of the issuer."</u></p> <p><u>If international Financial Reporting Standards adopted according to the Regulation (EC) N° 1606/200 apply to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information have been published.</u></p>
20.	<u>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</u>
20.1.	<p><u>Historical Financial Information</u></p> <p><u>A statement that audited historical financial information covering the latest two financial years (or such shorter period that the issuer has been in operation) have been prepared according to Regulation (EC) No 1606/2002, or, if not applicable, to a Member State national accounting standards for issuers from the European Union, and where own and consolidated financial statements as the case may be can be obtained.</u></p> <p><u>The audit report in respect of each year must be included.</u></p> <p><u>For third country issuers, a statement that such financial information have been prepared and audited according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards, and where it can be obtained. If such financial information is not equivalent to these standards, a statement that it has been prepared in the form of restated financial statements, and where it can be obtained.</u></p>
20.2.	<u>Auditing of historical annual financial information</u>
20.2.1.	<u>A statement that the historical financial information has been audited. If audit reports on</u>

<p><u>the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.</u></p>
<p><u>20.2.2. Indication of other information in the registration document which has been audited by the auditors.</u></p>
<p><u>20.2.3. Where financial data in the registration document is not extracted from the issuer's audited financial statements state the source of the data and state that the data is unaudited.</u></p>
<p><u>20.3. Age of latest financial information</u></p>
<p><u>20.3.1. The last year of audited financial information may not be older than one of the following:</u></p> <p><u>(a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;</u></p> <p><u>(b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.</u></p>
<p><u>20.4. Interim and other financial information</u></p>
<p><u>20.4.1. If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, a statement in that respect must be included in the registration document and where it can be obtained. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.</u></p>
<p><u>20.5. Dividend policy</u></p> <p><u>A description of the issuer's policy on dividend distributions and any restrictions thereon.</u></p> <p><u>20.5.1 The amount of the dividend per share for each financial year for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.</u></p>
<p><u>20.6. Legal and arbitration proceedings</u></p> <p><u>Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.</u></p>
<p><u>20.7. Significant change in the issuer's financial or trading position</u></p> <p><u>A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or provide an appropriate negative statement.</u></p>
<p><u>21. ADDITIONAL INFORMATION</u></p>
<p><u>21.1. Share Capital</u></p> <p><u>The following information as of the date of the most recent balance sheet included in the historical financial information:</u></p>
<p><u>21.1.1. The amount of issued capital, and for each class of share capital:</u></p> <p><u>(a) the number of shares authorised;</u></p> <p><u>(b) the number of shares issued and fully paid and issued but not fully paid;</u></p>

<p><u>(c) the par value per share, or that the shares have no par value; and</u></p> <p><u>(d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.</u></p>
<p><u>21.1.2. If there are shares not representing capital, state the number and main characteristics of such shares.</u></p>
<p><u>21.1.3. The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.</u></p>
<p><u>21.1.4. The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.</u></p>
<p><u>21.1.5. Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.</u></p>
<p><u>21.1.6. Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.</u></p>
<p><u>21.1.7. A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.</u></p>
<p><u>21.2. Memorandum and Articles of Association</u></p>
<p><u>21.2.1. A description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.</u></p>
<p><u>21.2.2. A summary of any provisions of the issuer's articles of association, statutes, charter or bylaws with respect to the members of the administrative, management and supervisory bodies.</u></p>
<p><u>21.2.3. A description of the rights, preferences and restrictions attaching to each class of the existing shares.</u></p>
<p><u>21.2.4. A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.</u></p>
<p><u>21.2.5. A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.</u></p>
<p><u>21.2.6. A brief description of any provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.</u></p>
<p><u>21.2.7. An indication of the articles of association, statutes, charter or bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.</u></p>
<p><u>21.2.8. A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaw governing changes in the capital, where such conditions are more stringent than is required by law.</u></p>
<p><u>22. MATERIAL CONTRACTS</u></p>
<p><u>A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document.</u></p> <p><u>A summary of any other contract (not being a contract entered into in the ordinary</u></p>

	<u>course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.</u>
<u>23.</u>	<u>THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST</u>
<u>23.1.</u>	<u>Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person's name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.</u>
<u>23.2.</u>	<u>Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.</u>
<u>24.</u>	<u>DOCUMENTS ON DISPLAY</u>
	<u>A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:</u> <u>(a) the memorandum and articles of association of the issuer;</u> <u>(b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the registration document;</u> <u>(c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.</u> <u>An indication of where the documents on display may be inspected, by physical or electronic means.</u>
<u>25.</u>	<u>INFORMATION ON HOLDINGS</u>
	<u>Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.</u>
<u>26.</u>	<u>INFORMATION ABOUT THE ISSUER OF THE DEPOSITARY RECEIPTS</u>
<u>27.</u>	<u>INFORMATION ABOUT THE UNDERLYING SHARES</u>
<u>28.</u>	<u>INFORMATION REGARDING THE DEPOSITARY RECEIPTS</u>
<u>29.</u>	<u>INFORMATION ABOUT THE TERMS AND CONDITIONS OF THE OFFER OF THE DEPOSITARY RECEIPTS</u>
<u>30.</u>	<u>ADMISSION TO TRADING AND DEALING ARRANGEMENTS IN THE DEPOSITARY RECEIPTS</u>
<u>31.</u>	<u>KEY INFORMATION ABOUT THE ISSUE OF THE DEPOSITARY RECEIPTS</u>
<u>32.</u>	<u>EXPENSE OF THE ISSUE/OFFER OF THE DEPOSITARY RECEIPTS</u>

ANNEX XXIX

Proportionate Schedule for Minimum Disclosure Requirements for Issues by Credit Institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

<p><u>Minimum Disclosure Requirements for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC (see footnote in Regulation)</u></p>
<u>1. PERSONS RESPONSIBLE</u>
<u>2. STATUTORY AUDITORS</u>
<u>3. RISK FACTORS</u>
<u>4. INFORMATION ABOUT THE ISSUER</u>
<u>5. BUSINESS OVERVIEW</u>
<u>6. ORGANISATIONAL STRUCTURE</u>
<u>7. TREND INFORMATION</u>
<u>8. PROFIT FORECASTS OR ESTIMATES</u>
<u>9. ADMINISTRATIVE, MANAGEMENT, AND SUPERVISORY BODIES</u>
<u>10. MAJOR SHAREHOLDERS</u>
<p><u>11. FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</u></p> <p><u>Audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation), and the audit report. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 12 months, or the entire period for which the issuer has been in operation, whichever is the shorter. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards for issuers from the European Union.</u></p>
<u>12. MATERIAL CONTRACTS</u>
<u>13. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST</u>
<u>14. DOCUMENTS ON DISPLAY</u>

EMISSIONS ALLOWANCE AUCTION BIDDERS INSTRUMENT 2012**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 60 (Applications for approval);
- (3) section 64 (Conduct: statements and codes);
- (4) section 119 (The code);
- (5) section 121 (Codes: procedure);
- (6) section 138 (General rule-making power);
- (7) section 139 (Miscellaneous ancillary matters);
- (8) section 156 (General supplementary powers);
- (9) section 157(1) (Guidance);
- (10) section 213 (The compensation scheme);
- (11) section 214 (General);
- (12) section 223 (Management expenses);
- (13) section 226 (Compulsory jurisdiction);
- (14) section 340 (Appointment);
- (15) section 293(1) (Notification requirements); and
- (16) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).

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

Commencement

C. This instrument comes into force on 27 July 2012.

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
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex D
Training and Competence sourcebook (TC)	Annex E
Fees manual (FEES)	Annex F
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex G
Conduct of Business sourcebook (COBS)	Annex H

Client Assets sourcebook (CASS)	Annex I
Market Conduct sourcebook (MAR)	Annex J
Supervision manual (SUP)	Annex K
Dispute Resolution: Complaints sourcebook (DISP)	Annex L
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex M
Listing Rules sourcebook (LR)	Annex N

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex O to this instrument.
- F. The Enforcement Guide (EG) is amended in accordance with Annex P to this instrument.

Notes

- G. In Annex A and Annex J 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 Emissions Allowance Auction Bidders Instrument 2012.

By order of the Board
26 July 2012

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>auction regulation bidding</i>	the <i>regulated activity</i> of <i>bidding in emissions auctions</i> where it is carried on by: <ol style="list-style-type: none"> (a) a <i>firm</i> that is exempt from <i>MiFID</i> under article 2(1)(i); or (b) a <i>MiFID investment firm</i> (other than a <i>UCITS investment firm</i>) on behalf of its <i>clients</i> in relation to a <i>two-day emissions spot</i>.
<i>bidding in emissions auctions</i>	the <i>regulated activity</i> , specified in article 24A of the <i>Regulated Activities Order</i> (Bidding in emissions auctions), which is in summary the reception, transmission or submission of a bid at an auction of an <i>emissions auction product</i> conducted on an <i>auction platform</i> .
<i>MiFID business bidding</i>	the <i>regulated activity</i> of <i>bidding in emissions auctions</i> where it is carried on by a <i>MiFID investment firm</i> (other than a <i>UCITS investment firm</i>) in relation to a <i>financial instrument</i> .
<i>prescribed auction platform</i>	an auction platform which has been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> .
<i>two-day emissions spot</i>	an <i>emissions allowance</i> where delivery is to be made at an agreed date no later than the second trading day from the day of an auction on an <i>auction platform</i> (within the meaning of article 3(3) of the <i>auction regulation</i>).

Amend the following definitions as shown.

<i>auction platform</i>	a platform on which auctions of greenhouse gas emission allowances <u>emissions allowances</u> are held in accordance with the <i>auction regulation</i> .
<i>branch</i>	... [Note: article 4(29) of the <i>Payment Services Directive</i>] <u>(h) (in relation to a person carrying on <i>auction regulation bidding</i>) a branch.</u>

<i>competent authority</i>	<p>...</p> <p>(2) (in relation to the exercise of an <i>EEA right</i> and the exercise of the <i>overseas financial stability information power</i>) a competent authority for the purposes of the relevant <i>Single Market Directive</i> <u>or the auction regulation</u>.</p> <p>...</p>
<i>designated investment</i>	<p>a <i>security</i> or a contractually-based investment (other than a <i>funeral plan contract</i> and a right to or interest in a funeral plan contract <i>funeral plan contract</i>), that is, any of the following <i>investments</i>, specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments), and a <i>long-term care insurance contract</i> which is a <i>pure protection contract</i>:</p> <p>...</p> <p>(ha) ...</p> <p>(hb) <u><i>emissions auction product</i> (article 82A) where it is a <i>financial instrument</i></u>.</p> <p>...</p>
<i>designated investment business</i>	<p>any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business:</p> <p>(b) ...</p> <p>(ba) <u><i>MiFID business bidding</i> (part of <i>bidding in emissions auctions</i>) (article 24A)</u>;</p> <p>...</p>
<i>EEA authorisation</i>	<p>(in accordance with paragraph 6 of Schedule 3 to the <i>Act</i> (EEA Passport Rights));</p> <p>...</p> <p>(b) in relation to any other <i>EEA firm</i>, authorisation granted to an <i>EEA firm</i> by its <i>Home State regulator</i> for the purpose of the relevant <i>Single Market Directive</i> <u>or the auction regulation</u>.</p>
<i>EEA firm</i>	<p>(in accordance with paragraph 5 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) any of the following, if it does not have its relevant office in the <i>United Kingdom</i>:</p> <p>...</p>

(g) an *undertaking* pursuing the activity of reinsurance (within the meaning of article 1 of the *Reinsurance Directive*) which has received authorisation under article 3 of the *Reinsurance Directive* from its *Home State Regulator*;

(h) a person who has received authorisation under article 18 of the auction regulation;

...

EEA regulator a *competent authority* for the purposes of any of the *Single Market Directives* or the *auction regulation*.

EEA right (in accordance with paragraph 7 of Schedule 3 to the *Act* (EEA Passport Rights)) the entitlement of a *person* to establish a *branch* or provide services in an *EEA State* other than that in which he has his relevant office:

...

(b) subject to the conditions of the relevant *Single Market Directive* or the *auction regulation*.

emissions auction products product the investment specified in article 82A of the *Regulated Activities Order* (Greenhouse gas emissions allowances), which is in summary an *greenhouse gas emission allowances emissions allowance* which are offered for sale on an *auction platform* as a *financial instrument* or a *two-day emissions spot*.

greenhouse gas emission emissions allowance an 'allowance', ~~licence, permit, right, note, unit, credit, asset, certificate or instrument~~ (the "allowance") where:

~~(a) the allowance confers or may result in a benefit or advantage to its holder or another person; and~~

~~(b) the allowance, or the benefit or advantage in (a), is linked to the emission or non-emission of quantities of carbon dioxide or other greenhouse gases into the environment by the holder of the allowance or another person~~

within the meaning of article 3(a) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

energy collective investment scheme a *collective investment scheme*, the property of which consists only of energy, energy investments, ~~greenhouse gas emissions allowances~~ *emissions allowances*, *tradable renewable energy credits* or cash awaiting investment.

energy investment any of the following:

- (a) a *unit* in an *energy collective investment scheme*;
- (b) an *option* to acquire or dispose of an *energy investment*;
- (c) a *future* or a *contract for differences* where the commodity or property of any other description in question is:
 - (i) *energy*; or
 - (ii) an *energy investment*; or
 - (iii) ~~a *greenhouse gas emissions allowance*~~ an *emissions allowance*; or
 - (iv) a *tradable renewable energy credit*;
- (d) a *contract for differences* where the index or other factor in question is linked to or otherwise dependent upon fluctuations in the value or price of any of (c)(i) to (iv) (including any prices or charges in respect of imbalances under the *Network Code* or the *Balancing and Settlement Code*);
- (e) a *weather derivative*;
- (f) ~~a *greenhouse gas emissions allowance*~~ an *emissions allowance*, if it is a *specified investment*;
- (g) a *tradable renewable energy credit*, if it is a *specified investment*;
- (h) *rights to or interests in investments* in (a)-(g).

energy market activity

- (a) any *regulated activity* other than *bidding in emissions auctions* in relation to an *energy investment* or to *energy*, or in relation to a *biomass investment* or *biomass* that is ancillary to activities related to *energy investments* or *energy*, which:
 - (i) is the *executing* of *own account transactions* on any *recognised investment exchange* or *designated investment exchange*; or
 - (ii) if it is not the *executing* of *transactions* on such exchanges, is performed in connection with or for persons who are not *retail clients*;
- (b) *establishing, operating or winding up a collective investment scheme* which is an *energy collective investment scheme* in which *retail clients* do not participate.

Home State

...

- (12) (in relation to a person who has received authorisation under article 18 of the *auction regulation*) the *EEA state* in which the person is established and authorised under the *auction*

		<u>regulation.</u>
<i>Home State regulator</i>	(1)	(in relation to an <i>EEA firm</i>) (as defined in paragraph 9 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) the <i>competent authority</i> (under the relevant <i>Single Market Directive</i> or the <u><i>auction regulation</i></u>) of an <i>EEA State</i> (other than the <i>United Kingdom</i>) in relation to the <i>EEA firm</i> concerned.
	...	
<i>Host State regulator</i>	...	
	(2)	(in relation to a <i>UK firm</i>) (as defined in paragraph 11 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) the <i>competent authority</i> (under the relevant <i>Single Market Directive</i> or the <u><i>auction regulation</i></u>) of an <i>EEA State</i> (other than the <i>United Kingdom</i>) in relation to a UK firm's <u><i>UK firm's</i></u> exercise of <i>EEA rights</i> there.
	...	
<i>investment service</i>		any of the following involving the provision of a service in relation to a <i>financial instrument</i> , that is:
	...	
		Note: article 4(1)(2) of, and section A of Annex 1 to, <i>MiFID</i> and <u>article 6(5) of the <i>auction regulation</i></u>
<i>investment services and/or activities</i>		any of the services and activities listed in Section A of Annex I to <i>MiFID</i> relating to any <i>financial instrument</i> , that is:
	...	
		Note: article 4(1)(2) of, and section A of Annex 1 to, <i>MiFID</i> and <u>article 6(5) of the <i>auction regulation</i></u>
<i>investment services or activities</i>		any of the services and activities listed in Section A of Annex I to <i>MiFID</i> relating to any <i>financial instrument</i> , that is:
	...	
		Note: article 4(1)(2) of, and section A of Annex 1 to, <i>MiFID</i> and <u>article 6(5) of the <i>auction regulation</i></u>
<i>market abuse</i>	(1)	(in accordance with section 118 of the <i>Act</i> (Market abuse)) <i>behaviour</i> (whether by one <i>person</i> alone or by two or more <i>persons</i> jointly or in concert) which:

- (a) occurs in relation to *qualifying investments* traded or admitted to trading on a *prescribed market* or in respect of which a request for admission to trading on such a market has been made; and
- (b) falls within any one or more of the types of *behaviour* set out in section 118(2) to (8) of the *Act*.

(2) (in accordance with section 118 of the *Act* (Market abuse) as modified by the *RAP Regulations*) *behaviour* (whether by one *person* alone or by two or more *persons* jointly or in concert) which:

- (a) occurs in relation to *qualifying investments* which are offered for sale on a *prescribed auction platform*; and
- (b) falls within any one or more of the types of *behaviour* set out in subsections 118(2) to (8A) of the *Act*.

market abuse
(*distortion*)

(1) (in accordance with section 118(8) of the *Act* (Market abuse)) the *behaviour* described in section 118(8) of the *Act* which satisfies the condition in section 118(8)(b) and is *behaviour* (not falling within sections 118(5), (6) or (7)) which:

- (a) would be, or would be likely to be, regarded by a *regular user* of the market as *behaviour* that would distort, or would be likely to distort, the market in a *qualifying investment*; and
- (b) is likely to be regarded by a *regular user* of the market as a failure on the part of the *person* concerned to observe the standard of *behaviour* reasonably expected of a *person* in his position in relation to the market.

(2) (in accordance with section 118(8) of the *Act* (Market abuse) as modified by the *RAP Regulations*) the *behaviour* described in section 118(8) of the *Act* as modified by the *RAP Regulations* which satisfies the condition in section 118(8)(b) and is *behaviour* (not falling within sections 118(5), (6) or (7)) which:

- (a) would be, or would be likely to be, regarded by a *regular user* of the auction platform as *behaviour* that would distort, or would be likely to distort, the auction of such an investment,
- (b) and is likely to be regarded by a *regular user* of the auction platform as a failure on the part of the *person* concerned to observe the standard of *behaviour* reasonably expected of a *person* in his position in relation to the market.

- market abuse (manipulating devices)*
- (1) (in accordance with section 118(6) of the Act (Market abuse)) the behaviour described in section 118(6) of the Act, which is effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.
- (2) (in accordance with section 118(6) of the Act (Market abuse) as modified by the RAP Regulations) the behaviour described in section 118(6) of the Act, which is effecting transactions, bids or orders to trade which employ fictitious devices or any other form of deception or contrivance.
- market abuse (manipulating transactions)*
- (1) (in accordance with section 118(5) of the Act (Market abuse)) the behaviour described in section 118(5) of the Act, which is behaviour effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which:
- (a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more *qualifying investments*; or
- (b) secure the price of one or more such investments at an abnormal or artificial level.
- (2) (in accordance with section 118(5) of the Act (Market abuse) as modified by the RAP Regulations) the behaviour described in section 118(5) of the Act as modified by the RAP Regulations, which is behaviour effecting transactions, bids or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant auction platform) which:
- (a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more *qualifying investments*; or
- (b) secure the price of one or more such investments at an abnormal or artificial level.
- market abuse (misleading behaviour)*
- (1) (in accordance with section 118(8) of the Act (Market abuse)) the behaviour described in section 118(8) of the Act which satisfies the condition in section 118(8)(a) and is behaviour (not falling within sections 118(5), (6) or (7)) which:
- (a) is likely to give a *regular user* of the market a false or misleading impression as to the supply of, demand for or price or value of, *qualifying investments*, and
- (b) is likely to be regarded by a *regular user* of the market as a failure on the part of the *person* concerned to observe the standard of *behaviour* reasonably expected of a

person in his position in relation to the market.

- (2) (in accordance with section 118(8) of the Act (Market abuse) as modified by the RAP Regulations) the behaviour described in section 118(8) of the Act which satisfies the condition in section 118(8)(a) and is behaviour (not falling within sections 118(5), (6) or (7)) which:
- (a) is likely to give a regular user of the auction platform a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments, or
 - (b) and is likely to be regarded by a regular user of the auction platform as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

*market abuse
(misuse of
information)*

- (1) (in accordance with section 118(4) of the Act (Market abuse)) the behaviour described in section 118(4) of the Act, which is behaviour (not falling within sections 118 (2) or (3) of the Act):
- (a) based on information which is not generally available to those using the market but which, if available to a *regular user* of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in *qualifying investments* should be effected; and
 - (b) likely to be regarded by a *regular user* of the market as a failure on the part of the *person* concerned to observe the standard of *behaviour* reasonably expected of a *person* in his position in relation to the market
- (2) (in accordance with section 118(4) of the Act (Market abuse) as modified by the RAP Regulations) the behaviour described in section 118(4) of the Act as modified by the RAP Regulations, which is behaviour (not falling within sections 118 (2) or (3) of the Act):
- (a) based on information which is not generally available to those using the auction platform but which, if available to a regular user of the auction platform, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in qualifying investments should be effected, and
 - (b) is likely to be regarded by a regular user of the auction platform as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the auction

platform.

- notice of intention* a notice of intention (as described in *SUP 13.5*) given by a *UK firm* to:
- (a) establish a *branch* in an *EEA State* under paragraph 19(2) of Part III of Schedule 3 to the *Act* (Exercise of passport rights by UK firms); or
 - (b) provide services in an *EEA State* under paragraph 20(1) of Part III of Schedule 3 to the *Act* (Exercise of passport rights by UK firms)- or
 - (c) establish a *branch* or provide services in an *EEA state* in the exercise of its *EEA right* under the *auction regulation*.
- participant firm* (1) (except in *FEES 1* and *FEES 6*) a *firm* or a *member* other than:
- ...
- (j) in respect of the carrying on of *bidding in emissions auctions*, a *firm* that is exempt from *MiFID* under article 2(1)(i).
- ...
- permission* permission to carry on *regulated activities*; that is, any of the following:
- ...
- (b) the permission that an *incoming EEA firm* has, under paragraph 15(1) or paragraph 15Z(1), (3) or (4) of Schedule 3 to the *Act* (EEA Passport Rights), on qualifying for *authorisation* under paragraph 12 of that Schedule;
- ...
- regular user* (1) (as defined in section 130A(3) of the *Act* (Market abuse)) a *person* who is, in relation to a particular market, a reasonable *person* who regularly deals on that market in *investments* of the kind in question.
- (2) (in accordance with section 130A(3) of the *Act* (Market abuse) as modified by the *RAP Regulations*) a *person* who is, in relation to a particular auction platform, a reasonable *person* who regularly makes bids on that market for *investments* of the kind in question.
- 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):
- ...

	(e)	...
	(ea)	<u>bidding in emissions auctions</u> (article 24A);
		...
<i>relevant information</i>	(1)	(except in <i>REC</i>) (in relation to an <i>investment</i>) information which would be likely to be regarded by a <i>regular user</i> of the market or <u>auction platform</u> in question as relevant when deciding the terms on which transactions in that <i>investment</i> should be effected.
	(2)	(in <i>REC</i>) (in relation to an <i>investment</i>) information which is relevant to determining the current value of that <i>investment</i> or (in relation to <i>RAPs</i>) information on the terms of <u>emissions auction products</u> and the terms on which they will be auctioned on an <i>RAP</i> .
<i>securities and futures firm</i>		(subject to <i>BIPRU</i> TP 1 (Revised definition of securities and futures firm for certain transitional purposes)) a <i>firm</i> whose <i>permitted activities</i> include <u>designated investment business or bidding in emissions auctions</u> , which is not an <i>authorised professional firm</i> , <i>bank</i> , <i>BIPRU investment firm</i> (unless it is an <i>exempt BIPRU commodities firm</i>), <i>building society</i> , <i>credit union</i> , <i>friendly society</i> , <i>ICVC</i> , <i>insurer</i> , <i>media firm</i> , <i>service company</i> , <i>incoming EEA firm</i> (without a <i>top-up permission</i>), <i>incoming Treaty firm</i> (without a <i>top-up permission</i>), <i>UCITS management company</i> or <i>UCITS qualifier</i> (without a <i>top-up permission</i>), whose <i>permission</i> does not include a <i>requirement</i> that it comply with <i>IPRU(INV) 5</i> (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f), (g) or <u>(h)</u> :
		...
	(g)	an <i>exempt BIPRU commodities firm</i> ;
	(h)	<u>a firm that is exempt from MiFID under article 2(1)(i) whose permitted activities include bidding in emissions auctions.</u>
<i>specified investment</i>		any of the following <i>investments</i> specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments):
		...
	(oe)	<u>emissions auction products</u> (article 82A);
		...

Annex B

Amendments to the Principles for Businesses (PRIN)

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

3.1. Who?

3.1.1 R *PRIN* applies to every *firm*, except that:

...

(5) *PRIN* does not apply to an *incoming ECA provider* acting as such; and

(6) *PRIN* does not apply to a *firm* in relation to its carrying on of *auction regulation bidding*.

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.

1.4 Application of SYSC 11 to SYSC 21

1.4.1 G The application of each of chapters *SYSC 11 to SYSC 21* is set out in those chapters and in *SYSC 1.4.1AR*.

1.4.1A R *SYSC 12, SYSC 19A, SYSC 20 and SYSC 21 do not apply to a firm in relation to its carrying on of auction regulation bidding.*

1.4.1B G *Apart from SYSC 12, SYSC 19A, SYSC 20 and SYSC 21 which are disapplied by SYSC 1.4.1AR, the other chapters of SYSC 11 to SYSC 17 do not apply in relation to a firm's carrying on of auction regulation bidding because they only apply to an insurer. SYSC 18 provides guidance on the Public Interest Disclosure Act.*

...

1 Annex 1 Detailed application of SYSC

...		
Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
2.6	...	
<u>2.6A</u>	R	<u>The common platform requirements do not apply to a firm (including an incoming EEA firm) in relation to its carrying on of auction regulation bidding, except for:</u>
		(1) <u>SYSC 6.1.1R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the firm (including its managers, employees and appointed representatives) might be used to further financial crime; and</u>
		(2) <u>SYSC 6.3 (Financial crime).</u>
...		

Annex D

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

2.1 The Statements of Principle

...

- 2.1.1A P An ~~approved person~~ approved person will not be subject to a *Statement of Principle* to the extent that it would be contrary to the *UK's* obligations under a *Single Market Directive* or the auction regulation.

...

Annex E

Amendments to the Training and Competence sourcebook (TC)

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

Appendix 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

Activity	Products/Sectors		Is there an appropriate qualification requirement?
<i>Designated investment business carried on for a retail client</i>			
...			
Dealing	13A ₂	<i>Securities which are not stakeholder pension schemes, personal pension schemes or broker funds</i>	No
	13B ₂	<i>Derivatives</i>	No
<u>MiFID business bidding</u>	<u>13C.</u>	<u>Emissions auction products that are financial instruments</u>	<u>No</u>
...			

Annex F

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:

...

(3) FEES 1, 2 and 5 apply to:

- (a) every firm (except to the extent it is bidding in emissions auctions), fee-paying payment service provider and fee-paying electronic money issuer which is subject to the Compulsory Jurisdiction of the Financial Ombudsman Service; and

...

...

...

3 Annex 1R Authorisation fees payable

...

Part 2 – Complexity Grouping Straightforward Cases

Straightforward cases	
Activity grouping	Description
...	
A.4	...
<u>A.10</u>	<u>A firm to the extent it is bidding in emissions auctions</u>
...	

...

Moderately complex cases	
Activity Grouping	Description

...	
A.10	<i>Firms dealing as principal, except to the extent the firm is bidding in emissions auctions</i>
...	

...

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

...

Activity group	Fee payer falls in the activity group if
...	
A.10 Firms dealing as principal	<p>its <i>permission</i> includes:</p> <p><u>(a) dealing in investments as principal; and/or</u></p> <p><u>(b) bidding in emissions auctions;</u></p> <p>BUT NOT if one or more of the following apply:</p> <p>...</p> <ul style="list-style-type: none"> the <i>firm</i> is an <i>oil market participant, energy market participant</i> or a <i>local</i> <u>(except where the firm is bidding in emissions auctions);</u> <p>...</p>
...	

...

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.1	...

...	
A.10	<p>NUMBER OF TRADERS</p> <p>Any <i>employee</i> or agent, who:</p> <ul style="list-style-type: none"> • ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FSA</i> in its fee-block A.10 (firms dealing as principal); and who, • as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>. <p>But not any <i>employees</i> or agents who work solely in the <i>firm's MTF</i> operation.</p> <p>A <i>firm</i> may, as an option, report <i>employees</i> or agents as full-time equivalents (FTE), taking account of any part-time staff. In calculating the FTE, <i>firms</i> must take into account the total hours <i>employees</i> or agents have contracted to work for the <i>firm</i> and not the time <i>employees</i> or agents devote to the <u><i>dealing in investments as principal and bidding in emissions auctions functions</i></u> function of dealing as principal set out in fee-block A.10. Any figures using the FTE calculation to be recorded to one decimal place, rounded down to the nearest decimal place.</p>
...	

4 Annex 2R **Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2012 to 31 March 2013**

Part 1

This table shows the tariff rates applicable to each fee block

Activity group	Fee payable	
...		
A.10	Band Width (No. of traders)	Fee (£/trader)
	...	
	> 180	5,133.71
<u>For firms carrying on auction regulation bidding, the fee in A.10 is calculated as above less 20% for each trader that carries on auction regulation bidding</u>		

	<u>but not <i>MiFID business bidding or dealing in investments as principal.</i></u>
...	

...

Part 3

This table shows the modification 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 applicable to the firm
...	
A.10	<u>In relation to each trader that carries on <i>auction regulation bidding</i> but not <i>MiFID business bidding or dealing in investments as principal</i>, 100%.</u> <u>In relation to all other traders, 10%.</u>
...	

...

6 Annex 3R Financial Services Compensation Scheme - classes and sub-classes

...

Class D	Investment
...	
Legal basis for activity in sub-class D2	Any of the following activities in relation to <i>designated investment business</i>
	<i>dealing in investments as principal;</i>
	<i>dealing in investments as agent;</i>
	<u><i>MiFID business bidding;</i></u>
	...
...	

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.

3.60 FIRMS TO WHICH RULES 3-61 to 3-182 APPLY

Broad scope firms

3.60(1) R Rules 3-61 to 3-182 apply to a *broad scope firm* except that rules 3-80 to 3-178 do not apply to a *venture capital firm* or in respect of *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(i).

...

3.72 R A *firm's* absolute minimum requirement is:

...

(ea) for a *dematerialised instruction transmitter*: £50,000; ~~€~~

(eb) for a *firm* that is exempt from *MiFID* under article 2(1)(i) and whose permitted activities include *bidding in emissions auctions*: £50,000;

(f) for a *broad scope firm* other than one within (b) to (ea ~~eb~~) above: £100,000.

...

APPENDIX 1 GLOSSARY OF TERMS FOR IPRU(INV) 3

...

investment business means any of the following regulated activities specified in Part II of the Regulated Activities Order and which is carried on by way of business:

...

(b) ...

(ba) *auction regulation bidding* (part of *bidding in emissions auctions*) (article 24A);

...

...

Annex H

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

...

- 1.1.1C R The following rules in COBS apply to a firm in relation to its carrying on of auction regulation bidding:
- (1) COBS 5 (Distance communications);
 - (2) (for a firm that has exercised an opt-in to CASS in accordance with CASS 1.4.9R in relation only to those clients for which it holds client money or safe custody assets in accordance with CASS) COBS 3 (Client categorisation), COBS 6.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money), COBS 6.1.11R (Timing of disclosure) and COBS 16.4 (Statements of client designated investments or client money).

Annex I

Amendments to the Client Assets sourcebook (CASS)

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

1.4 Application: particular activities

...

Auction regulation bidding

1.4.9 R Where a firm carries on auction regulation bidding it may elect to comply with CASS (but not CASS 5) in respect of this activity, subject to the general modifications in CASS 1.4.10R.

1.4.10 R Where a firm has made an election in accordance with CASS 1.4.9R, CASS is modified so that in relation to that firm:

(1) each reference to:

(a) designated investments;

(b) safe custody assets; and

(c) contingent liability investments;

includes a reference to a two-day emissions spot;

(2) each reference to designated investment business includes auction regulation bidding;

(3) each reference to safeguarding and administering investments, including safeguarding and administration of assets (without arranging) and arranging safeguarding and administration of assets, includes those activities where they are carried on in relation to a two-day emissions spot; and

(4) the reference in CASS 6.2.3AR to an 'emissions auction product that is a financial instrument' includes a two-day emissions spot;

1.4.11 G The effect of CASS 1.4.10R is that when a firm makes an election in accordance with CASS 1.4.9R:

(1) a two-day emissions spot falls within the scope of each chapter in CASS (save for CASS 5), for example:

(a) the reference in CASS 6.1.1R(1B) to safeguarding and administering investments is modified to include the activity of safeguarding and administering a two-day emissions spot;

and

(b) any money that the firm receives or holds for or on behalf of a client in the course of or in connection with its auction regulation bidding activities will be treated as client money and so will need to be dealt with in accordance with the client money rules; and

(2) that election also has effect in relation to rules and guidance elsewhere in the Handbook, including:

(a) COBS 3 (Client categorisation);

(b) COBS 6.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money);

(c) COBS 6.1.11R (Timing of disclosure);

(d) COBS 16.4 (Statements of client designated investments or client money);

(e) SUP 3 (Auditors);

(f) SUP 10.4.5R (the table of controlled functions) and SUP 10.7.9R (CASS operational oversight function (CF10a)); and

(g) SUP 16.14 (Client money and asset return).

1.4.12 G The option to elect to comply with CASS set out in CASS 1.4.9R only applies to the extent the firm is carrying on auction regulation bidding. Where a firm is carrying on MiFID business bidding, CASS applies to it in accordance with the general application rules in CASS for a firm that is carrying on MiFID business.

1.4.13 R Where a firm makes an election in accordance with CASS 1.4.9R it must:

(1) make a written record of the election, including the date from which the election is to be effective, on the date it makes the election;

(2) keep that record from the date that it is made for a period of five years after ceasing to use the opt in.

1.4.14 R Where a firm that has opted in to CASS under CASS 1.4.9R subsequently decides to cease its use of that opt in it must:

(1) make a written record of this decision, including the date from which the decision is to be effective, on the date it takes the decision;

- (2) keep that record from the date that it is made for a period of five years after the date it is to be effective; and
- (3) discharge any outstanding fiduciary obligations that had arisen because the *firm* had elected to comply with CASS.

...

6.2.3 ...

6.2.3A R If:

- (1) the *safe custody asset* is an *emission auction product* that is a *financial instrument*; and
- (2) it is not practicable or possible for a *firm* to effect registration or recording of legal title in this asset in the manner set out in CASS 6.2.3R,

the *firm* must register or record legal title in its name provided it has notified the *client* in writing.

...

Schedule 1 Record keeping requirements

...

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 1A.3.3R	...			
<u>CASS 1.4.12R</u> and, where applicable, <u>CASS 1.4.13R</u>	For a <i>firm</i> which carries on <i>auction regulation bidding</i> , election (under <i>CASS 1.4.9R</i>) to comply with <i>CASS</i> in respect of this activity and, where applicable, decision to discontinue use of that opt in	<u>Record of this election or, where applicable, the decision to discontinue use of the opt in, including the date on which either is to be effective</u>	<u>Upon making the election or, where applicable, upon taking the decision to discontinue use of the opt in</u>	<u>5 years from the date on which the opt in ceases to be used</u>
...				

Annex J

Amendments to the Market Conduct sourcebook (MAR)

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

1.1 Application and interpretation

Application and purpose

1.1.1 ...

1.1.1A G References in MAR 1 to the Act should be read to mean the Act as modified by the RAP regulations where the relevant behaviour occurs in relation to qualifying investments which are offered for sale on a prescribed auction platform.

1.1.2 G This chapter provides assistance in determining whether or not *behaviour* amounts to *market abuse*. It also forms part of the UK's implementation of the *Market Abuse Directive* (including its EU implementing legislation, that is Directive 2003/124/EC, Directive 2003/125/EC, Regulation 2273/2003 and Directive 2004/72/EC) and the auction regulation. It is therefore likely to be helpful to *persons* who:

- (1) want to avoid engaging in *market abuse* or to avoid requiring or encouraging another to do so; or
- (2) want to determine whether they are required by SUP 15.10 (Reporting suspicious transactions (market abuse)) to report a transaction to the FSA as a suspicious one.

...

Using MAR 1

...

1.1.5 G Part VIII of the *Act*, and in particular section 118, specifies ~~seven~~ types of *behaviour* which can amount to *market abuse*. This chapter considers the general concepts relevant to *market abuse*, then each type of behaviour in turn and then describes exceptions to *market abuse* which are of general application. In doing so, it sets out the relevant provisions of the *Code of Market Conduct*, that is:

...

1.2 Market Abuse: general

...

1.2.2A UK Table: section 118(1) of the Act as modified by the RAP Regulations

“For the purposes of this Act, <i>[market abuse]</i> is <i>[behaviour]</i> (whether by one person alone or by two or more persons jointly or in concert) which -	
(a)	occurs in relation to:
	(i) <i>[qualifying investments]</i> which are offered for sale on a <i>[prescribed auction platform]</i> , or
	(ii) in the case of subsection (2) or (3), investments which are <i>[related investments]</i> in relation to such <i>[qualifying investments]</i> , and
(b)	falls within any one or more of the types of <i>[behaviour]</i> set out in subsections (2) to (8A).”

...

Prescribed markets and qualifying investments: “in relation to”: factors to be taken into account

1.2.5 E In the opinion of the FSA, the following factors are to be taken into account in determining whether or not *behaviour* prior to a request for admission to trading, ~~or~~ the admission to or the commencement of trading, ~~or the offer for sale on a *prescribed auction platform*~~ satisfies section 118(1)(a) of the Act, and are indications that it does:

- (1) if it is in relation to *qualifying investments*:
 - (a) in respect of which a request for admission to trading on a *prescribed market* is subsequently made; and
 - ~~(2)~~ if it continues to have an effect once an application has been made for the *qualifying investment* to be admitted for trading, or it has been admitted to trading on a *prescribed market*, respectively, or
 - (b) if it is in relation to *qualifying investments*:
 - (a) which are subsequently offered for sale on a *prescribed auction platform*; and
 - (b) if it continues to have an effect once the *qualifying investments* are offered for sale on a *prescribed auction platform*.

...

Insiders: factors to be taken into account

...

1.2.7A UK Table: section 118B of the Act as modified by the RAP Regulations

<p><u>“For the purposes of [market abuse] an [insider] is any person who has [inside information]:</u></p>	
(a)	<p><u>as a result of his membership of an administrative, management or supervisory body of an [auction platform] or its operator, an auctioneer or auction monitor,</u></p>
(b)	<p><u>as a result of his holding in the capital of an [auction platform] or its operator, an auctioneer or auction monitor,</u></p>
(c)	<p><u>as a result of having access to the information through the exercise of his employment, profession or duties,</u></p>
(d)	<p><u>as a result of his criminal activities, or</u></p>
(e)	<p><u>which he has obtained by other means and which he knows, or could reasonably be expected to know, is [inside information].”</u></p>

...

Inside information: factors to be taken into account

...

1.2.12 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not information is generally available, and are indications that it is (and therefore not *inside information*)

- (1) whether the information has been disclosed to a *prescribed market* or a *prescribed auction platform* through a *regulatory information service* or *RIS* or otherwise in accordance with the rules of that market;

...

1.2.15A UK Table: section 118C(4) of the Act as modified by the RAP Regulations

<p><u>“In relation to a person charged with the execution of bids ... [inside information] includes information conveyed by a client and related to the client's pending bids ...”</u></p>
--

1.2.16 E In the opinion of the *FSA*, a factor which indicates that there is a pending order or bid for a client is, if a *person* is approached by another in relation to a transaction, and:

- (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
- (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

...

The regular user

- 1.2.20 G In section 118 of the *Act*, the *regular user* decides:
- (1) ...
 - (2) whether *behaviour*:
 - (a) based on information meeting the criteria in section 118(4)(a) is below the expected standard (section 118(4)(b)); or
 - (b) creates or is likely to create a false or misleading impression or distorts the market or the auction of investments of the kind in question (section 118(8)); or
 - (c) which creates or is likely to create a false or misleading impression or distorts the market or the auction of investments of the kind in question is below the expected standard (section 118(8)).
- 1.2.21 G The *regular user* is a hypothetical reasonable *person* who regularly deals on the market and in the investments of the kind in question or bids on the auction platform in relation to investments of the kind in question. The presence of the *regular user* imports an objective element into the elements listed in *MAR* 1.2.15UK while retaining some subjective features of the markets for, or the auction of, the investments in question.

...

1.3 Market abuse (insider dealing)

...

- 1.3.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (insider dealing)*:
- (1) ...
 - (2) front running/pre-positioning - that is, a transaction for a *person's* own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is *insider information*), which takes advantage of the anticipated impact of the

order on the market or auction clearing price;

...

...

- 1.3.6 C A *person* will form an intention to *buy or sell, or submit or withdraw a bid for, a qualifying investment or a related investment* before doing so. His carrying out of his own intention is not in itself *market abuse (insider dealing)*. [**Note:** Recital 30 *Market Abuse Directive* and article 36(1) of the auction regulation]

...

Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant factors: execution of client orders

- 1.3.12 C The dutiful carrying out of, or arranging for the dutiful carrying out of, an order (including an order relating to a bid) on behalf of another (including as portfolio manager) will not in itself amount to *market abuse (insider dealing)* by the *person* carrying out that order. [**Note:** Recital 18 *Market Abuse Directive* and article 36(1) of the auction regulation]

- 1.3.13 G *MAR* 1.3.12C applies whether or not the *person* carrying out the order (including an order relating to a bid) or the *person* for whom he is acting, in fact possesses *inside information*. Also, a *person* that carries out an order on behalf of another will not, merely as a result of that action, be considered to have any *inside information* held by that other *person*.

...

- 1.3.15 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is dutiful execution of an order (including an order relating to a bid) on behalf of another, and are indications that it is:

...

- (4) the extent to which the *person's behaviour* was reasonable by the proper standards of conduct of the market or auction platform concerned and (if relevant) proportional to the risk undertaken by him; or
- (5) whether, if the relevant trading or bidding (including the withdrawal of a bid) by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading or bidding either has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and he has not objected to it.

...

1.4 Market abuse (improper disclosure)

...

Factors to be taken into account in determining whether or not behaviour amounts to market abuse (improper disclosure)

1.4.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:

- (1) whether the disclosure is permitted by the rules of a *prescribed market*, a *prescribed auction platform*, of the *FSA* or the *Takeover Code*; or

...

...

1.5 Market abuse (misuse of information)

...

1.5.1A UK Table: section 118(4) of the Act as modified by the RAP Regulations

<u>“The third [type of <i>behaviour</i>] is where the [<i>behaviour</i>] (not [amounting to <i>market abuse (insider dealing)</i> or <i>market abuse (improper disclosure)</i>):</u>	
(a)	<u>is based on information</u>
	<u>which is not generally available to those using the auction platform</u>
	<u>but which, if available to a [<i>regular user</i>] of the auction platform, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in [<i>qualifying investments</i>] should be effected, and</u>
(b)	<u>is likely to be regarded by a [<i>regular user</i>] of the auction platform as a failure on the part of the person concerned to observe the standard of [<i>behaviour</i>] reasonably expected of a person in his position in relation to the auction platform.”</u>

1.5.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (misuse of information)*:

- (1) *dealing* or *arranging deals* in *qualifying investments* based on *relevant information*, which is not generally available and relates to matters which a *regular user* would reasonably expect to be disclosed to users of the particular *prescribed market* or *prescribed auction platform*, but which does not amount to *market abuse*

(*insider dealing*) (whether because the *dealing* relates to a *qualifying investment* to which section 118(2) does not apply or because the *relevant information* is not *inside information*); and

...

...

Factors to be taken into account: standards of behaviour

- 1.5.7 E In the opinion of the *FSA*, the following factors are to be taken into account when considering whether a *regular user* would reasonably expect the *relevant information* to be disclosed to users of the particular *prescribed market* or *prescribed auction platform*, or to be announced, and accordingly whether *behaviour* is likely to be regarded by a *regular user* as failing to meet the expected standard and are indications that he would:

...

...

1.6 Market abuse (manipulating transactions)

...

1.6.1A UK Table: section 118(5) of the Act as modified by the RAP Regulations

<u>“The fourth [type of <i>behaviour</i>] ...consists of effecting transactions, bids or orders to trade</u>	
<u>(otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant auction platform)</u>	
<u>which:</u>	
<u>(a)</u>	<u>give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or</u>
<u>(b)</u>	<u>secure the price of one or more such investments at an abnormal or artificial level.”</u>

Description of behaviour that amount to market abuse (manipulating transactions): false or misleading impressions

- 1.6.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (manipulating transactions)* of a type involving false or misleading impressions:

...

- (3) painting the tape - that is, entering into a series of transactions that

are shown on a public display for the purpose of giving the impression of activity or price movement in a *qualifying investment* ~~and~~;

- (4) entering orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, and withdrawing them before they are executed, in order to give a misleading impression that there is demand for or supply of the *qualifying investment* at that price, and
- (5) buying or selling on the secondary market of *qualifying investments* or related derivatives prior to the auction with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders in the auctions, other than for legitimate reasons. [Note: Article 1.2(c) *Market Abuse Directive* and Article 36(1) and Article 37(b) *auction regulation*]

...

Descriptions of behaviour that amount to market abuse (manipulating transactions): price positioning

- 1.6.4 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (manipulating transactions)* involving securing the price of a *qualifying investment*:

...

- (6) transactions or orders to trade employed so as to create obstacles to the price falling below a certain level, in order to avoid negative consequences for the *issuer*, for example a downgrading of its credit rating; ~~and~~
- (7) trading on one market or trading platform with a view to improperly influencing the price of the same or a related *qualifying investment* that is traded on another *prescribed market*, and
- (8) conduct by a *person*, or *persons* acting in collusion, that secure a dominant position over the demand for a *qualifying investment* which has the effect of fixing, directly or indirectly, auction clearing prices or creating other unfair trading conditions, other than for legitimate reasons. [Note: Article 1.2(c) *Market Abuse Directive* and Article 36(1) and Article 37(b) *auction regulation*]

Factors to be taken into account: “legitimate reasons”

- 1.6.5 E In the opinion of the *FSA* the following factors are to be taken into account when considering whether *behaviour* is for “legitimate reasons”, and are indications that it is:
- (1) if the *person* has an actuating purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a

qualifying investment;

- (2) if the *person* has another, illegitimate, reason behind the transactions, bid or order to trade; [**Note:** Recital 20 *Market Abuse Directive* and Article 36(1) *auction regulation*]

...

- 1.6.6 E In the opinion of the *FSA* the following factors are to be taken into account when considering whether *behaviour* is for “legitimate reasons”, and are indications that it is:

...

- (2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently;
- (3) ...
- (4) if the transaction complied with the rules of the relevant *prescribed markets or prescribed auction platform* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).

- 1.6.7 G It is unlikely that the *behaviour* of market or auction platform users when ~~trading~~ dealing at times and in sizes most beneficial to them (whether for the purpose of long term investment objectives, risk management or short term speculation) and seeking the maximum profit from their dealings will of itself amount to distortion. Such *behaviour*, generally speaking, improves the liquidity and efficiency of markets or auction platforms.

...

Factors to be taken into account: behaviour giving a false or misleading impression

- 1.6.9 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* amounts to *market abuse (manipulating transactions)*: [**Note:** Article 4 2003/124/EC and Article 36(1) auction regulation]

- (1) the extent to which orders to trade given, bids submitted or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market or prescribed auction platform* concerned, in particular when these activities lead to a significant change in the price of the *qualifying investment*;
- (2) the extent to which orders to trade given, bids submitted or transactions undertaken by *persons* with a significant buying or selling position in a *qualifying investment* lead to significant changes

in the price of the *qualifying investment* or related derivative or underlying asset admitted to trading on a regulated market;

...

...

1.7 Market abuse (manipulation devices)

...

1.7.1A UK Table: section 118(6) of the Act as modified by the RAP Regulations

“The fifth [type of behaviour] ... consists of effecting transactions, bids or orders to trade which employ fictitious devices or any other form of deception or contrivance.”

Descriptions of behaviour that amount to market abuse (manipulating devices)

- 1.7.2 E The following *behaviours* are, in the opinion of the *FSA*, *market abuse (manipulating devices)*:
- (1) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a *qualifying investment* (or indirectly about its *issuer, if applicable*) while having previously taken positions on, or submitted bids in relation to, that *qualifying investment* and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way; [**Note:** Article 1.2 *Market Abuse Directive* and Article 36(1) and Article 37(b)(iii) *auction regulation*]

...

Factors to be taken into account when determining whether or not behaviour amounts to market abuse (manipulating devices)

- 1.7.3 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a fictitious device or other form of deception or contrivance has been used, and are indications that it has:
- (1) if orders to trade given, bids submitted or transactions undertaken in *qualifying investments* by *persons* are preceded or followed by dissemination of false or misleading information by the same *persons* or *persons* linked to them;
 - (2) if orders to trade are given, bids submitted or transactions are undertaken in *qualifying investments* by *persons* before or after the same *persons* or *persons* linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest. [**Note:**

Article 5 2003/124/EC and Article 36(1) *auction regulation*]

...

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

...

1.9.1A UK Table: section 118(8) of the Act as modified by the RAP Regulations

<p><u>“The seventh [type of <i>behaviour</i>] is where the [<i>behaviour</i>] (not [amounting to <i>market abuse (manipulating transactions)</i>], <i>market abuse (manipulating devices)</i> or <i>market abuse (dissemination)</i>]</u></p>	
<p>(a)</p>	<p><u>is likely to give a [<i>regular user</i>] of the auction platform a false or misleading impression as to the supply of, demand for or price or value of, [<i>qualifying investments</i>] [<i>market abuse (misleading behaviour)</i>], or</u></p>
<p>(b)</p>	<p><u>would be, or would be likely to be, regarded by a [<i>regular user</i>] of the auction platform as [<i>behaviour</i>] that would distort, or would be likely to distort, the auction of such an investment [<i>market abuse (distortion)</i>]</u></p>
<p><u>and the behaviour is likely to be regarded by a [<i>regular user</i>] of the auction platform as a failure on the part of the [<i>person</i>] concerned to observe the standard of [<i>behaviour</i>] reasonably expected of a [<i>person</i>] in his position in relation to the market.”</u></p>	

...

Factors to be taken into account: false or misleading impressions

1.9.4 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* is likely to give a *regular user* a false or misleading impression as to the supply of or the demand for or as to the price or value of one or more *qualifying investments* or *related investments*:

- (1) the experience and knowledge of the users of the market or auction platform in question;
- (2) the structure of the market or auction platform, including its reporting, notification and transparency requirements;
- (3) the legal and regulatory requirements of the market or auction platform concerned

...

Factors to be taken into account: standards of behaviour

1.9.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* that creates a false or misleading impression as to, or distorts the market or auction platform for, a *qualifying investment* , has also failed to meet the standard expected by a *regular user*:

...

(2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently; or

(3) the characteristics of the market or auction platform in question, including the users and applicable rules and codes of conduct (including, if relevant, any statutory or regulatory obligation to disclose a holding or position, such as under *DTR 5*);

(4) ...

(5) if the transaction complied with the rules of the relevant *prescribed markets or prescribed auction platform* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions); and

...

Annex K

Amendments to the Supervision manual (SUP)

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

1 The FSA’s approach to supervision

1.1 Application and purpose

...

- 1.1.2 G The *Act* requires the *FSA* to “maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Act, or by any directly applicable Community regulation or decision made under *MiFID* or the *UCITS Directive* or the *auction regulation*, are complying with them” (paragraph 6(1) of Schedule 1 to the *Act*).

...

2 Information gathering by the FSA on its own initiative

2.1 Application and purpose

...

- 2.1.3 G Achieving the *regulatory objectives* involves the *FSA* informing itself of developments in *firms* and in markets. The *Act* requires the *FSA* to monitor a *firm’s* compliance with requirements imposed by or under the *Act*, or by any directly applicable Community regulation or decision made under *MiFID* or the *UCITS Directive* or the *auction regulation* (paragraph 6(1) of Schedule 1). The *Act* also requires the *FSA* to take certain steps to cooperate with other relevant bodies and regulators (section 354). For these purposes, the *FSA* needs to have access to a broad range of information about a *firm’s* business.

...

3 Auditors

3.1 Application

...

- 3.1.2R Applicable sections (see SUP 3.1.1R)

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor

...		
<u>(7AA) A firm that has exercised an opt in to CASS in accordance with CASS 1.4.9R</u>	<u>SUP 3.1 to SUP 3.7, SUP 3.11</u>	<u>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10.</u>
...		

...

10 Approved persons

10.1 Application

...

10.1.9 R This chapter does not apply to:

- (1) an *incoming EEA firm*; or
- (2) an *incoming Treaty firm*; or
- (3) a *UCITS qualifier*;

if and in so far as the question of whether a *person* is fit and proper to perform a particular *function* in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty*, ~~or~~ the *UCITS Directive* or the *auction regulation* to an authority in a country or territory outside the *United Kingdom*.

...

10.1.13 R Only the following *controlled functions* apply to an *incoming EEA firm* with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*:

...

- (6) the *customer function* other than where this relates to the function in SUP 10.10.7AR(4) and (7).

...

Bidders in emissions auctions

10.1.27 G For a firm that is exempt from MiFID under article 2(1)(i) and whose only permission is bidding in emissions auctions, the only controlled functions that apply to it are the governing functions, the money laundering reporting function, the customer function and (where it has exercised an opt-in to CASS in accordance with CASS 1.4.9R and is a CASS medium firm or a CASS large firm) the CASS operational oversight function. This is because the approved persons regime specifies a number of functions by incorporation of

requirements in SYSC; however, a firm carrying on auction regulation bidding is only subject to SYSC to a limited extent in relation to that activity. This means that the required functions do not apply to auction regulation bidding, except for the money laundering reporting function. Similarly, the significant management function does not apply in relation to auction regulation bidding because in carrying on that activity, a firm is not subject to SYSC 2.1.1R or SYSC 4.1.1R and is not undertaking proprietary trading.

...

10.6 Governing functions

...

What the governing functions include

...

10.6.2A R In respect of bidding in emissions auctions, each of the governing functions (other than the non-executive function and the function described in SUP 10.6.4R(2)) includes that part of the customer function specified in SUP 10.10.7AR(7) (bidder's representative).

10.6.3 G The effect of SUP 10.6.2R and SUP 10.6.2AR 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 or the part of the customer function specified in SUP 10.10.7AR(7). However, 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 (except the part specified in SUP 10.10.7AR(7)).

...

10.8 Systems and ~~control functions~~ controls function

Application

10.8.1-A R The systems and controls function applies to every firm subject to this chapter, except in relation to bidding in emissions auctions carried on by a firm that is exempt from MiFID under article 2(1)(i).

Systems and ~~control functions~~ controls function (CF28)

10.8.1 R ...

...

10.10 Customer functions

...

- 10.10.7A R The *customer function* is the function of:
- ...
- (6) acting in the capacity of an *investment manager* and carrying on functions connected to this;
- (7) in relation to *bidding in emissions auctions*, acting as a ‘bidder’s representative’ within the meaning of subparagraph 3 of article 6(3) of the *auction regulation*.

- 10.10.7B R The *customer function* does not extend to an individual who is performing the functions in SUP 10.10.7AR(1) to (2) or SUP 10.10.7AR(5) to ~~(6)~~ (7) and who is based overseas and who, in a 12 *month* period, spends no more than 30 *days* in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function.

...

12 Appointed representatives

...

Business for which an appointed representative is exempt

- 12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under section 39(1) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt, which is business which comprises any of:
- (a) ...
- (aa) *bidding in emissions auctions* (article 24A of the *Regulated Activities Order*) where that activity does not consist either of *dealing on own account* or the *execution of orders on behalf of clients*;

...

...

13 Exercise of passport rights by UK firms

13.1 Application and purpose

Application

...

- 13.1.3A G Other than the notification requirements in SUP 13.5.1AAR and SUP 13.5.2-AR and the related guidance in SUP 13.5.1BG, SUP 13.5.2AG and SUP

13.5.7G, this chapter does not apply to a UK firm in relation to its exercise of an EEA right under the auction regulation to provide services or establish a branch in another EEA state. This is because a UK firm is not subject to the requirements in Schedule 3 to the Act in respect of its exercise of that EEA right.

...

13.5 Notices of intention

Specified contents: notice of intention to establish a branch

- 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 other than under the auction regulation must submit a notice of intention in the form set out in SUP 13 Annex 1R.

...

...

- 13.5.1AA R A UK firm establishing a branch in a particular EEA state for the first time under the auction regulation must submit a notice of intention in the form set out in SUP 13 Annex 7R prior to its establishment of that branch or whenever possible thereafter.

- 13.5.1B G SUP 13.5.1R does not apply to UK pure reinsurers or a UK firm exercising an EEA right under the auction regulation as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive or the auction regulation. However, the information required by SUP 13.5.1AR and SUP 13.5.1AAR assists the FSA's supervision of a branch in another EEA state.

Specified contents: notice of intention to provide cross border services

- 13.5.2 R A UK firm wishing to provide cross border services into a particular EEA State for the first time under an EEA right other than under the auction regulation must submit a notice in the form set out in:

...

- 13.5.2-A R (1) A UK firm wishing to provide a service into a particular EEA State for the first time under the auction regulation must inform the FSA of the information in (2) by email to emissionstrading@fsa.gov.uk prior to its provision of that service or whenever possible thereafter.

(2) The information required by (1) is:

- (a) name of the firm and the FSA firm reference number;
 (b) EEA state in which the service is or will be provided; and

(c) the proposed commencement date of the service or the date on which the service commenced.

13.5.2A G SUP 13.5.2R does not apply to UK pure reinsurers or a UK firm exercising an EEA right under the auction regulation as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive or the auction regulation. However, the information required by SUP 13.5.2-AR assists the FSA's supervision of a UK firm's provision of a service in another EEA state under the auction regulation.

...

Unregulated activities

13.5.5 G A notice of intention (other than one to establish a branch or provide services in another EEA state under the auction regulation) may include activities within the scope of the relevant Single Market Directive which are not regulated activities (paragraphs 19(3) and 20(2) of Part III of Schedule 3 to the Act), although in the case of a MiFID investment firm a notice of intention may only include ancillary services which are to be carried on with one or more investment services and activities (paragraphs 19(5B) and 20(2A) of Part III of Schedule 3 to the Act). Regulation 19 of the EEA Passport Rights Regulations states that where a UK firm is able to carry on such an unregulated activity in the EEA State in question without contravening any law of the United Kingdom (or any part of the United Kingdom) the UK firm is treated, for the purposes of the exercise of its EEA right, as being authorised to carry on that activity.

...

After SUP 13 Annex 6R insert the following new form. The text is not underlined.

13 Annex 7R Passporting: Emissions Trading. Notice of intention from a UK firm to exercise the right of establishment in another EEA Member State

(see form on next page)

Firm name:

FSA firm reference number:



Intended EEA state(s) of establishment:

Purpose of this form

- *auction regulation* to establish a branch and/or use agents located in another *EEA state*.
- This form assists the *FSA's* supervision of a branch in another *EEA state* and its cooperation with regulators in other *EEA states*.

For general guidance on the exercise of passport rights by *UK firms*, please refer to *SUP 13*.

Filling in the form

1. When completing the notification, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed send to the email address below.
2. All relevant questions must be answered in full and all relevant documents attached.

If you have any questions in connection with Auction regulation, please call the Firm Contact Centre on: 0845 606 9966 (Call rates may vary) Overseas call +44 20 7066 1000 or E-mail: EmissionsTrading@fsa.gov.uk

Emissions Trading team
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London, E14 5HS
Telephone: +44 (0)20 7066 1000

E-mail: EmissionsTrading@fsa.gov.uk

1. Contact details of the firm in the UK

1.1 Details of the person we can contact about this notification.

Contact name	
Position at firm	
Telephone number	+
Email address	█@
Web address	www

2. Details about the establishment (branch and/or agents)

2.1 Branch details

Please provide the address of the proposed EEA branch(es)

Address			
Country			
Telephone number			
Email address at branch	@		

2.2 Please provide details of the branch manager(s)

Title	Forename	Surname	Direct E-mail:	Direct dial telephone

2.3 Please give the proposed date for the business to start at the branch or the date on which business started at the branch (dd/mm/yyyy).

--	--	--	--	--	--	--	--	--	--

2.4 Do you intend to use an agent located in another *EEA state* to carry on *auction regulation bidding* in that *EEA state*?

Yes No

If 'Yes' please complete sections 2.5 – 2.7.

2.5 Agent details

Name of agent			
Contact name			
Address			
Postcode			
Telephone number		+44(0)	
Email address		@	

2.6 If you are using more than one agent, please attach their details to this form using the format above.

2.7 Please give the proposed date the agent is to commence business on the firm's behalf or the date on which business commenced (*dd/mm/yyyy*).

--	--	--	--	--	--	--	--	--	--

3. Declaration

Note to declaration

If you are submitting this notification electronically you do not need to provide a signature here. However, you still need to have the authority to make this notification on behalf of the firm.

It is a criminal offence to knowingly or recklessly give us information that is false or misleading. If necessary, please take appropriate professional advice before supplying information to us.

There will be a delay in processing the application if any information is inaccurate or incomplete. Failure to notify us immediately of any significant change to the information provided may result in a serious delay in the application process.

- I understand it is a criminal offence to knowingly or recklessly give the FSA information that is false or misleading.
- I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.
- I confirm that I am authorised to sign on behalf of the firm.

Name	
Position	
Telephone	
E-mail	
Signature	
Date	dd/mm/yy

Data protection

For the purposes of complying with the Data Protection Act 1998, the personal information in this form will be used by the FSA to discharge its statutory functions under the *auction regulation* and other relevant legislation and may be disclosed to third parties for those purposes.

Where to send this form

Please email the completed form, together with any required documentation to the Emissions Trading team at: EmissionsTrading@fsa.gov.uk

Amend the following as shown.

13A Qualifying for authorisation under the Act

13A.1 Application and purpose

Application

- 13A.1.1 G (1) This chapter applies to an *EEA firm* that wishes to exercise an entitlement to establish a *branch* in, or provide *cross border services* into, the *United Kingdom* under a *Single Market Directive* or the *auction regulation*. (The *Act* refers to such an entitlement as an *EEA right* and its exercise is referred to in the *Handbook* as “passporting”.) (See *SUP* App 3 (Guidance on passporting issues) for further *guidance* on passporting.)

...

...

- 13A.1.5 G (1) ...
- (2) The *guidance* in this chapter represents the *FSA's* interpretation of the *Single Market Directives*, the *auction regulation*, the *Act* and the secondary legislation made under the *Act*. The *guidance* is not exhaustive and should not be seen as a substitute for a *person* consulting the legislation or taking legal advice.

13A.2 EEA firms and Treaty firms

- 13A.2.1 G A *person* will only be an *EEA firm* or a *Treaty firm* if it has its head office in an *EEA State* other than the *United Kingdom*. *EEA firms* and *Treaty firms* are entitled to exercise both the right of establishment and the freedom to provide services under the *Treaty*. The difference, however, is that an *EEA firm* has a right to passport under a *Single Market Directive* or the *auction regulation*, whereas a *Treaty firm* carries on activities for which the right to carry on those activities does not fall within the scope of a *Single Market Directive* or the *auction regulation*. 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* or the *auction regulation* 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.
- 13A.2.2 G An *EEA firm* may passport those activities which fall within the scope of the relevant *Single Market Directive* or the *auction regulation* as long as they are

included in its *Home State authorisation*.

13A.3 Qualifications for authorisation under the Act

EEA firms

13A.3.1 G Section 31 of the *Act* (Authorised persons) states that an *EEA firm* is *authorised* for the purposes of the *Act* if it qualifies for *authorisation* under Schedule 3 to the *Act* (EEA Passport Rights). Under paragraph 12 of Part II of that Schedule, an *EEA firm* that is an *EEA pure reinsurer*, or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*, qualifies for *authorisation* without condition. ~~Any~~ Other than those two types of *EEA firm*, an *EEA firm* that is not an *EEA pure reinsurer* qualifies for *authorisation* if:

(1) ...

(2) ...

...

13A.3.2 G (1) On qualifying for *authorisation*, subject to SUP 13A.3.1CG(1), an *EEA firm* (except for an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) will have *permission* to carry on each *permitted activity* (see (3) below) which is a *regulated activity*.

(2) ...

(3) The *permitted activities* of an *EEA firm* (except for an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) are those activities identified in the consent notice, regulator's notice or notice of intention. ~~Permitted~~ Those *permitted activities* may include activities that are within the scope of a *Single Market Directive* but which are *unregulated activities* in the *United Kingdom*.

(3A) An *EEA firm* that received authorisation under article 18 of the *auction regulation* has *permission* to carry on *bidding in emissions auctions*.

(4) The *permission* will be treated as being on terms equivalent to those appearing in the consent notice, regulator's notice, ~~or~~ notice of intention or (in respect of an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) to those appearing in the authorisation granted to the *EEA firm* under article 18 of the *auction regulation*. For example, it will reflect any limitations or requirements which are included in the *firm's Home State* authorisation.

13A.4 EEA firms establishing a branch in the United Kingdom

The conditions for establishing a branch

- 13A.4.1 G (1) Before an *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm that has received authorisation under article 18 of the auction regulation*) exercises an *EEA right* to establish a branch in the *United Kingdom* other than under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1) of Part II of Schedule 3 to the *Act*.
- (2) ...

...

Auction regulation bidding: notification rule and applicable provisions

- 13A.4.5 R An incoming EEA firm that is exercising an EEA right under the auction regulation to establish a branch in the United Kingdom must submit the form in SUP 13A Annex 4R prior to its establishment of that branch or whenever possible thereafter.
- 13A.4.6 G The sole purpose of the notification in SUP 13A.4.5R is to enable the FSA to supervise the UK branch of the incoming EEA firm's compliance with the applicable provisions on an ongoing basis. The applicable provisions that apply to that branch are set out in SUP 13A Annex 1G (Application of the Handbook to Incoming EEA Firms).

13A.5 EEA firms providing cross border services into the United Kingdom

...

- 13A.5.2 G An *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm that received authorisation under article 18 of the auction regulation*) should note that the requirement under the *Single Market Directives* to give a notice of intention to provide *cross border services* applies whether or not:
- (1) ...
- (2) ...

The conditions for providing cross border services into the United Kingdom

- 13A.5.3 G (1) Before an *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm that has received authorisation under article 18 of the auction regulation*) 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*.

...

- (4) An EEA firm that has received authorisation under article 18 of the auction regulation is not subject to the service conditions in its exercise of an EEA right under the auction regulation to provide services in the United Kingdom. The notification procedure in SUP 13A.5.4G does not apply to it and it does not need to notify the FSA prior to providing services into the United Kingdom because there are presently no applicable provisions that apply in these circumstances. Instead, its provision of these services is supervised by its Home State regulator.

The notification procedure

- 13A.5.4 G (1) Unless the *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm that received authorisation under article 18 of the auction regulation*) is passporting under the *Insurance Mediation Directive*, if the *FSA* receives a regulator's notice or, where no notice is required (in the case of an *EEA firm* passporting under the *Banking Consolidation Directive*), is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the *FSA* will, under paragraphs 14(2)(b) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the *FSA* received the regulator's notice or was informed of the *EEA firm's* intention.

...

...

13A.6 Which rules will an incoming EEA firm be subject to?

...

- 13A.6.2 G An *incoming EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm that has received authorisation under article 18 of the auction regulation and only provides services in the United Kingdom*) or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see SUP 13A.4.4G, SUP 13A.4.6G, and SUP 13A.5.4G) and other relevant *UK* legislation. For example where the business includes:

...

- (1) ...
(2) ...

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

<p>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</p>

apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to *incoming ECA providers*. These should refer to *COBS 1 Annex 1 Part 3 section 7 for guidance* on how *COBS* applies to them. The table does not apply to *EEA pure reinsurers* as ~~these firms have automatic passport rights on the basis of their Home State authorisation~~ or to an *EEA firm* in relation to its exercise of an *EEA right under the auction regulation to provide services in the United Kingdom*.

...

4. An EEA firm that exercises an EEA right under the auction regulation to establish a branch in the United Kingdom to provide auction regulation bidding is subject to a limited set of requirements in the Handbook that apply to that activity. These are the rules listed in paragraph 2.6A of SYSC 1 Annex 1, GEN 4 and SUP (in particular, the money laundering reporting function in SUP 10 and requirements to notify the FSA). Aside from this note, the table does not apply to those firms.

5. An EEA firm that exercises an EEA right under MiFID to carry on MiFID business bidding is subject to the applicable provisions relating to its carrying on of MiFID business.

...

13A Annex 2G Matters reserved to a Home State regulator

...	
<u>The auction regulation</u>	
<u>11E</u>	<u>Where an <i>incoming EEA firm</i> exercises an <i>EEA right</i> under the <i>auction regulation</i> to provide services or establish a branch in the <i>United Kingdom</i>, it is carrying on <i>auction regulation bidding</i>. Authorisation and supervision of a <i>firm</i> under the <i>auction regulation</i> are almost exclusively matters reserved to the <i>Home State regulator</i>. The only requirements which the <i>FSA</i> has applied as <i>Host State regulator</i> under the <i>auction regulation</i> in respect of <i>auction regulation bidding</i> is on a <i>UK branch</i> in relation to safeguards against money laundering and financial crime as well as a statutory status disclosure obligation and requirements to notify the <i>FSA</i> (see Note 4 of <i>SUP 13A Annex 1G</i>).</u>
<u>11F</u>	<u>An <i>incoming EEA firm</i> that carries on <i>MiFID business bidding</i> is exercising an <i>EEA right</i> under <i>MiFID</i> and is subject to the <i>applicable provisions</i> relating to its carrying on of <i>MiFID business</i>. The respective responsibilities of the <i>Home State regulator</i> and <i>Host State regulator</i> are the same as under <i>MiFID</i>.</u>
...	

...

After SUP 13A Annex 3R insert the following new annex. The text is not underlined.

13A Annex 4R **Passporting: Emissions Trading. Notice of intention to exercise the right of establishment in the United Kingdom**

(see form on next page)

Firm name:

EEA state of authorisation (home member state):



Purpose of this form

- You must complete this notification if you are an *incoming EEA firm* that is seeking to exercise an *EEA right* under the *auction regulation* to establish a branch and/or use agents located in the United Kingdom.
- This form enables the FSA to supervise a UK establishment of an *incoming EEA firm's* compliance with the *applicable provisions* that apply to that establishment as set out in the FSA Handbook at SUP 13A Annex 1G (Application of the Handbook to Incoming EEA Firms).
- Please note that we require an *incoming EEA firm* with an establishment in the UK to have an approved *Money Laundering Reporting Officer*.
- For general guidance on the exercise of passport rights in the UK by *incoming EEA firms*, please refer to SUP 13A (Qualifying for authorisation under the Act).

Filling in the form

1. When completing the notification, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed send to the email address below.
2. All relevant questions must be answered in full and all relevant documents attached.

If you have any questions in connection with Auction regulation, please call the Firm Contact Centre on: 0845 606 9966 (Call rates may vary) Overseas call +44 20 7066 1000 or E-mail: EmissionsTrading@fsa.gov.uk

Emissions Trading team
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London, E14 5HS
Telephone: +44 (0)20 7066 1000

E-mail: EmissionsTrading@fsa.gov.uk

1. Contact details of the firm in the home state

1.1 Details of the person we can contact about this notification in the *home state*.

Contact name	
Position at firm	
Telephone number	+
Email address	
Web address	www

2. Details about the establishment (branch and/or agents)

2.1 Branch details

Please provide the address of the UK branch from which we can obtain information about the business.

Address			
Postcode			
Telephone number		+44(0)	
Email address at branch		@	

2.2 Please provide details of the branch manager(s) and (if different) the Money Laundering Reporting Officer

<i>Title</i>	<i>Forename</i>	<i>Surname</i>	<i>Direct E-mail:</i>	<i>Direct dial telephone</i>

The Money Laundering Reporting Officer (CF11) is required to be registered as an [approved person](#) with the FSA and an incoming EEA firm should submit the appropriate form in application for this if it has not done so at the time of submitting this form.

2.3 Please give the proposed date for the business to start at the branch or the date on which business started at the branch (*dd/mm/yyyy*)

--	--	--	--	--	--	--	--

2.4 Do you intend to use an agent located in the UK to carry on *auction regulation bidding* in the UK?

Yes No

If 'Yes' please complete sections 2.5 – 2.7

2.5 Agent details

Name of agent			
Contact name			
Address			
Postcode			
Telephone number			+44(0)
Email address			@

2.6 If you are using more than one agent, please attach their details to this form using the format above.

2.7 Please give the proposed date the agent is to commence business on the firm's behalf or the date on which business commenced (*dd/mm/yyyy*).

--	--	--	--	--	--	--	--

3. Details about your authorisation

Requirement	Response
<p><u>Permission to Conduct the Activity</u> Please provide evidence of your authorisation under the <i>auction regulation</i>, including the date on which authorisation was granted by your Home State Regulator</p> <p>NOTE: a copy of the authorisation letter from your Home State Regulator should normally be sufficient evidence of this.</p>	

4. Declaration

Note to declaration

If you are submitting this notification electronically you do not need to provide a signature here. However, you still need to have the authority to make this notification on behalf of the firm.

It is a criminal offence to knowingly or recklessly give us information that is false or misleading. If necessary, please take appropriate professional advice before supplying information to us.

There will be a delay in processing the application if any information is inaccurate or incomplete. Failure to notify us immediately of any significant change to the information provided may result in a serious delay in the application process.

- I understand it is a criminal offence to knowingly or recklessly give the FSA information that is false or misleading.
- I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.
- I confirm that I am authorised to sign on behalf of the firm.

Name	
Position	
Telephone	
E-mail	
Signature	
Date	dd/mm/yy

Data protection

For the purposes of complying with the Data Protection Act 1998, the personal information in this form will be used by the FSA to discharge its statutory functions under the *auction regulation* and other relevant legislation, and may be disclosed to third parties for those purposes.

Where to send this form

Please email the completed form, together with any required documentation to the Emissions Trading team at: EmissionsTrading@fsa.gov.uk

Amend the following as shown.

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

14.1 Application and purpose

Application

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* or the *auction regulation* and, therefore, qualifies for *authorisation* under Schedule 3 to the *Act*.

14.1.1A G The guidance in SUP 14.2 and SUP 14.3 covers the EEA Passport Rights Regulations. It is not, however, relevant to an EEA firm exercising an EEA right under the auction regulation, except for SUP 14.2.14R which applies a separate notification requirement. Additionally, where an EEA firm is carrying on MiFID business bidding, that firm is exercising an EEA right under MiFID and so this chapter applies to that activity because it is MiFID business.

...

14.2 Changes to branch details

...

Firms passporting under the auction regulation

14.2.14 R An EEA firm that is exercising an EEA right to provide auction regulation bidding from a branch in the United Kingdom must notify the FSA of any change to the information submitted under SUP 13A.4.5R by email to emissionstrading@fsa.gov.uk prior to the change or whenever possible thereafter.

...

14.5 Variation of a top-up permission to carry on regulated activities outside the scope of the Single Market Directives or the auction regulation

...

14.6 Cancelling qualification for authorisation

...

Auction regulation bidding: notification rule

14.6.3A R An EEA firm that has exercised an EEA right under the auction regulation to establish a branch in the United Kingdom must notify the FSA by email to emissionstrading@fsa.gov.uk when it ceases to carry on regulated activities through a branch passport in the United Kingdom or whenever possible thereafter.

14.6.3B G The sole purpose of the notification in SUP 14.6.3AR is to inform the FSA that it may discontinue its supervision of the UK branch of the incoming EEA firm's compliance with the applicable provisions. The applicable provisions that apply to that branch are set out in SUP 13A Annex 1G (Application of the Handbook to Incoming EEA Firms).

Financial institutions giving up right to authorisation

14.6.4 G ...

...

14.7 Cancellation of a top-up permission to carry on regulated activities outside the scope of the Single Market Directives or the auction regulation

...

15.3 General notification requirements

...

15.3.7A G Although PRIN does not apply to a firm in relation to its carrying on of auction regulation bidding, the FSA expects to be given notice of events that are material to the FSA's supervision of that business and so firms carrying on that business should have regard to the guidance in SUP 15.3.8G to SUP 15.3.10G.

...

15.3.11 R (1) A firm must notify the FSA of:

...

(e) a breach of any requirement in regulation 4C(3) (or any successor provision) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007; or

(ea) a breach of a directly applicable provision in the auction regulation; or

...

...

...

16 Reporting requirements

...

16.12 Integrated regulatory reporting

16.12.1 G The effect of SUP 16.1.1 R is that this section applies to every *firm* carrying on business set out in column (1) of SUP 16.12.4 R except:

(1) an *incoming EEA firm* with *permission* for *cross border services* only;

(1A) an *incoming EEA firm* in relation to its carrying on of *bidding in emissions auctions*;

...

...

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 <i>data items</i>	reporting frequency / period	Due <u>due</u> date
...
<u>RAG 11</u>	<u><i>bidding in emissions auctions</i></u>	<u>SUP 16.12.29AR</u>	<u>SUP 16.12.29AR</u>	<u>SUP 16.12.29AR</u>

...

Regulated Activity Group 11

16.12.29A R A *firm* must submit the form contained in SUP 16 Annex 32R (Bidding in emissions auctions return) annually within 30 *business days* from its *accounting reference date* unless the *firm* did not carry on any *auction regulation bidding* during the year to which that form relates.

...

After SUP 16 Annex 31BG insert the following new appendix. The text is not underlined.

16 Annex 32R Bidding in emissions auctions return

FSA060**Bidding in emissions auctions return****A**

1 Are you meeting your minimum capital requirement?

yes - no

2 In carrying on *bidding in emissions auctions*, have you complied throughout the reporting period, and are you currently compliant, with directly applicable requirements under the *auction regulation* and related *rules* in the *Handbook*?

yes - no

Amend the following as shown.

Appendix 3 Guidance on passporting issues

3.1 Application

3.1.1 G This appendix applies to all *firms* when ~~passporting~~ carrying on a passported activity, except for a *firm* which is only carrying on a passported activity under the auction regulation.

...

Annex L

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1.1 Purpose and application

...

Application to firms

- 1.1.3 R (1) Subject to DISP 1.1.5R, this ~~This~~ chapter applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.

...

...

- 1.1.5 R This chapter does not apply to:

...

- (3) an *authorised professional firm* in respect of expressions of dissatisfaction about its *non-mainstream regulated activities*; and

- (4) *complaints in respect of auction regulation bidding*.

...

1 Annex 2G Application of DISP 1 to type of respondent / complaint

...

Type of respondent / <u>complaint</u>	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	DISP 1.10A Complaints data publication rules
...						
<i>VJ participant</i>	...					
<u><i>complaints relating to auction regulation</i></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>Does not apply</u>

<i>bidding</i>						
----------------	--	--	--	--	--	--

...

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* (other than auction regulation bidding);

...

...

Schedule 6 Rules that can be waived

Sch 6.1 G 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*, other than *rules* made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives or European Regulations, 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 or Regulations.

Annex M

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

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

2A.3 Guidance on RAP recognition requirements

...

2A.3.2 G ...

Table: Guidance on RAP recognition requirements

Column A	Column B	Column C
<i>REC 2</i> guidance which applies to an <i>RAP</i>	Modification to <i>REC 2</i> guidance for an <i>RAP</i>	Relevant <i>RAP</i> recognition requirement
...		
<i>REC 2.12.11G</i> to <i>REC 2.12.12G</i> (Availability of relevant information)	<p><i>REC 2.12.11G</i> to <i>REC 2.12.12G</i> are replaced with the following for an <i>RAP</i>:</p> <p><i>REC 2.12.11G</i></p> <p>In determining whether appropriate arrangements have been made to make <i>relevant information</i> available to <i>persons</i> engaged in dealing in <i>emissions auction products</i>, the <i>FSA</i> may have regard to:</p> <p>(1) the extent to which auction bidders are able to obtain information in a timely fashion about the terms of those <i>emissions auction products</i> and the terms on which they will be auctioned, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media;</p> <p>(2) what restrictions, if any, there are on the dissemination of <i>relevant information</i> to auction bidders; and</p> <p>(3) whether <i>relevant information</i> is, or can be, kept to restricted groups of persons in such a way as to facilitate or encourage</p>	Reg 17(2)(c)

	<p><i>market abuse.</i></p> <p><i>REC 2.12.12G</i></p> <p>An <i>RAP</i> does not need to maintain its own arrangements for providing information on the terms of <i>emissions auction products</i> to auction bidders where it has made adequate arrangements for other persons to do so on its behalf or there are other effective and reliable arrangements for this purpose.</p>	
...		

3 Notification rules for UK recognised bodies

...

3.18 Membership

...

3.18.3 R Where a *UK recognised body* admits for the first time a *member* whose head or registered office is in a jurisdiction from which that *UK recognised body* has not previously admitted *members*, it must immediately give the *FSA* notice of that event, and:

...

- (2) the name of any regulatory authority in that jurisdiction which regulates that *member* in respect of activities relating to *specified investments* or (for an *RAP*) relating to *emissions auction products*; and

...

...

5 Applications for Recognition (UK recognised bodies)

...

5.2 Application process

...

5.2.14 G Information and supporting documentation (see *REC 5.2.4G*).

...	
-----	--

(3)	Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform or (for an <i>RAP</i>) <i>auction platform</i> , settlement arrangements, clearing services and <i>custody</i> services which it plans to supply. An applicant for <i>RAP</i> status must provide details on the relationship between the <i>auction platform</i> and any secondary market in <i>emissions auction products</i> which it operates or plans to operate.
...	

...

Annex N

Amendments to the Listing Rules sourcebook (LR)

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

Appendix 1.1 Relevant definitions

...

specified investment any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments):

... ..

(i) *stakeholder pension scheme* (article 82)

(ia) *emissions auction product* (article 82A);

...

...

Annex O

Amendments to the Perimeter Guidance manual (PERG)

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

2.4 Link between activities and the United Kingdom

...

2.4.3 G Section 418 of the *Act* (Carrying on regulated activities in the United Kingdom) takes this one step further. It extends the meaning that ‘in the *United Kingdom*’ would ordinarily have by setting out five additional cases. The *Act* states that, in these five cases, a *person* who is carrying on a *regulated activity* but who would not otherwise be regarded as carrying on the activity in the *United Kingdom* is, for the purposes of the *Act*, to be regarded as carrying on the activity in the *United Kingdom*.

- (1) The first case is where a *UK-based person* carries on a *regulated activity* in another *EEA State* in exercise of rights under a *Single Market Directive* or the *auction regulation*.

...

...

2.6 Specified investments: a broad outline

...

Greenhouse gas emissions allowances

2.6.19D G This *specified investment* comprises *emissions allowances* that are auctioned as *financial instruments* or *two-day emissions spots* (together, *emissions auction products*).

2.6.19E G It relates only to the *regulated activity* of *bidding in emissions auctions* (whereby a bid is received, transmitted and submitted on an *auction platform*) and captures the two forms of allowance products that may be auctioned under article 4(2) of the *auction regulation*: a ‘two-day spot’ or a ‘five-day future’.

2.6.19F G For the purposes of the *RAO*, this *specified investment* is not a *security*, *contractually-based investment* or a *relevant investment*.

2.6.19G G This *specified investment* incorporates definitions from other *EU directives* or *regulations* which can be summarised as follows:

- (1) “Emissions allowance” means an ‘allowance’ as defined in article 3(a) of Directive 2003/87/EC which established the scheme for greenhouse gas emissions allowance trading within the EU. That article provides that an ‘allowance’ is an allowance to emit one tonne of carbon dioxide equivalent during a specified period, only valid for the purpose of meeting the requirements of Directive 2003/87/EC and only transferable in accordance with the provisions of that directive (emissions allowance).
- (2) A ‘two-day spot’ is defined by reference to article 3(3) of the auction regulation. That article provides that a ‘two-day spot’ is an allowance auctioned for delivery at an agreed date no later than the second trading day from the day of the auction (two-day emissions spot).
- (3) A financial instrument is defined as any instrument listed in Section C of Annex I to MiFID. Recital 14 of the auction regulation explains that a ‘two-day spot’ is not a financial instrument whereas a ‘five-day future’ is (see PERG 13.4, Q34). A ‘five-day future’ is defined in article 3(4) of the auction regulation as an allowance auctioned as a financial instrument for delivery at an agreed date no later than the fifth trading day from the day of the auction.

...

2.7 Activities: a broad outline

...

Bidding in emissions auctions

2.7.6B G The RAO and the auction regulation together generate three broad categories of person in relation to bidding for emissions allowances on an auction platform:

- (1) The first category consists of an investment firm to which MiFID applies and a BCD credit institution where either firm is bidding on behalf of its clients for emissions auction products or bidding on its own account for emissions auction products that are financial instruments. This category also consists of a person that is exempt from MiFID under article 2(1)(i) where it is bidding on behalf of a client of its main business or bidding on its own account (further information on the article 2(1)(i) exemption from MiFID is in PERG 13.5, Q44). A person in this category is entitled to bid on an auction platform but requires permission from the FSA for bidding in emissions auctions to do so.

- (2) The second category consists of an *investment firm* to which *MiFID* applies and a *BCD credit institution* where either is bidding on its own account for *two day emissions spots*. This category also consists of operators or aircraft operators bidding on their own account as well as group entities or business groupings of those operators or public bodies or state-owned entities of *Member States* that control any of those operators (as set out in article 18 of the *auction regulation*). A person or entity in this category is entitled to bid on an *auction platform* but does not require *permission* from the *FSA* to do so as a result of an exclusion from the *regulated activity of bidding in emissions auctions* in article 24B of the *RAO*.
- (3) The third category consists of all other *persons*. The *auction regulation* prevents an *auction platform* from granting these *persons* admission to bid. A *person* in this category is not entitled to bid on an *auction platform* and the *FSA* is not able to grant such a *person permission* to do so.

2.7.6C G A *person* may fall into both the first and the second category. For example, a *person* might be both exempt from *MiFID* under article 2(1)(i) (within the first category) and be a group entity of an operator (within the second category). In this case, that *person* does not require *permission* for activities that cause that *person* to fall into the second category because those activities are excluded from the activity of *bidding in emissions auctions*.

2.7.6D G Article 24A(2) of the *RAO* provides that *bidding in emissions auctions* does not form part of any other *regulated activity* and so, although in the *FSA*'s view this activity broadly equates to the *regulated activities of dealing in investments as principal, dealing in investments as agent, arranging (bringing about) deals in investments or making arrangements with a view to transactions in investments*, a *person* seeking to carry on this activity will only require *permission* for *bidding in emissions auctions* to do so.

...

2.8 Regulated activities: exclusions applicable in certain circumstances

...

Dealing in investments as principal

2.8.4 G The *regulated activity of dealing in investments as principal* applies to specified transactions relating to any security or to any *contractually based investment* (apart from rights under *funeral plan contracts* or rights to or interests in such contracts). The activity is cut back by exclusions as follows.

...

- (7) An activity that might otherwise be both *dealing in investments as principal* and *bidding in emissions auctions* is specifically excluded from *dealing in investments as principal* as a result of article 24A(2) of the RAO which provides that the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see PERG 2.7.6DG).

...

Dealing in investments as agent

- 2.8.5 G The *regulated activity* of *dealing in investments as agent* applies to specified transactions relating to any *security* or to any *relevant investment* (apart from rights under *funeral plan contracts* or rights to or interests in such rights). In addition, the activity is cut back by exclusions as follows.

...

- (4) An activity that might otherwise be both *dealing in investments as agent* and *bidding in emissions auctions* is specifically excluded from *dealing in investments as agent* as a result of article 24A(2) of the RAO which provides that the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see PERG 2.7.6EG).

...

...

Arranging deals in investments and arranging a home finance transaction

...

- 2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows.

- (-1) Under Article 24A(2), an activity that would otherwise be both *arranging* and *bidding in emissions auctions* is specifically excluded from *arranging* because the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see PERG 2.7.6EG).

- (1) ...

...

...

2.9 Exclusions applicable to particular regulated activities

2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

- (1) Each set of circumstances described in *PERG 2.9.3G* to *PERG 2.9.17G* has some application to several *regulated activities* relating to *securities, relevant investments* or *home finance transactions*. They have no effect in relation to the separate *regulated activities* of *accepting deposits, issuing electronic money, effecting or carrying out contracts of insurance, bidding in emissions auctions, advising on syndicate participation at Lloyd's, managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* or *entering as provider into a funeral plan contract*. Within each set of circumstances, the *Regulated Activities Order*, in Chapter XVII of Part II of the Order, makes separate provision for each *regulated activity* affected. This is necessary because each exclusion has to be tailored to reflect the different nature of the *regulated activity* involved and the different language required (for example, some activities involve entering directly into transactions while others relate to the provision of services).

...

...

2.10 Persons carrying on regulated activities who do not need authorisation

...

Members of the professions

...

2.10.14 G The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the *Act* (Exemption from the general prohibition) (the *Non-Exempt Activities Order*). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

...

- (3) ...

(3A) *bidding in emissions auctions*;

...

...

2 Annex 2G Regulated activities and the permission regime

...

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
--------------------	---

...

...

Bidding in emissions auctions(ac) bidding in emissions auctionsemissions auction products

...

...

Designated investment business [see notes 1A, ~~and 1B~~ and 1C to Table 1]

...

...

...

Note 1C:

Although MiFID business bidding (part of bidding in emissions auctions) is designated investment business, it is not separately listed in this table under designated investment business because bidding in emissions auctions is already referred to above.

...

13 Guidance on the scope of the Markets in Financial Instruments Directive and the recast Capital Adequacy Directive

...

13.3 Investment services and activities

...

Q12A. We carry out the activity of bidding in emissions auctions. Is this a MiFID service or activity?

Article 6(5) of the auction regulation deems as an investment service or activity the reception, transmission and submission of a bid for a financial instrument (the 'five-day future' auction product – see PERG 2.6.19GG(3)) on an auction platform by an investment firm to which MiFID applies or a BCD credit institution. It does not specify which investment service or activity. In the FSA's view, it is likely to be the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients or dealing on own account.

As a result of some of bidding in emissions auctions being MiFID business, the regulated activity of bidding in emissions auctions is divided for the purposes of

the Handbook, and the different requirements that apply, into two parts: MiFID business bidding and auction regulation bidding.

Q13. When might we be receiving and transmitting orders in relation to one or more financial instruments? (A1 and recital 20)

...

If you are party to a transaction as agent for your client or commit your client to it, you may be doing more than receiving and transmitting orders and will need to consider whether you are providing the investment service of executing orders on behalf of clients.

Where you are receiving, transmitting and submitting bids on an auction platform in relation to financial instruments on behalf of your clients, you may be receiving and transmitting orders in relation to one or more financial instruments.

...

Q15. When might we be executing orders on behalf of clients? (A2, article 4.1(5) and recital 21)

When you are acting to conclude agreements to buy or sell one or more MiFID financial instruments on behalf of clients. You will be providing this investment service if you participate in the execution of an order on behalf of a client, as opposed simply to arranging the relevant deal. In our view, you can execute orders on behalf of clients either when dealing in investments as agent (by entering into an agreement in the name of your client or in your own name, but on behalf of your client) or, in some cases, by dealing in investments as principal (for example by back-to-back or riskless principal trading).

Where you bid on behalf of your client on an auction platform for a financial instrument, you may be executing orders on behalf of clients.

Q16. What is dealing on own account? (A3 and article 4.1(6))

...

Where you bid for your own account on an auction platform for a financial instrument, you may be dealing on own account.

...

13.4 Financial instruments

...

Q34. Are there any other derivatives subject to MiFID regulation?

There is a miscellaneous category of derivatives in C10, which is supplemented by articles 38 and 39 of the *MiFID Regulation*. These relate to:

...

- ~~emission~~ emissions allowances;

...

C10 derivative must also meet at least one of the following criteria:

...

In relation to *emissions auction products*, recital 14 together with the definitions of ‘two-day spot’ and ‘five-day future’ in article 3(3) and 3(4) of the *auction regulation*, indicate that a ‘five-day future’ (one of two forms of auction product permitted under the *auction regulation*) falls within this category of derivative.

...

13 Annex 2

Table 1 - MiFID Investment services and activities and the Part IV permission regime

MiFID Investment Services and Activities	Part IV permission	Comments
--	--------------------	----------

<p>A1- Reception and transmission of orders in relation to one or more financial instruments</p>	<p>Arranging (bringing about) deals in investments (article 25(1) <i>RAO</i>):-</p> <p><u>Bidding in emissions auctions (article 24A <i>RAO</i>)</u></p>	<p>This was an ISD service.</p> <p>Generally speaking, only firms with permission to carry on the activity of arranging (bringing about) deals in investments in relation to securities and contractually based investments which are financial instruments can provide the service of reception and transmission. This is because a service must bring about the transaction if it is to amount to reception and transmission of orders.</p> <p>The activity of arranging (bringing about) deals in investments is wider than A1, so a firm carrying on this regulated activity will not always be receiving and transmitting orders.</p> <p>See <u>Q12A</u>, Q13 and Q14 for further guidance.</p>
--	--	--

A2- Execution of orders on behalf of clients	<p>Dealing in investments as agent (article 21 <i>RAO</i>)</p> <p>Dealing in investments as principal (article 14 <i>RAO</i>)</p> <p><u>Bidding in emissions auctions (article 24A <i>RAO</i>)</u></p>	<p>This was an ISD service.</p> <p>Usually, where a firm executes orders on behalf of clients it will need permission to carry on the activity of dealing in investments as agent. Where a firm executes client orders on a true back-to-back basis or by dealing on own account, it also needs permission to carry on the activity of dealing in investments as principal.</p> <p>See <u>Q12A</u> and <u>Q15</u> for further guidance.</p>
A3- Dealing on own account	Dealing in investments as principal (article 14 <i>RAO</i>)	<p>Dealing on own account falls within the ISD, but only where a service is provided. Under MiFID, dealing on own account is caught even if no service is provided. Where a firm is dealing on own account, it needs permission to carry on the activity of dealing in investments as principal.</p> <p>See <u>Q12A</u> and <u>Q16</u> for further guidance.</p>
...
<p>Note: The activity of <i>bidding in emissions auctions</i> can form part of A1, A2 or A3. In terms of the <i>permission</i> regime, <i>bidding in emissions auctions</i> does not form part of any other <i>regulated activity</i> (see <i>PERG 2.7.7CG</i>) and so a <i>firm</i> must have a separate <i>permission</i> to undertake that activity.</p>		

Table 2: MiFID financial instruments and the Part IV permission regime

MiFID financial instrument	Part IV permission category	Commentary
...

<p>C10- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.</p>	<p>option (excluding commodity option and option on a commodity future)</p> <p>future (excluding a commodity future and a rolling spot forex contract)</p> <p>contract for differences (excluding spread bet and rolling spot forex contract)</p> <p>spread bet</p> <p><u>emissions auction product</u></p>	<p>C10 is supplemented by Level 2 measures (see articles 38 and 39 of the <i>MiFID Regulation</i>) and comprises miscellaneous derivatives.</p> <p>For further guidance see Q34.</p>
<p>...</p>		

...

13 Annex 4 Principal Statutory Instruments relating to MiFID scope issues

1. The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 [SI 2006 No- 3384]
2. The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 [SI 2007 No 126]
3. The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006 [SI 2006 No 2975]
4. The Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2006 [SI 2006 No 3414]

5. The Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2007 [SI 2007 No 125]

6. The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 [SI 2012 No 1906]

Annex P

Amendments to the Enforcement Guide (EG)

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

Prohibition orders and withdrawal of approval – approved persons

...

9.9 When it decides whether to make a *prohibition order* against an *approved person* and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.

...

(3) Whether, and to what extent, the *approved person* has:

(a) ...

(b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other *rules*) or failed to comply with any directly applicable Community regulation made under *MiFID* or any directly applicable provision of the *auction regulation*.

...

...

10 Injunctions

...

[Footnote] 9: Under sections 380(6)(a) and (7)(a), a 'relevant requirement' means a requirement: which is imposed by or under the *Act* or by any directly applicable Community regulation or decision made under *MiFID* or the UCITS directive or by the auction regulation; or which is imposed by or under any other Act and whose contravention constitutes ~~and~~ an offence which the FSA has power to prosecute under the *Act* (or in the case of Scotland, which is imposed by or under any other Act) and whose contravention constitutes an offence under Part V of the Criminal Justice Act 1993 or under the *Money Laundering Regulations*.

...

The FSA's choice of powers

...

11.5 However, there may be circumstances in which the FSA will choose to use the powers under section 382 or section 383 of the *Act* to apply to the court for an order for restitution against a *firm*. Those circumstances may include, for example, where:

- (1) the FSA wishes to combine an application for an order for restitution with other court action against the *firm*, for example, where it wishes to apply to the court for an *injunction* to prevent the *firm* breaching a relevant requirement of the *Act* or any directly applicable Community regulation or decision made under *MiFID* or the *UCITS Directive* or the *auction regulation*; the FSA's powers to apply for *injunctions* restraining *firms* from breaching one of those relevant requirements ~~of the *Act* or any directly applicable Community regulation under *MiFID*~~ are discussed in chapter 10 of this guide;

...

...

Other relevant powers

- 11.8 The FSA may apply to the court for an *injunction* if it appears that a *person*, whether *authorised* or not, is reasonably likely to breach a requirement of the *Act* or any directly applicable Community regulation or decision under *MiFID* or the *UCITS Directive* or the *auction regulation*, or engage in *market abuse*. It can also apply for an *injunction* if a *person* has breached ~~a requirement of the *Act* or any directly applicable Community regulation under *MiFID*~~ one of those requirements or has engaged in *market abuse* and is likely to continue doing so.
- 11.9 The FSA may consider taking action for a financial penalty or *public censure*, as well as seeking restitution, if a *person* has breached a relevant requirement of the *Act* or any directly applicable Community regulation or decision under *MiFID* or the *UCITS Directive* or the *auction regulation*, or has engaged in, or *required or encouraged* others to engage in, *market abuse*.

**CONDUCT OF BUSINESS SOURCEBOOK (MORTALITY ASSUMPTIONS FOR
FUTURE ANNUITY PROJECTIONS) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 149 (Evidential provisions); 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 21 December 2012.

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 Conduct of Business Sourcebook (Mortality Assumptions for Future Annuity Projections) Instrument 2012.

By order of the Board
26 July 2012

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

13 Annex 2 Projections

...

R	
3	How to calculate a projection for a future annuity
3.1	A <i>projection</i> for a future annuity must:
(1)	be calculated by rounding all factors to three decimal places before applying them to the relevant retirement fund;
(2)	be based on the mortality tables PMA92 and PFA92, using the medium cohort projection based on year of birth mortality rates <u>use a mortality rate based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PCMA00 and PCFA00 and including mortality improvements derived from each of the male and female annual mortality projection models, in equal parts;</u>
(3)	[deleted]
(4)	(for an annuity where two lives are concerned):
(a)	reflect the age difference between the two lives; or
(b)	be based on the assumption that the male life is three years older than the female (if the genders differ) or the two lives have the same age (if the genders are the same);
(5)	include an expenses allowance of 4%;
(6)	be based on the following rates of return as appropriate:

...

<u>E</u>	
3.1A	<u>For any year commencing 6 April, the use of the male and female annual CMI Mortality Projections Models in the series CMI(20YY-1) M [1.25%] and CMI(20YY-1) F [1.25%], where YY-1 is the year of the Model used, will tend to show compliance with COBS 13 Annex 2 3.1R(2).</u>

R	
3.2	...

PACKAGED BANK ACCOUNTS INSTRUMENT 2012

Powers exercised

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

Commencement

- C. This instrument comes into force on 31 March 2013.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Packaged Bank Accounts Instrument 2012.

By order of the Board
26 July 2012

Annex A

Amendments to the Glossary of definitions

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

<i>packaged bank account</i>	an arrangement under which a <i>firm</i> provides a <i>retail banking service</i> as part of a package which includes access to other goods or services, whether or not a fee is charged.
------------------------------	---

Annex B

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

Eligibility to claim benefits: general insurance contracts and pure protection contracts

- 5.1.1 G (1) In line with *Principle 6*, a *firm* should take reasonable steps to ensure that a *customer* only buys a *policy* under which he is eligible to claim benefits.
- (2) If, at any time while *arranging a policy*, a *firm* finds that parts of the cover apply, but others do not, it should inform the *customer* so he can take an informed decision on whether to buy the *policy*.
- (3) This guidance does not apply to policies arranged as part of a packaged bank account.

Eligibility to claim benefits: payment protection contracts

- 5.1.2 R (1) A *firm* arranging a *payment protection contract* must:
- (1) (a) take reasonable steps to ensure that the *customer* only buys a *policy* under which he is eligible to claim benefits; and
- (2) (b) if, at any time while *arranging the policy*, it finds that parts of the cover do not apply, inform the *customer* so he can take an informed decision on whether to buy the *policy*.
- (2) This rule does not apply to payment protection contracts arranged as part of a packaged bank account.
- 5.1.3 G (1) For a typical *payment protection contract* the reasonable steps required in the first part of the eligibility *rule* are likely to include checking that the *customer* meets any qualifying requirements for different parts of the *policy*.
- (2) This guidance does not apply to payment protection contracts arranged as part of a packaged bank account.

Eligibility to claim benefits: policies arranged as part of a packaged bank account

- 5.1.3A R A firm arranging policies as part of a packaged bank account must:
- (1) take reasonable steps to establish whether the customer is eligible to claim each of the benefits under each policy included in the packaged bank account which must include checking that the customer meets any qualifying requirements to claim each of the

benefits under each *policy*; and

- (2) inform the *customer* whether or not he would be eligible to claim each of the benefits under each *policy* included in the *packaged bank account* so that the *customer* can take an informed decision about the arrangements proposed.

5.1.3B R A *firm* must make a record of the eligibility assessment and, if the *customer* proceeds with the arrangements proposed, retain it for a minimum period of three years from the date on which the assessment was undertaken.

5.1.3C R Throughout the term of a *policy* included in a *packaged bank account*, a *firm* must provide the *customer* with an eligibility statement on an annual basis. This statement must set out any qualifying requirements to claim each of the benefits under the *policy* and recommend that the *customer* reviews his circumstances and whether he meets these requirements.

...

Suitability guidance for protection policies

- 5.3.2 G (1) In taking reasonable care to ensure the suitability of advice on a *payment protection contract* or a *pure protection contract* a *firm* should:
- (1) (a) establish the *customer's* demands and needs. It should do this using information readily available and accessible to the *firm* and by obtaining further relevant information from the ~~customer~~ *customer*, including details of existing insurance cover; it need not consider alternatives to policies nor *customer* needs that are not relevant to the type of policy in which the *customer* is interested;
 - (2) (b) take reasonable care to ensure that a *policy* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations and conditions; and
 - (3) (c) inform the *customer* of any demands and needs that are not met.
- (2) This *guidance* does not apply to *payment protection contracts* or *pure protection contracts* included in a *packaged bank account*.

Suitability of advice on policies included in a packaged bank account

- 5.3.2A R In taking reasonable care to ensure the suitability of advice on a *policy* included in a *packaged bank account*, a *firm* must:
- (1) establish the *customer's* demands and needs by using information readily available to the *firm* and by obtaining further relevant information from the *customer*, including details of existing

insurance cover; it need not consider alternatives to *policies* nor *customer* needs that are not relevant to the type of *policy* in which the *customer* is interested;

- (2) take reasonable steps to establish whether each *policy* included in the *packaged bank account* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations, and conditions;
- (3) inform the *customer* of any demands and needs that are not met; and
- (4) explain to the *customer* its recommendation and the reasons for the recommendation.

5.3.2B R A *firm* must make a record of the suitability assessment, the recommendation given and the reasons for the recommendation and, if the *customer* proceeds with the recommendation, retain it for a minimum period of three years from the date on which the recommendation was made.

...

Schedule 1 Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>ICOBS 5.1.3BR</u>	<u>Eligibility</u>	<u>Details of whether the <i>customer</i> is eligible to claim each of the benefits under each <i>policy</i> included in the <i>packaged bank account</i></u>	<u>Date of eligibility assessment</u>	<u>3 years</u>
<u>ICOBS 5.3.2BR</u>	<u>Suitability and recommendation given</u>	<u>Details of whether each <i>policy</i> included in the <i>packaged bank account</i> is suitable for the <i>customer's</i> demand and needs, the recommendation given and the reasons for the recommendation</u>	<u>Date of recommendation</u>	<u>3 years</u>

MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 11) INSTRUMENT 2012

Powers exercise

- 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 119 (The code);
 - (b) section 121 (Codes: procedure);
 - (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. This instrument comes into force on 1 August 2012.

Amendments to the Handbook

- D. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 11) Instrument 2012.

By order of the Board
26 July 2012

Annex

Amendments to the Market Conduct sourcebook (MAR)

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

1.4. Market abuse (improper disclosure)

...

Descriptions of behaviour that does not amount to market abuse (improper disclosure)

...

1.4.4 C ...

1.4.4A C Disclosure of inside information by a broker to a potential buyer regarding the fact that the seller of qualifying investments is a person discharging managerial responsibilities or the identity of the person discharging managerial responsibilities or the purpose of the sale by the person discharging managerial responsibilities where:

...

- (1) the disclosure is made only to the extent necessary, and solely in order to dispose of the investment;
- (2) the illiquidity of the stock is such that the transaction could not otherwise be completed; and
- (3) the transaction could not be otherwise completed without creating a disorderly market;

will not, of itself, amount to market abuse (improper disclosure).

...

Examples of market abuse (improper disclosure)

1.4.6 G The following ~~is an example~~ are examples of market abuse (improper disclosure):

- (1) X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.
- (2) A, a person discharging managerial responsibilities in B PLC, asks C, a broker, to sell some or all of A's shares in B PLC. C discloses to a potential buyer that A is a person discharging managerial responsibilities or discloses the identity of A, in circumstances where

the fact that A is a person discharging managerial responsibilities or the identity of A, is inside information, other than in the circumstances set out in MAR 1.4.4AC.

**CREDIT UNIONS NEW SOURCEBOOK (CONSEQUENTIAL
AMENDMENTS NO 2) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 149 (Evidential provisions);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 213 (The compensation scheme);
 - (f) section 214 (General); and
 - (g) section 226 (Compulsory jurisdiction); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the FSA’s 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 September 2012.

Amendments to the Handbook

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

(1)	(2)
Supervision manual (SUP)	Annex A
Compensation sourcebook (COMP)	Annex B
Credit Unions New sourcebook (CREDS)	Annex C

Notes

- E. In Annex A (SUP) 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 Credit Unions New Sourcebook (Consequential Amendments No 2) Instrument 2012.

By order of the Board
26 July 2012

Annex A

Amendments to the Supervision manual (SUP)

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

16 Annex 14(1) R Quarterly return (CQ) for credit unions

....

SUPPLEMENTARY ANALYSIS OF THE QUARTERLY RETURN

~~The Supplementary Analysis of the Quarterly Return should be completed as part of the Quarterly Return by credit unions in Great Britain where they meet one or more of the following conditions at the end of the quarter:~~

- ~~• the credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);~~
- ~~• the credit union has issued deferred shares in accordance with section 31A of the Act; or~~
- the credit union has admitted corporate members under section 5A of the Act.

A credit union should complete the relevant sections of the supplementary analysis of the quarterly return (CQ) for credit unions if any of the following conditions apply:

- the Great Britain credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the Great Britain credit union has issued deferred shares in accordance with section 31A of the Act;
- the Great Britain credit union has admitted corporate members under section 5A of the Act; or
- the credit union has revaluation reserves from the upward valuation of property fixed assets.

Interest-bearing shares

Interest-bearing shares

	£	
Total shares	_____	10A
<i>(transferred from 1A on CQ)</i>		
Interest-bearing shares	_____	10B
Dividend-bearing shares	_____	10C

Deferred shares

Deferred shares

Total shares	_____	11A
<i>(transferred from 1A on CQ)</i>		
Non-deferred shares	_____	11B
Deferred shares	_____	11C

Reserves – total

Audited reserves – General	_____	12A
<i>(transferred from 5A on CQ)</i>		
Audited reserves – Other	_____	12B
<i>(transferred from 5B on CQ)</i>		
Revaluation reserve – non-capital element	_____	12C
Deferred share reserves	_____	12D
Reserves	_____	12E

Reserves – percentage

Total assets	_____	12F
<i>(transferred from 4A on CQ)</i>		
Reserves as % of total assets	_____	12G

Corporate membership**Corporate members**

Number of members at the end of the quarter		12A
<i>(transferred from 4a 1A on CQ)</i>	_____	13A
Individuals		12B
	_____	13B
Bodies corporate		12C
	_____	13C
Partnerships		12D
	_____	13D
Unincorporated associations		12E
	_____	13E

Corporate non-deferred shares

Non-deferred shares		13A
<i>(transferred from 11B above)</i>	_____	14A
Individual non-deferred shares		13B
	_____	14B
Body corporate non-deferred shares		13C
	_____	14C
Partnership non-deferred shares		13D
	_____	14D
Unincorporated association non-deferred shares		13E
	_____	14E

Corporate deferred shares

Deferred shares		14A
<i>(transferred from 11C above)</i>	_____	15A
Individual deferred shares		14B
	_____	15B
Body corporate deferred shares		14C
	_____	15C
Partnership deferred shares		14D
	_____	15D
Unincorporated deferred shares		14E
	_____	15E

Corporate loans

Total loans to members		15A
		16A
<i>(transferred from 1B on CQ)</i>		
Individual loans		15B
		16B
Body corporate loans		15C
		16C
Partnership loans		15D
		16D
Unincorporated association loans		15E
		16E

Reserves and capital – adjusted for deferred share and revaluation reserves**Re-valued total assets**

Total assets		16A
<i>(transferred from 4A on CQ)</i>		
Revaluation amount		16B
Re-valued total assets		16C

Adjusted reserves - total

Audited reserves – General		17A
<i>(transferred from 5A on CQ)</i>		
Audited reserves – Other		17B
<i>(transferred from 5B on CQ)</i>		
Revaluation reserves		17C
Deferred share reserves		17D
Adjusted reserves		17E

Adjusted reserves - percentage

Adjusted reserves as % of re-valued total assets		18A
--	--	-----

Revaluation reserves – CREDS capital element

Total capital		19A
<i>(transferred from 5E on CQ)</i>		
Deferred share reserves		19B
Total capital and deferred share reserves		19C
1/3 of (Total capital and deferred share reserves)		19D
Revaluation reserves		19E
Revaluation reserves – CREDS capital element		19F

Adjusted capital - total

Total capital and deferred share reserves		20A
<i>(transferred from 19C above)</i>		
Revaluation reserve – CREDS capital element		20B
<i>(transferred from 19F above)</i>		
Adjusted capital		20C

Adjusted capital - percentage

Adjusted capital as % of re-valued total assets

21A

NOTE: A *credit union* should use the figures for re-valued total assets and adjusted capital when reporting large exposures and risk-adjusted capital-to-assets in the main body of the CQ. Further guidance is provided in the Notes on completing the CQ.

16 Annex 14(2) R Annual return (CY) for credit unions

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SUPPLEMENTARY ANALYSIS OF THE ANNUAL RETURN

The Supplementary Analysis of the Annual Return should be completed as part of the Annual Return by credit unions in Great Britain where they meet one or more of the following conditions at the end of the financial year:

- the credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the credit union has issued deferred shares in accordance with section 31A of the Act;
- the credit union has admitted corporate members under section 5A of the Act; or
- the credit union's rules limit the number of non-qualifying members of the credit union, in accordance with section 5(5) of the Act

A credit union should complete the relevant sections of the supplementary analysis of the annual return (CY) for credit unions if any of the following conditions apply:

- the Great Britain credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the Great Britain credit union has issued deferred shares in accordance with section 31A of the Act;
- the Great Britain credit union has admitted corporate members under section 5A of the Act;
- the rules of the Great Britain credit union limit the number of non-qualifying members, in accordance with section 5(5) of the Act; or
- the credit union has revaluation reserves from the upward valuation of property fixed assets.

Interest bearing shares

Interest-bearing shares

	£	
Members' share balances (transferred from 2T on CY)	_____	33A
Interest-bearing shares	_____	33B

Dividend-bearing shares	_____	33C
-------------------------	-------	-----

Interest expenditure

Expenditure – Other	_____	34A
<i>(transferred from 4P on CY)</i>		
Interest expenditure	_____	34B
Non-interest expenditure	_____	34C

Deferred shares

Deferred shares

Members' share balances	_____	35A
<i>(transferred from 2T on CY)</i>		
Non-deferred shares	_____	35B
Deferred shares	_____	35C

Reserves – total

General reserve – Closing balance	_____	36A
<i>(transferred from 10G on CY)</i>		
Other reserve – Closing balance	_____	36B
<i>(transferred from 11G on CY)</i>		
Revaluation reserve – non-capital element	_____	36C
Deferred share reserve	_____	36D
Reserves	_____	36E

Reserves – percentage

Total assets	_____	36F
<i>(transferred from 1P on CY)</i>		
Reserves as % of total assets	_____	36G

Corporate membership

Corporate members

Total members	_____	36A
<i>(transferred from 12D on CY)</i>		37A
Individuals	_____	36B
		37B
Bodies corporate	_____	36C
		37C
Partnerships	_____	36D
		37D
Unincorporated associations	_____	36E
		37E

Corporate non-deferred shares

£

Non-deferred shares	_____	37A
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	<hr/>	38A
<i>(transferred from 35B above)</i>		
Individual non-deferred shares		37B 38B
Body corporate non-deferred shares	<hr/>	37C 38C
Partnership non-deferred shares	<hr/>	37D 38D
Unincorporated association non-deferred shares	<hr/>	37E 38E

Corporate deferred shares

Deferred shares		38A
	<hr/>	39A
<i>(transferred from 35C above)</i>		
Individual deferred shares		38B 39B
Body corporate deferred shares	<hr/>	38C 39C
Partnership deferred shares	<hr/>	38D 39D
Unincorporated deferred shares	<hr/>	38E 39E

Corporate loans

Due from members for loans - Secured		39A
	<hr/>	40A
<i>(transferred from 1E on CY)</i>		
Due from members for loans - Unsecured		39B 40B
	<hr/>	
<i>(transferred from 1F on CY)</i>		
Total loans outstanding		39C 40C
	<hr/>	
Individual loans		39D 40D
Body corporate loans	<hr/>	39E 40E
Partnership loans	<hr/>	39F 40F
Unincorporated association loans	<hr/>	39G 40G

Non-qualifying membership

Non-qualifying member percentage

Limit on the number of non-qualifying members (where stated in the rules of the <i>credit union</i>)		40A 41A
	<hr/>	

Reserves and capital – adjusted for deferred share reserves and revaluation reserves

Re-valued fixed and total assets

Fixed assets	_____	41A
<i>(transferred from 1A on CY)</i>		
Revaluation amount	_____	41B
Re-valued fixed assets	_____	41C
Total assets	_____	41D
<i>(transferred from 1P on CY)</i>		
Re-valued total assets	_____	41E

Adjusted reserves - total

General reserves	_____	42A
<i>(transferred from 2N on CY)</i>		
Other reserves	_____	42B
<i>(transferred from 2P on CY)</i>		
Revaluation reserves	_____	42C
Deferred share reserves	_____	42D
Adjusted reserves	_____	42E

Adjusted reserves - percentage

Adjusted reserves as % of re-valued total assets	_____	43A
--	-------	-----

Revaluation reserves – CREDS capital element

Total capital	_____	44A
<i>(transferred from 2S on CY)</i>		
Deferred share reserves	_____	44B
Total capital and deferred share reserves	_____	44C
1/3 of (Total capital and deferred share reserves)	_____	44D
Revaluation reserves	_____	44E
Revaluation reserves – CREDS capital element	_____	44F

Adjusted capital - total

Total capital and deferred share reserves	_____	45A
<i>(transferred from 44C above)</i>		
Revaluation reserve – CREDS capital element	_____	45B
<i>(transferred from 44F above)</i>		
Adjusted capital	_____	45C

Adjusted capital - percentage

Adjusted capital as % of re-valued total assets	_____	46B
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NOTE: A *credit union* should use the figures for re-valued total assets and adjusted capital when reporting large exposures and risk-adjusted capital-to-assets in the main body of the CY. Further guidance is provided in the Notes on completing the CY.

16 Annex 15(1)G Notes on completing the Quarterly Return (CQ) for credit unions

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General information

The Quarterly Return (CQ) is to be completed by all *credit unions* in the *United Kingdom* as at end March, end June, end September and end December. This form should be completed using the accruals-based accounting method.

Please read *CREDS* in conjunction with these reporting instructions.

Send the fully completed Quarterly Return (CQ) to **The Financial Services Authority** in accordance with *SUP* 16.3.6R – *SUP* 16.3.13R **within one calendar month** after the quarter to which it relates. Failure to do so is a breach of your regulatory requirements, as laid down in *CREDS*, and may result in your *credit union* being subject to *FSA* sanctions.

Page numbers that appear in the text of these Notes refer to the pages of the Quarterly Return (CQ), not to the pages of these Notes (CQN).

Words in italics denote defined terms which can be found in the Glossary to the main *FSA Handbook*.

"*CREDS*" means the Credit Unions New sourcebook.

"*SUP*" means The Supervision Manual (part of the main *FSA Handbook*)

"*APER*" means the Approved Person ~~Manual~~ sourcebook (part of the main *FSA Handbook*)

"CUA 1979" means the Credit Unions Act 1979.

"CUO" means the Credit Unions Order (Northern Ireland) 1985.

If there is no figure to be entered in the box please insert "nil" or "N/A" as appropriate.

Care should be taken to avoid errors. The *approved person* who signs the Front Page of the Quarterly Return (CQ) should initial any alterations to entries. Correction fluid should **not** be used in correcting entries.

All information should be legible, in particular especially the name of the persons signing the Quarterly Return (CQ).

~~If you have any questions, please contact one of the following numbers:~~

~~020 7676 0104~~

~~020 7676 1096~~

~~020 7676 0282~~

~~020 7676 0352~~

If you have any questions, please contact The Customer Contact Centre

UK: 0845 606 9966 (call rates may vary)

International: +44 20 7066 1000

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Membership and complaints contact

page 2 of CQ

Membership

Indicate in the appropriate boxes the number of members that the *credit union* currently has in each category of membership.

“Member” refers to a member (qualifying or non-qualifying) (and over the age at which he may lawfully become a member of the *credit union*, for *Great Britain credit unions* under the *credit union’s* rules or, for *Northern Ireland credit unions*, under the CUO or the *credit union’s* rules) who, ~~in respect of a *Great Britain credit union*, can save up to £10,000 or 1.5 per cent of the total non-deferred shares in the *Great Britain credit union*, whichever is the greater, or who, in respect of a *Northern Ireland credit union*, can save up to £15,000 or 1.5 per cent of the total non-deferred shares in the *Northern Ireland credit union*, whichever is the greater.~~ [A qualifying member is a person who fulfils the membership requirements: a non-qualifying member is a person who no longer fulfils the membership requirements having once done so.]

“Juvenile depositor” refers to a depositor who is a person too young to be a member of the *credit union* (for a *Great Britain credit union* under the ~~*credit union’s*~~ *credit union’s* rules and for a *Northern Ireland credit union* under the CUO or the *credit union’s* rules), who can save up to a maximum of £10,000, or 1.5% of the total non-deferred shares in the *credit union* but cannot take out a loan from the *credit union*.

....

Share capital

page 3 of CQ

1A Total shares

The total amount of money held by your *credit union*, at the quarter end, relating to shares paid in by members, including money held for *deferred shares* by *Great Britain credit unions*.

This figure should take account of all changes made during the quarter.

...

Income and expenditure

page 3 of CQ

...

4A Total assets

The total assets of your *credit union* that appear on the Balance

Sheet of the relevant monthly financial statement. It may include the following:

- Investments
- Investments of juvenile *deposits*
- Total loans to members
- Cash and *bank* balances

This is not an exclusive list. Your *credit union* will need to refer to its relevant Balance Sheet.

Please note: Unused overdrafts should not be included when calculating the total assets of your *credit union*.

If a *credit union* has revalued its property fixed assets upwards, the revalued amount of total assets should not be included here. Instead, include here the value of total assets excluding any upward property revaluation. The revalued amount of total assets, including any upward property revaluation, should be calculated in section 16 of the supplementary analysis of the quarterly return (CQ) for *credit unions*.

4B Total liabilities (including reserves)

The total liabilities of your *credit union*, that appear on the Balance Sheet of the relevant Monthly Financial Statement of your *credit union*. It may include the following:

- Total shares of members, including *deferred shares*
- Reserves, but not including revaluation reserves or *deferred share reserves*
- Juvenile savings
- Total borrowings at **2E** above

This is not an exclusive list. Your *credit union* will need to refer to its relevant Balance Sheet.

Under section 7(6) of the Credit Unions Act 1979, a *Great Britain credit union* must transfer a sum equal to the amount paid on fully subscribed *deferred shares* to its reserves. However, in the main body of the CQ, *Great Britain credit unions* should report the amount held for *deferred shares* here (as part of total shareholding and, therefore, as part of total liabilities), and should not report *deferred share reserves* as part of Audited reserves – other at **5B**. In the supplementary analysis of the CQ, *Great Britain credit unions* should report *deferred share reserves* at **17D** and **19B**.

Where a *credit union* has revaluation reserves, due to the upwards revaluation of property fixed assets, the amount should not be included here but reported separately in the supplementary analysis of the CQ at **17C** and **19E**.

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...

5B Audited reserves - other Money that your *credit union* has set aside out of net profits (in accordance with *CREDS* 5.3.2R) - for example, a "revenue reserve" for unforeseen circumstances.

This will include initial capital which has not yet been spent.

Please note:

~~Where a revaluation reserve is included within other reserves, this should only include revaluation reserves counting towards capital under *CREDS* 5.2.1R(6) to *CREDS* 5.2.1R(8).~~

Under section 7(6) of the Credit Unions Act 1979, a *Great Britain credit union* must transfer a sum equal to the amount paid on fully subscribed *deferred shares* to its reserves. However, ~~if~~ if money is held in a ~~deferred share reserve~~ *shares* by a *Great Britain credit union*, it should not be included here within other reserves in the main body of the CQ, but reported separately as part of the calculation of adjusted reserves and adjusted capital in the supplementary analysis ~~to~~ of the quarterly return CQ at 17D and 19B. Similarly, where a *credit union* has revaluation reserves, due to the upwards revaluation of fixed assets, it should not be included here but reported separately in the supplementary analysis of the CQ at 17C and 19E.

Please refer to Chapter 5 of *CREDS*. ~~This~~ The figure for Audited reserves – other will be negative if your *credit union* has an accumulated deficit from previous years. "Audited reserves – other" should not be confused with a bad debt "reserve" or provision for bad debts. Please insert "nil" if no other audited reserves are held by your *credit union* other than a general reserve.

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Information for version 1 credit unions

...

Total capital

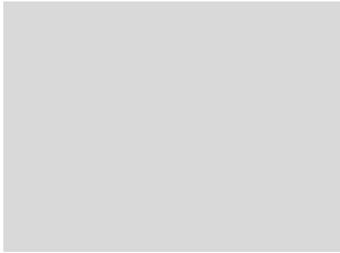
This is the same figure that appears at **5E** on the ~~Quarterly Return (CQ)~~ or, where your *credit union* has revaluation reserves or ~~deferred share reserves~~, it is defined as adjusted capital at 20C on the supplementary analysis of the CQ.

...

Capital ratio (for information purposes only)

To determine the capital ratio your *credit union* will use the following formula:

Total capital (**5E** or **20C**)



X
100
Total assets (**4A or 16C**)
1

....

Large exposures **page 4 of CQ**

...

8A Largest net exposure *A credit union should report here its largest large net exposure. To work out your credit union's largest large net exposure you will need to determine:*

a) the net *exposure* on each loan and find the largest figure. The formula for this is:

(loan balance + interest owing) – attached share balance

b) what is the total capital of your *credit union*? This is defined at **5E of CQ** or, where your credit union has revaluation reserves or deferred share reserves, it is defined as adjusted capital at 20C on the supplementary analysis of the CQ.

...

8B As % of capital An individual large exposure should not exceed **25%** of your *credit union's* capital (*CREDS 7.4.2R*).

To determine this percentage, your *credit union* will need to use the following calculation:

Largest large net exposure (**8A**)
X
100
Total capital (**5E or 20C**)
1

...

8D As % of capital *CREDS* states that the aggregate total of large net *exposures* should not exceed 500% of the total capital of the *credit union*, and should not exceed 300% of total capital without prior notifying the *FSA*. To see if the example satisfies the rules please use the following calculation:

Aggregate total of large net exposure exposures (8C)

X

100

Total capital (5E or 20C)

....

**Large version 1 and
version 2 credit
unions**

page 4 of CQ

...

9A	Total capital	This figure is the same as the figure that appears at 5E of CQ or, where your <i>credit union</i> has revaluation reserves or deferred share reserves, it is defined as adjusted capital at 20C on the supplementary analysis of the CQ.
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...

...

F

Net provisions

Total assets (as at **4A** of CQ or **16C** of the supplementary analysis of the CQ)

G

1% of total assets

The figure that needs to be posted to the Quarterly Return (CQ) is the lesser of **F** and **G**. If this is a negative figure, the figure that appears on the Quarterly Return (CQ) needs to be a negative figure.

A worked example is given on the next page

...

...

E

Net provisions

3,200

Total assets (as at **4A** of CQ or **16C** of the supplementary analysis of the CQ)

1,120,000

...

...

9D	Total assets	This is the total assets of your <i>credit union</i> that appears on the Balance Sheet. It will be the same figure that appears in 4A above of the CQ or, where a <i>credit union</i> has revaluation reserves, at 16C of the supplementary analysis of the CQ. Please note that unused overdrafts or unused committed facilities cannot be used when calculating the total assets of your <i>credit union</i> .
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NOTES ON COMPLETING SUPPLEMENTARY ANALYSIS OF THE QUARTERLY RETURN

General Information

A credit union should complete the relevant sections of the supplementary analysis of the quarterly return (CQ) for credit unions if any of the following conditions apply:

- the Great Britain credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the Great Britain credit union has issued deferred shares in accordance with section 31A of the Act;
- the Great Britain credit union has admitted corporate members under section 5A of the Act; or
- the credit union has revaluation reserves from the upward valuation of property fixed assets.

The sections of the supplementary analysis of the CQ should be completed as follows:

- ~~Sections 10 – 15 The Supplementary Analysis of the Quarterly Return should be completed as part of the Quarterly Return by credit unions in Great Britain by a Great Britain credit union where they meet one or more of the following conditions at the end of the quarter: that~~
- ~~the credit union has issued interest-bearing shares, under section 7A of the Credit Unions Act 1979 (the Act);~~
- ~~the credit union has issued deferred shares *deferred shares* in accordance with section 31A of the Act; or~~
- ~~the credit union has admitted corporate members under section 5A of the Act.~~
- These sections are The Supplementary Analysis of the Quarterly Return is intended to break down some of the information contained in the Quarterly Return CQ in order to give a clearer picture of the financial position of credit unions *Great Britain credit unions* that undertake the these activities listed above.

- The Credit Unions (Northern Ireland) Order 1985 does not provide for *Northern Ireland credit unions* to undertake the activities listed above. Therefore, *Northern Ireland credit unions* do not need to complete the ~~Supplementary Analysis of the Quarterly Return~~ sections 10 – 15.
- Sections 16 – 21 should be completed by a *Great Britain credit union* that has issued *deferred shares* or has revaluation reserves. Sections 16 and 19 – 21 should be completed by a *Northern Ireland credit union* that has revaluation reserves.
- Sections 16 – 21 are intended to recalculate or adjust the value of reserves and capital by including the appropriate amount of deferred share reserves and revaluation reserves. Adjusted reserves amounts at 17E and 18A are used to determine whether a *Great Britain credit union* meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act. Adjusted capital amounts at 20C and 21A are used to determine whether a *credit union* meets the capital requirements in *CREDS*.

...

Deferred shares

Deferred shares

11A	Total shares	The total amount of money held by the <i>credit union</i> relating to shares paid in by members.
		The amount entered here should be transferred from 1A on CQ for analysis. In the following sections, this amount should be broken down into non-deferred shares and <i>deferred shares</i> so that: 11A = 11B + 11C
11B	Non-deferred shares	The total amount of money held by the <i>credit union</i> in respect of non-deferred shares.
11C	Deferred shares	The total amount of money held by the <i>credit union</i> in respect of <u>of</u> <i>deferred shares</i> .

Reserves – total

12A	Audited reserves – General	The total amount held by the <i>credit union</i> in general reserve. The amount entered here should be transferred from 5A on CQ.
12B	Audited reserves – Other	The total amount held by the <i>credit union</i> in other reserves. The amount entered here should be transferred from 5B on CQ.
12C	Revaluation reserves –	The amount of revaluation reserve that is not included in 5B of CQ and 12B (because it does not count towards a <i>credit</i>

	non-capital element	union's capital under CREDs 5.2.1R). See the note to 5B on CQ.
12D	Deferred share reserves	The total amount held by the credit union in the deferred share reserve. Where subscribed for in full, credit unions must transfer a sum equal to the amount paid for deferred shares to its reserves.
12E	Reserves	The total amount of money held by the credit union in reserves (including deferred share reserves) at the end of the financial year, so that:
		12E = 12A + 12B + 12C + 12D

Reserves - percentage

12F	Total assets	The amount entered here should be transferred from 4A on CQ.
12G	Reserves as % of total assets	To determine this ratio your credit union will use the following formula:
		Reserves (12E)
		X
		100
		Total assets (12F)
		1

Corporate membership

Corporate members

<u>12A</u>	Number of members at the end of the quarter	Total number of members of the <i>credit union</i> .
13A		The amount entered here should be transferred from 1a on CQ for analysis. In the following sections, this amount should be broken down into different categories of member so that:
		<u>12A 13A</u> = <u>12B 13B</u> + <u>12C 13C</u> + <u>12D 13D</u> + <u>12E 13E</u>

<u>12B</u> 43B	Individuals	The number of members of the <i>credit union</i> that are individuals.
<u>12C</u> 43C	Bodies corporate	The number of members of the <i>credit union</i> that are bodies corporate <u>bodies corporate</u> .
<u>12D</u> 43D	Partnerships	The number of members of the <i>credit union</i> that are partnerships. Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
<u>12E</u> 43E	Unincorporated associations	The number of members of the <i>credit union</i> that are unincorporated associations. Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

Corporate non-deferred shares

<u>13A</u> 44A	Non-deferred shares	The total amount of money held by the <i>credit union</i> in respect of shares that are not <i>deferred shares</i> . The amount entered here should be equal to the amount at 11B above. In the following sections, this amount should be broken down into non-deferred shares held by different categories of member so that: <u>13A 44A = 13B 44B + 13C 44C + 13D 44D + 13E 44E</u>
<u>13B</u> 44B	Individual non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by individuals.
<u>13C</u> 44C	Body corporate non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by bodies corporate <u>bodies corporate</u> .
<u>13D</u> 44D	Partnership non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by partnerships. Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.

<u>13E</u>	Unincorporated association non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by unincorporated associations.
<u>14E</u>		

Unincorporated associations are represented by individuals who are members of a *credit union* in their capacity as officers or members of the governing body of an unincorporated association.

Corporate deferred shares

<u>14A</u>	Deferred shares	The total amount of money held by the <i>credit union</i> in respect of <i>deferred shares</i> . This should be equal to the amount at 11C .
<u>15A</u>		

In the following sections, this amount should be broken down into *deferred shares* held by different categories of member so that:

$$\mathbf{14A \ 15A = 14B \ 15B + 14C \ 15C + 14D \ 15D + 14E \ 15E}$$

<u>14B</u>	Individual deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by individuals.
<u>15B</u>		

<u>14C</u>	Body corporate deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by <i>bodies corporate</i> .
<u>15C</u>		

<u>14D</u>	Partnership deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by partnerships.
<u>15D</u>		

Partnerships are represented by individuals who are members of a *credit union* in their capacity as partners in a partnership.

<u>14E</u>	Unincorporated association deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by unincorporated associations.
<u>15E</u>		

Unincorporated associations are represented by individuals who are members of a *credit union* in their capacity as officers or members of the governing body of an unincorporated association.

Corporate loans

<u>15A</u>	Total loans to members	The total amount outstanding to the <i>credit union</i> on loans to members. The amount entered here should be transferred from 1B on CQ for analysis.
<u>46A</u>		

In the following sections, this amount should be broken down into loans to different categories of member so that:

$$\mathbf{15A\ 46A = 15B\ 46B + 15C\ 46C + 15D\ 46D + 15E\ 46E}$$

<u>15B</u>	Individual loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to individuals.
<u>46B</u>		

<u>15C</u>	Body corporate loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to <i>bodies corporate</i> .
<u>46C</u>		

<u>15D</u>	Partnership loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to partnerships.
<u>46D</u>		

Partnerships are represented by individuals who are members of a *credit union* in their capacity as partners in a partnership.

<u>15E</u>	Unincorporated association loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to unincorporated associations.
<u>46E</u>		

Unincorporated associations are represented by individuals who are members of a *credit union* in their capacity as officers or members of the governing body of an unincorporated association.

Reserves and capital – adjusted for deferred share reserves and revaluation reserves

Re-valued total assets

<u>16A</u>	<u>Total assets</u>	<u>The value of total assets of the <i>credit union</i>, excluding any amount for the upward revaluation of property fixed assets. The amount entered here should be transferred from 4A on CQ.</u>
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<u>16B</u>	<u>Revaluation amount</u>	<u>The amount by which the property fixed assets the <i>credit union</i> owns have been re-valued upwards, being the difference between current market values and the book values of the property fixed assets.</u>
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<u>16C</u>	<u>Re-valued total assets</u>	<u>The current market value of total assets of the <i>credit union</i>.</u>
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including any amount for the upward revaluation of property fixed assets, so that:

$$\mathbf{16C = 16A + 16B}$$

This amount will be used to determine which CREDs requirements apply to a credit union.

Adjusted reserves – total

<u>17A</u>	<u>Audited reserves – General</u>	<u>The total amount held by the Great Britain credit union in general reserves. The amount entered here should be transferred from 5A on CQ.</u>
<u>17B</u>	<u>Audited reserves – Other</u>	<u>The total amount of money held by the Great Britain credit union in other reserves. This amount should not include deferred share reserves or revaluation reserves. The amount entered here should be transferred from 5B on CQ.</u>
<u>17C</u>	<u>Revaluation reserves</u>	<u>The amount of revaluation reserves held by the Great Britain credit union, arising from the differences between current market values and the book values of the property fixed assets.</u>
<u>17D</u>	<u>Deferred share reserves</u>	<u>The total amount held by the Great Britain credit union in the deferred share reserves. Under section 7(6) of the Act, where subscribed for in full, Great Britain credit unions must transfer a sum equal to the amount paid for deferred shares to its reserves.</u>
<u>17E</u>	<u>Adjusted reserves</u>	<u>The total amount of money held by the Great Britain credit union in reserves (including revaluation reserves and deferred share reserves), so that:</u> $\mathbf{17E = 17A + 17B + 17C + 17D}$ <u>This amount will be used to determine whether a Great Britain credit union meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act.</u>

Adjusted reserves - percentage

18A	<u>Adjusted reserves as % of re-valued total assets</u>	To determine this ratio the <i>Great Britain credit union</i> should use the following formula:
		<u>Adjusted reserves (17E)</u>
		X
		<u>100</u>
		/
		<u>Re-valued total assets (16C)</u>
		<u>This amount will be used to determine whether a <i>Great Britain credit union</i> meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act.</u>

Revaluation reserves – CREDS capital element

19A	<u>Total capital</u>	<u>The total amount held by the <i>credit union</i> as capital in the form of general reserves, other reserves, interim profit or loss, and subordinated debt. This amount should not include deferred share reserves or revaluation reserves. The amount entered here should be transferred from 5E on CQ.</u>
19B	<u>Deferred share reserves</u>	<u>The total amount held by the <i>credit union</i> in the deferred share reserves. Under section 7(6) of the Act, where subscribed for in full, <i>Great Britain credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves. For <i>Northern Ireland credit unions</i>, the amount entered here will be nil.</u>
19C	<u>Total capital and deferred share reserves</u>	<u>The total amount held by the <i>credit union</i> in total capital and deferred share reserves so that:</u> 19C = 19A + 19B

19D	<u>1/3 of (Total capital and deferred share reserves)</u>	<u>To determine this amount the <i>credit union</i> should use the following formula:</u>
		1
		<u>X</u>
		<u>Total capital and deferred share reserves (19C)</u>
		/
		<u>3</u>
19E	<u>Revaluation reserves</u>	<u>The amount of revaluation reserves held by the <i>credit union</i> that meets the requirements in <i>CREDS</i> 5.2.1R(6) to (7), arising from the differences between current market values and the book values of the property fixed assets.</u>
19F	<u>Revaluation reserves – CREDS capital element</u>	<u>The amount of revaluation reserves meets the limits in <i>CREDS</i> 5.2.1R(6) to (8) and so can be included in capital.</u>
		<u><i>CREDS</i> 5.2.1R(8) states that the amount of revaluation reserves included in the calculation of capital must not be more than 25% of the sum of audited reserves, interim net profits, <i>deferred shares</i>, subordinated debt, initial capital and revaluation reserves.</u>
		<u>The simplest way of reporting this amount accurately is to calculate an equivalent amount. An equivalent amount is a third of the sum of audited reserves, interim net profits, <i>deferred shares</i>, subordinated debt and initial capital, but excluding revaluation reserves. This is equivalent to a third of the sum of total capital and <i>deferred shares</i>, which is the amount at 19E.</u>
		<u>So the amount that can be included in capital for the purpose of meeting the <i>CREDS</i> capital requirements will be equal to either 19D or 19E above, whichever is the lower.</u>
Adjusted capital – total		
20A	<u>Total capital and deferred share reserves</u>	<u>The total amount held by the <i>credit union</i> in total capital and deferred share reserves. This amount should be equal to 19C above.</u>
20B	<u>Revaluation reserves – CREDS capital element</u>	<u>The amount of revaluation reserves that can be included in capital for the purpose of meeting the <i>CREDS</i> capital requirements. This amount should be equal to 19F above.</u>

<u>20C</u>	<u>Adjusted capital</u>	<p>The sum of total capital, deferred share reserves and the <i>CREDS</i> capital element of revaluation reserves so that:</p> <p><u>20C = 20A + 20B</u></p> <p>This amount will be used to determine whether a <i>credit union</i> meets the <i>CREDS</i> capital requirements.</p>
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Adjusted capital – percentage

<u>21A</u>	<u>Adjusted capital as % of re-valued total assets</u>	<p>To determine this ratio the <i>credit union</i> should use the following formula:</p> <p><u>Adjusted capital (20C)</u></p> <p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>100</u></p> <p style="text-align: center;">/</p> <p><u>Re-valued total assets (16C)</u></p> <p>This amount will be used to determine whether a <i>credit union</i> meets the <i>CREDS</i> capital requirements.</p>
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16 Annex 15(2)G Notes on completing the Annual Return (CY) for credit unions

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Balance sheet

The balance sheet sets out the *credit union's* total assets, reserves and liabilities at the end of the financial year.

ASSETS

1A	Fixed assets	<p>The figure entered here should include the value of any property the <i>credit union</i> owns (e.g. the <i>credit union's</i> registered office, computer or office equipment). Depreciation of the fixed assets should be deducted before the figure is entered into the box. <u>If a <i>credit union</i> has re-valued its property fixed assets upwards, the re-valued amount of fixed assets should not be included here. Instead, include here the value of fixed assets excluding any upward property revaluation. The re-valued amount of fixed assets should be included in the supplementary analysis of the annual return (CY) for <i>credit unions</i> at 41C.</u></p>
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Credit union capital and reserves

...

2P	Other reserves	<p>Money that the <i>credit union</i> has set aside out of profits e.g. a revenue reserve to provide for unforeseen circumstances. Other reserves are entirely voluntary and do not have to be held by the <i>credit union</i>.</p>
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Please note:

~~Where a revaluation reserve is included within the other reserves, this should only include revaluation reserves counting towards capital under CREDS 5.2.1R(6) to CREDS 5.2.1R(8).~~

~~If Under section 7(6) of the Credit Unions Act 1979, a *Great Britain credit union* shall transfer a sum equal to the amount paid on fully subscribed *deferred shares* to its reserves. However, if money is held for in a *deferred share reserve* by a *Great Britain credit union* *deferred shares*, it should not be included here within other reserves in the main body of the CY, but reported separately in the supplementary analysis ~~to~~ of the annual return CY at **42D** and **44B**. Similarly, where a *credit union* has revaluation reserves, due to the upwards revaluation of fixed assets, it should not be included here within other reserves but reported separately in the supplementary analysis of the CY at **42C** and **44E**.~~

...

2T	Members' share balances	<p>Total amount of money held by the <i>credit union</i> in respect of shares paid in by members, <u>including money paid in for <i>deferred shares</i>.</u></p>
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...

Adult liquidity Liquidity ratio

...

	Large exposures	Whilst these figures relate to the financial year end, your <i>credit union</i> will need to look at large <i>exposure</i> requirements when issuing loans. For example, a large <i>exposure</i> is defined as any individual net liability which is at least £7,5000 <u>£7,500</u> and at least 10% of the value of the <i>credit union's</i> capital.
31A	Largest net exposure	<p><u>A credit union should report its largest large net exposure.</u> To work out your <i>credit union's</i> largest <u>large</u> net <i>exposure</i> you will need to determine:</p> <ol style="list-style-type: none"> 1. the net <i>exposure</i> on each loan and find the largest figure. The formula for this is: (loan balance + interest owing) – attached share balance 2. what is the total capital of your <i>credit union</i>? This is defined at 2S of CY or, <u>where your credit union has revaluation reserves or deferred share reserves, it is defined as adjusted capital at 45C on the supplementary analysis of the CY.</u> <p>Say, for example your <i>credit union's</i> total capital is £40,000. We know from the above that only net liabilities over 10% of Capital are subject to the large <i>exposures</i> rule. Ten percent of £40,000 is £4,000.</p> <p>However, we further know from the above that only net liabilities over £7,500 are subject to the large <i>exposures</i> rule. Below we see all net <i>exposures</i> over 10% of total capital and those that do and do not qualify:</p> <p>...</p>
31B	As % of capital	<p>An individual large exposure should not exceed 25% of your <i>credit union's</i> capital (<i>CREDS</i> 7.4.2R).</p> <p>To determine this percentage, your <i>credit union</i> will need to use the following calculation:</p> $ \begin{array}{r} \text{Largest net exposure (31A)} \\ \times \\ 100 \\ \hline \text{Total capital (2S or 45C)} \\ \hline 1 \end{array} $ <p>...</p>

...

31D As % of capital *CREDS* states that the aggregate total of large net *exposures* must not exceed 500% of the total capital of the *credit union*, and must not exceed 300% of total capital without prior notifying the FSA. To see if the example satisfies the rules please use the following calculation:

Aggregate total of large net *exposure* (31C)

X

100

Total capital (2S or 45C)

1

So:

£35,285

X

100

=

88.21%

£40,000

1

Please note that risk adjusted capital should not be used for the purposes of calculating your large *exposures*. For all *credit unions* the total capital figure used here should be the same as box **2S** ~~on the balance sheet of CY or, where your *credit union* has revaluation reserves or deferred share reserves, it is defined as adjusted capital at **45C** on the supplementary analysis of the CY.~~

Large version 1 and version 2 credit unions

Risk adjusted capital ratio

A risk adjusted capital ratio is a requirement for larger *version 1* and *version 2 credit unions* under *CREDS*.

CREDS 5.3.15R states "A *version 1 credit union* with total assets of more than £10 million and/or a total number of members of more than 10,000 must maintain at all times a risk-adjusted capital to total assets ratio of at least 8%".

32A Total capital

The figure for capital will be the figure that appears on the balance sheet at **2S** of CY or, where a *credit union* has revaluation reserves or deferred share reserves, it is defined as

adjusted capital at **45C** on the supplementary analysis of the CY.

32B ...

...

F

Net provisions

Total assets (as at **1P** of CY or **41E** of the supplementary analysis of the CY)

G

1% of total assets

The figure that needs to be posted onto the Annual Return (CY) is the lesser of **F** and **G**. If this is a negative figure, the figure that appears on the Annual Return (CY) need to be a negative figure.

A worked example is given on the next page.

...

...

F

Net provisions

3,200

Total assets (as at **1P** of CY or **41E** of the supplementary analysis of the CY)

1,120,000

...

...

32D Total assets

This is the same as box ~~**4M**~~ on the Balance Sheet **1P** of CY or **41E** of the supplementary analysis of the CY.

...

NOTES ON COMPLETING SUPPLEMENTARY ANALYSIS OF THE ANNUAL RETURN

General Information

A credit union should complete the relevant sections of the supplementary analysis of the annual return (CY) for credit unions if any of the following conditions apply:

- the Great Britain credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the Great Britain credit union has issued deferred shares in accordance with section 31A of the Act;
- the Great Britain credit union has admitted corporate members under section 5A of the Act;
- the rules of the Great Britain credit union limit the number of non-qualifying members, in accordance with section 5(5) of the Act; or
- the credit union has revaluation reserves from the upward valuation of property fixed assets.

The sections of the supplementary analysis of the CY should be completed as follows:

- ~~Sections 33 – 40 The Supplementary Analysis of the Annual Return~~ should be completed as part of the Annual Return by credit unions in Great Britain by a *Great Britain credit union* where they meet one or more of the following conditions at the end of the financial year: that has
 - ~~the credit union has issued interest-bearing shares, under section 7A of the Credit Unions Act 1979 (the Act);~~
 - ~~the credit union has issued deferred shares, in accordance with section 31A of the Act;~~
 - ~~the credit union has admitted corporate members under section 5A of the Act; or~~
 - ~~the rules of the credit union limit limited the number of non-qualifying members of the credit union in its rules, in accordance with section 5(5) of the Act.~~
- These sections The Supplementary Analysis of the Annual Return are is intended to break down some of the information contained in the Annual Return CY in order to give a clearer picture of the financial position of ~~credit unions~~ *Great Britain credit unions* that undertake ~~the these activities listed above.~~
- Where a credit union issues interest bearing shares, its auditor should submit a report to the FSA stating whether, in their opinion, the credit union has satisfied the conditions specified by the FSA for the purpose of section 7A of the Credit Unions Act 1979.
- The Credit Unions (Northern Ireland Order) 1985 does not provide for Northern Ireland credit unions to undertake the these activities listed above. Therefore, so they Northern Ireland credit unions do not need to complete the Supplementary Analysis of the Quarterly Return sections 33 – 40.
- Sections 41 – 46 should be completed by a Great Britain credit union that has issued deferred shares or that has revaluation reserves. Sections 41 and 44 – 46 should be completed by a Northern Ireland credit union that has revaluation reserves.
 - Sections 41 – 46 are intended to recalculate or adjust the value of reserves and capital by including the appropriate amount of deferred share reserves and

revaluation reserves. Adjusted reserves amounts at 42E and 43A are used to determine whether a *Great Britain credit union* meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act. Adjusted capital amounts at 45C and 46A are used to determine whether a *credit union* meets the capital requirements in CREDS.

...

Deferred shares

Deferred shares

35A	Members' share balances	The total amount of money held by the <i>credit union</i> in respect of member shares.
		The amount entered here should be transferred from 2T on CY for analysis. In the following sections, this amount should be broken down into non-deferred shares and <i>deferred shares</i> so that: 35A = 35B + 35C
35B	Non-deferred shares	The total amount of money held by the <i>credit union</i> in respect of non-deferred shares.
35C	Deferred shares	The total amount of money held by the <i>credit union</i> in respect of <i>deferred shares</i> .

Reserves

36A	General reserve— Closing balance	The total amount held by the <i>credit union</i> in general reserve at the end of the financial year. The amount entered here should be transferred from 10G on CY.
36B	Other reserve—Closing balance	The total amount held by the <i>credit union</i> in other reserves at the end of the financial year. The amount entered here should be transferred from 11G on CY.
36C	Revaluation reserves— non-capital element	The amount of revaluation reserve that is not included in 11G on CY and 36B (because it does not count towards a <i>credit union's</i> capital under CREDS 5.2.1R). See the note to 2P on CY.
36D	Deferred share reserves	The total amount held by the <i>credit union</i> in the deferred share reserve. Where subscribed for in full, <i>credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves.
36E	Reserves	The total amount of money held by the <i>credit union</i> in reserves (including <i>deferred share</i> reserves) at the end of the financial year, so that: 36E = 36A + 36B + 36C + 36D

Reserves – percentage

36F	Total assets	The amount entered here should be transferred from 1P on CQY.
36G	Reserves as % of total assets	To determine this ratio your <i>credit union</i> will use the following formula: Reserves (36E) X 400 Total assets (36F) 4

Corporate membership**Corporate members**

36A	Total members	Total number of members of the <i>credit union</i> at the end of the financial year.
37A		The amount entered here should be transferred from 12D on CY for analysis. In the following sections, this amount should be broken down into different categories of member so that: 37A 36A = 37B 36B + 37C 36C + 37D 36D + 37E 36E
36B	Individual members	The number of members of the <i>credit union</i> at the end of the financial year that are individuals.
37B		
36C	Body corporate members	The number of members of the <i>credit union</i> at the end of the financial year that are bodies corporate <u>bodies corporate</u> .
37C		
36D	Partnership members	The number of members of the <i>credit union</i> at the end of the financial year that are partnerships.
37D		Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
36E	Unincorporated association members	The number of members of the <i>credit union</i> at the end of the financial year that are unincorporated associations.
37E		Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

Corporate non-deferred shares

<u>37A</u> 38A	Non-deferred shares	The total amount of money held by the <i>credit union</i> in respect of shares that are not <i>deferred shares</i> . The amount entered here should be equal to the amount at 35B above. In the following sections, this amount should be broken down into non-deferred shares held by different categories of member so that: 38A 37A = 38B 37B + 38C 37C + 38D 37D + 38E 37E
<u>37B</u> 38B	Individual non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by individuals.
<u>37C</u> 38C	Body corporate non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by bodies corporate <u>bodies corporate</u> .
<u>37D</u> 38D	Partnership non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by partnerships. Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
<u>37E</u> 38E	Unincorporated association non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by unincorporated associations. Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

Corporate deferred shares

<u>38A</u> 39A	Deferred shares	The total amount of money held by the <i>credit union</i> in respect of <i>deferred shares</i> . This should be equal to the amount at 35C . In the following sections, this amount should be broken down into <i>deferred shares</i> held by different categories of member so that: 39A 38A = 39B 38B + 39C 38C + 39D 38D + 39E 38E
<u>38B</u> 39B	Individual deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by individuals.
<u>38C</u> 39C	Body corporate deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by bodies corporate <u>bodies corporate</u> .

<u>38D</u>	Partnership deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by partnerships.
<u>39D</u>		Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
<u>38E</u>	Unincorporated association deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by unincorporated associations.
<u>39E</u>		Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

Corporate loans

<u>39A</u>	Due from members for loans – Secured	The total amount outstanding to the <i>credit union</i> on secured loans to members e.g. loans secured on shares or property.
<u>40A</u>		The amount entered here should be transferred from 1E on CY for analysis.
<u>39B</u>	Due from members for loans – Unsecured	The total amount outstanding to the <i>credit union</i> on unsecured loans to members. This figure will exclude any loans written off during the financial year.
<u>40B</u>		The amount entered here should be transferred from 1F on CY for analysis.
<u>39C</u>	Total loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on all loans to members, whether secured or unsecured, so that: $40C \ 39C = 40A \ 39A + 40B \ 39B$ In the following sections, this amount should be broken down into loans to different categories of member so that: $40C \ 39C = 40D \ 39D + 40E \ 39E + 40F \ 39F + 40G \ 39G$
<u>39D</u>	Individual loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to individuals.
<u>40D</u>		
<u>39E</u>	Body corporate loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to <i>bodies corporate</i> .
<u>40E</u>		
<u>39F</u>	Partnership loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to partnerships.
<u>40F</u>		Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
<u>39G</u>	Unincorporated	The total amount outstanding to the <i>credit union</i> at the end

40G	association loans	of the financial year on loans to unincorporated associations. Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.
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Non-qualifying membership

40A	Limit on non-qualifying members	If the rules of the <i>credit union</i> provide a limit on the number of non-qualifying members of a <i>credit union</i> , that amount should be entered here.
41A		Non-qualifying members are members who no longer fulfil the membership qualifications, having once done so e.g. he or she no longer lives in the common bond area.

Reserves and capital – adjusted for deferred share reserves and revaluation reserves

Re-valued fixed and total assets

41A	<u>Fixed assets</u>	<u>The book value of any property the <i>credit union</i> owns, excluding any amount for the upward revaluation of property fixed assets. The amount entered here should be transferred from 1A on CY.</u>
41B	<u>Revaluation amount</u>	<u>The amount by which the property fixed assets the <i>credit union</i> owns have been re-valued upwards, being the difference between current market values and the book values of the property fixed assets.</u>
41C	<u>Re-valued fixed assets</u>	<u>The current market values of the property fixed assets the <i>credit union</i> owns, including any amount for the upward revaluation of property fixed assets. so that:</u> 41C = 41A + 41B
41D	<u>Total assets</u>	<u>The value of total assets of the <i>credit union</i>, excluding any amount for the upward revaluation of property fixed assets. The amount entered here should be transferred from 1P on CY.</u>
41E	<u>Re-valued total assets</u>	<u>The current market value of total assets of the <i>credit union</i>, including any amount for the upward revaluation of property fixed assets, so that</u> 41E = 41B + 41D <u>This amount will be used to determine which <i>CREDS</i> capital requirements apply to a <i>credit union</i>.</u>

Adjusted reserves - total

42A	<u>General reserves</u>	<u>The total amount held by the <i>Great Britain credit union</i> in general reserves at the end of the financial year. The amount entered here should be transferred from 2N on CY.</u>
42B	<u>Other reserves</u>	<u>The total amount of money held by the <i>Great Britain credit union</i> in other reserves at the end of the financial year. This amount should not include deferred share reserves or revaluation reserves. The amount entered here should be transferred from 2P on CY.</u>
42C	<u>Revaluation reserves</u>	<u>The amount of revaluation reserves held by the <i>Great Britain credit union</i>, arising from the differences between current market values and the book values of the property fixed assets.</u>
42D	<u>Deferred share reserves</u>	<u>The total amount held by the <i>Great Britain credit union</i> in the deferred share reserves. Under section 7(6) of the Act, where subscribed for in full, <i>Great Britain credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves.</u>
42E	<u>Adjusted reserves</u>	<p><u>The total amount of money held by the <i>Great Britain credit union</i> in reserves (including revaluation reserves and deferred share reserves), so that:</u></p> <p><u>42E = 42A + 42B + 42C + 42D</u></p> <p><u>This amount will be used to determine whether a <i>Great Britain credit union</i> meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act.</u></p>

Adjusted reserves - percentage

43A	<u>Adjusted reserves as % of re-valued total assets</u>	<u>To determine this ratio the <i>Great Britain credit union</i> should use the following formula:</u>
		<u>Adjusted reserves (42E)</u>
		X
		<u>100</u>
		/
		<u>Re-valued total assets (41E)</u>
		<u>This amount will be used to determine whether a <i>Great Britain credit union</i> meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act.</u>

Revaluation reserves – CREDS capital element

44A	<u>Total capital</u>	<u>The total amount held by the <i>credit union</i> as capital in the form of general reserves, other reserves and subordinated debt. This amount should not include deferred share reserves or revaluation reserves. The amount entered here should be transferred from 2S on CY.</u>
44B	<u>Deferred share reserves</u>	<u>The total amount held by the <i>credit union</i> in the deferred share reserves. Under section 7(6) of the Act, where subscribed for in full, <i>Great Britain credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves. For <i>Northern Ireland credit unions</i>, the amount entered here will be nil.</u>
44C	<u>Total capital and deferred share reserves</u>	<u>The total amount held by the <i>credit union</i> in total capital and deferred share reserves so that:</u> <u>44C = 44A + 44B</u>

44D	<u>1/3 of (Total capital and deferred share reserves)</u>	<u>To determine this amount the <i>credit union</i> should use the following formula:</u>
		1
		<u>X</u>
		<u>Total capital and deferred share reserves (44C)</u>
		/
		<u>3</u>
44E	<u>Revaluation reserves</u>	<u>The amount of revaluation reserves held by the <i>credit union</i> that meets the requirements in <i>CREDS</i> 5.2.1R(6) to (7), arising from the differences between current market values and the book values of the property fixed assets.</u>
44F	<u>Revaluation reserves – CREDS capital element</u>	<u>The amount of revaluation reserves that meets the limits in <i>CREDS</i> 5.2.1(6) to (8) and so can be included in capital.</u>
		<u><i>CREDS</i> 5.2.1R(8) states that the amount of revaluation reserves included in the calculation of capital must not be more than 25% of the total of audited reserves, interim net profits, <i>deferred shares</i>, subordinated debt, initial capital and revaluation reserves.</u>
		<u>The simplest way of reporting this amount accurately is to calculate an equivalent amount. An equivalent amount is a third of the sum of audited reserves, interim net profits, <i>deferred shares</i>, subordinated debt and initial capital, but excluding revaluation reserves. This is equivalent to a third of the sum of total capital and <i>deferred shares</i>, which is the amount at 44D.</u>
		<u>So the amount that can be included in capital for the purpose of meeting the <i>CREDS</i> capital requirements will be equal to either 44D or 44E above, whichever is the lower.</u>
Adjusted capital – total		
45A	<u>Total capital and deferred share reserves</u>	<u>The total amount held by the <i>credit union</i> in total capital and deferred share reserves. This amount should be equal to 44C above.</u>
45B	<u>Revaluation reserves – CREDS capital element</u>	<u>The amount of revaluation reserves that can be included in capital for the purpose of meeting the <i>CREDS</i> capital requirements. This amount should be equal to 44F above.</u>

<u>45C</u>	<u>Adjusted capital</u>	<p><u>The sum of total capital, deferred share reserves and the CREDS capital element of revaluation reserves so that:</u></p> <p><u>45C = 45A + 45B</u></p> <p><u>This amount will be used to determine whether a <i>credit union</i> meets the CREDS capital requirements.</u></p>
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Adjusted capital – percentage

<u>46B</u>	<u>Adjusted capital as % of re-valued fixed assets</u>	<p><u>To determine this ratio the <i>credit union</i> should use the following formula:</u></p> <p><u>Adjusted capital (45C)</u></p> <p><u>X</u></p> <p><u>100</u></p> <p><u>/</u></p> <p><u>Re-valued fixed assets (41E)</u></p> <p><u>This amount will be used to determine whether a <i>credit union</i> meets the CREDS capital requirements.</u></p>
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Annex B**Amendments to the Compensation sourcebook (COMP)**

In this Annex, underlining indicates new text.

- 5.3.1 R A *deposit* is a *protected deposit* only if:
- ...
- (2) the *deposit* is not:
- (a) a bond issued by a *credit institution* which is part of the institution's capital, as set out in the Consolidated Banking Directive (Directive 2000/12/EC); or
- (aa) subordinated debt issued by a *credit union* meeting the requirements set out at CREDS 5.2.1R(4); or
- ...

Annex C

Amendments to the Credit Unions New sourcebook (CREDS)

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

Amend the following as shown.

- 2.2.16 G (1) As the *credit union's governing body*, the committee of management has responsibility for ensuring that the *credit union* complies with the requirements of SYSC 4.1.1R (see *CREDS 2.2.1G* and *CREDS 2.2.2G*). So, the committee of management has overall responsibility for:
- (a) establishing objectives and formulating a business plan;
 - (b) monitoring the financial position of the *credit union*;
 - (c) determining and documenting policies and procedures;
 - (d) directing and coordinating the work of all *employees* and volunteers, and ensuring that they are capable and properly trained;
 - (e) maintaining adequate reserves;
 - (f) making provision for bad and doubtful debts;
 - (g) recommending a dividend on shares to members subject to the *credit union's* financial position;
 - (h) ensuring that the *credit union* complies with all statutory and regulatory requirements; and
 - (i) ensuring that the *credit union* complies with the requirements of its registered rules.
- (2) ~~Where a committee of management has responsibility for these matters on a day-to-day basis (that is, they are not delegated to a chief executive or manager) it seems highly likely that each member of the committee would be performing the apportionment and oversight function, and would therefore require individual approval. [deleted]~~
- ...
- 4.2.1 R (1) A ~~Great Britain~~ *credit union* must not permit a member to have or claim any interest in the shares total non-deferred shares of the ~~Great Britain~~ *credit union*, ~~other than deferred shares~~, exceeding the greater of:

- (a) ~~£10,000~~ 15,000; or
- (b) 1.5 per cent of the *total non-deferred shares* in the *Great Britain credit union*.
- (2) ~~A Northern Ireland credit union must not permit a member to have or claim any interest in the shares of the Northern Ireland credit union exceeding the greater of:~~
- (a) ~~£15,000; or~~
- (b) 1.5 per cent of the *total shares* in the *Northern Ireland credit union*. ~~[deleted]~~
- ...
- 4.2.4 R ~~Shares in a *Great Britain credit union* must not be held in the joint names of more than two members. There is no restriction on the number of members who may jointly hold shares in a *credit union*.~~
G
- 4.2.4A G ~~There is no restriction on the number of members who may jointly hold shares in a *Northern Ireland credit union*. [deleted]~~
- 4.2.5 R (1) ~~For the purpose only of the ~~limit~~ limits in *CREDS 4.2.1R(1)*, *CREDS 7.3.2R* and *CREDS 7.3.6R* the interest of a member in a joint account must be treated as ~~50 per cent of the shareholding in that account~~ the percentage represented by that individual member as a percentage of the total number of members holding an interest in the joint account.~~
- (2) ~~For the purpose only of the limit in *CREDS 4.2.1R(2)*, the interest of a member in a joint account must be treated as the percentage represented by that individual member as a percentage of the total number of members holding an interest in the joint account. [deleted]~~
- ...
- 5.1.6 G In addition to the capital requirements set out in this chapter, section 7A of the Credit Unions Act 1979 provides that a *Great Britain credit union* may issue interest-bearing shares only if, among other things, its most recent year end balance sheet shows that it holds reserves of at least £50,000 or 5% of its total assets, whichever is greater, and subject to compliance with any conditions specified by the *FSA* in a direction for the purposes of section 7A(1)(e) of the Credit Unions Act 1979.
- ...
- 5.2.1 R ...
- (8) The amount of revaluation reserve included in the calculation of

capital must not represent more than 25 per cent of the total of capital resources in (1)(a) to ~~(e)~~ (f).

- 5.2.1A R The written agreement or instrument referred to in *CREDS 5.2.1R(4)(g)* must contain a prominent statement that the subordinated debt is not covered by the *compensation scheme*.
- ...
- 8.3.5 G *SUP 10.7: the required functions:*
- (1) ~~*SUP 10.7.1R: the apportionment and oversight function. This is the function of dealing with apportionment of responsibilities under SYSC 4.4.3R, and of overseeing the establishment and maintenance of systems and controls under SYSC 4.1.1R. [deleted]*~~
- (2) *SUP 10.7.13R: the money laundering reporting function. This is the function of acting in the capacity of the money laundering reporting officer of a credit union.*
- ...
- 9.2.10 R A report under this section must be given or addressed, and delivered, in the way set out in *SUP 16.3.6R* to *SUP 16.3.16G* (General provisions on reporting), except that, instead of the *credit union's* usual supervisory contact, the report must be given to or addressed for the attention of the ~~Central Analysis and Reporting department~~ Data Monitoring team of the *FSA*.
- ...

continued

Sch 2 Notification requirements

Sch 2.1 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant ~~record-keeping~~ notification requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...
<i>CREDS</i> 7.4.6G	Large exposures	Limits on large exposures to avoid concentration of risk	Upon request	As soon as reasonably practical
<i>CREDS</i> 7.4.3R	Large exposures	The aggregate total of all large exposures will exceed <u>300% of capital.</u>	Prior to the <u>aggregate total of all large exposures exceeding 300% of capital.</u>	<u>As soon as reasonably practicable.</u>
...				

**RECOGNISED INVESTMENT EXCHANGES AND RECOGNISED CLEARING
HOUSES SOURCEBOOK (FINANCIAL RESOURCES REQUIREMENTS)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 1 February 2013.

Amendments to the Handbook

- C. The Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Recognised Investment Exchanges and Recognised Clearing House Sourcebook (Financial Resources Requirements) Instrument 2012.

By order of the Board
26 July 2012

Annex

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.

2 Recognition requirements

...

2.3 Financial resources

...

Operational and other risks: ~~standard approach~~ components of calculation

2.3.7 G ~~The FSA considers that a UK recognised body which (after allowing for the financial resources necessary to cover counterparty and market risks) has at any time:~~

- ~~(1) liquid financial assets amounting to at least six months' operating costs; and~~
- ~~(2) net capital of at least this amount;~~

~~will, at that time, have sufficient financial resources to meet the *recognition requirement* unless there are special circumstances indicating otherwise. In considering whether a UK recognised body has sufficient financial resources in relation to operational and other risks, the FSA will normally have regard to two components: eligible financial resources and net capital.~~

Operational and other risk: UK RCHs - the standard approach

2.3.8 G (1) ~~In this standard approach, the FSA assumes liquid financial assets are needed to cover the costs that would be incurred during an orderly run down of the UK recognised body's business as such, while continuing to satisfy all the *recognition requirements* and complying with any other obligations under the Act (including the obligations to pay periodic fees to the FSA under REC 7). The FSA considers that a UK RCH which at any time holds:~~

- (a) eligible financial resources not less than the amount calculated under the standard approach; and
- (b) net capital not less than the amount of eligible financial resources calculated under (a);

will, at that time, have sufficient financial resources to meet the *recognition requirement* in respect of operational and other risks

unless there are special circumstances indicating otherwise.

- (2) ~~The calculation of operating costs may exclude non-cash costs (costs that do not involve an outflow of funds) and variable costs of the UK recognised body's exempt activities that would not be incurred if no exempt activities were performed. Fixed costs should be included in the assessment of operating costs. The FSA would normally expect the capital equal to the amount of liquid financial assets to be in the form of equity. The FSA would normally regard the amount calculated under REC 2.3.8G(1) to be a minimum amount of financial resources below which a UK RCH would be failing the recognition requirements. The FSA would normally expect a UK RCH to hold, in addition to this minimum amount, an amount constituting an operational risk buffer calculated in accordance with REC 2.3.22G.~~

Operational and other risks: ~~alternative approaches~~ UK RIEs - the standard and risk-based approach

- 2.3.9 G (1) ~~The FSA recognises that UK recognised bodies may wish to satisfy the recognition requirements in different ways. The FSA does not prescribe any particular approach to calculating financial resources or to assessing their adequacy. It is willing to discuss with each UK recognised body the most appropriate way for it to meet the recognition requirement and each UK recognised body will need to be able to show the FSA that its financial resources are at all times sufficient to meet the recognition requirement. The FSA considers that a UK RIE which at any time holds:~~

- (a) eligible financial resources not less than the greater of:
- (i) the amount calculated under the standard approach;
and
 - (ii) the amount calculated under the risk-based approach;
and
- (b) net capital not less than the amount of eligible financial resources determined under (1)(a);

will, at that time, have sufficient financial resources to meet the recognition requirement in respect of operational and other risks unless there are special circumstances indicating otherwise.

- (2) ~~The FSA would normally regard the amount calculated under REC 2.3.9G(1)(a)(i) to be a minimum amount of financial resources below which a UK RIE would be failing the recognition requirements. The FSA would expect a UK RIE to hold, in addition to this minimum amount, an amount constituting an operational risk buffer calculated in accordance with REC 2.3.22G.~~

Operational and other risks: individual guidance

- 2.3.10 G The FSA would expect to provide a UK recognised body with individual guidance on the amount of eligible financial resources which it considers would be sufficient for the UK recognised body to hold in respect of operational and other risks in order to satisfy the recognition requirements. In formulating its individual guidance, the FSA will ordinarily apply the approach described in REC 2.3.8G, for UK RCHs, and REC 2.3.9G, for UK RIEs.

Operational and other risks: eligible financial resources

- 2.3.11 G For the purposes of REC 2.3, “eligible financial resources” should consist of liquid financial assets held on the balance sheet of a UK recognised body, including cash and liquid financial instruments where the financial instruments have minimal market and credit risk and are capable of being liquidated with minimal adverse price effect.

Operational and other risks: net capital

- 2.3.12 G For the purposes of REC 2.3, “net capital” should be in the form of equity. For this purpose, the FSA considers that common stock, retained earnings, disclosed reserves and other instruments classified as common equity tier one capital or additional tier one capital constitute equity. The FSA considers that, when calculating its net capital, a UK recognised body:
- (1) should deduct holdings of its own securities, or those of any undertaking in the same group as the UK recognised body, together with any amount owed to the UK recognised body by an undertaking in its group under any loan or credit arrangement and any exposure arising under any guarantee, charge or contingent liability given in favour of such an undertaking or a creditor of such undertaking; and
 - (2) may include interim earnings that have been independently verified by its auditor.

Operational and other risks: eligible financial resources calculated under the standard approach

- 2.3.13 G (1) Under the standard approach, the amount of eligible financial resources is equal to six months of operating costs.
- (2) Under the standard approach, the FSA assumes liquid financial assets are needed to cover the costs that would be incurred during an orderly wind-down of the UK recognised body’s exempt activities, while continuing to satisfy all the recognition requirements and complying with any other obligations under the Act (including the obligations to pay periodic fees to the FSA).
- (3) For the purposes of the standard approach, the FSA would normally expect the calculation of operating costs to be based on the UK

recognised body's most recent audited annual accounts, with six months of operating costs being equal to one half of the sum of all operating costs reflected in the audited annual accounts of the UK recognised body in the course of performing its functions during the year to which the accounts relate. In calculating the gross annual operating costs, the FSA would consider it reasonable to exclude non-cash costs (costs that do not involve an outflow of funds).

- (4) The FSA considers it to be reasonable for a UK recognised body to adjust its operating expenditure calculation if, during the period since its last audited accounts were prepared, its level of operating expenditure has changed materially as documented by the current annual budget or forecast adopted by the UK recognised body's governing body.
- (5) The FSA considers that it is reasonable for a UK recognised body to adjust its operating expenditure to take account of arrangements between two or more undertakings in the same group, which are all subject to prudential regulation in the United Kingdom under which specified costs are shared or recharged among those undertakings and those costs would otherwise be double-counted in the calculation of their financial resources requirement.

Operational and other risks: eligible financial resources calculated under the risk-based approach (UK RIE's only)

- 2.3.14 G (1) The risk-based approach is intended to ensure that sufficient financial resources are maintained at all times such that a UK RIE would not be prevented from implementing an orderly wind-down as a result of the financial impacts of stress events affecting its business or the markets in which it operates.
- (2) Under the risk-based approach the amount of eligible financial resources is calculated by adding together:
- (a) the amount estimated by the UK RIE to absorb the potential business losses that a business of its nature, scale and complexity might incur in stressed but plausible market conditions; and
- (b) the amount estimated by the UK RIE to effect an orderly closure.

In this context, a business loss arises where there is an increase in cost or reduction of revenue relative to a UK RIE's expectation of its financial performance, such that a loss needs to be charged against its capital.

Operational and other risks: the risk-based assessment (UK RIEs only)

- 2.3.15 G For the purposes of calculating the risk-based approach, the FSA would

normally expect the UK RIE to provide the FSA with an annual financial risk assessment that identifies the risks to its business. As a financial risk assessment is likely to form an integral part of the UK RIE's management process and decision-making culture, the FSA would normally expect it to be approved by the UK RIE's governing body.

- 2.3.16 G The FSA would normally expect to use the financial risk assessment prepared by the UK RIE in the course of preparing individual guidance on the amount of financial resources that it considers is sufficient for a UK RIE to hold in order to satisfy the recognition requirements. The financial risk assessment would provide the basis for calculating the amount of eligible financial resources that should be held by the UK RIE under the risk-based approach.
- 2.3.17 G The financial risk assessment should be based on a methodology which provides a reasonable estimate of the potential business losses which a UK RIE might incur in stressed but plausible market conditions. The FSA would expect a UK RIE to carry out a financial risk assessment at least once in every twelve-month period, or more frequently if there are material changes in the nature, scale or complexity of the UK RIE's operations or its business plans that suggest such financial risk assessment no longer provides a reasonable estimate of its potential business losses. The FSA considers that it would be reasonable for a financial risk assessment to proceed in the following way:
- (1) Step 1: the UK RIE would identify, in writing, the risks to which the business of the UK RIE is exposed and which could have a material adverse effect on its financial position, in the light of the nature, scale and complexity of its operations and its business plans. For this purpose, it would be reasonable to refer to the categorisation of risk used under the system of risk management adopted by the UK RIE in order to meet its responsibilities under the recognition requirements referred to in REC 2.5. That description would identify which risks are indemnified or transferred by the UK RIE and which are retained and accepted.
 - (2) Step 2: the UK RIE would conduct an assessment of the potential business losses that could arise in the event that the risks identified in accordance with step 1 were to materialise. For this purpose, it would be reasonable for a UK RIE to develop, and keep under review, a stress and scenario testing plan designed to simulate the effects of a pre-determined series of events, or sets of circumstances, that would be likely to occur following the crystallisation of one or more identified risks, taking into account the systems and controls in place to mitigate those risks. The stress and scenario testing plan would:
 - (a) cover a forward-looking period of at least one year;
 - (b) consider a suitable range of adverse events and sets of circumstances, of a defined severity and duration, which could

- occur in stressed but plausible market conditions;
- (c) consider how a particular adverse event or set of circumstances could lead to or be correlated with other events;
 - (d) consider the potential for a particular adverse event or set of circumstances to affect multiple business lines;
 - (e) take into account realistic management actions to resolve such adverse events and circumstances; and
 - (f) where appropriate, involve sensitivity analysis showing the effects of changes to assumptions made about the impact of particular adverse events and circumstances.

In designing its stress and scenario testing plan, the FSA considers that it would be reasonable for a UK RIE to be guided by any risk-scoring methodology that it deploys for general risk-management purposes that might have application in evaluating the probability and impact of its risks.

The FSA would not expect a UK RIE which undertakes central counterparty clearing activities to include within its range of stress events the potential default of a participant or other entity (such as another central counterparty which is not a participant).

- (3) Step 3: the UK RIE would assess the eligible financial resources that it would need to hold to cover such potential business losses. Such eligible financial resources would enable the UK RIE to absorb any financial shocks attributable to such business risks were they to arise.

In carrying out this assessment, the FSA considers that it would be reasonable for a UK RIE to take account of any action which its senior management might plan on taking in response to a given stress event. For example, if the risk appetite of a UK RIE is such that it would not pursue recovery from a given stress event (and would instead initiate an orderly wind-down), the assessment of eligible financial resources needed in such circumstances might reasonably be limited to the costs of orderly wind-down from the point in time at which that decision would be likely to be made.

Where a UK RIE expects to be making a loss during the period covered by the financial risk assessment as a result of its anticipated business performance in normal market conditions, the business losses which are relevant to the calculation of the risk-based approach are those additional losses which the UK RIE would expect to incur in stressed but plausible market conditions.

- (4) Step 4: the UK RIE would make an assessment of the cost of orderly closure. The FSA considers that an orderly closure should normally

include an assessment of the impact of closure on the users of the markets operated by that UK RIE. For the purpose of this assessment, the FSA considers that it would be reasonable for a UK RIE to adopt the amount needed under the standard approach as its cost of orderly closure or to use its own method of calculation based on a scenario plan which comprehensively documents the costs that a UK RIE in its position might incur in order to fully implement an orderly wind-down.

- (5) Step 5: the UK RIE would produce a proposal for the amount of eligible financial resources considered to be adequate to meet the risk-based approach. Such a proposal would be based on the sum of:
- (a) the amount assessed to cover potential business losses in accordance with REC 2.3.17G(3); and
 - (b) an amount assessed to cover the cost of orderly closure in accordance with REC 2.3.17G(4).
- (6) Step 6: the UK RIE would calculate the amount available as an operational risk buffer in accordance with REC 2.3.22G. To the extent the amount available is insufficient to constitute an operational risk buffer, the UK RIE would include within its proposal the amount it would propose to hold (in addition to the sum of the amounts referred to in (5)(a) and (b)) for those purposes.

- 2.3.18 G The FSA would normally expect a financial risk assessment to include a description of the methodology applied by the UK RIE to arrive at the proposal made in accordance with REC 2.3.17G(5).
- 2.3.19 G Where a UK RIE is a member of a group, the FSA would normally expect the annual risk assessment to be accompanied by a consolidated balance sheet:
- (1) of any group in which the UK RIE is a subsidiary undertaking; or
 - (2) (if the UK RIE is not a subsidiary undertaking in any group) of any group of which the UK RIE is a parent undertaking.
- 2.3.20 G The FSA would expect to consider the financial risk assessment, any proposal with respect to an operational risk buffer and, if applicable, the consolidated balance sheet, in formulating its guidance on the amount of eligible financial resources it considers to be sufficient for the UK RIE to hold in order to meet the recognition requirements. In formulating its guidance, the FSA would, where relevant, consider whether or not the financial risk assessment makes adequate provision for the following risks:
- (1) the risks related to the administration and operation of the UK RIE as a business enterprise (whether as a result of adverse reputational effects, poor execution of business strategy, ineffective response to competition, or otherwise);

- (2) the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by a UK RIE (whether as a result of errors or delays in processing, system outages, insufficient capacity, fraud, data loss and leakage, or otherwise);
- (3) the risk that the financial position of the UK RIE 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, including reputational contagion; and
- (4) any other type of risk which is relevant to that particular UK RIE.

Operational and other risks: purpose of the risk buffer

- 2.3.21 G The FSA would normally consider a UK recognised body to be failing the recognition requirements if it held financial resources less than the amount calculated under REC 2.3.8G (in respect of UK RCHs) and REC 2.3.9G(1)(a)(i) (in respect of UK RIEs). The FSA therefore expects a UK recognised body to hold an operational risk buffer of a sufficient amount in excess of this minimum, to ensure that it is at all times able to comply with its regulatory obligations.

Operational and other risks: calculation of the operational risk buffer - UK recognised bodies

- 2.3.22 G (1) The FSA would normally expect a UK RCH to hold, in addition to the minimum amount determined under REC 2.3.8G, an operational risk buffer equal to 50% of the amount calculated under REC 2.3.8G(1).
- (2) The FSA would normally expect a UK RIE to hold, in addition to the minimum amount determined under REC 2.3.9G(1)(a)(i), an operational risk buffer consistent with a risk-based approach.
- (a) Where the amount of eligible financial resources calculated by a UK RIE under REC 2.3.17G(5) (the risk-based approach) is greater than the amount of eligible financial resources calculated under REC 2.3.13G (the standard approach), and the difference is of an amount sufficient to serve the purposes of the operational risk buffer, then the FSA considers that there would be no need for a UK RIE to hold any further amount as an operational risk buffer.
- (b) Where the amount of eligible financial resources calculated by a UK RIE under REC 2.3.17G(5) (the risk-based approach) is not sufficient to provide an effective operational risk buffer over and above the amount calculated under REC 2.3.13G (the standard approach), then the FSA would expect the UK RIE to include within its annual risk assessment a

proposal to hold additional financial resources sufficient to constitute an operational risk buffer.

- (3) As the operational risk buffer is an amount in excess of the minimum financial resources sufficient to meet the *recognition requirements*, the FSA would normally not regard a *UK recognised body* that draws upon or temporarily depletes the operational risk buffer to have failed or be failing a *recognition requirement* in respect of its financial resources. However, the FSA would expect to be notified as soon as reasonably practicable if the *UK recognised body* draws upon, or intends to draw upon, its operational risk buffer.

LISTING RULES (RELATED PARTY TRANSACTIONS) INSTRUMENT 2012

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); and
 - (c) section 156 (General supplementary powers); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on 1 August 2012.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Listing Rules (Related Party Transactions) Instrument 2012.

By order of the Board
26 July 2012

Annex A

Amendments to the Glossary of definitions

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

*substantial
shareholder*

~~(in *LR*) any *person* who is entitled to exercise or to control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the *company* (or of any *company* which is its *subsidiary undertaking* or *parent undertaking* or of a fellow *subsidiary undertaking* of its *parent undertaking*).~~ Disregard for this purpose any voting rights which such a *person* exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a *long term insurer* in respect of its linked long term business if no *associate* of that *person* interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such *person* confers or collaborates with such an *associate* which also acts in its capacity as investment manager, collective investment undertaking or long term insurer) as defined in *LR* 11.1.4AR.

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

Definition of “substantial shareholder”

- 11.1.4A R In LR, a “substantial shareholder” means any person who is entitled to exercise, or to control the exercise of, 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the company (or of any company which is its subsidiary undertaking or parent undertaking or of a fellow subsidiary undertaking of its parent undertaking). For the purposes of calculating voting rights, the following voting rights are to be disregarded:
- (1) any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long-term insurer in respect of its linked long-term business if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long-term insurer); or
- (2) any voting rights which a person may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:
- (a) underwriting the issue or sale of securities; or
- (b) placing securities, where the person provides a firm commitment to acquire any securities which it does not place; or
- (c) acquiring securities from existing shareholders or the issuer pursuant to an agreement to procure third-party purchases of securities;
- and where the conditions in (i) to (iv) are satisfied:
- (i) the activities set out in (2)(a) to (c) are performed in the ordinary course of business;
- (ii) the securities to which the voting rights attach are held for a consecutive period of 5 trading days or less, beginning with the first trading day on which the securities are held;

- (iii) the voting rights are not exercised within the period the securities are held; and
- (iv) no attempt is made directly or indirectly by the firm to intervene in (or attempt to intervene in) or exert (or attempt to exert) influence on the management of the issuer within the period the securities are held.

Appendix 1.1 Relevant definitions

<i>substantial shareholder</i>	any person who is entitled to exercise or to control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the company (or of any company which is its subsidiary undertaking or parent undertaking or of a fellow subsidiary undertaking of its parent undertaking). Disregard for this purpose any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long term insurer in respect of its linked long term business if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long term insurer) as defined in LR 11.1.4AR.
<u>trading day</u>	<u>a day included in the calendar of trading days published by the FSA at www.fsa.gov.uk.</u>

LISTING RULES (CONTACT WITH THE FSA) INSTRUMENT 2012**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 30 September 2012.

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 the instrument listed in column (2).

(1)	(2)
Supervision manual (SUP)	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 Listing Rules (Contact with the FSA) Instrument 2012.

By order of the Board
26 July 2012

Annex A

Amendments to the Supervision manual (SUP)

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

9.2.1 G Requests for individual *guidance* may be made in writing or orally. Requests for individual *guidance* in relation to the *Part 6 rules* should be made in writing other than in circumstances of exceptional urgency or in the case of a request from a *sponsor* in relation to the provision of a *sponsor service*. If oral queries raise complex or significant issues, the *FSA* will normally expect the details of the request to be confirmed in writing. Simple requests for *guidance* may often be dealt with orally, although it is open to a *person* to seek a written confirmation from the *FSA* of oral *guidance* given by the *FSA*.

...

9.2.4 G The *FSA* does not expect to enter into discussions on a ‘no-name’ basis about the affairs of an individual *person* ~~except in relation to SUP 9.2.4AG.~~

9.2.4A G ~~The *FSA* may enter into discussions with a *person* on a ‘no-names’ basis about how a particular requirement in the *Part 6 rules* should be interpreted, but:~~

- ~~(1) the *FSA* will not be bound by any *guidance* given in response to the request; and~~
- ~~(2) the *person* receiving the *guidance* will not be able to rely upon it.~~
[deleted]

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

In this Annex, underlining indicates new text.

Early consultation with FSA

- 1.2.5 G An *issuer* or *sponsor* should consult with the *FSA* at the earliest possible stage if it:
- (1) is in doubt about how the *listing rules* apply in a particular situation;
or
 - (2) considers that it may be necessary for the *FSA* to dispense with or modify a *listing rule*.
- 1.2.6 G Where a *listing rule* refers to consultation with the *FSA*, submissions should be made in writing other than in circumstances of exceptional urgency or in the case of a submission from a *sponsor* in relation to the provision of a *sponsor service*.

Address for correspondence

Note: The *FSA*'s address for correspondence is:

....

Annex C

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

In this Annex, underlining indicates new text.

Early consultation with FSA

- 1.2.4 G An *issuer, person discharging managerial responsibilities or connected person* should consult with the *FSA* at the earliest possible stage if they:
- (1) are in doubt about how the *disclosure rules* apply in a particular situation; or
 - (2) consider that it may be necessary for the *FSA* to dispense with or modify a *disclosure rule*.

- 1.2.5 G Where a *disclosure rule* refers to consultation with the *FSA*, submissions should be made in writing other than in circumstances of exceptional urgency.

Address for correspondence

Note: The *FSA*'s address for correspondence is:

....

...

Early consultation with FSA

- 1A.2.4 G An *issuer* or other *person* should consult with the *FSA* at the earliest possible stage if they:
- (1) are in doubt about how the *transparency rules* apply in a particular situation; or
 - (2) consider that it may be necessary for the *FSA* to dispense with or modify a *transparency rule*.

- 1A.2.5 G Where a *transparency rule* refers to consultation with the *FSA*, submissions should be made in writing other than in circumstances of exceptional urgency.

Address for correspondence

Note: The *FSA*'s address for correspondence in relation to the *disclosure rules* is:

....

**RETAIL DISTRIBUTION REVIEW (PLATFORMS) (AMENDMENT)
INSTRUMENT 2012**

Purpose

- A. The purpose of this instrument is to postpone the date on which certain amendments to the Handbook made by the Retail Distributions Review (Platforms) Instrument 2011 (FSA 2011/47) come into force.

Powers exercised

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

Commencement

- D. This instrument comes into force on 27 July 2012.

Amendments to the Handbook

- E. The amendment to the Glossary of definitions by the insertion of the new definition “intermediate unitholder” by the Retail Distributions Review (Platforms) Instrument 2011 (FSA 2011/47) is postponed and comes into force on 31 December 2013 instead of 31 December 2012.
- F. The amendment to the Conduct of Business sourcebook (COBS) by the insertion of new section COBS 14.4 by the Retail Distributions Review (Platforms) Instrument 2011 (FSA 2011/47) is postponed and comes into force on 31 December 2013 instead of 31 December 2012.

Citation

- G. This instrument may be cited as the Retail Distributions Review (Platforms) (Amendment) Instrument 2012.

By order of the Board
26 July 2012

HANDBOOK ADMINISTRATION (NO 27) INSTRUMENT 2012**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 October 2012:

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
Insurance: Conduct of Business sourcebook (ICOBS)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Supervision manual (SUP)	Annex D
Compensation sourcebook (COMP)	Annex E
Collective Investment Schemes sourcebook (COLL)	Annex F
Listing Rules sourcebook (LR)	Annex G
Prospectus Rules sourcebook (PR)	Annex H

Citation

- E. This instrument may be cited as the Handbook Administration (No 27) Instrument 2012.

By order of the Board
27 September 2012

Annex A**Amendments to the Glossary of definitions**

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

reinsurance contract (in *COBS 21*, ~~*ICOB*~~ *ICOBS*, *CASS 5* and *COMP*) a *contract of insurance* covering all or part of a risk to which a *person* is exposed under a *contract of insurance*.

Annex B

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

TP 1 Transitional Provisions

...			
	Initial disclosure document		
2	R	A firm may use the keyfacts logo on a document that meets the requirements for an initial disclosure document except that it includes the sentence "It requires us to give you this document" in section 1 of the document. This rule applies until 5 January 2009. Expired	
...			
	Employers' liability insurance: disclosure by insurers		
7	R	For the purposes of <i>ICOBS</i> 8.4.6R a firm falling within <i>ICOBS</i> 8.4.1R(2) at 6 March 2011 must ensure that the notification is:	
		(1)	valid as at a date no earlier than 6 March 2011; and
		(2)	submitted to the FSA no later than 6 April 2011. Expired
8	R	(1)	For the purposes of <i>ICOBS</i> 8.4.4R(1)(a), <i>ICOBS</i> 8.4.4R(2)(b)(ii) and <i>ICOBS</i> 8 Annex 1, and subject to TP 13:
		(a)	a firm is not required to include information required by <i>ICOBS</i> 8 Annex 1.1.1R(1) in relation to policies entered into or renewed before 1 April 2012 unless the firm holds that information;
		(b)	a firm must make available in accordance with <i>ICOBS</i> 8.4.7R the information required by <i>ICOBS</i> 8 Annex 1.1.1R(1) and (2) no later than three months from the date of entry, renewal or making of the claim;
		(c)	a firm is not required to comply with <i>ICOBS</i> 8 Annex 1 Part 2 before 1 April 2011; and
		(d)	notwithstanding (a), a firm is not required to include information relating to either the HMRC Employer Reference Number or to all other employers, other than the principal employer policyholder, covered by the policy, in relation to policies entered into, renewed or claims made before 1 April 2012.

		(2)	For the purposes of <i>ICOBS</i> 8.4.4R(3)(a) a <i>firm</i> required to produce an employers' liability register under <i>ICOBS</i> 8.4.4R(1)(a) must obtain and submit to the <i>FSA</i> a <i>director's</i> certificate and a report prepared by an auditor required by <i>ICOBS</i> 8.4.4R(1)(c):
		(a)	in relation to the register as at 1 April 2012; and
		(b)	by 1 August 2012.
			TP 8R(1) applies until 1 April 2012 and TP 8R(2) applies until 1 August 2012. <u>Expired</u>
8A	R		For the purposes of the <i>director's</i> certificate required under <i>ICOBS</i> 8.4.4R(1)(b) a <i>firm</i> will be deemed to have complied with <i>ICOBS</i> 8.4.4R(1)(b) to the extent that:
		(1)	the <i>director's</i> certificate states that the employers' liability register as at 1 April 2012 has been properly prepared in accordance with <i>ICOBS</i> 8.4; and
		(2)	the <i>director</i> has made the statement in (1) on the basis that the <i>firm</i> in preparing the register has been materially compliant (as described in <i>ICOBS</i> 8.4.4R(1A)(a)) with the requirements in <i>ICOBS</i> 8.4.4R(1)(b).
			TP 8AR applies until 1 August 2012. <u>Expired</u>
...			
9	G		The effect of TP 8R(1) and <i>ICOBS</i> 8 Annex 1.1.1R is that from 1 April 2011 until 1 April 2012, a <i>firm</i> is required to include in its employers' liability register the information required by the form in <i>ICOBS</i> 8 Annex 1.1.2R relating to <i>policies</i> entered into, renewed or in respect of which a claim is made (subject to TP 13 below), but only to the extent that the <i>firm</i> has that information (with the exception of the HMRC Employer Reference Number and information relating to all employers covered by the <i>policy</i> , other than the principal employer <i>policyholder</i> , where information is only required in relation to <i>policies</i> entered into, renewed or claims made on or after 1 April 2012). The <i>firm</i> has a maximum of three <i>months</i> to make the information available from the date of entry, renewal or making of claim (subject to TP 13 below). From 1 April 2012 <i>firms</i> will need to include all the information in the form in <i>ICOBS</i> 8 Annex 1.1.2R for <i>policies</i> entered or renewed on or after that date. <i>Firms</i> will continue to be required to include only information that the <i>firm</i> holds for <i>policies</i> in relation to which a claim is made (subject to TP 13 below) on or after 1 April 2012 (unless those <i>policies</i> were also entered into or renewed by the <i>firm</i> on or after 1 April 2012). <u>Expired</u>
...			
10	R		For the purposes of <i>ICOBS</i> 8.4.4R(2)(a), for a <i>firm</i> required to produce an employers' liability register under <i>ICOBS</i> 8.4.4R(1)(a) from 1 April 2011, the

		<p>date of the initial version of the register must be 1 April 2011.</p> <p>This <i>rule</i> applies until 1 April 2012. <u>Expired</u></p>
10A	R	<p>For the purposes of <i>ICOB</i>S 8.4.6AR, if, as at 31 March 2012, a <i>firm</i> has obtained a <i>waiver</i> having the same effect as <i>ICOB</i>S 8 Annex 1.1.1BR, it must notify the <i>FSA</i> up to one <i>month</i> after, instead of before, the date upon which it first seeks to rely on <i>ICOB</i>S 8 Annex 1.1.1BR. <u>Expired</u></p>
11	E	<p>For the purposes of <i>ICOB</i>S 8.4.8E, a public statement by a tracing office, approved by the <i>directors</i> of the tracing office, stating that the tracing office complies in all material respects with the requirements in <i>ICOB</i>S 8.4.9R(1) to (6) may be relied upon as tending to establish that a <i>firm</i> has satisfied the requirements to use a tracing office satisfying the requirements in <i>ICOB</i>S 8.4.9R(1) to (6).</p> <p>This <i>rule</i> applies to 1 April 2012. <u>Expired</u></p>
12	R	<p>For the purposes of the condition referred to in <i>ICOB</i>S 8.4.9R(7), until a tracing office publishes its first annual report, the condition will be satisfied if the tracing office has issued a public statement, approved by the <i>directors</i> of the tracing office, stating that the tracing office complies in all material respects with the requirements in <i>ICOB</i>S 8.4.9R(1) to (6). <u>Expired</u></p>
...		

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.

3.6 Form and content of non-real time qualifying credit promotions

...

Clear, fair and not misleading

3.6.3 R ...

(2) A *non-real time financial promotion* which includes a comparison or contact must:

...

(c) not create confusion in the market place between the *firm* itself (or the *person* whose ~~*qualifying credit promotion*~~ *financial promotion of qualifying credit* it approves) and a competitor or between the *firm's* trademarks, trade names, other distinguishing marks, *qualifying credit* (or those of the *person* whose ~~*qualifying credit promotion*~~ *financial promotion of qualifying credit* it approves) and those of a competitor;

...

...

3.6.7 G The requirement in *MCOB* 3.6.4E(1)(l) that certain information must be given in proximity means, for example, in relation to printed ~~*qualifying credit promotions*~~ *financial promotions of qualifying credit*, that this information is all visible at the same time.

...

3.6.24 G ...

(2) In *MCOB* 3.6.22R, when determining the representative *APR*, account should be taken of the business that has arisen from a similar ~~*qualifying credit promotion*~~ *financial promotion of qualifying credit* in the previous 12 months. Where the *financial promotion* is for a new product or business, reference should instead be had to the relevant business plans.

...

3.11 Communication and approval of qualifying credit promotions for an overseas person or an unauthorised person

...

Non-real time qualifying credit promotions for overseas persons

3.11.5 R A firm must not *communicate* or *approve* a *non-real time financial promotion* which relates to *qualifying credit* provided by an *overseas person*, unless:

- (1) the ~~*qualifying credit promotion*~~ *financial promotion of qualifying credit* makes clear which *firm* has *approved* or *communicated* it ...

...

...

3 Annex 1G Examples of ~~*qualifying credit promotions*~~ *qualifying credit promotions*

This Annex belongs to *MCOB 3.1.12G*. This Annex gives examples of ~~*qualifying credit promotions*~~ *financial promotions of qualifying credit* that comply with a number of provisions of *MCOB 3*. ...

...

Example 2

This example of a ~~*qualifying credit promotion*~~ *financial promotion of qualifying credit* published by a *mortgage intermediary* illustrates one method of complying with the following provisions of *MCOB 3*:-

...

Example 3

This example of a ~~*qualifying credit promotion*~~ *financial promotion of qualifying credit* illustrates one method of complying with the following provisions of *MCOB 3*:-

...

Example 4

This example of a ~~*qualifying credit promotion*~~ *financial promotion of qualifying credit* illustrates one method of complying with the following provisions of *MCOB 3*:-

...

10.2.1 G The purpose of this chapter is to establish the requirements for the proper calculation of the *APR*. As a cost measure which facilitates comparisons between similar mortgages offered on a similar basis, the *APR* is an

integral element of the *rules* relating to ~~*qualifying credit promotions*~~
financial promotions of qualifying credit and disclosure.

Annex D

Amendments to the Supervision manual (SUP)

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

16.3 General provisions on reporting

Application

16.3.1 G The effect of *SUP* 16.1.1R is that this section applies to every *firm* except:

...

(2) an *incoming EEA firm* or *incoming Treaty firm*, which is not:

(a) a *firm* of a type listed in *SUP* 16.1.3R as a *firm* to which section *SUP* 16.6, ~~*SUP* 16.7~~ or *SUP* 16.12 applies;

...

...

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

...

(4) ~~financial reports (*SUP* 16.7);~~ [deleted]

...

...

Reports from groups

...

16.3.26 G Examples of reports covering a *group* are:

...

(4) consolidated financial reports required from *banks* under *SUP* ~~16.7.7R~~ 16.12.5R;

(5) consolidated reporting statements required from *securities and futures firms* under *SUP* ~~16.7.24R~~ 16.12.11R;

...

...

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 1

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 <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)						
	<i>UK bank</i>	<i>Building society</i>	<i>Non-EEA bank</i>	<i>EEA bank that has permission to accept deposits, other than one with permission for cross border services only</i>	<i>EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only</i>	<i>Credit union</i>	<i>Dormant account fund operator (note 15)</i>
...							
Sectoral information, including arrears and impairment	FSA015 (Note 2)	FSA015 (Note 2)					
...							
Note 1	...						
Note 2	Firms <i>Firms</i> that are members of a <i>UK consolidation group</i> subject to the capital resources requirement at stage 1 of <i>BIPRU 8 Annex 5R</i> are also required to submit this data item on a <i>UK consolidation group</i> basis. <i>Firms'</i> attention is drawn to <i>SUP 16.3.25G</i> regarding a single submission for all <i>firms</i> in the <i>group</i> .						
...							
Note 8	This will be applicable to <i>firms</i> (other than building societies) that are members of a <i>UK consolidation group</i> ; on a half-yearly reporting date. <i>Firms'</i> attention is drawn to <i>SUP 16.3.25G</i> regarding a single submission for all <i>firms</i> in the <i>group</i>.						
...							

16.12.6 R The applicable reporting frequencies for submission of *data items* and periods referred to in SUP 16.12.5R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

...				
Note 1	Monthly submission only applicable if the <i>firm</i> has been notified in writing that it is required to report (when, on an annual review, it			

	has two consecutive quarterly submissions of FSA003 showing <i>data element 93A</i> being greater than £50 million, or its currency equivalent, and also greater than 50% of <i>data element 70A</i> or, during 2007, it has two consecutive quarterly submissions of FSA009 showing <i>data element 27A</i> and <i>data element 33A</i> combined being greater than £50 million, or its currency equivalent, and also greater than 50% of <i>data element 36A</i>.
...	

...

16 Annex 18AR Retail Mediation Activities Return ('RMAR')

Delete the text of this annex and replace with the following (see next page). The text is not underlined.

Note: The changes made to the RMAR by the following instruments previously made by the Board will still take effect on the commencement dates stated in them, but using the RMAR form shown below:

Handbook Administration (No 26) Instrument 2012 (FSA 2012/31) – commencement date: 31 December 2012

Retail Distribution Review (Retail Mediation Activities Return and Complaints Data) Instrument 2011 (FSA 2011/58) – commencement date: 30 June 2013

Supervision Manual (Retail Mediation Activities Return) (Amendment No 2) Instrument 2010 (FSA 2010/69) – commencement date: 31 December 2013

Supervision Manual (Retail Mediation Activities Return) (Amendment No 3) Instrument 2010 (FSA 2010/70 – commencement date: 31 December 2013

SECTION A: Balance sheet

	A	B		A
Fixed assets				
1				
2				
3				
4				
Current assets				
5				
6				
7				
8				
9				
10				
Liabilities: amounts falling due within one year				
11				
12				
13				
14				
Capital and reserves				
Capital account (incorporated businesses)				
20				
21				
22				
23				
24				
25				
Capital account (unincorporated businesses and Limited Liability Partnerships)				
26				
27				
28				

15	Total assets less current liabilities	<input type="text"/>
16	Other liabilities falling due after more than one year	<input type="text"/>
17	Provisions for liabilities and charges	<input type="text"/>
18	Net assets	<input type="text"/>
19	Memo: guarantees provided by firm	<input type="text"/>

SECTION B: Profit and Loss account

B1: Regulated Business Revenue

	A	B	C	D	E
	Commissions		Fees	Other income	Regulated business
	Gross	Net		(reg activities)	revenue
1 Regulated mortgage contracts					
2 Non-investment insurance					
3 Retail investments					
4 TOTAL					

B2: Other P&L

5 Income from other FSA regulated activities	
6 Other Revenue (income from non-regulated activities)	
7 TOTAL REVENUE	
8 TOTAL EXPENDITURE	
9 Profit/(Loss) on ordinary activities before taxation	
10 Profit/(Loss) on extraordinary activities before taxation	

11	Taxation	<input type="text"/>
12	Profit/(Loss) for the period before dividends and appropriations	<input type="text"/>
13	Dividends and other appropriations	<input type="text"/>
14	Retained Profit	<input type="text"/>

SECTION C: Client money and assets

A B C

1 Have any notifiable client money issues been raised, either in the firm's last client assets audit report or elsewhere, that have not previously been notified to the FSA?
 Yes / No

How is your client account(s) set up (tick all that apply)?

		Segregated Trusts		
		Risk Transfer	Statutory	Non-statutory
2	Non-investment insurance			
3	Retail investments			

If not risk transfer:

		Non-investment insurance		Retail investments
		Statutory	Non-statutory	Statutory
4	Client money credit total as at reporting date			
5	Client money debit total as at reporting date			
6	Net client money balance as at reporting date			

7 If non-statutory, has auditor's confirmation of systems and controls been obtained?
 Yes / No

8 Is any client money invested (other than on deposit)?
 Yes / No

	Mortgage	Non-investment insurance	Retail investments
10 Does the firm hold any client assets (other than client money)?			

SECTION D1: Regulatory Capital

	A	B	C	A
	Mortgage	Non-investment insurance	Retail investments	
1 Is the firm exempt from these capital requirements in relation to any of its retail mediation activities?				

Mortgage and non-investment insurance

	Client money	Non-client money	
2 Base requirement			
3 5% of annual income (firms holding client money)			
4 2.5% of annual income (firms not holding client money)			
5 Capital requirement (higher of above)			
6 Other FSA capital requirements (if applicable)			
7 Additional capital requirements for PII (if applicable)			
8 TOTAL CAPITAL REQUIREMENT			
9 TOTAL CAPITAL RESOURCES			See guidance
10 TOTAL CAPITAL EXCESS/DEFICIT			

Eligible capital (mortgage and non-investment insurance)

Incorporated firms		
24 Share capital		
25 Reserves		
26 Interim net profits		
27 Revaluation reserves		
28 Eligible subordinated loans		
29 less Investments in own shares		
30 less Intangible assets		
31 less interim net losses		
32 TOTAL CAPITAL RESOURCES		

IPRU(INV) requirements for personal investment firms (retail investment activities only)

11 Category of personal investment firm under IPRU(INV)	
---	--

Unincorporated firms and limited liability partnerships

33 Capital of a sole trader or partnership	
34 Eligible subordinated loans	

12	Own funds requirement		A	35	Personal assets not needed to meet non-business liabilities	
13	Additional own funds requirement for PII (if applicable)			36	less Intangible assets	
14	Other FSA capital requirements (if applicable)			37	less interim net losses	
15	Total own funds requirement			38	less excess of drawings over profits for a sole trader or p'ship	
16	Own funds			39	TOTAL CAPITAL RESOURCES	
17	Surplus/deficit of own funds					
18	Adjusted net current assets requirement (if applicable)		D			
19	Adjusted net current assets (if applicable)		E			
20	Surplus/deficit (if applicable)		F			
21	Expenditure based requirement (if applicable)		G			
22	Adjusted Capital/liquid capital (if applicable)		H			
23	Surplus/deficit (if applicable)		I			

SECTION D2: FINANCIAL RESOURCES - NON-MIFID PERSONAL INVESTMENT FIRMS

OWN FUNDS (TEST 1)	A	A	A	B	
	£	ADJUSTED NET CURRENT ASSETS (TEST 1A)	£	EXPENDITURE-BASED REQUIREMENT (TEST 2)	
1 Paid up share capital (excluding preference shares redeemable by shareholders within 2 years)		18 Net current assets (from balance sheet)		25 Total assets less total liabilities (from balance sheet)	
2 Share premium account		less		26 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part I adjustments required against assets	
3 Audited retained profits		19 Long term assets adjustment		27 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for subordinated loans	
4 Verified interim profits		20 Connected persons adjustment		28 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for indemnity commission	
5 Revaluation reserves		21 Investments adjustments		29 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for deficiencies in subsidiaries	
6 Short term subordinated loans				30 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for contingent liabilities	
7 Debt capital				31 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for foreign exchange risk	
8 Balances on proprietors' or partners' capital accounts				32 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for redeemable preference shares	
9 Balances on proprietors' or partners' current accounts				33 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for derivatives	
10 Personal assets				34 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II other adjustments against liabilities	
11 Less intangible assets					
12 Less material current year losses					
13 Less excess of current year drawings over current year losses					
14 PASS Loan Adjustments					
15 OWN FUNDS (1+2+3+4+5+6+7+8+9+10-11-12-13+14)		22 ADJUSTED NET CURRENT ASSETS (18-19-20-21)		35 ADJUSTED CAPITAL/ LIQUID CAPITAL [(25+27)-26-28-29-30-31-32-33-34]	

SECTION E: PII Self-Certification

	H	I	J
	Mortgage advising/arranging	Non-inv insurance advising/arranging/ dealing/assisting	Retail investment advising/arranging
1 Does your firm hold a comparable guarantee or equivalent cover in lieu of PII, or is it otherwise exempt from holding PII in respect of any regulated activities (select as appropriate)?			
2 If your firm does not hold a comparable guarantee or equivalent cover and is not exempt does the firm currently hold PII?			
3 Has your firm renewed its PII cover since the last reporting date			

4 Professional Indemnity Insurance Details

Please complete the table below if the answer to Question 3 is "Yes". Otherwise, the table must be left blank

PII policy	PII Basic information							IMD firms should state their indemnity limits in Euros				PII detailed information			
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	
	Activities covered by the policy			Retroactive start date (if any)	Annualised premium (Sterling)	Insurer (from list)	Start date	End date	Indemnity Limit		Limit of Indemnity:		Business line	Policy excess (Sterling)	Policy exclusions
	Mortgage advising/arranging	Non-inv insurance advising/arranging /dealing/assisting	Retail investment advising/arranging						(Single) in: Euros/Sterling/ Unlimited	Single	(Aggregate) in: Euros/Sterling/ Unlimited	Aggregate			
1															
2															
3															
4															
5															
6															
7															
8															
9															
10															

	H
5 Annual income as stated on the most recent proposal form	
6 Amount of additional capital required for increased excess(es) (where applicable, total amount for all policies)	
7 Total amount of additional own funds required for policy exclusion(s)	
8 Total of additional own funds required	
9 Total of readily realisable own funds	
10 Excess /deficit of readily realisable own funds	

SECTION F: Threshold conditions

A

Close links

1 Has there been a notifiable change to the firm's close links?

2 If yes, has the FSA been notified of it?

(if no notification has been made, please notify us separately of the changes)

Controllers

3 Has there been a notifiable change to the firm's controllers including changes to the percentage of shares or voting power they hold in your firm?

4 If yes, has the FSA been notified of it?

(if no notification has been made, please notify us separately of the changes)

SECTION G: Training and Competence

A B C D

Advising on mortgages	Advising on non-investment insurance (retail customers)	Advising on retail investments	Total
-----------------------	--	--------------------------------	-------

1 Total number of all staff

--	--	--	--

Of which:

2 Number of staff that give advice

--	--	--	--

3 Number of staff that give advice (Full time equivalent)

--	--	--	--

4 Number of staff that supervise others to give advice

--	--	--	--

5 Number of advisers that have been assessed as competent

--	--	--	--

6 Number of advisers that have passed approved examinations

--	--	--	--

7 Number of advisers that have left since the last reporting date

--	--	--	--

What types of advice were provided?

(tick all that apply)

Mortgage Non-Inv Insurance Retail Investments

8 Independent (whole of market plus option of fee-only)

--	--	--

9 Whole of market (without fee-only option)

--	--	--

10 On the basis of a fair analysis of the market

--	--	--

11 Multi-tie / the products of a limited number of providers

--	--	--

12 Single-tie / the products of one provider

Clawed back commission (retail investment firms only)

13 Clawed back commission by:

Number

--

14

Value

--

SECTION H: COBS Data

General COBS data

A

B

- 1 Do FSA regulated activities form the core business of the firm?
- 2 If not, specify type of core business:

Monitoring of Appointed Representatives ('ARs')

- 3 Number of ARs registered with the firm
- 4 Of which, number of 'secondary' ARs
- 5 Of which, number of introducer ARs
- 6 Number of advisers within ARs

(Only firms that have ARs)

- 7 Does the firm have appropriate systems and procedures to ensure that the activities of its ARs are effectively monitored and controlled?
- 8 Number of ARs that have been subject to monitoring visits by the firm during the reporting period.
- 9 Number of ARs that have been subject to file reviews by the firm during the reporting period.
- 10 Number of ARs that have been subject to financial checks by the firm during the reporting period.
- 11 Has any other monitoring of ARs by the firm taken place?

--

--

--

SECTION I: supplementary product sales data

(i) non-investment insurance product information

A

1 Total non-investment insurance premium derived from retail customers (annualised)

2 Please indicate in column **A** each product type where the firm has advised or arranged transactions for retail customers during the reporting period

3 Please indicate in column **B** where the firm's business with retail customers in the product type formed more than 40% by premium of all of its retail non-investment insurance activities.

(ii) non-investment insurance chains

4 Of total non-investment insurance premiums derived from retail customers, please indicate in column **D** the products where these sales were passed up a chain and this business was significant*

- *significant is where premium collected from being in a chain for this product amounts to
- 1) more than 40% of the premium collected for all non-investment insurance activities with retail customers, or
 - 2) more than 40% of premium collected for all retail business in this product

	A y/n	B y/n	D y/n
P1 Private motor			
P2 Household			
P3 Creditor - Payment protection			
P4 Travel			
P5 Personal accident - sickness			
P6 Legal expenses			
P7 Private Medical Insurance (PMI)			
P8 Critical illness			
P9 Permanent Health Insurance (PHI)			
P10 Life assurance (or term assurance)			
P11 HealthCare cash plan			
P12 Extended warranty (motor only)			

SECTION J: data required for calculation of fees**Special Instructions**

This section only needs to be completed once a year, according to your firm's accounting reference date. It is essential that you read the corresponding help text before completing this section. Where indicated, you are required to report your firm's income in respect of FSA, FOS and FSCS.

Data required for fees calculations

References in italics denote FSA fee block, FOS industry block & FSCS sub-class

	A		B		C
	FSA		FOS		FSCS
	Annual Income (£s)		Relevant Annual Income (£s)		Annual Eligible Income (£s)
1 Home Finance Mediation	<i>A.18</i> <input type="text"/>	<i>I016</i>	<input type="text"/>	<i>SE02</i>	<input type="text"/>
2 Non-investment Insurance Mediation	<i>A.19</i> <input type="text"/>	<i>I017</i>	<input type="text"/>	<i>SB02</i>	<input type="text"/>
3 Life and Pensions Mediation	<i>A.12/13</i> <input type="text"/>	<i>I008/9</i>	<input type="text"/>	<i>SC02</i>	<input type="text"/>
4 Investment Mediation	<i>A.12/13</i> <input type="text"/>	<i>I008/9</i>	<input type="text"/>	<i>SD02</i>	<input type="text"/>

...

Editor's Note: App 2.1.3R (the text of which is shown below) was made by the Board in the CRD (Consequential Amendments) Instrument 2006 (FSA 2006/53) with effect from 31 December 2006. This text was inadvertently omitted from the Online Handbook but is repeated here for clarity. The provision which follows it is therefore renumbered.

Amend the following as shown.

Appendix 2 Insurers: Regulatory intervention points and run-off plans

...

2.1.3 R SUP App 2.16 applies to the Society.

~~2.1.3~~ G SUP App 2.15 applies to an *insurer* carrying on *with-profits business*, but
2.1.4 only if COBS 20.2.53R (Ceasing to effect new contracts of insurance in a
with-profits fund) also applies.

Annex E**Amendments to the Compensation sourcebook (COMP)**

In this Annex, striking thorough indicates deleted text.

Websites

- 16.4.5 R *A firm that accepts deposits* under a single brand or trading name must, ~~on pages of its website where it advertises new accounts operated by any of its branches,~~ in a way that best brings the information to depositors' attention:
- (1) display prominently (in electronic form) the compensation sticker; and
 - (2) provide from the sticker an electronic link to the compensation leaflet.
- 16.4.6 R *A firm that accepts deposits* under multiple brands or trading names must, ~~on pages of its website where it advertises new accounts operated by any of its branches,~~ in a way that best brings the information to depositors' attention:
- (1) display prominently (in electronic form) the compensation poster; and
 - (2) provide from the poster an electronic link to the compensation leaflet.

Annex F

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 prospectus

4.2.5 R ...

...		
22A	For a <i>property authorised investment fund</i> , a statement that:	
	...	
	(2)	no <i>body corporate</i> may seek to obtain or intentionally maintain a holding of more that <u>than</u> 10% of the net asset value of the fund; or
	...	
...		

...

4.6.7 G (1) In translating the *simplified prospectus* from English into ~~the~~ or one or more of the official languages of the *EEA State* ...

...

Annex G

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text, unless otherwise stated.

Minimum information to be included

4.2.4 R The following minimum information from the *PD Regulation* must be included in *listing particulars*:

...

- (4) for an issue of *certificates representing shares*, irrespective of the denomination per unit of the issue, the *schedule* applicable to depositary receipts over shares with a denomination per unit of at least 100,000 euros (except that item 13.2 (relating to profit forecasts) in Annex 10 and Annex 28 is not to apply);

...

Appendix 1 Relevant definitions

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

transparency rules in accordance with 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.

Annex H

Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text.

Appendix 3 Schedules and Building Blocks and Table of Combinations of Schedules and Building Blocks

...

ANNEX XVIII	...
...	

<u>ANNEX XIX</u>	<u>LIST OF SPECIALIST ISSUERS</u>
<ul style="list-style-type: none"> - <u>Property companies</u> - <u>Mineral companies</u> - <u>Investment companies</u> - <u>Scientific research based companies</u> - <u>Companies with less than three years of existence (start-up companies)</u> - <u>Shipping companies.</u> 	

ANNEX XX	...
...	

ADVANCED MEASUREMENT APPROACH (GUIDELINES) INSTRUMENT 2012

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 October 2012.

Amendments to the Handbook

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Advanced Measurement Approach (Guidelines) Instrument 2012.

By order of the Board
27 September 2012

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

In this Annex, underlining indicates new text.

7.1 Risk control

...

Operational risk

...

7.1.16B **G** In meeting the general standards referred to in SYSC 7.1.16R, a firm with AMA approval should be able to demonstrate to the FSA that it has considered and complies with Section III of the European Banking Authority's Guidelines on the Advanced Measurement Approach (AMA) – Extensions and Changes published in January 2012. These can be found at [http://eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2012/EBA-BS-2011-209-final-\(EBA-GL-on-AMA-extensions-and-changes\).pdf](http://eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2012/EBA-BS-2011-209-final-(EBA-GL-on-AMA-extensions-and-changes).pdf)

Annex B

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text.

6.5 Operational risk: Advanced measurement approach

...

Minimum standards

...

- 6.5.5B G In meeting the general risk management standards referred to in *BIPRU* 6.5.5R(1), a *firm* with AMA approval should be able to demonstrate to the FSA that it has considered and complies with Section III of the European Banking Authority's Guidelines on the Advanced Measurement Approach (AMA) – Extensions and Changes published in January 2012. These can be found at [http://eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2012/EBA-BS-2011-209-final-\(EBA-GL-on-AMA-extensions-and-changes\).pdf](http://eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2012/EBA-BS-2011-209-final-(EBA-GL-on-AMA-extensions-and-changes).pdf)

MORTGAGE MARKET REVIEW (CONDUCT OF BUSINESS) INSTRUMENT 2012**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Part 2 of Annex D to this instrument comes into force on 26 October 2012.
- (2) The remainder of this instrument comes into force on 26 April 2014.

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
Training and Competence sourcebook (TC)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex D
Supervision manual (SUP)	Annex E
Professional Firms sourcebook (PROF)	Annex F

Amendments to material outside the Handbook

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

Citation

- F. This instrument may be cited as the Mortgage Market Review (Conduct of Business) Instrument 2012.

By order of the Board
27 September 2012

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 new text is not underlined.

<i>bridging loan</i>	a <i>regulated mortgage contract</i> which has a term of twelve <i>months</i> or less.
<i>credit-impaired customer</i>	a <i>customer</i> who: <ul style="list-style-type: none"> (a) within the last two years has owed overdue payments, in an amount equivalent to three <i>months</i>' payments, on a mortgage or other loan (whether secured or unsecured), except where the amount overdue reached that level because of late payment caused by errors by a bank or other third party; or (b) has been the subject of one or more county court judgments, with a total value greater than £500, within the last three years; or (c) has been subject to an individual voluntary arrangement or bankruptcy order which was in force at any time within the last three years.
<i>direct deal</i>	a <i>home finance transaction</i> that can only be obtained direct from a <i>home finance provider</i> , and where that <i>home finance provider</i> is not the selling <i>firm</i> .
<i>execution-only sale</i>	<ul style="list-style-type: none"> (a) a <i>home finance transaction</i> entered into by a <i>firm</i> with, or arranged by a <i>firm</i> for, a <i>customer</i>; or (b) a variation of an existing <i>home finance transaction</i> entered into by a <i>firm</i> with, or arranged by a <i>firm</i> for, a <i>customer</i>; <p>where the <i>firm</i> does not give <i>advice on home finance transactions</i> to that particular <i>customer</i>, or where the <i>customer</i> has rejected such <i>advice</i> given by the <i>firm</i>.</p>
<i>high net worth mortgage customer</i>	a <i>customer</i> with an annual net income of no less than £300,000 or net assets of no less than £3,000,000, or whose obligations are guaranteed by a person with an income or assets of such amount.
<i>high net worth illustration</i>	an <i>illustration</i> for a <i>regulated mortgage contract</i> to a <i>high net</i>

	<i>worth mortgage customer.</i>
<i>high net worth offer document</i>	an <i>offer document</i> for a <i>regulated mortgage contract</i> to a <i>high net worth mortgage customer</i> .
<i>initial contact</i>	the first occasion when a <i>firm</i> is in contact with the <i>customer</i> and may perform any of the following in relation to a <i>home finance transaction</i> : <ul style="list-style-type: none"> (a) <i>advising</i> on the transaction; (b) <i>arranging (bringing about)</i> the transaction; or (c) <i>entering into</i> the transaction, when there is no <i>firm arranging (bringing about)</i> the transaction.
<i>interest roll-up mortgage</i>	an <i>interest-only mortgage</i> under which neither capital repayments, nor payment of any of the interest accruing under its terms, are required or anticipated until it comes to an end, whether on expiry of the term (if any), discharge of the mortgage or the happening of some other event.
<i>payment shortfall</i>	the outstanding amount to be paid measured against the amount of payments which have become due during the term of a <i>regulated mortgage contract</i> or <i>home purchase plan</i> , including any <i>arrears</i> amount due.
<i>professional customer</i>	a <i>customer</i> who works or has recently worked in the home finance sector for at least one year in a professional position, which requires knowledge of the <i>home finance transactions</i> or home finance services envisaged, and who the <i>firm</i> reasonably believes to be capable of understanding the risks involved in the transaction or transactions contemplated.

Amend the following definitions as shown.

<i>combined initial disclosure document</i>	information about the breadth of advice, <i>scope of advice</i> or <i>scope of basic advice</i> and the nature and costs of the services offered by a <i>firm</i> in relation to <u>either</u> : <ul style="list-style-type: none"> (a) two or more of the following: <ul style="list-style-type: none"> (a i) <i>packaged products</i> or, for <i>basic advice</i>, <i>stakeholder products</i> that are not a <i>group personal pension scheme</i> or a <i>group stakeholder pension scheme</i> (but only if a <i>consultancy charge</i> will be made); (b ii) <i>non-investment insurance contracts</i>; (c iii) <i>regulated mortgage contracts</i> <u><i>home finance</i></u>
---	--

transactions (other than ~~lifetime mortgages~~ regulated sale and rent back agreements); or

- ~~(d) home purchase plans;~~
- ~~(e) equity release transactions;~~
- (b) home finance transactions (other than regulated sale and rent back agreements) only;

which contains the keyfacts logo, headings and text in the order shown in, and in accordance with the notes in, COBS 6 Annex 2.

early repayment charge (in MCOB and BSOCS) a charge levied by the mortgage lender on the customer in the event that the amount of the loan is repaid in full or in part before a date or event specified in the contract.

initial disclosure document information about the *scope of advice* and the nature of the services offered by a firm in relation to:

- ~~(a) a regulated mortgage contract other than a lifetime mortgage as required by MCOB 4.4.1R(1) and set out in MCOB 4 Annex 1R;~~
- ~~(b) an equity release transaction as required by MCOB 4.4.1R(1) and set out in MCOB 8 Annex 1R;~~
- ~~(e) a home purchase plan as required by MCOB 4.4.1R(1) and set out in MCOB 4 Annex 1R; or~~
- ~~(d) a non-investment insurance contract in accordance with ICOBS 4.5.1G and set out in ICOBS 4 Annex 1G.~~

repayment mortgage a regulated mortgage contract under which the customer is obliged to make payments of interest and capital which are designed to repay the mortgage in full over the stated term.

repayment vehicle strategy the means by which the customer ~~will~~ intends to repay the outstanding capital due and, where applicable, pay the interest accrued under the regulated mortgage contract, where all or part of that contract is an *interest-only mortgage*.

Annex B

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

Appendix 1

App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

App 1.1.1 R

Activity		Products/Sectors	Is there an appropriate examination requirement?
...			
<i>Regulated mortgage activity and reversion activity carried on for a customer</i>			
Advising; <u>arranging (bringing about) or (for a mortgage lender or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A Regulated Activities Order (Arranging contracts to which the arranger is a party)</u>	20	<i>Regulated mortgage contracts for a non-business purpose</i>	Yes
	<u>20 A</u>	<i><u>Regulated mortgage contracts for a business purpose</u></i>	<u>No</u>
	21	<i>Equity release transactions</i>	Yes

Designing scripted questions for <u>non-advised execution-only sales</u>	<u>21 A</u>	<u>Regulated mortgage contracts for a non-business purpose</u>	<u>Yes</u>
	<u>21 B</u>	<u>Regulated mortgage contracts for a business purpose</u>	<u>No</u>
	22	<i>Equity release transactions</i>	Yes
Overseeing non-advised <u>execution-only sales on a day-to-day basis</u>	23	<i>Equity release transactions</i>	Yes
...			

...

Appendix 4E – Appropriate Qualification tables

...

<p>Qualification table for: Advising a customer on <u>or arranging (bringing about)</u> a <i>regulated mortgage contract</i> (for a non-business purpose) - Activity number 20 in TC Appendix 1.1.1R; and <u>Designing scripted questions for use in execution-only sales to customers of regulated mortgage contracts</u> for a non-business purpose - Activity number 21A in TC Appendix 1.1.1R</p>
...

<p>Qualification table for: Advising a customer on <u>or arranging (bringing about)</u> <i>Equity release transactions</i> - Activity number 21 in TC Appendix 1.1.1R</p>
...

...

<p>Qualification table for : Overseeing non-advised <u>execution-only</u> sales on a day-to-day basis on <i>Equity release transactions</i> – Activity number 23 in TC Appendix 1.1.1R</p>
...

TP 8 Transitional provisions relating to time limits for attaining qualifications

...		
8.2	R	<p><u>An <i>employee</i> who is carrying on the activities specified in TC Appendix 1 of:</u></p> <p>(1) <u>arranging (bringing about) regulated mortgage contracts or home reversion plans or (for a mortgage lender or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A Regulated Activities Order (Arranging contracts to which the arranger is a party) for a non-business purpose; or</u></p> <p>(2) <u>designing scripted questions for execution-only sales of regulated mortgage contracts for a non-business purpose;</u></p> <p><u>as at 26 April 2014 will, for the purposes of TC 2.2A.1R, be regarded as carrying on such activities only with effect from that date; and, in relation to such an <i>employee</i>, a <i>firm</i> need not (in relation to such activities only) comply with TC 2.1.6R until 26 October 2016. TP 8.1 does not apply in respect of such an <i>employee</i>.</u></p>

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

6.2A Describing advice services

...

6.2A.4 G (1) A *firm* that provides both *independent advice* and *restricted advice* should not hold itself out as acting independently for its business as a whole. ~~However, a *firm* may hold itself out as acting independently in respect of its services for which it provides *independent advice* or *advice which meets other independence requirements for particular investments*. For example, a *firm* that provides *independent advice* on *regulated mortgage contracts* in accordance with *MCOB* but *restricted advice* on *retail investment products* will not be able to hold itself out as an independent financial adviser. However, it would be able to hold itself out as an adviser providing *independent advice* for *regulated mortgage contracts* provided it was made clear in accordance with the *fair, clear and not misleading rule* that it provided *restricted advice* for *retail investment products*.~~

(1A) A *firm* that offers an unlimited range of *regulated mortgage contracts*, or gives *advice* in relation to *contracts of insurance* on the basis of a fair analysis, but offers *restricted advice* on *retail investment products* should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it offers an unlimited range for *regulated mortgage contracts* or gives *advice* in relation to *contracts of insurance* on the basis of a fair analysis provided it makes clear in accordance with the *fair, clear and not misleading rule* that it provides *restricted advice* for *retail investment products*.

...

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) 4.4A.20G

....

2 Whose products do we offer? [Note 4] [Note 4A] [Note 6]

Home Finance Products [Note 13]

~~[Compliance with Islamic law [Note 18]~~

~~Our services are regularly checked by [name(s) of scholar(s)] to ensure compliance with Islamic law. Ask us if you want further information about the role of our scholar(s).]~~

[1] ~~[Lifetime] [Mortgages] [Equity Release Products] [and Islamic] [home reversion schemes purchase plans] [Note 13]~~

We offer ~~[lifetime] [mortgages] [home reversion plans] [equity release products]~~ from the whole market.

We ~~[can] [Note 7] only offer [lifetime] [mortgages] [home reversion plans] [equity release products]~~ from a limited number of ~~[lenders / companies]~~.
Ask us for a list of the ~~[lenders / companies]~~ we offer ~~[lifetime] [mortgages] [home reversion plans] [equity release products]~~ from. [Note 14]

We ~~[can] [Note 7] only offer [a limited range of the] [a] [lifetime] [mortgage] [s] [home reversion plan] [s] [equity release products]~~ from ~~[a single lender / company] [name of single lender / company]. [Note 11(1) and (3)] [Note 16]~~

~~{or}~~

~~We only offer our own [lifetime] [mortgages] [home reversions plan] [equity release products]. [Note 11(2)]~~

We do not offer ~~[lifetime mortgages] [home reversion plans]~~. [Note 12]

[2] ~~[Islamic Home Purchase Plans] [Note 19] [Note 13]~~

We offer ~~Islamic home purchase plans~~ from the whole market.

We ~~[can] [Note 7] only offer Islamic home purchase plans~~ from a limited number of providers.
Ask us for a list of the ~~providers~~ we offer ~~Islamic home purchase plans~~ from. [Note 14]

We ~~[can] [Note 7] only offer [a limited range of the] [a] Islamic home purchase plan [s] from [a single provider] [name of single provider]. [Note 11(1) and (3)][Note 16]~~

~~[or]~~

~~We only offer our own Islamic home purchase plans. [Note 11(2)]~~

Equity release products are either lifetime mortgages or home reversion plans. [Note 5]

We are not limited in the range of [mortgages] [equity release products] [Islamic] [home purchase plans] we will consider for you [Note 7A]

[Compliance with Islamic law [Note 18]

Our services are regularly checked by [name(s) of scholar(s)] to ensure compliance with Islamic law. Ask us if you want further information about the role of our scholar(s).]

3 Which service will we provide you with? **[Note 4] [Note 4A] [Note 6] [Note 6A]**

...

[Home Finance Products] [Note 13]

~~—— [1] [Mortgages] [Equity Release Products] [Note 13]~~

~~We will advise and make a recommendation for you on [lifetime mortgages] [home reversions] [equity release products] after we have assessed your needs.~~

~~You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of [lifetime mortgages] [home reversions] [equity release products] that we will provide details on. You will then need to make your own choice about how to proceed.~~

[2] [Islamic Home Purchase Plans] [Note 13]

~~We will advise and make a recommendation for you after we have assessed your needs.~~

~~You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.~~

4	What will you have to pay us for our services? [Note 4A] [Note 20A]
----------	--

...

[Home Finance Products] [Note 13]**[1] [Mortgages] [Equity Release Products] [Islamic] [Home Purchase Plans] [Note 13]**

- No fee. [We will be paid by commission from the [lender/~~company that buys your home provider~~.] [Note 33]
A fee of £[] payable at the outset and £[] payable when you apply for a [lifetime] [mortgage] [home reversion plan] [equity release product] [Islamic] [home purchase plan]. [We will also be paid commission from the [lender/~~company that buys your home provider~~.]]. [Note 33] [Note 34]
-

You will receive a ~~key facts illustration~~ keyfacts illustration when considering a particular [lifetime] [mortgage] [home reversion plan] [equity release product], which will tell you about any fees relating to it. [Note 13] [Note 13A]

Refund of fees [Note 32] [Note 13]

If we charge you a fee, and your [lifetime] [mortgage] [home reversion plan] [Islamic] [home purchase plan] does not go ahead, you will receive: [Note 35]

- A full refund [if the [lender/~~company provider~~] rejects your application]. [Note 36]
- A refund of £ [] [if your application falls through]. [Note 36] [Note 37] [Note 38]
- No refund [if you decide not to proceed]. [Note 36]

[2] [Islamic Home Purchase Plans] [Note 13]

- No fee. [We will be paid by commission from the provider.] [Note 33]
A fee of £[] payable at the outset and £[] payable when you apply for an Islamic home purchase plan. [We will also be paid commission from the provider]. [Note 18]
-

Refund of fees [Note 35]

If we charge you a fee, and your Islamic home purchase plan does not go ahead, you will receive: [Note 32]

- A full refund [if the provider] rejects your application]. [Note 36]
- A refund of £ [] [if your application falls through]. [Note 36] [Note 37] [Note 38]
- No refund [if you decide not to proceed]. [Note 36]

...

8 Are we covered by the Financial Services Compensation Scheme (FSCS)?
[Note 4A] [Note 39] [Note 55] [Note 56]

...

[Note 59] Message from the Financial Services Authority

Think carefully about this information before deciding whether you want to go ahead.

If you are at all unsure about which equity release product is right for you, you should ask your adviser to make a recommendation.

...

Note 4 – a *firm* should describe the services that it expects to provide to the particular *client*. For services in relation to:

...

- ~~equity release transactions~~ – the *firm* should select a maximum of two boxes within this section. *Firms* should not omit the boxes not selected.
- home finance transactions (other than regulated sale and rent back agreements) – where the *firm* will be providing services to a *consumer* by way of a *distance contract*, it should include in Section 3 a statement that explains whether or not the *consumer* will receive *advice* as part of the services. It should insert the appropriate heading above the statement in accordance with Note 13 (1).

Note 4A - If a *firm* is not offering all product types it should omit the headings and text relating to the product types it is not offering. For example, if it is completing the relevant sections of this template in relation to insurance and home finance products but not investment products, it should omit the heading “Investment” and the corresponding text.

Note 5 – a *firm* should include this sentence if, and only if, it offers *equity release transactions*.

...

Note 6A – If the combined initial disclosure document is used only in relation to home finance transactions (except where Section 3 is required to be used for home finance transactions as the firm is providing services by way of a distance contract: see Note 4), the firm should delete this heading and re-number the later sections accordingly.

Note 7 – insert “can” if the firm’s range of products is determined by any contractual obligation. This does not apply where a *product provider*; ~~or insurer; lender; home purchase provider or home reversion provider~~ is selling its own products.

Note 7A - This sentence must only be used where there are no limitations in the product range that a firm will be providing to the customer. Otherwise, the firm must insert alternative text that describes in simple, clear terms the limits on its product range for the relevant market. If the firm is not considering products from a comprehensive range across the market and has not listed here the name of every lender/provider it offers products from, the text used must offer a list of these lenders/providers. Where the firm offers equity release products, it must state if it offers home reversion plans but not lifetime mortgages, or vice versa. The firm must also state that it will not consider direct deals, where that is the case. Depending on the firm’s precise circumstances, the following examples may be appropriate:

- “We offer a comprehensive range of [mortgages] [equity release products] [Islamic] [home purchase plans] from across the market, but not deals that you can only obtain by going direct to a [lender/provider].”
- “We only offer products from [number] [lenders/providers]. We can provide you with a list of these.”
- “We only offer some, but not all, of the [mortgages] [equity release products] [Islamic] [home purchase plans] from [number] [lenders/providers]. We can provide you with a list of these.”
- “We only offer the [mortgages] [equity release products] [Islamic] [home purchase plans] from [name of lender(s)/provider(s)].”
- “We only offer some, but not all, of the [mortgages] [equity release products] [Islamic] [home purchase plans] from [name of lender(s)/provider(s)].”
- “We only offer lifetime mortgages from [name of lender(s)] and home reversion plans from [name of provider(s)].”
- “We only offer [lifetime mortgages/home reversion plans] but not [lifetime mortgages/home reversion plans]. We only offer [lifetime mortgages/home reversion plans] from [name of provider] and we only offer some, but not all, of their products.”
- “We only sell bridging finance products from [name of lender(s)]. We do not offer products from across the mortgage market.”

...

Note 11 – if the *firm* selects this box, it will be offering the products of one provider for a particular product type. It should therefore follow the format specified in (1) below except when offering its own products, in which case it should follow (2) instead. In the case of *non-investment insurance contracts*, where the *firm* is providing a service in relation to different types of insurance, this box covers the situation where it is offering a particular type of insurance from a single *insurance undertaking*.

- (1) Insert the name of the provider, namely the *product provider* for *packaged products*; and the *insurance undertaking(s)* for *non-investment insurance contracts*; ~~the *lender* for *regulated mortgage contracts* and *regulated lifetime mortgage contracts* and the *home reversion provider* for *home reversion plans*~~. For example: “We can only offer products from [name of *product provider*]”. For *non-investment insurance contracts* the type of insurance offered should also be included. For example: “We only offer ABC’s household insurance and ABC’s motor insurance.” If the provider has only one product, the *firm* should amend the text to the singular – for example: “We can only offer a mortgage policy from [name of ~~*lender*~~ *insurance undertaking*]”. ~~If the *firm* does not offer all of the *home finance transactions* generally available from that provider, it should insert the words “a limited range of” as shown in the specimen.~~
- (2) If the *firm* is a *product provider* offering only its own products, or is part of a *product provider* offering only the products sold under that part’s trading name, it should use this alternative text.
- ~~(3) If the *firm* offers *home reversion plans* from only one *reversion provider*, and *lifetime mortgages* from only one *lender*, which is different from the *reversion provider*, then the *firm* should identify the *lender* and the *reversion provider* and specify the type of *equity release transaction* to which they relate. For example, “We can only offer lifetime mortgages from ABC Mortgages Ltd and home reversion plans from ABC Reversions Ltd.”~~

Note 12 – ~~if the *firm* does not give *personal recommendations* advise or give personalised information on, both types of *equity release transactions*, then it should indicate to the *client* the sector that the *firm* does not cover. However, if the *firm*’s scope of service does not include *equity release transactions*, the last box (“We do not offer [lifetime mortgages] [home reversion plans]”), should be omitted.~~

Note 13 – in describing the services and products provided, *firms* should omit the text in brackets that do not apply and ensure that they describe accurately their activities with respect of the services and products that they offer, as follows:

- (1) Headings and sub-headings:
 - a. If the *firm* offers ~~both~~ a combination of *regulated mortgage contracts* and *home purchase plans* and *equity release products*, it should include the heading “Home Finance Products” in the *combined initial disclosure document* and describe the *regulated mortgage contracts*, ~~and~~ *home purchase plans* and *equity release transactions* (as applicable) that it offers under ~~two~~ separate sub-headings. The sub-headings (“Mortgages”, ~~and~~ “Home Purchase Plans” and “Equity Release Products”) should be numbered accordingly. If the *firm* only

offers one of these ~~two~~ three products, then the heading “Home Finance Products” should be omitted and the heading will read “Mortgages”, or “Home Purchase Plans” or “Equity Release Products”, as appropriate.

- b. If the *firm* offers *equity release transactions*, then the appropriate heading “Home Finance Products” ~~should be omitted and the~~ or sub-heading will read is “Equity Release Products” (even if the *firm* offers ~~*equity release transactions from only one sector*~~ only lifetime mortgages or only home reversion plans).

...

(2) Describing the products:

- a. If a *firm* gives ~~*personal recommendations*~~ or gives personalised information advice on, or arranges execution-only sales in, lifetime mortgages, it should change “mortgage” to “lifetime mortgage”
- b. If a *firm* gives ~~*personal recommendations*~~ or gives personalised information advice on, or arranges execution-only sales in, home reversion plans, it should use the text in brackets relating to home reversion plans.
- c. If the *firm* gives ~~*personal recommendations*~~ or gives personalised information advice on, or arranges execution-only sales in, products from both equity release market sectors, then it should use the term ‘equity release products’ when referring to them collectively.

(3) Describing the provider: If a *firm* gives ~~*personal recommendations*~~ or gives personalised information advice on, or arranges execution-only sales in, *home purchase plans* or *home reversion plans*, it should change “mortgage” to “product” and “lender” to “company” or “provider”, as appropriate.

(4) Home purchase plans: A *firm* that carries on *home purchase activities* may add the word “Islamic” to “home purchase plan(s)” if it holds out one or more *home purchase plans* within its product range as compliant with Islamic law. If “Islamic” is included, it should be included consistently throughout the document. However, a *firm* may omit the word “Islamic” in sections 5 and 8 even if it uses it elsewhere throughout the document. A *firm* that wishes to hold itself, its products or services out as compliant with religious or philosophical belief other than Islamic law may include an appropriate description in place of the references to “Islamic” and “Islamic law”.

(5) A *firm* offering services in relation to loans for business purposes must use a description of its services which make that clear.

Note 13A – A *firm* must not include this paragraph if the only services to which the combined initial disclosure document relates are activities relating to *home purchase plans*. A *firm* may include a similar explanation regarding the financial information statement if the services they offer include activities relating to *home purchase plans*.

Note 14 – for services provided in relation to *home finance transactions*, this sentence is required only where a *firm* selects this service option. It may also be omitted if a *firm* chooses to list all of the *lenders*, *home purchase providers* and *home reversion providers* it offers *home finance transactions* from in the previous line, so long as the *firm* offers all of the products generally available from each.

...

Note 16 – if the *firm* does not select this box, it should alter the wording to say “a single group of companies” for *packaged products*; and “a single insurer” for *non-investment insurance contracts*; “a single lender” for *regulated mortgage contracts* or *lifetime mortgages* and “a single company” (or “a single provider”) for *home purchase plans* and *home reversion plans*. For example: “We only offer the products from a single group of companies” should replace the text in the specimen *combined initial disclosure document*.

...

Note 18 – This subsection is ~~optional unless~~ may (at the *firm*'s option) be used if, and only if, the *firm* holds itself, its ~~*regulated mortgage contract* or *home purchase plan*~~ products or services out as compliant with Islamic law ~~in the *combined initial disclosure document*~~. If a *firm* includes this section it should describe it as Section 2 and renumber subsequent sections accordingly.

A *firm* that wishes to hold itself, its ~~*regulated mortgage contract* or *home purchase plan*~~ products or services out as compliant with religious or philosophical beliefs other than Islamic law ~~in the *combined initial disclosure document*~~ may also use the subsection in accordance with this note and modify the wording in the section to the extent appropriate.

Note 19 – A *firm* that carries on ~~*home purchase activities*~~ may omit the word “Islamic” from “Islamic home purchase plan(s)” if one or more *home purchase plans* within its scope of service is not held out as compliant with Islamic law. If “Islamic” is omitted, it should be omitted consistently throughout the document. However, a *firm* may omit the word “Islamic” in sections 5 and 8 without having to omit it throughout the document. A *firm* that wishes to hold itself, its products or services out as compliant with religious or philosophical belief other than Islamic law ~~in the *combined disclosure document*~~ may make appropriate amendments to references to “Islamic” and “Islamic law”.

...

Note 34 – insert a plain language description of when any *fees* are payable for services relating to *home finance transactions*, and the amount. This description could include, for example, a cash amount, a percentage of the loan or reversion amount or the amount per hour, as appropriate. However, where a cash amount is not disclosed, one or more examples of the cash amount should be included. If a *firm* offers more than one pricing option in relation to *equity release transactions*, it should specify the pricing policy for each of them. For example, “A fee of £[XX] payable at the outset and £[YY] when you apply for a lifetime mortgage and £[ZZ] when you apply for a home reversion plan”. If a *firm* does not charge a *fee*, the text for the second box should be abbreviated to ‘A fee’. The fee must be described, where possible, as a cash sum, but where this is not possible:

- If the fee is a percentage of another sum which is not yet known (such as the amount to be borrowed), give the percentage and a representative illustrative example which gives an amount as a cash sum.
- If the fee will be one of a range of possible cash fees, provide a description of the fee in terms which include the maximum and minimum possible fees as cash sums, and what factors will determine where in the range the fee will be.
- If the fee will be one of a range of fees that are a percentage of another sum which is not yet known (such as the amount to be borrowed), give the minimum and maximum percentages and a representative illustrative example which gives an amount as a cash sum, and set out what factors will determine where in the range the fee will be.
- If the fee will be based on an hourly rate, but the number of hours to be spent on the *customer's* transaction is unknown, state the hourly rate in cash terms and set out what factors will determine how many hours it takes to provide the *firm's* services.

...

Note 39 – the *firm* may omit this section for services relating to *packaged products* if the *firm* has, on first contact with the *client*, provided the *client* with its *client agreement* which contains that information. This section may be omitted for services relating to *non-investment insurance contracts* if the information covered by this section is not required by *ICOBS* or is required by *ICOBS* but is provided to the *customer* by some other means. ~~This section may be omitted for services relating to *home finance transactions* in accordance with *MCOB 4.4.1R(3)*.~~ If this section is omitted, the other sections of the *combined initial disclosure document* should be renumbered accordingly.

...

~~**Note 59** – this warning box should be added when the *firm* sells *lifetime mortgages* or *home reversion plans* or both.~~

Annex D

**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, unless otherwise stated.

Part 1: Comes into force on 26 April 2014

1.2 General application: who? what?

- 1.2.1 R (1) This sourcebook applies to every *firm* that:
- (a) carries on a *home finance activity* (subject to the business loan and loans to high net worth mortgage customers application provisions); or

...

Firm types and the home finance activities

- 1.2.2 G (1) This sourcebook applies to activities carried out in respect of ~~four types of product:~~ regulated mortgage contracts (which includes lifetime mortgages), equity release transactions, home purchase plans, home reversion plans and regulated sale and rent back agreements...

...

Business loans and loans to high net worth mortgage customers: application of MCOB

- 1.2.3 R In relation to a *regulated mortgage contract* for a business purpose
- (1) *MCOB* applies if the *customer* is not a *large business customer*; and
- (2) if *MCOB* applies, a *firm* must either:
- (a) comply with *MCOB* in full (disregarding the tailored provisions for *regulated mortgage contracts* for a business purpose in the remainder of *MCOB*); or
- (b) comply with *MCOB* in full, but taking account of all those tailored provisions, including *MCOB* 1.2.7R.

- 1.2.3A R In relation to a regulated mortgage contract with a high net worth mortgage customer, a firm must either:

- (a) comply with MCOB in full (disregarding the tailored provisions for *regulated mortgage contracts with high net worth mortgage customers* in the remainder of MCOB); or
- (b) subject to MCOB 1.2.9CR, comply with MCOB in full, but taking account of all those tailored provisions, including MCOB 1.2.7R.

1.2.3B R Where any provision of MCOB is expressed to apply in respect of a *high net worth mortgage customer*, it applies in respect of joint borrowers (or potential borrowers) if one of them satisfies that definition in his own right.

1.2.4 G ~~For detail of the~~ The tailored provisions applying, see are those in the sections section on ‘business Business loans’ and loans to high net worth mortgage customers: tailored provisions’ set out in each relevant chapter.

1.2.4A G Certain other provisions of MCOB apply in all cases in respect of *high net worth mortgage customers* or of transactions which are solely for a business purpose. The application of the tailored and other provisions for *high net worth mortgage customers* and transactions for a business purpose are summarised in the table at MCOB 1.2.4BG.

1.2.4B G **Table of provisions applicable to business loans and high net worth mortgage customers: this table belongs to MCOB 1.2.4AG**

<u>Provisions</u>	<u>Tailored provisions or applicable in all cases?</u>	<u>For business loans only, are the provisions applicable to all business loans, or only where the loan is solely for a business purpose?</u>
<u>Various of the provisions in MCOB 4.7A and MCOB 4.8A</u>	<u>Applicable in all cases</u>	<u>Applicable only where loan is solely for a business purpose</u>
<u>MCOB 4.9</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>
<u>MCOB 5.7</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>
<u>MCOB 6.7</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>
<u>MCOB 7.7</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>

<u>Various of the provisions in MCOB 11.6</u>	<u>Applicable in all cases</u>	<u>Applicable only where loan is solely for a business purpose</u>
<u>MCOB 12.6</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>
<u>MCOB 13.7</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>

- 1.2.5 G (1) ...
- (2) Whether a *regulated mortgage contract* is, or is solely, for a business purpose will be a matter of fact to be determined by a *firm* (in accordance with *MCOB 1.2.9DR* where applicable) depending on the individual circumstances of each case...
- ...
- Business loans and loans to high net worth mortgage customers: additional requirements if tailored route is used
- 1.2.7 R In relation to a *regulated mortgage contract* for a business purpose or with a high net worth mortgage customer, if a *firm* has opted for the tailored route, it must adopt the following modifications to the sourcebook:
- (1) (except in relation to ~~sections 6 and 8 of any initial disclosure document~~ or sections 5 and 8 of any *combined initial disclosure document*) substitute an alternative description of the facility provided under the *regulated mortgage contract* for 'mortgage' where that term is used in any disclosure;
- (2) substitute the term 'illustration' for ~~key facts~~ 'keyfacts illustration' when opting to use the tailored business loans or loans to high net worth mortgage customers rules in *MCOB 4.9*, *MCOB 5.7*, *MCOB 6.7* or *MCOB 7.7*; and
- ...
- 1.2.8 G (1) *Firms* are reminded of the requirement in *MCOB 2.2.6R* that any communication should be clear, fair and not misleading when substituting an alternative for the term 'mortgage' in accordance with *MCOB 1.2.7R(1)*.
- (2) Possible alternatives to the term 'mortgage' include, for example, 'secured ~~business~~ overdraft', 'secured loan' or 'secured business credit'.
- 1.2.9 G The disclosure *rules* in *MCOB* place particular emphasis on the description of borrowing. Where the *regulated mortgage contract* is for

a business purpose or with a *high net worth mortgage customer*, a firm should reflect this emphasis in any disclosure by first describing any borrowing before addressing the other facilities provided under the regulated mortgage contract.

...

Provisions for professional customers

1.2.9B G Certain provisions of MCOB 4.7A and MCOB 4.8A apply in respect of professional customers. Where they apply, they provide greater flexibility for firms.

Requirement for evidence before treating a loan as being solely for business purposes, or a customer as a high net worth mortgage customer or a professional customer

1.2.9C R A firm may not treat a customer as being a high net worth mortgage customer for the purposes of MCOB unless either:

(1) it is aware, from evidence already in its possession as a result of a business relationship between it and the customer, that the customer satisfies the definition of high net worth mortgage customer; or

(2) it has first obtained a written statement which:

(a) confirms that the customer satisfies the definition of high net worth mortgage customer;

(b) specifies the period for which it is valid, which includes the time when the regulated mortgage contract is entered into; and

(c) is signed by a suitably qualified professional adviser of the customer who is not an associate of the firm or of the customer.

1.2.9D R A firm must not treat a loan as being solely for a business purpose for the purposes of MCOB unless it has reviewed a business plan provided by the customer which provides credible evidence that that is the case.

1.2.9E R A firm must not treat a customer as being a professional customer for the purposes of MCOB unless it has credible evidence that the customer satisfies the definition.

1.2.9F R A firm must keep the evidence in MCOB 1.2.9CR(1) and MCOB 1.2.9ER, the business plan in MCOB 1.2.9DR and the written statement in MCOB 1.2.9CR(2) for not less than three years from the date on which it was obtained or, if later, used to satisfy MCOB 1.2.

Authorised professional firms

1.2.10 R *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for:

...

(2) ... ~~and~~.

(3) ~~initial disclosure requirements but only as regards providing the information contained in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme?) of an initial disclosure document or combined initial disclosure document (see *MCOB* 4.4 and *MCOB* 4.10). [deleted]~~

...

1.3 General application: where?

...

Distance contracts entered into from an establishment in another EEA State

1.3.4 R ...

(2) The *rules* which do not apply are:

(a) initial disclosure requirements in *MCOB* 4.4 4.4A (in respect of *regulated mortgage contracts*)...

...

(g) *MCOB* 8.3 (Application of rules in *MCOB* 4) to the extent that it applies *MCOB* 4.4 4.4A to *MCOB* 4.6;

...

...

2.1 Application

Who?

...

2.1.2 R This table belongs to *MCOB* 2.1.1 R

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter except <i>MCOB</i> 2.2.6AR, <i>MCOB</i> 2.2.8AR, <i>MCOB</i> 2.2.8BG, <i>MCOB</i> 2.6A.1R to

<i>mortgage administrator</i> <i>mortgage adviser</i> <i>mortgage arranger</i>	<u>2.6A.18G</u> and <i>MCOB 2.8.6G</i>
<i>mortgage administrator</i> <i>mortgage adviser</i> <i>mortgage arranger</i>	As for a <i>mortgage lender</i> , except that <u><i>MCOB 2.6A.-1R</i></u> does not apply.
<i>home purchase provider</i>	<i>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.6R to MCOB 2.2.9G, MCOB 2.5, to MCOB 2.6, MCOB 2.6A.1R to MCOB 2.6A.4G, MCOB 2.6A.7G to MCOB 2.6A.10G, MCOB 2.7.4R to MCOB 2.7.6R, MCOB 2.7A and MCOB 2.8.6G</i>
...	
<i>SRB administrator</i>	<i>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.2G, MCOB 2.2.3R, MCOB 2.2.6R, MCOB 2.2.7G, MCOB 2.2.8G, MCOB 2.5, to MCOB 2.6, MCOB 2.6A.5BR(5), MCOB 2.6A.8R to MCOB 2.6A.11G, MCOB 2.6A.17AR, MCOB 2.6A.18G, MCOB 2.7.1G to MCOB 2.7.5R, MCOB 2.7A, MCOB 2.8.1G to MCOB 2.8.5G.</i>
...	

...

2.2 Communications

...

Related investment advice

- 2.2.5 G *Firms* are reminded that they should follow the relevant *rules* in *COBS 6* and *COBS 13* relating to advice and disclosure on *investments* if they are *advising the customer* on an *investment* such as an annuity associated with an *equity release transaction* or an *ISA* used as a *repayment vehicle strategy*.

...

2.5A The customer's best interests

- 2.5A.1 R A firm must act honestly, fairly and professionally in accordance with the

best interests of its customer.

...

2.6A Protecting customer's interests: regulated mortgage contracts, home purchase plans, home reversion plans and regulated sale and rent back agreements

Protecting customer's interests: regulated mortgage contracts

2.6A-1 R A mortgage lender may only include, or rely on, a term in a regulated mortgage contract which permits it to change the rate of interest from a fixed, discounted or other concessionary rate to the firm's standard variable rate in the event of a breach of contract if each of the following conditions is met:

- (1) the breach of contract is material;
- (2) the breach of contract is unrelated to a payment shortfall; and
- (3) that standard variable rate is not an interest rate created especially for customers who are (either at all, or in particular ways) in breach of contract.

...

Protecting customers' interests under regulated sale and rent back agreements:
security of tenure

2.6A.5B R (1) When ~~entering into a~~ entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the *regulated sale and rent back agreement*:

...

- (2) When ~~entering into a~~ entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the *regulated sale and rent back agreement*, if the property is in England and Wales, the terms of the tenancy do not:

...

- (3) When ~~entering into a~~ entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the *regulated sale and rent back agreement*, if the property is in Scotland, the terms of the tenancy do not include:

...

- (4) When ~~entering into a~~ entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the *regulated sale and rent back agreement*, if the property is in Northern Ireland,

the terms of the tenancy do not include:

...

...

3.8 Form and content of real time qualifying credit promotions

...

3.8.6 G Firms should note the additional disclosure requirements in ~~MCOB 4.4.7R~~ (~~Disclosure 4.4A.17R~~ (Additional disclosure where initial contact is by telephone), MCOB 4.4A.18R (Additional disclosure requirements where the services are to be provided to a consumer under a distance contract) and MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts and distance home purchase mediation contracts with retail customers) in relation to telephone calls that may fall within the definition of a *financial promotion*.

...

4.1 Application

Who?

...

4.1.2 R Table This table belongs to MCOB 4.1.1R

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	<u>except in relation to lifetime mortgages: MCOB 4.1 to MCOB 4.4 4.4A, 4.6A, and MCOB 4.8 4.8A in accordance with MCOB 4.1.2A R, to and MCOB 4.9</u>
<i>mortgage adviser</i>	<u>except in relation to lifetime mortgages: whole chapter except MCOB 4.10</u>
<i>mortgage arranger</i>	<u>except in relation to lifetime mortgages: whole chapter except MCOB 4.7 4.7A and MCOB 4.10</u>
<i>home purchase provider</i>	<u>MCOB 4.1, MCOB 4.2 and MCOB 4.10 (except MCOB 4.10.5G to MCOB 4.10.7G). MCOB 4.3, MCOB 4.4 4.4A and MCOB 4.8 4.8A in accordance with MCOB 4.1.2BR and MCOB 4.10</u>

<i>home purchase adviser</i>	<i>MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.10.</i> <i>MCOB 4.3, MCOB 4.4 4.4A, MCOB 4.7 4.7A and MCOB 4.8 4.8A</i> in accordance with <i>MCOB 4.10</i>
<i>home purchase arranger</i>	As for a <i>home purchase adviser</i> except <i>MCOB 4.10.5G to MCOB 4.10.7G MCOB 4.10.5AR to MCOB 4.10.9AR, 4.10.13R and MCOB 4.7 4.7A</i> do not apply
<i>reversion equity release provider</i> <i>reversion equity release adviser</i> <i>reversion equity release arranger</i>	See <i>MCOB 8 8.3</i> for the application of this chapter
...	

4.1.2A R *MCOB 4.8A only applies to a mortgage lender in relation to entering into a regulated mortgage contract where there is no firm which is arranging (bringing about) the regulated mortgage contract to which MCOB 4.8A applies.*

4.1.2B R *MCOB 4.8A only applies to a home purchase provider (as provided in MCOB 4.10.9BR) in relation to entering into a home purchase plan where there is no firm which is arranging (bringing about) the home purchase plan to which MCOB 4.8A applies (as provided in MCOB 4.10.9BR).*

4.1.2C G *MCOB 4.1.2AR and MCOB 4.1.2BR mean that the provisions in MCOB 4.8A on execution-only sales, including the prohibition on entering into them in the circumstances specified in that section, only apply to sales by mortgage lenders or home purchase providers where there is no intermediary firm to which that section applies.*

4.1.2D G *MCOB 4.1.2AR and MCOB 4.1.2BR mean that the situations where MCOB 4.8A applies to a mortgage lender or home purchase provider include where a mortgage intermediary or home purchase intermediary has been involved in arranging a regulated mortgage contract or home purchaser plan but is no longer involved in the transaction.*

What?

4.1.3 R *This chapter applies if a firm in the course of carrying on a home finance activity: enters into, advises on or arranges a home finance transaction or a variation of the terms of a home finance transaction.*

(1) ~~*makes, or anticipates making, a personal recommendation about;*~~
~~*or*~~

- (2) ~~gives, or anticipates giving, personalised information relating to; the customer~~
- (3) ~~entering into a home finance transaction; or~~
- (4) ~~varying the terms of a home finance transaction entered into by the customer.~~

...

4.1.6 G ~~MCOB 4.1.5 R means that this chapter, MCOB 4, deals with standard regulated mortgage contracts, home purchase plans and regulated sale and rent back agreements only and therefore firms should note that the scope of service rules in this chapter do not apply in respect of equity release transactions. [deleted]~~

...

4.2 Purpose

- 4.2.1 G (1) This chapter amplifies *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and *Principle 9* (Customers: relationships of trust).
- (2) The purpose of this chapter is to ensure that:
- (a) ~~customers~~ are adequately informed about the nature of the service they may receive from a firm in relation to home finance transactions. In particular firms need to make clear to ~~customers~~ the scope range of home finance transactions available from ~~them~~ firms and the basis of their remuneration; and
 - (b) where *advice* is given, it is suitable for the *customer*. ~~The steps firms need to take to ensure that the customer receives suitable advice will vary depending on the demands and needs of the customer and the type of home finance transaction.;~~
 - (c) the firm provides advice whenever it makes a sale during which there is spoken or other interactive dialogue between the firm and the customer (with exceptions for high net worth mortgage customers and professional customers, and for loans which are solely for a business purpose);
 - (d) when there is no spoken or other interactive dialogue between the firm and the customer during the sale, the firm is able to provide an execution-only service except for certain vulnerable customers (customers for regulated sale and rent back and equity release transactions; customers whose main

purpose is debt consolidation; and *customers* who are using the transaction in order to exercise a statutory “right to buy”) who are given advice in every case;

- (e) *execution-only sales* are only provided where the *customer* has been warned about the implications of proceeding without *advice*, or where the *customer* has rejected *advice* which has been given, and has specifically instructed the *firm* that he wishes to do so; and
- (f) except in the case of *regulated sale and rent back transactions*, *customers* have the right to reject *advice* and proceed on an execution-only basis.

- (3) This chapter also implements certain requirements of the *Distance Marketing Directive* in relation to *distance mortgage mediation contracts* and *distance home purchase mediation contracts*.

...

The existing section 4.3 is deleted in its entirety. The existing text is not struck through.

4.3 Scope of service provided [deleted]

MCOB 4.4 is deleted in its entirety and replaced with a new section MCOB 4.4A. The deleted text is not shown and the new text is not underlined.

4.4 Initial disclosure requirements [deleted]

4.4A Initial disclosure requirements

Description of a firm’s services in all cases

- 4.4A.1 R Using the methods and at the times specified in this section, a *firm* must provide the *customer* with the following information:
 - (1) whether there are any limitations in the range of products that it will offer to the *customer*, and if so what those are; and
 - (2) the basis on which the *firm* will be remunerated.

Range of products

- 4.4A.2 R (1) The limitations in MCOB 4.4A.1R include any limitations on the *regulated mortgage contracts* the *firm* will consider from within the relevant market. A *firm* which is offering services to a *customer* in

respect of more than one type of relevant market must describe its services in relation to each such relevant market.

- (2) For these purposes, there are two relevant markets for *regulated mortgage contracts* (apart from *lifetime mortgages*): one for *regulated mortgage contracts* that are not for a business purpose; and one for *regulated mortgage contracts* that are. A *firm* offering services in relation to loans for a business purpose must make that clear in its disclosure under *MCOB 4.4A.1R(1)*.
 - (3) If a *firm* will not, as part of its services, consider *direct deals*, it need not treat that as a limitation in its product range, but the *firm* must tell the *customer* as part of the disclosure under *MCOB 4.4A.1R(1)* that it will not consider *direct deals*.
- 4.4A.3 G (1) A *firm* that only offers products from one part of a relevant market (for example, just *bridging loans*) should not disclose its service as unlimited.
- (2) When considering whether there are any limitations in its product range across the relevant market, a *firm* need not take account of the existence of exclusive deals which a *mortgage lender* offers to be sold by one or a limited number of *mortgage intermediaries* only (and not generally by *mortgage intermediaries* across the relevant market).
- 4.4A.4 R (1) If a *firm* is not offering to the *customer* products from an unlimited range from across the relevant market, its disclosure on product range in *MCOB 4.4A.1R* must either:
- (a) list the names of all the *mortgage lenders* whose products it is offering; or
 - (b) inform the *customer* of the number of *mortgage lenders* whose products it is offering and that he has the right to request a list of those *mortgage lenders*.
- (2) If a *customer* requests the list in (1), the *firm* must provide it in a *durable medium* as soon as possible following the request and in any event within five *business days*. The list must also indicate whether the *firm* offers all of the products generally available from each *mortgage lender* on the list.
- 4.4A.5 G A *firm* may be able to describe its product range as unlimited even if it offers its *customers* only a selection of the *regulated mortgage contracts* available from the relevant market, or uses ‘panels’. The *firm* would need to ensure that any panel, or selection of products, is sufficiently broad in its composition that it is representative of products from across the market, that it is reviewed regularly, and that its use does not materially disadvantage any *customer*. In such a case, a *firm* should ensure that its analysis of the market and of the available *regulated mortgage contracts* is kept adequately up to date. For example, a *firm* would need to update its selection of *regulated mortgage*

contracts if it became aware that a *regulated mortgage contract* had become generally available offering an improved product feature, or a better interest rate, when compared with the *regulated mortgage contracts* currently in the *firm's* selection.

- 4.4A.6 G The disclosure required by *MCOB* 4.4A.1R(1), *MCOB* 4.4A.2R and *MCOB* 4.4A.4R(1) about limitations in product range and *direct deals* should be expressed in simple, clear terms. A *firm* may wish to consider using a sentence appropriate to the circumstances, along the following lines:
- “We are not limited in the range of mortgages we will consider for you.”
 - “We offer a comprehensive range of mortgages from across the market, but not deals that you can only obtain by going direct to a lender.”
 - “We only offer mortgages from [number] lender(s). We can provide you with a list of these.”
 - “We only offer mortgages from [name of lender(s)].”
 - “We only offer some, but not all, of the mortgages from [number] lender(s). We can provide you with a list of these.”
 - “We only offer some, but not all, of the mortgages from [name of lender(s)].”
 - “We only sell bridging finance products from [name of lender(s)]. We do not offer products from across the mortgage market.”
- 4.4A.7 G (1) *Firms* are reminded that, in the light of the *rules* and *guidance* in *SYSC*, they should have adequate systems and controls in place to ensure that the disclosure they make to a *customer* about their service reflects the service the *customer* is actually offered.
- (2) *Firms* are also reminded that *Principle 7* (Communications with clients) and *MCOB* 2.2.6R (Clear, fair and not misleading communications) are also relevant to how they describe their services, including in any business name they adopt. For example, a *firm* should not call itself an “independent mortgage adviser” unless its product range across the relevant market is unlimited.
- (3) A *firm* that offers a different service for different product types should not disclose that it offers one type of service for its business as a whole. For example, a *firm* that provides independent advice on retail investment products but only offers a limited range of *regulated mortgage contracts* should ensure it discloses to the *customer* that the service is different for the different products.
- (4) There are additional *rules* about complying with *MCOB* 4.4A.1R(1) in relation to *home purchase plans* and *equity release transactions* at

MCOB 4.10.3BR and *MCOB* 8.3.2BR.

Basis of remuneration

- 4.4A.8 R (1) The information about the basis of remuneration required by *MCOB* 4.4A.1R(2) must include all relevant information, including the following details:
- (a) any fees which the *firm* will charge to the *customer*;
 - (b) when any such fees will be payable and, if applicable, reimbursable; and
 - (c) whether the *firm* will receive commission from a third party and, if applicable, any arrangements for offsetting this against any fees charged.
- (2) The details in (1)(a) must be expressed, where possible, as a specific cash sum, but the following *rules* apply where this is not possible:
- (a) If the *firm* will charge a fee that is a percentage of another sum which is not yet known (such as, but not limited to, the amount to be borrowed), the *firm* must provide details of the percentage and a representative illustrative example which gives an amount as a cash sum.
 - (b) If the *firm* will charge one of a range of possible cash fees, the *firm* must provide a description of the fee in terms which include the maximum and minimum possible fees as cash sums, and what factors will determine where in the range the fee will be.
 - (c) If the *firm* will charge one of a range of fees that are a percentage of another sum which is not yet known (such as, but not limited to, the amount to be borrowed), the *firm* must provide details of the minimum and maximum percentages and a representative illustrative example which gives an amount as a cash sum, and set out what factors will determine where in the range the fee will be.
 - (d) If the *firm* will charge an amount based on an hourly rate, but the number of hours to be spent on the *customer's* transaction is unknown, the *firm* must state the hourly rate in cash terms and set out what factors will determine how many hours it takes to provide the *firm's* services.

Method of providing initial disclosure in all cases

- 4.4A.9 R The information required by *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R(1) and *MCOB* 4.4A.8R must be communicated clearly and prominently, and in doing so:

- (1) if the *initial contact* includes spoken interaction, the information must be communicated orally; and
- (2) if the *initial contact* does not include spoken interaction, the messages must appear separately from other messages in the communication.

If the *initial contact* is made by electronic means, the *firm* must ensure that the *customer* cannot progress to the next stage of the sale unless the information has been communicated to the *customer*.

- 4.4A.10 G (1) In order to comply with *MCOB* 4.4A.9R for an internet sale, a *firm* should display the required information on a screen which the *customer* must access as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *customer* the option to click on a link or download a document. The messages could be displayed clearly on one of the initial pages which the *customer* accesses.
- (2) In a postal sale, a *firm* may comply by setting out the messages in a clear covering letter.
- (3) Where the *initial contact* is by email, SMS or instant messaging, the messages could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging.
- (4) For face-to-face and telephone contact, a *firm* should comply by building the messages into the initial oral discussion with the *customer*.
- 4.4A.11 G A *firm* may demonstrate compliance with *MCOB* 4.4A.9R(1) by, for example, undertaking one or more of the following: building a requirement for oral communication of the relevant information into its training of staff as evidenced by its training and compliance manuals; inserting appropriate prompts into paper-based or automated sales systems; and having procedures in place to monitor compliance by staff with that *rule*. What is required in each case will depend on all the circumstances.

Timing of initial disclosure in all cases

- 4.4A.12 R The information required by *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R(1) and *MCOB* 4.4A.8R must be provided during the course of the *initial contact*.
- 4.4A.13 G (1) In many cases, *MCOB* 4.4A.12R means that information will be given at the time of the first contact between the *firm* and the *customer*. However, there may be circumstances, for example in relation to a loan for a business purpose, where the possibility of the *customer* entering into, or varying the terms of, a *regulated mortgage contract* is only identified after preliminary discussions. The relevant disclosure is only required once this possibility is identified.
- (2) *MCOB* 4.4A.12R does not require a *firm* to provide the information

specified in that *rule* when a *customer* contacts a *firm* simply to arrange to receive services in relation to a *regulated mortgage contract* at a later time, such as when a *customer* books an appointment. In those cases, the initial disclosure should be made when the *firm* first makes contact with the *customer* with a view to actually carrying out the services. However, *firms* should note the additional disclosure requirements in *MCOB 4.5* (Additional disclosure for distance mortgage mediation contracts with retail customers), and the need to ensure that the required information is provided in good time (see *MCOB 4.5.3G(1)*).

- 4.4A.14 G *Principle 7* and *MCOB 2.2.6R* also mean that, if initial disclosure has been given but any of the information in it (for example the basis on which the *firm* will be remunerated) subsequently changes, the *firm* should bring this clearly to the *customer's* attention.

Instances where initial disclosure need not be given

- 4.4A.15 R The information requirements in *MCOB 4.4A.1R*, *MCOB 4.4A.2R*, *MCOB 4.4A.4R(1)* and *MCOB 4.4A.8R* do not apply where:
- (1) the information has already been provided by the *firm* and the *firm* has good reason to believe that it is still accurate and appropriate for the *customer*; or
 - (2) the information has already been provided by the *firm* which first made contact with the *customer* in respect of the particular *regulated mortgage contract*, and the *firm* subsequently making contact with the *customer* does not expect to alter or replace the product range or basis of remuneration described in that information.
- 4.4A.16 G A *mortgage lender* should provide the information in the provisions referred to in *MCOB 4.4A.15R* in a direct sale but need not do so where the sale is through a *mortgage intermediary*. If a number of different *firms* are involved in relation to the transaction, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish that the *customer* has been provided with the information as required by this section.

Additional disclosure where initial contact is by telephone

- 4.4A.17 R If the *initial contact* is by telephone, then the *firm* must also, before proceeding further, give the name of the *firm* and (if the call is initiated by or on behalf of the *firm*) the commercial purpose of the call.

Additional disclosure where the services are to be provided to a consumer under a distance contract

- 4.4A.18 R Where a *firm* provides services to a *consumer* by way of a *distance contract*, the *firm* must provide the *consumer* with the following information in a *durable medium* in good time before the *distance contract* has been agreed:
- (1) the information which is required by *MCOB 4.4A.1R* to *MCOB*

4.4A.8R;

- (2) whether or not the *firm* will be providing the *consumer* with *advice*;
- (3) the name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*;
- (4) an appropriate statutory status disclosure statement (see *GEN* 4), a statement that the *firm* is on the *FSA Register* and its *FSA* registration number;
- (5) the total price to be paid by the *consumer* to the *firm* for the financial service, including all related *fees*, charges and expenses, and all taxes paid through the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it;
- (6) the arrangements for payment and for performance;
- (7) how to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme;
- (8) whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities, and information about any other applicable named compensation scheme; and
- (9) any other contractual terms and conditions of the *distance contract*.

4.4A.19 G (1) *MCOB* 4.4A.18R contains the additional disclosure requirements for *firms* providing *mortgage mediation activities* to a *consumer* by way of a *distance contract*. *MCOB* 4.5 and *MCOB* 4.6 contain further *rules* and *guidance* applicable where *firms* enter into a *distance contract* in respect of their *home finance mediation activities* independent of any contractual arrangement with a *consumer* relating to a particular *home finance transaction* or *transactions*.

- (2) There is *guidance* on *distance contracts* and *consumers* at *MCOB* 1.3.5G and *MCOB* 1.3.6G.

4.4A.20 G If used in accordance with its notes and provided to the *customer* at the correct time, using a *combined initial disclosure document* in a *durable medium* may satisfy the requirements of *MCOB* 4.4A.18R, though *firms* should consider whether it contains all the contractual terms and conditions of the *distance contract*.

Uncertainty whether a mortgage is regulated

4.4A.21 R (1) If at the point that initial disclosure must be made in accordance with *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R and *MCOB* 4.4A.8R

a *firm* is uncertain whether the contract will be a *regulated mortgage contract*, the *firm* must:

- (a) make the initial disclosure; or
 - (b) seek to obtain from the *customer* information that will enable the *firm* to ascertain whether the contract will be a *regulated mortgage contract*.
- (2) Where (1)(b) applies, the initial disclosure must be made unless, on the basis of the information provided by the *customer*, the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract*.

Appointed representatives

- 4.4A.22 R A *firm* may restrict the *home finance transactions* it authorises a particular *appointed representative* to sell. If it does so, the *firm* must ensure the *appointed representative* reflects this limited range in any disclosure given to the *customer* under MCOB 4.4A.

Record keeping

- 4.4A.23 G *Firms* are reminded of the general record-keeping requirements in SYSC 9. A *firm* should keep appropriate records of the disclosures required by this section.

Amend the following as shown.

4.5 Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers

...

- 4.5.2 R If the ~~initial contact of a kind in MCOB 4.4.1R(1)~~ *initial contact* is with a *consumer* with a view to concluding a *distance mortgage mediation contract*...

After MCOB 4.6 insert the following new section. The text is not underlined.

4.6A Rolling-up of fees or charges into loan

- 4.6A.1 R A *mortgage lender* may not offer a *regulated mortgage contract* to a *customer* on the basis that fees or charges of any kind (receivable either by the *mortgage lender* or another party) are automatically added to the sum advanced.

- 4.6A.2 R A *firm* must not undertake any action that commits a *customer* to an application for a *regulated mortgage contract* where a fee or charge of any kind (receivable either by the *firm* or another party) is to be added to the sum advanced under the *regulated mortgage contract*, unless the *customer* has made a positive choice to add the fee or charge to the sum advanced.

MCOB 4.7 is deleted in its entirety and replaced with a new section MCOB 4.7A. The deleted text is not shown and the new text is not underlined.

4.7A Advised sales

- 4.7A.1 G (1) MCOB 4.7A sets out standards to be observed by *firms* when *advising* a particular *customer* on *regulated mortgage contracts*.
- (2) The *rules* at MCOB 4.8A require *firms* which are selling *regulated mortgage contracts* to, or entering into variations of existing *regulated mortgage contracts* with, certain types of vulnerable *customer*, to provide *advice* to them.
- (3) The *rules* at MCOB 4.8A also provide that *advice* must be given wherever the sales process involves spoken or other interactive dialogue (except for *high net worth mortgage customers*, *professional customers* and loans solely for a business purpose). They do not prohibit the giving of pre-contract or preliminary information which does not amount to *advice* to the particular *customer*, but means that *advice* must be given before a *firm enters into* or *arranges a regulated mortgage contract*, or variation of such contract, unless the requirements there are satisfied. *Firms* may wish to refer to *PERG* (particularly *PERG* 4.6) for guidance on the regulatory perimeter in relation to *advising on home finance transactions*.
- (4) The *rules* at MCOB 4.8A provide for an exception which permits certain *execution-only sales* which do not involve additional borrowing.

Suitability

- 4.7A.2 R If a *firm* gives *advice* to a particular *customer* to enter into a *regulated mortgage contract*, or to vary an existing *regulated mortgage contract*, it must take reasonable steps to ensure that the *regulated mortgage contract* is, or after the variation will be, suitable for that *customer*.
- 4.7A.3 R In MCOB 4.7A, a reference to *advice* to enter into a *regulated mortgage contract* is to be read as including *advice* to vary an existing *regulated mortgage contract*.
- 4.7A.4 G (1) A *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of MCOB 4.7A.

- (2) For the purposes of *MCOB 4.7A.2R*, if for any reason a *customer* rejects (in whole or in part) *advice* given by a *firm*, the *firm* is not precluded from advising him to enter into a different *regulated mortgage contract* (in accordance with the requirements of *MCOB 4.7A*) provided the *firm* has taken reasonable steps to ensure that that different contract is suitable for the *customer*.

4.7A.5 R For the purposes of *MCOB 4.7A.2R*:

- (1) a *regulated mortgage contract* will not be suitable for a *customer* unless the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer*;
- (2) a *firm* must base its determination of whether a *regulated mortgage contract* is appropriate to a *customer's* needs and circumstances on the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware;
- (3) no *advice* must be given to a *customer* to enter into a *regulated mortgage contract* if there is no *regulated mortgage contract* which is suitable from the product range offered by the *firm*; and
- (4) if a *mortgage lender* is dealing with an existing *customer* with a *payment shortfall* and has concluded that there is no suitable replacement *regulated mortgage contract*, the *firm* must nonetheless have regard to *MCOB 13.3*.

4.7A.6 R When a *firm* assesses whether the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB 4.7A.5R(1)*, the factors it must consider include the following, insofar as relevant:

- (1) whether the *customer's* requirements appear to be within the *mortgage lender's* known eligibility criteria for the *regulated mortgage contract*;
- (2) whether it is appropriate for the *customer* to have an *interest-only mortgage*, a *repayment mortgage*, or a combination of the two;
- (3) whether it is appropriate for the *customer* to take out a *regulated mortgage contract* for a particular term;
- (4) whether it is appropriate for the *customer* to have stability in the amount of required payments, especially having regard to the impact on the *customer* of significant interest rate changes in the future;
- (5) whether it is appropriate for the *customer* to have their payments minimised at the outset;
- (6) whether it is appropriate for the *customer* to make early

repayments;

- (7) whether it is appropriate for the *customer* to have any other features of a *regulated mortgage contract*;
- (8) whether the *regulated mortgage contract* is appropriate, based on the information provided by the *customer* as to his credit history; and
- (9) whether it is appropriate for the *customer* to pay any fees or charges in relation to the *regulated mortgage contract* up front, rather than adding them to the sum advanced (see also *MCOB 4.6A.2R*).

- 4.7A.7 G *Firms* are reminded that the list in *MCOB 4.7A.6R* is not exhaustive. For certain *customers* there may be additional considerations to explore beyond those described in that rule; for example, in the case of a business loan or a *regulated mortgage contract* for a *high net worth mortgage customer*.
- 4.7A.8 G Examples of criteria in *MCOB 4.7A.6R(1)* are: the expected affordability criteria of the *mortgage lender*; and whether the *mortgage lender* will lend in respect of properties of a non-standard construction.

Interest-only

- 4.7A.9 R In relation to *MCOB 4.7A.6R(2)*, where a *firm* has identified an *interest-only mortgage* as appropriate for a *customer*, the *firm* must ensure that the *customer* is aware that he will have to demonstrate to the *mortgage lender* that he will have in place a clearly understood and credible *repayment strategy*, in order for the *mortgage lender* to be able to satisfy *MCOB 11.6.41R(1)*.
- 4.7A.10 G *MCOB 4.7A.9R* does not require a *firm* to *advise* the *customer* on a credible *repayment strategy* or assess the adequacy of a *customer's* existing *repayment strategy*.

Bridging loans

- 4.7A.11 R When a *firm* assesses whether a *bridging loan* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB 4.7A.5R(1)*, the factors it must consider include, in addition to the factors listed at *MCOB 4.7A.6R*:
- (1) whether it is appropriate for the *customer* to make regular payments; and
 - (2) whether it is appropriate for the *customer* to access finance quickly.
- 4.7A.12 R Where a *firm* has identified a *bridging loan* as appropriate for a *customer*, the *firm* must ensure that the *customer* is aware that he will have to demonstrate to the *mortgage lender* that he has a clearly understood and credible *repayment strategy* in place.

- 4.7A.13 R Where a *firm* is considering giving *advice* to a *customer* to enter into a *bridging loan*, the reasonable steps in *MCOB* 4.7A.2R include considering why it is not appropriate for the *customer* to take out a *regulated mortgage contract* which is not a *bridging loan*.
- 4.7A.14 E If a *firm* advises a *customer* to enter into a *regulated mortgage contract* with a term of a particular length so that *MCOB* 4.7A.11R to *MCOB* 4.7A.13R do not apply because the *regulated mortgage contract* does not fall within the definition of a *bridging loan*, that advice may be relied on as tending to show contravention of *MCOB* 2.5A.1R (The customer's best interests).

Debt consolidation

- 4.7A.15 R When a *firm* advises a *customer* in relation to entering into a *regulated mortgage contract* where the main purpose for doing so is the consolidation of existing debts by the *customer*, in addition to the factors at *MCOB* 4.7A.6R, it must also take account of the following, where relevant, in assessing whether the *regulated mortgage contract* is suitable for the *customer*:
- (1) the costs associated with increasing the period over which a debt is to be repaid;
 - (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and
 - (3) where the *customer* is known to have payment difficulties, whether it would be appropriate for the *customer* to negotiate an arrangement with his creditors rather than to take out a *regulated mortgage contract*.
- 4.7A.16 E An attempt by the *firm* to misdescribe the *customer's* purpose or to encourage the *customer* to tailor the amount he wishes to borrow so that *MCOB* 4.7A.15R does not apply may be relied on as tending to show contravention of *MCOB* 2.5A.1R (The customer's best interests).

Further advances

- 4.7A.17 R Where the *customer* is looking to increase the borrowing secured on the property which is the subject of an existing *regulated mortgage contract*, unless the *firm* knows that the existing lender will not make a further advance to the *customer*, the *firm* must inform the *customer*, either orally or in writing, that it may be possible, and more appropriate, to do so rather than to enter into a *regulated mortgage contract* with another lender.
- 4.7A.18 G *Firms* are not under any obligation to explore whether a further advance with the existing lender is, in fact, more appropriate for the *customer*.

Other considerations when advising

- 4.7A.19 R When *advising a customer* on the suitability of a *regulated mortgage contract*, a *firm* must explain to the *customer* that the assessment of whether the *regulated mortgage contract* is appropriate to his needs and circumstances is based only on the *customer's* current circumstances and any reasonably foreseeable changes to those.
- 4.7A.20 G Different considerations apply when giving *advice* to a *customer* with a *payment shortfall*. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* should not be advised to enter into a *regulated mortgage contract*. In those cases, a *firm* may still be able to give *advice* to that *customer* where the *regulated mortgage contract* concerned is, in the circumstances, a more suitable one than the *customer's* existing *regulated mortgage contract*.
- 4.7A.21 G In complying with *MCOB 4.7A.5R(1)* a *firm* is not required to consider whether it would be preferable for the *customer* to:
- (1) purchase a property by using his own resources, rather than by borrowing under a *regulated mortgage contract*; or
 - (2) rent a property, rather than purchase one; or
 - (3) delay entering into a *regulated mortgage contract* until a later date (on the grounds that property prices would have fallen in the intervening period, or that the interest rate in relation to the *regulated mortgage contract* may be lower, or both).
- 4.7A.22 G *MCOB 4.7A.5R(3)* means that where the *advice* is not provided on an unlimited range of products from across the relevant market, the assessment of suitability should not be limited to the types of *regulated mortgage contracts* which the *firm* offers. A *firm* cannot recommend the 'least worst' *regulated mortgage contract* where the *firm* does not have access to products appropriate to the *customer's* needs and circumstances. This means, for example, that a *firm* dealing solely in the credit-impaired market should not recommend one of these *regulated mortgage contracts* if approached for *advice* by a *customer* who is not a *credit-impaired customer*.
- 4.7A.23 G A *firm* may generally rely on any information provided by the *customer* for the purposes of *MCOB 4.7A.5R(1)* unless, taking a common sense view of this information, it has reason to doubt it.

Rejected advice

- 4.7A.24 R If a *customer* has rejected the *advice* given by a *firm* and instead wishes to enter into a different *regulated mortgage contract* as an *execution-only sale*, the *firm* may *enter into* or *arrange* that contract as an *execution-only sale* provided the requirements in *MCOB 4.8A.14R* are satisfied.

Record keeping

- 4.7A.25 R (1) A *firm* must make and retain a record:
- (a) of the *customer* information, including that relating to the *customer's* needs and circumstances, that it has obtained for the purposes of *MCOB 4.7A*;
 - (b) that explains why the *firm* has concluded that any *advice* given to a *customer* complies with *MCOB 4.7A.2R* and satisfies the suitability requirement in *MCOB 4.7A.5(1)R*; and
 - (c) of the *customer's* positive choice in *MCOB 4.6A.2R* (Rolling up of fees or charges into loan) where applicable.
- (2) The records in (1) must be retained for a minimum of three years from the date on which the *advice* was given or, in the case of (1) (d), the making of the choice.

MCOB 4.8 is deleted in its entirety and replaced with a new section *MCOB 4.8A*. The deleted text is not shown and the new text is not underlined.

4.8A Execution-only sales

Scope and application of this section

- 4.8A.1 G This section sets out the conditions which must be satisfied for a *firm* to enter into or vary a *regulated mortgage contract* with a *customer*, or arrange such a transaction for a *customer*, without giving *advice*, or where the *advice* given by the *firm* has been rejected. As explained in *MCOB 4.7A.1G*, it does not prohibit the giving of pre-contract or preliminary information which does not amount to *advice* to the particular *customer*. If a *firm* intends (where permitted under this section) to operate a business model under which it will not give *advice* to particular *customers*, it may wish to refer to *PERG* (particularly *PERG 4.6*) for guidance on the regulatory perimeter in relation to the *regulated activities* which constitute *advising on home finance transactions*.
- 4.8A.2 G Subject to certain limited exceptions, where the *rules* in *MCOB 4.8A* apply to a *firm* they restrict *execution-only sales* (which term is defined to include variations of existing contracts) to cases where:
- (1) there is no spoken or other interactive dialogue between the *firm* and the *customer* during the sale; or
 - (2) if there is spoken or other interactive dialogue between the *firm* and the *customer* during the sale:
 - (a) the *customer* is a *high net worth mortgage customer*; or

- (b) the *customer* is a *professional customer*; or
- (c) the loan is solely for a business purpose;

and in each case the *customer* has positively elected to proceed with an *execution-only sale* and (in the case of a *professional customer*) identified the product he wishes to purchase; or

- (3) the *customer* has rejected *advice*, identified the product he wishes to purchase and positively elected to proceed with an *execution-only sale*.

In each case certain requirements must be satisfied.

- 4.8A.3 G Interactive dialogue includes SMS, mobile instant messaging, email and communication via social media sites; this list is not exhaustive. Where a sale is carried out entirely on the internet, a *firm* merely permitting the *customer* to input details about the matters specified in *MCOB* 4.8A.14R(1), (2) or (3) in order to select from the *firm's* product range the *regulated mortgage contract* he wishes to purchase, or the variation he wishes to enter into, would not be engaging in interactive dialogue. *Firms* are reminded that, if this process steers the *customer* towards any one or more of the products offered by it, so as to constitute *advice*, the requirements of *MCOB* 4.7A will apply.

The customer's best interests

- 4.8A.4 G *Firms* are reminded that *MCOB* 2.5A.1R (The customer's best interests) applies in all cases, including in relation to *execution-only sales*.
- 4.8A.5 R A *firm* must not encourage a *customer* to opt out of receiving *advice* on *regulated mortgage contracts* from, or reject *advice* given by, it or any *associate*.
- 4.8A.6 G *Firms* are not prohibited from *entering into* or *arranging execution-only sales* for *regulated mortgage contracts* for *customers* to whom they have provided product information (where otherwise permitted under this section), but *MCOB* 2.5A.1R and *MCOB* 4.8A.5R (The customer's best interests) mean the information they provide should not steer the *customer* to elect to enter into an *execution-only sale*.

Cases where execution-only sales are not permitted

- 4.8A.7 R A *firm* must not enter into or arrange an *execution-only sale* for a *regulated mortgage contract* if:
- (1) the *customer* is intending to use it to exercise a statutory "right to buy" the *customer's* home; or
 - (2) the main purpose of the *customer's* entering into it is to raise funds for debt consolidation; or

- (3) there is spoken or other interactive dialogue between the *firm* and the *customer* at any point during the sale.

4.8A.8 E An attempt by the *firm* either to:

- (1) misdescribe the *customer's* purpose or characteristics; or
 (2) encourage the *customer* to tailor the amount he wishes to borrow;

so that *MCOB* 4.8A.7R does not apply may be relied on as tending to show contravention of *MCOB* 2.5A.1R (The customer's best interests).

Exceptions: high net worth mortgage customers, professional customers and loans solely for a business purpose.

4.8A.9 R (1) *MCOB* 4.8A.7R does not apply where the *customer* is a *high net worth mortgage customer*.

- (2) *MCOB* 4.8A.7R(3) does not apply where the *customer* is a *professional customer* or the loan is solely for a business purpose.

Exception: rate switches and other variations

4.8A.10 R (1) *MCOB* 4.8A.7R does not apply in the case of a variation of a *regulated mortgage contract*, provided that:

- (a) the variation would not involve the *customer* taking on additional borrowing beyond the amount currently outstanding under the existing *regulated mortgage contract*, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and
 (b) where the variation will (in whole or part) change from one interest rate to another, the *firm* has presented to the *customer*, using only a non-interactive channel, all products offered by it for which the *customer* is eligible, whether or not the *customer* then selects from those products using an interactive channel.

- (2) The reference to a variation in (1) (and in all other provisions which cross-refer to this *rule*) must be read as including any new *regulated mortgage contract* which would replace an existing *regulated mortgage contract* between the *customer* (or, where there are joint borrowers, at least one of them) and the *firm* (either as the original *mortgage lender* or as the transferee of the existing contract).

4.8A.11 G (1) The variation in *MCOB* 4.8A.10R might involve: a transfer to a different property ("porting"); the addition or removal of a borrower for joint mortgages; an extension of the term; a change in payment method; or consent to let the property. This list is not exhaustive.

- (2) Examples of rate changes in *MCOB* 4.8A.10R(1)(b) are: a transfer

from a variable rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.

- (3) *Firms* are reminded that, if their presentation in *MCOB* 4.8A.10R(1)(b) has (either explicitly or implicitly) steered the *customer* towards any one or more of the products offered by them such as to constitute *advice*, the requirements of *MCOB* 4.7A will apply.

Exception: rejected advice

- 4.8A.12 R *MCOB* 4.8A.7R does not apply where the *customer* has rejected *advice* given by a *firm* and instead wishes to enter into a different *regulated mortgage contract* as an *execution-only sale* (see *MCOB* 4.8A.14R).

Execution-only sales: guidance

- 4.8A.13 G (1) If a *firm* wishes to be able to apply the exception in *MCOB* 4.8A.9R for a *high net worth mortgage customer*, it should first consider the provision in *MCOB* 1.2.9CR (Requirement for evidence before treating a loan as being solely for business purposes, or a customer as a high net worth mortgage customer or a professional customer).
- (2) Where a *firm's* business model is such that it does not offer *advice on regulated mortgage contracts* to particular *customers*, it should ensure that it does not *enter into* or *arrange regulated mortgage contracts* for *customers* in breach of *MCOB* 4.8A.7R. Such a *firm* may wish to use filtering questions which the *customer* is required to answer before he is able to proceed, in order to establish whether any of the exceptions to *MCOB* 4.8A.7R apply.

Requirements for execution-only sales

- 4.8A.14 R A *firm* must not *enter into* or *arrange* an *execution-only sale* for a *regulated mortgage contract* unless, except as provided in *MCOB* 4.8A.15R:
- (1) for a new *regulated mortgage contract* not falling within *MCOB* 4.8A.10R, the *customer* has identified the *regulated mortgage contract* he wishes to purchase, specifying to the *firm* at least the following information:
- (a) the name of the *mortgage lender*;
- (b) the rate of interest;
- (c) the interest rate type (that is, whether fixed, variable or some other type);
- (d) the price or value of the property on which the *regulated mortgage contract* would be secured (estimated where

- necessary);
- (e) the length of the term required by the *customer*;
 - (f) the sum the *customer* wishes to borrow; and
 - (g) whether the *customer* wants an *interest-only mortgage* or a *repayment mortgage*;
- (2) for a contract variation not falling within *MCOB 4.8A.10R* (but permitted by *MCOB 4.8A.7R*), the *customer* has specified at least the following information, where applicable to the variation he wishes to enter into:
- (a) the price or value of the property;
 - (b) the length of term required (or confirmation that this should remain unchanged); and
 - (c) the amount the *customer* wishes to borrow;
- (3) for a contract variation falling within *MCOB 4.8A.10R*, the *customer* has specified the variation he wishes to enter into;
- (4) the *customer* has been informed, clearly and prominently and in a *durable medium* (after providing the information in (1), (2), or (3), where that is required):
- (a) in any case falling within *MCOB 4A.7A.24 R* (Rejected advice) where the *firm* has advised the *customer* that the *regulated mortgage contract* (or variation) is unsuitable for the *customer*, that that is the case; or
 - (b) in any other case, that in the provision of its services for the *execution-only sale* the *firm* is not required to assess the suitability of that *regulated mortgage contract* (or variation);

and in either case that the *customer* will not benefit from the protection of the rules (in *MCOB 4.7A*) on assessing suitability. In any case where there is spoken dialogue between the *firm* and the *customer* at any point during the sale, the *firm* must also provide this information orally; and

- (5) once the *customer* has been provided with the information in (4), in any case where there is spoken or other interactive dialogue between the *firm* and the *customer* at any point during the sale, he has confirmed, in writing, to the *firm* that he is aware of the consequences of losing the protections of the *rules* on assessing suitability and is making a positive election to proceed with an *execution-only sale*. The written confirmation must be in the same document as the information in *durable medium* in (4), which must be separate from any other information or contractual

documentation.

- 4.8A.15 R The requirements in *MCOB* 4.8A.14R(1) to (3) do not apply if the *customer* is a *high net worth mortgage customer* or entering into the *regulated mortgage contract* solely for a business purpose.
- 4.8A.16 G Where the information in *MCOB* 4.8A.14R(4) is given by electronic means, the *firm* should ensure that the *customer* cannot progress to the next stage of the sale unless the information has been communicated to the *customer*.

Managing execution-only sales

- 4.8A.17 R A *firm* which intends to transact *execution-only sales* in *regulated mortgage contracts* must have in place and operate in accordance with a clearly defined policy which:
- (1) sets out the amount of business the *firm* reasonably expects to transact by way of *execution-only sales* and the steps to be taken by the *firm* if that business exceeds the expected levels; and
 - (2) sets out its processes and procedures for ensuring compliance with the *rules* in *MCOB* 4.8A; in particular:
 - (a) how it will ensure in every case that, before proceeding with an *execution-only sale* it has obtained (where required) a voluntary and informed positive election from the *customer* in order to comply with *MCOB* 4.8A.14R(5);
 - (b) how it will ensure in every case that it acts in compliance with *MCOB* 2.5A.1R and *MCOB* 4.8A.5R (The customer's best interests), including not encouraging a *customer* to enter into a *regulated mortgage contract* (or variation) as an *execution-only sale*; and
 - (c) how it will identify whether a *customer* meets the definition of *high net worth mortgage customer* or *professional customer*, if it will offer *execution-only sales* to those *customers*; and
 - (3) includes the arrangements for monitoring and auditing compliance with the policy, processes and procedures.

Record keeping

- 4.8A.18 R (1) Whenever a *firm* enters into or arranges an *execution-only sale* for a *regulated mortgage contract*, it must make and maintain a record of:
- (a) the information provided by the *customer* which satisfies *MCOB* 4.8A.14R(1), (2) or (3);

- (b) the information in *durable medium* in MCOB 4.8A.14R(4);
 - (c) (where applicable) the confirmation by the *customer* in MCOB 4.8A.14R(5); and
 - (d) any *advice* from the *firm* which the *customer* rejected, including the reasons why it was rejected, before deciding to enter into an *execution-only sale*.
- (2) The record in (1) must be retained for a minimum of three years from the date on which the *regulated mortgage contract* was *entered into* or *arranged* (or the variation was entered into or arranged).
 - (3) A *firm* must keep an adequate and up-to-date record of the policy in MCOB 4.8A.17R, where such policy is required by that *rule*. When the policy is changed, a record of the previous policy must be retained for one year from the date of change.

Forbearance

- 4.8A.19 R MCOB 4.8A does not apply to any variation which is made solely for the purposes of forbearance where the *customer* has a *payment shortfall*, or in order to avoid a *payment shortfall*.

Amend the following as shown.

4.9 Business loans and loans to high net worth mortgage customers: tailored provisions

- 4.9.1 R ~~For the purposes of the rules in MCOB there is one market in regulated mortgage contracts for a business purpose. Within this market, a firm should describe its scope of service in accordance with MCOB 4.3.1R. [deleted]~~
- 4.9.1A G Firms are reminded that in accordance with MCOB 1.2.3R and MCOB 1.2.3AR, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers, as the case may be. Therefore, a firm may only follow the tailored provisions in MCOB 4.9 in relation to one of these sectors if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.
- 4.9.2 G ~~Where a personal recommendation or personalised information is provided in connection with a regulated mortgage contract for a business purpose it is recognised that there may be additional considerations beyond those described in MCOB 4.7.11E as part of the assessment of whether the regulated mortgage contract is appropriate to the needs and circumstances~~

of the *customer*. [deleted]

Initial disclosure

- 4.9.3 G ~~As explained in *MCOB 4.4.3G(1)* the requirement to provide an initial disclosure document is only triggered where the *firm* has identified the possibility that it will be giving personalised information or *advice* to a *customer* on a *regulated mortgage contract* for a business purpose. [deleted]~~
- 4.9.4 G (1) *Firms* are reminded that *MCOB 1.2.7R* enables them to substitute an alternative for 'mortgage' in the initial disclosure document in relation to a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer* (except in relation to ~~sections 6 and 8 of any initial disclosure document~~ or sections 5 and 8 of any combined initial disclosure document).
- (2) *MCOB 1.2.7R* also means that a *firm* ~~must~~ should amend any combined initial disclosure document in relation to a regulated mortgage contract for a business purpose or a high net worth mortgage customer so that the final sentence of prescribed text in section 4 states: 'You will receive an illustration which will tell you about any fees relating to a particular [term used by the firm to describe the borrowing, for example "mortgage secured overdraft"]'.
- (3) Where the initial disclosure ~~document~~ in relation to a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer* makes reference to the permitted business of a *firm* (for example, sections ~~6 5~~ and 8 of the ~~initial disclosure document~~ combined initial disclosure document may refer to a *firm* advising on or arranging regulated mortgage contracts) a *firm* can add text explaining the relevance of these descriptions. One approach may be to add an additional sentence such as: 'Secured overdrafts are referred to here as "mortgages" because they involve a charge being taken over your property'.

Non-advised sales

- 4.9.5 R ~~*MCOB 4.8.1R* does not apply in relation to a *regulated mortgage contract* for a business purpose. [deleted]~~

...

4.10 Home purchase plans: sales standards

Scope of service provided

- 4.10.1 R ~~A *firm* must comply with the scope of service requirements at *MCOB 4.3.1R* and *MCOB 4.3.2R* (Providing services within and beyond scope), *MCOB 4.3.4A R* and *4.3.4AR* (Whole of market and *MCOB 4.3.10R* (Appointed representatives)). [deleted]~~

Initial disclosure requirements

- 4.10.2 R (1) ~~A firm must, on first making contact with a customer when it anticipates giving personalised information or advice on entering into a new home purchase plan, ensure that the customer is, or has been, provided with an appropriate initial disclosure document or combined initial disclosure document in a durable medium.~~
- (2) ~~If the initial contact in (1) is by telephone, a firm must:~~
- (a) ~~(if the call is with a view to concluding a distance home purchase mediation contract) give the following information before proceeding further:~~
- (i) ~~the name of the firm and (if initiated by the firm) the commercial purpose of the call;~~
- (ii) ~~the scope of the service provided by the firm; and~~
- (iii) ~~whether or not the firm will provide the customer with advice on those home purchase plans within its scope; and~~
- (b) ~~Ensure that the customer is, or has been, provided with such a document in a durable medium as soon as is practicable.~~
- (3) ~~A firm must not use a combined initial disclosure document in relation to a combination of home purchase plans and equity release transactions. [deleted]~~
- 4.10.3 G ~~In accordance with Principle 7, where a firm is likely to provide services in relation to both regulated mortgage contracts and home purchase plans, it should provide a combined initial disclosure document rather than two separate initial disclosure documents. [deleted]~~
- 4.10.3A R A firm must comply with the rules in MCOB 4.4A as if the references in those rules to regulated mortgage contracts and mortgage lenders were to, respectively, home purchase plans and home purchase providers.
- 4.10.3B R For the purposes of MCOB 4.4A.2R(1) there is one relevant market for home purchase plans.
- 4.10.4 G ~~The guidance on initial disclosure requirements at MCOB 4.4.2G to MCOB 4.4.4G in MCOB 4.4A may be relevant; in this context, that guidance should be read using home purchase plan terminology instead of the equivalent regulated mortgage contract terminology, where appropriate.~~

Additional requirements for distance home purchase mediation contracts with retail customers

[Note: The rules regarding additional disclosure requirements for, and

cancellation of, *distance home purchase mediation contracts* are set out in *MCOB 4.5* and *MCOB 4.6* respectively.]

Advised sales: suitability

- 4.10.5 G ~~In accordance with *Principle 9*, a firm should take reasonable steps to obtain from a *customer* all information likely to be relevant to ensuring the suitability of its advice. [deleted]~~
- 4.10.5A R If a firm gives advice to a particular customer to enter into a home purchase plan, or to vary an existing home purchase plan, it must take reasonable steps to ensure that the home purchase plan is, or after the variation will be, suitable for that customer.
- 4.10.5B R In *MCOB 4.10*, a reference to advice to enter into a home purchase plan is to be read as including advice to vary an existing home purchase plan.
- 4.10.5C G A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of *MCOB 4.10.5AR* to *MCOB 4.10.9AR*.
- 4.10.5D R For the purposes of *MCOB 4.10.5AR*:
- (1) a home purchase plan will not be suitable for a customer unless the home purchase plan is appropriate to the needs and circumstances of the customer;
 - (2) a firm must base its determination of whether a home purchase plan is appropriate to a customer's needs and circumstances on the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware;
 - (3) no advice must be given to a customer to enter into a home purchase plan if there is no home purchase plan which is suitable from the product range offered by the firm;
 - (4) if a home purchase provider is dealing with an existing customer in arrears, with a payment shortfall or otherwise in breach of their home purchase plan and has concluded that there is no suitable replacement home purchase plan, the firm must nonetheless have regard to *MCOB 13.3*; and
 - (5) the reasonable steps in that rule include considering why it is not appropriate for the customer to take out a regulated mortgage contract.
- 4.10.6 R ~~A firm, before making a personal recommendation on a home purchase plan, must take reasonable steps to ensure that it is:~~
- (1) affordable;

- (2) ~~appropriate to the *customer's* needs and circumstances; and~~
- (3) ~~the most suitable of those *home purchase plans* that the *firm* has available to it within the scope of the service provided to the *customer*.
[deleted]~~

4.10.6A G MCOB 4.10.5DR(3) has the effect that a *firm* cannot recommend the 'least worst' *home purchase plan* where the *firm* does not have access to *home purchase plan* products appropriate to the *customer's* needs and circumstances.

4.10.7 G ~~The guidance on suitability at MCOB 4.7.8G to MCOB 4.7.10G and MCOB 4.7.16G may be relevant~~ Firms may wish to consider the following provisions:

- (1) the rule at MCOB 4.7A.6R on the *customer's* needs and circumstances, as if it were *guidance* and to the extent applicable to *home purchase plans*; and
- (2) the guidance at MCOB 4.7A.1G(2), MCOB 4.7A.21G and MCOB 4.7A.23G (Other considerations when advising);

in each case using *home purchase plan* terminology instead of the equivalent *regulated mortgage contract* terminology, where appropriate.

Non-advised sales

4.10.8 R ~~If a *firm* arranges a *home purchase plan* or a variation to an existing *home purchase plan* without giving a *personal recommendation*, it must ensure that the questions it asks about the *customer's* needs and circumstances are scripted in advance. [deleted]~~

4.10.9 G ~~The guidance on non-advised sales at MCOB 4.8.2G and on scripted questions at MCOB 4.8.5G and MCOB 4.8.6G may be relevant. [deleted]~~

Rejected recommendations

4.10.9A R If a *customer* has rejected the *advice* given by a *firm* and instead requested an *execution-only sale* of a *home purchase plan*, the *firm* may *enter into* or *arrange* that *execution-only sale* provided the requirements in MCOB 4.8A.14R (as applied in relation to *home purchase plans* by MCOB 4.10.9BR and modified for *home purchase plans* by MCOB 4.10.9DR) are satisfied.

Execution-only sales

4.10.9B R MCOB 4.8A applies to a *firm* as if the references in that section to *regulated mortgage contracts* and *mortgage lenders* were to, respectively, *home purchase plans* and *home purchase providers*, but MCOB 4.8A.14R(1) and (2) are modified in relation to *home purchase plans* as set out in MCOB 4.10.9DR.

4.10.9C G As provided in MCOB 4.1.2BR, MCOB 4.8A only applies to home purchase providers in relation to entering into home purchase plans where there is no firm which is arranging the transaction and to which MCOB 4.8A applies.

4.10.9D R For home purchase plans, the following items of information replace those set out in MCOB 4.8A.14R(1) and (2):

- (1) the name of the home purchase provider;
- (2) the length of the term required by the customer; and
- (3) the sum required from the home purchase provider.

Risks and features statement and tariff of charges

4.10.10 R A firm must, before ~~making a personal recommendation to~~ advising a customer of, ~~or when a customer requests or selects,~~ to enter into, or entering into or arranging a home purchase plan as an execution-only sale, ensure that the customer is, or has been, provided with an appropriate risks and features statement about that plan.

...

Record keeping

4.10.13 R (1) A firm must make and retain a record:

- (a) of the customer information, including that relating to the customer's needs and circumstances that it has obtained for the purposes of MCOB 4.10.5DR;
- (b) that explains why the firm has concluded that any advice given to a customer complies with MCOB 4.10.5AR and satisfies the suitability requirement in MCOB 4.10.5DR(1); and
- (c) of any advice which the customer has rejected, including the reasons why it was rejected and details of the home purchase plan which the customer has proceeded with as an execution-only sale.

(2) The records in (1) must be retained for a minimum of three years from the date on which the advice was given.

4.10.14 G Firms should note the record-keeping requirements in MCOB 4.8A in relation to execution-only sales which are imposed in relation to home purchase plans by MCOB 4.10.9BR.

4.11 Sale and rent back: advising and selling standards

Initial disclosure requirements

- 4.11.1 R (1) ~~A regulated sale and rent back firm, on first making contact with a potential SRB agreement seller for whom it might reasonably be expected to carry on any regulated sale and rent back activity, must make the following disclosures to him a customer, both orally and in writing, during the initial contact:~~

...

~~Affordability and appropriateness~~ Advised sales

- 4.11.3 R ~~A regulated sale and rent back firm must not permit a potential SRB agreement seller to become contractually committed to enter into a regulated sale and rent back agreement unless it has reasonable grounds to be satisfied that:~~ a firm with permission to advise on regulated sale and rent back agreements has advised the particular customer to enter into it.
- (1) ~~the customer can afford the payments he will be liable to make under the agreement; and~~
- (2) ~~the proposed regulated sale and rent back agreement is appropriate to the needs, objectives and circumstances of the customer.~~

Suitability

- 4.11.3A R A firm must take reasonable steps to ensure that it does not advise a particular customer to enter into a regulated sale and rent back agreement unless the regulated sale and rent back agreement is suitable for that customer.
- 4.11.3B G A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.11.3AR.
- 4.11.3C R For the purposes of MCOB 4.11.3AR:
- (1) a regulated sale and rent back agreement will not be suitable unless, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm concludes on reasonable grounds that:
- (a) the customer can afford the payments he will be liable to make under it; and
- (b) the proposed regulated sale and rent back agreement is appropriate to the needs and circumstances of the customer;
- (2) a firm must base its determination of whether a customer can afford the payments he will be liable to make under a regulated sale and rent back agreement, and whether it is appropriate to his needs and circumstances, on the facts disclosed by the customer and other

relevant facts about the *customer* of which the *firm* is or should reasonably be aware;

- (3) no advice must be given to a *customer* to enter into a *regulated sale and rent back agreement* if there is no *regulated sale and rent back agreement* which is suitable from within the product range offered by the *firm*.

- 4.11.4 E (1) In assessing whether a *customer* can afford to enter into a particular *regulated sale and rent back agreement*, a *firm* should use the following information:
- (a) the rental payments that will be due under the tenancy agreement which confers the right of the *customer* (or trust beneficiary or related party) to continue residing in the property, stress tested to take account of possible future rental increases during the fixed term of the tenancy agreement by reference to the circumstances in which the agreement permits increases or changes to the initial rent;
 - (b) adequate information, obtained from the *customer* to establish his average income and expenditure calculated on a monthly basis, and any other resources that he has available, and verified by the *firm* using evidence provided by the *customer*;
 - (c) the *customer's* net disposable income, which a *firm* should establish using the information referred to in (b);
 - (d) the *customer's* entitlement to means-tested benefits and housing benefits; and
 - (e) the effect of any likely future change to the *customer's* income, expenditure or resources during the period of the *regulated sale and rent back agreement*.
- (2) The *firm* should explain to the *customer* that it will base its assessment on whether he can afford to enter into the particular *regulated sale and rent back agreement* on the information he provides to the *firm* about his income, expenditure and resources.
- (3) In assessing affordability under (1) the *firm*:
- (a) must not rely to a material extent on the capital of, or income from, any lump sum the *customer* receives which represents the net sale proceeds of the property; and
 - (b) must disregard any discount or any future sum that may be payable to the *customer* under the terms of the *regulated sale and rent back agreement*.
- (4) Contravention of (1), (2) or (3) may be relied upon as tending to show

contravention of *MCOB 4.11.3CR(1)(a)*.

4.11.4A R In assessing whether the *regulated sale and rent back agreement* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB 4.11.3C R(1) (b)*, as a minimum requirement a *firm* must consider the following list of factors:

- (1) whether it is appropriate for the *customer* to sell his property for a price less than its value (as determined by the valuation which is required by *MCOB 6.9.2R*, including where applicable a valuation obtained by the *SRB agreement seller* as described in *MCOB 6.9.2R (4)*) (where this is proposed under the *regulated sale and rent back agreement*);
- (2) whether it is appropriate for the *customer* because he is in financial difficulty;
- (3) whether all other options have been explored and eliminated, including the *customer* speaking to his *home finance provider* and other creditors, getting debt advice, releasing the equity by other means and checking whether he is eligible for government or local authority help;
- (4) whether it would be more appropriate for the *customer* to sell his home on the open market;
- (5) whether the benefits to the *customer* in entering into the proposed *regulated sale and rent back agreement* outweigh any adverse effects it may have for him, including on his entitlement to means-tested benefits and housing benefits;
- (6) the feasibility of the *customer* raising funds by alternative methods other than by a sale of his property; and
- (7) if the *customer* is not under threat of repossession, why it is appropriate for the *customer* to take out a *regulated sale and rent back agreement* rather than to use an alternative method of finance.

4.11.4B E The following may be relied on as tending to show contravention of *MCOB 2.5A.1R* (The customer's best interests):

- (1) an attempt by the *firm* to misdescribe the *customer's* reasons for considering a *regulated sale and rent back agreement*; or
- (2) an attempt to encourage a *customer* to enter into a *regulated sale and rent back agreement* involving a sale price for his property which is less than its value (as determined by the valuation which is required by *MCOB 6.9.2R*, including where applicable a valuation obtained by the *SRB agreement seller* as described in *MCOB 6.9.2R(4)*) if he is not under threat of repossession.

4.11.4C G Firms are reminded that the list in MCOB 4.11.4AR is not exhaustive. For certain customers there may be additional considerations to explore beyond those described in that rule.

4.11.5 E ~~(1) In assessing whether a particular regulated sale and rent back agreement is appropriate to the needs, objectives and circumstances of a potential SRB agreement seller, a firm should have due regard to the following:~~

- ~~(a) whether the benefits to the customer in entering into the proposed regulated sale and rent back agreement outweigh any adverse effects it may have for him, including on his entitlement to means tested benefits and housing benefits; and~~
- ~~(b) the feasibility of the customer raising funds by alternative methods other than by a sale of his property.~~

~~(2) Contravention of (1) may be relied upon as tending to show contravention of MCOB 4.11.3R(2). [deleted]~~

...

4.11.7 G

...

- (2) The firm should consider whether a customer ~~in arrears~~ with a payment shortfall under his regulated mortgage contract or home purchase plan has contacted his mortgage lender or home purchase provider to discuss possible forbearance options that may be available. Other possible alternative methods of raising funds will include the availability of local authority or other government rescue schemes that may apply in the customer's circumstances.

...

Record keeping

4.11.8 R (1) A firm must make and retain a record of the customer information that has been provided to it, including that relating to:

- (a) the customer's income, expenditure and other resources that it has obtained from him for the purpose of assessing affordability, together with the stress testing of the rental payments;
- (b) the customer's needs and individual circumstances that it has obtained from him for the purpose of assessing appropriateness; and
- (c) the customer's entitlement to means-tested benefits and housing benefits, including any evidence provided by the customer, that

it has obtained from him for the affordability and appropriateness assessment;

and which explains why the *firm* concluded that the regulated sale and rent back agreement was suitable for the customer could afford, and why it was appropriate for him, and why it advised him to enter into the proposed ~~regulated sale and rent back agreement~~ it.

- (2) The record in (1) must be retained for a minimum of five years from the date on which the assessment of ~~affordability and appropriateness suitability~~ was made, or one year after the end of the fixed term of the tenancy agreement under the *regulated sale and rent back agreement*, if later.

Reliance on another firm

- 4.11.9 R A *firm* need not comply with the requirements imposed on a *regulated sale and rent back firm* in this section to the extent that it is satisfied on reasonable grounds that another *firm*, with the appropriate permission to do so, has already done so.
- 4.11.10 G The effect of *MCOB* 4.11.9R is that a *SRB agreement provider* is expected to ~~carry out its own assessments of affordability and appropriateness~~ advise in relation to a particular *regulated sale and rent back agreement*, unless it is reasonable for it to rely on another *firm* with permission to advise on regulated sale and rent back agreements, to have done so in relation to a particular transaction.

The following Annex is deleted in its entirety. The deleted text is not struck through.

4 Annex 1R Initial disclosure document [deleted]

Amend the following as shown.

5.1 Application

...

What?

- 5.1.3 R (1) This chapter applies if a *firm*:
- (a) ~~makes a personal recommendation to~~ advises a particular customer to enter into, or arranges an execution-only sale in, a home finance transaction; or
 - (b) provides information to a *customer* that is specific to the

amount to be provided on a particular *home finance transaction*, including information provided in response to a request from a *customer*; or

- (c) provides the means for a *customer* to make an application to it;

in connection with entering into, or agreeing to enter into, a *home finance transaction* provided by a *home finance provider*, other than an *equity release transaction* or a variation to an existing *home finance transaction*.

...

5.2 Purpose

5.2.1 G ...

- (2) The purpose of *MCOB 5* is to ensure that, before a *customer* submits an application for a particular *home finance transaction*, he is supplied with information that makes clear:
- (a) (in relation to a *regulated mortgage contract*) its features, any *linked deposits*, any *linked borrowing* and any *tied products*; and
- (b) the price that the *customer* will be required to pay under that *home finance transaction*, to enable the *customer* to assess whether it is affordable to him make a well-informed purchasing decision.

...

5.4 ~~Mortgage illustrations:~~ Information on regulated mortgage contracts: general

...

~~Restriction on provision~~ Provision of information

- 5.4.13 R ~~A firm must not provide a customer with information that is specific to the amount that the customer wants to borrow on a particular regulated mortgage contract except in the following circumstances:~~
- (1) ~~when it is in the form of an illustration;~~
- (2) ~~when it is provided on screen, for example a computer screen;~~
- (3) ~~when supplementary information which is not contained within an illustration is provided after or at the same time as an illustration; or~~
- (4) ~~when it is provided orally, for example by telephone. [deleted]~~

- 5.4.13A G When providing information on regulated mortgage contracts, firms should bear in mind that the information must be clear, fair and not misleading in accordance with Principle 7 and MCOB 2.2.6R; and must be given in accordance with MCOB 2.5A.1R (The customer's best interests).
- 5.4.14 R ~~Where MCOB 5.4.13R(2) applies:~~
- (1) ~~if the customer initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed prominently on each page on screen: "This information does not contain all of the details you need to choose a mortgage. Make sure that you read the separate key facts illustration before you make a decision."; and~~
 - (2) ~~a firm must not provide a customised print function where the information on the screen would not be in the form of an illustration if the information were printed in hard copy. [deleted]~~
- 5.4.15 R ~~Where MCOB 5.4.13R(3) applies, supplementary information must only be provided when it does not significantly duplicate information provided in the illustration. [deleted]~~
- 5.4.16 G MCOB 5.4.13R 5 places no restrictions on the provision of information that is not specific to the amount the customer wants to borrow, for example, marketing literature including generic mortgage repayment tables or graphs illustrating the benefits of making a regular overpayment on a flexible mortgage. Such literature may, however, constitute a *financial promotion* and be subject to the provisions of MCOB 3 (Financial promotion).
- 5.4.17 G ~~Where MCOB 5.4.13R(2) and MCOB 5.4.13R(4) apply, firms should encourage the customer to obtain a copy of an illustration in a durable medium. This could be done, for example, if the information was contained on the firm's website, by a prompt which asked the customer whether he wished to print off an illustration. [deleted]~~
- 5.4.18 R (1) ~~Unless (2) applies, where MCOB 5.4.13R(2) or MCOB 5.4.13R(4) apply, a firm must provide the means for the customer to obtain an illustration as soon as practicable, through a delivery channel acceptable to the customer.~~
- (2) ~~A firm does not need to provide an illustration if the customer refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the provision of an illustration is not appropriate, for example, because on the basis of discussions undertaken the customer is ineligible given the mortgage lender's lending criteria, or is not interested in pursuing the enquiry. [deleted]~~

Messages to be given when providing information on regulated mortgage contracts

- 5.4.18A R (1) Whenever a *firm* provides a *customer* with information specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract* following an assessment of the *customer's* needs and circumstances in order to comply with *MCOB 4.7A.2R*, it must give, clearly and prominently, the following information:
- (a) the same information on the *firm's* product range as is required by *MCOB 4.4A.1R(1)*, *MCOB 4.4A.2R* and *MCOB 4.4A.4R(1)*; and
- (b) that the *customer* has the right to request an *illustration* for any *regulated mortgage contract* which the *firm* is able to offer the *customer*.
- (2) A *firm* need not give the information in (1) if it has previously given that information in compliance with this *rule* within the last ten *business days*.

Message to be given when customer requests an execution-only sale

- 5.4.18B R (1) Whenever, as part of an *execution-only sale* (or potential *execution-only sale*), a *customer* provides a *firm* with the information in *MCOB 4.8A.14R(1)*, (2) or (3) the *firm* must inform the *customer*, clearly and prominently, that the *customer* has the right to request an *illustration* for any *regulated mortgage contract* which the *firm* is able to offer the *customer*.
- (2) Whenever, as part of an *execution-only sale* (or potential *execution-only sale*), a *high net worth mortgage customer* or *customer* who would be entering into a *regulated mortgage contract* solely for a business purpose is provided with information specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract*, the *firm* must inform the *customer*, clearly and prominently, that the *customer* has the right to request an *illustration* for any *regulated mortgage contract* which the *firm* is able to offer the *customer*.
- (3) A *firm* need not give the information in (1) and (2) if it has previously given that information in compliance with this *rule* within the last ten *business days*.

Guidance relevant to messages given to customer

- 5.4.18C G (1) In order to demonstrate compliance with *MCOB 5.4.18AR(1)*, a *firm* may wish to consider, for example, doing one or more of the following: give the messages to the *customer* in a durable medium; build the requirements into the *firm's* training of staff, as evidenced by its training and compliance manuals; insert appropriate prompts into paper-based or automated sales systems; have procedures in place to monitor compliance by its staff with that *rule*. What is required in

each case will depend on all the circumstances.

- (2) The reference in the template *illustration* at MCOB 5 Annex 1R to the possibility of obtaining other *illustrations* is not sufficient to comply with the obligations in MCOB 5.4.18AR(1)(b) and MCOB 5.4.18BR. A firm may, however, satisfy those obligations in a number of ways; for example, by drawing the *customer's* attention to the right to request an *illustration* orally in a face-to-face meeting, or by referring to it in a letter or electronic communication or other written information.

...

Tied products

...

- 5.4.24 G The rules on the content of an *illustration* at MCOB 5.6 (Content of illustrations) mean that if the *regulated mortgage contract* requires the *customer* to take out a *tied product*, the *illustration* must include an accurate quotation or a reasonable estimate of the payments the *customer* would need to make for the *tied product* (see MCOB 5.6.52R(2) ~~on where the *tied product* is a repayment vehicle strategy that is a *tied product* and MCOB 5.6.74R ~~on insurance that is a~~ where the *tied product* is insurance)...~~

...

5.5 Provision of illustrations

Timing

- 5.5.1 R (1) A firm must provide the *customer* with an *illustration* for a *regulated mortgage contract* before the *customer* submits an application for that particular *regulated mortgage contract* to a *mortgage lender*, unless an *illustration* for that particular *regulated mortgage contract* has already been provided.
- (2) ~~A~~ Except in the circumstances in MCOB 5.5.1AR, a firm must provide the *customer* with an *illustration* for a *regulated mortgage contract* when any of the following occurs, unless an *illustration* for that *regulated mortgage contract* has already been provided:
- (a) ~~the firm makes a personal recommendation to~~ advises the particular *customer* in relation to enter into one or more that regulated mortgage contracts, in which case an *illustration* must be provided at the point the recommendation advice is made given (and *illustrations* for all recommended *regulated mortgage contracts* must be provided), unless the advice is given by telephone, in which case the firm must provide an *illustration* within 5 business days; or

- (b) ~~the *firm* provides written information that is specific to the amount that the *customer* wants to borrow on a particular regulated mortgage contract; or [deleted]~~
 - (c) ~~the *customer* requests written information from the *firm* that is specific to the amount that the *customer* wants to borrow on a particular regulated mortgage contract, unless the *firm* does not wish to do business with the *customer*. [deleted]~~
 - (d) the *customer* requests an *illustration* for that regulated mortgage contract, unless the *firm* is aware that it is unable to offer that regulated mortgage contract to him; or
 - (e) as part of an *execution-only sale* (or potential *execution-only sale*) the *customer* has provided the *firm* with the information in MCOB 4.8A.14R(1) to (3) to indicate which regulated mortgage contract or variation he wishes to enter into; or
 - (f) as part of an *execution-only sale* (or potential *execution-only sale*), a *high net worth mortgage customer* or a *customer* who is entering into the regulated mortgage contract solely for a business purpose, has indicated his intention to submit an application for that regulated mortgage contract.
- (3) Subject to MCOB 5.5.4R, the *firm* may comply with (1) and (2) by providing an *offer document* containing an *illustration*, if this can be done as quickly as providing an *illustration*.

5.5.1A R A *firm* need not provide an *illustration*:

- (1) in relation to a *direct deal*;
- (2) if the *customer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the *customer* is not interested in pursuing the enquiry; or
- (3) if the *firm* does not wish to do business with the *customer*.

5.5.1B R If the *firm* chooses not to give an *illustration* in the circumstances set out in MCOB 5.5.1AR(1), where it has given *advice* on a *direct deal*, the *firm* must give the *customer* a written record of the *advice*.

5.5.1C R If, notwithstanding MCOB 5.5.1AR(1), a *firm* chooses to give an *illustration* in relation to a *direct deal*, it need not comply with MCOB 5.4.2R or MCOB 5.4.3R (Accuracy).

5.5.1D G In the circumstances in MCOB 5.5.1CR, a *firm* remains subject to MCOB 5.4.1R (Clear, fair and not misleading).

5.5.1E G In the circumstances in MCOB 5.5.1AR(2), the *rule* in MCOB 5.5.1R(1) will mean that the *customer* may not make an application for a regulated

mortgage contract as an illustration has not been provided.

...

- 5.5.4 R A *firm* must not ~~accept fees, commission a valuation, or undertake any other~~ action that commits the *customer* to an application (including accepting product-related fees in relation to the regulated mortgage contract concerned) until the *customer* has had the opportunity to consider an *illustration*.

...

- 5.5.6 G Subject to *MCOB 5.5.1R* and *MCOB 5.5.15R* when an *illustration* is requested without delay, a *firm* may perform an internal credit score and obtain information on the *customer's* credit record from a credit reference agency (subject to the consent of the *customer*), in order to provide a *customer* with an approval in principle for a *regulated mortgage contract*, without having to provide an *illustration*. ~~[deleted]~~

...

No preference between repayment and interest only

- 5.5.13 R If the *customer* expresses no preference between a *repayment mortgage* and an *interest only mortgage*, the *firm* must:
- (1) ~~provide an illustration for a repayment mortgage (except where the firm does not provide repayment mortgages, in which case it must provide only an illustration for an interest only mortgage); and~~
 - (2) ~~make the customer aware that it has provided the illustration on this basis. [deleted]~~

Providing an illustration without delay in response to a customer request

- 5.5.14 G Where the *customer* requests ~~written information from the firm that is specific to the amount that the customer wants to borrow on an illustration for~~ a particular *regulated mortgage contract* ~~under (see MCOB 5.5.1R(2)(e)(d))~~, the purpose of *MCOB 5.5.15R*, *MCOB 5.5.16R* and *MCOB 5.5.17G* is to ensure that the *customer* receives an *illustration* without unnecessary delay. These requirements do not restrict the information that the *firm* may obtain from the *customer* after it has provided the *customer* with an *illustration*.
- 5.5.15 R In meeting a request for an illustration under in accordance with MCOB 5.5.1R(2)(e) (d), the *firm* must not delay the provision of the *illustration* by requesting information other than:

...

- (7) any of the following information where it affects the availability of the *regulated mortgage contract* that the *customer* has requested information on or affects the information to be included in the *illustration*:

...

- (c) ~~whether the *customer* needs to self-certify his income;~~ [deleted]

...

5.6 Content of illustrations

...

Content: required information

...

- 5.6.6 R As a minimum the *illustration* must be personalised to reflect the following requirements of the *customer*:

...

- (4) the term of the *regulated mortgage contract* (where the *customer* is unable to suggest a date at which he expects to repay the loan, for example in the case of an open-ended ~~secured bridging loan~~ *bridging loan*, secured overdraft or *mortgage credit card*, then a term of 12 months must be assumed and this assumption stated); and

...

Section 5: "Overall cost of this mortgage"

- 5.6.31 R Under the section heading 'Overall cost of this mortgage' where the *regulated mortgage contract* has an agreed term for repayment and a regular payment plan (that is, it is not a revolving credit agreement such as a secured overdraft or *mortgage credit card*, or a *regulated mortgage contract* where all of the interest rolls up, such as an open-ended ~~bridging loan~~ *bridging loan*):

...

- 5.6.32 R Under the section heading 'Overall cost of this mortgage' where the *regulated mortgage contract* has no agreed term for repayment, (and a 12 month term has been assumed), or no regular payment plan, or both (for example, a revolving credit agreement such as a secured overdraft or *mortgage credit card* or a *regulated mortgage contract* where all the interest rolls up such as an open-ended ~~bridging loan~~ *bridging loan*):

...

- (2) where all the interest on the *regulated mortgage contract* rolls up and is repaid as a lump sum at the end of the *regulated mortgage contract*, for example a ~~secured bridging loan~~ *bridging loan*, then the following text must follow the text in (1): 'It assumes that you pay back the total amount owing as a lump sum at the end of the mortgage term.';

...

...

Section 6: 'What you will need to pay each [insert frequency of payments from MCOB 5.6.40R]'

5.6.39 R *MCOB 5.6.40R to MCOB 5.6.57G do not apply to loans without a term or regular payment plan where some or all of the interest rolls up, for example ~~secured bridging loans~~ bridging loans, secured overdrafts or mortgage credit cards. In these cases, MCOB 5.6.134R to MCOB 5.6.138G apply.*

...

5.6.52 R Where all or part of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*:

...

(2) if the *regulated mortgage contract* requires the *customer* to take out a ~~*repayment vehicle*~~ that is a tied product as a *repayment strategy* either through the *mortgage lender* or *mortgage intermediary* then:

...

(b) include an accurate quotation or a reasonable estimate of the payments the *customer* will need to make for ~~the *repayment vehicle*~~ that tied product; and

...

(3) if the *illustration* includes a quotation for the payments that would need to be made ~~into the *repayment vehicle*~~ by the *customer* for the *repayment strategy*:

...

(b) the *illustration* must provide a brief description only of the type of ~~*repayment vehicle*~~ *strategy* illustrated (full details of the ~~*repayment vehicle*~~ *strategy* may be provided separately);

...

(4) if a quotation for the ~~*repayment vehicle*~~ *strategy* is not provided in the *illustration*, the *illustration* must include a '?' sign in the column for payments alongside the following text...

(5) unless *MCOB 5.6.55R* applies, if a quotation for the ~~*repayment vehicle*~~ *strategy* has been included in the *illustration*, Section 6 must be extended to illustrate the monthly cost inclusive of the savings plan and must have the sub-heading 'What you will need to pay each [insert frequency of payments from *MCOB 5.6.40R*] including the cost of a savings plan to

repay the capital' and must include:

...

- (b) the sum of what the *customer* would need to pay in each instalment for the *regulated mortgage contract* and for the *repayment ~~vehicle~~ strategy* in the payments column. For example if payments are made monthly, this would be the amount that the *customer* would need to pay each month for the *regulated mortgage contract* and the *repayment ~~vehicle~~ strategy*...

...

Multi-part mortgages

...

- 5.6.56 R Where *MCOB* 5.6.55R applies and part of the *regulated mortgage contract* is an *interest-only mortgage*:
- (1) if a quotation for the *repayment ~~vehicle~~ strategy* has been included in the *illustration* in accordance with *MCOB* 5.6.52R(3) then *MCOB* 5.6.52R(5) does not apply.

...

...

Section 7: 'Are you comfortable with the risks'?

- 5.6.58 R *MCOB* 5.6.59R to *MCOB* 5.6.65R do not apply to loans without a term or regular repayment plan where some or all of the interest rolls up, for example, ~~secured bridging loans~~ *bridging loans*, secured overdrafts or *mortgage credit cards*. In these cases *MCOB* 5.6.140R to *MCOB* 5.6.145R apply.
- 5.6.59 R Under the section heading 'Are you comfortable with the risks?':
- (1) under the sub-heading 'What if interest rates go up?' the *illustration* must include the following:

...

(e)

...

- (ii) where a *repayment ~~vehicle~~ strategy* has been included in the *illustration* in accordance with *MCOB* 5.6.52R(3), the payments quoted in (i) must include the cost of the *repayment ~~vehicle~~ strategy* and state that this is the case;

...

...

Alternative requirements for loans without a term or a regular repayment plan
Section 6: “What you will need to pay each [insert frequency of payments from MCOB 5.6.40R]”

- 5.6.133 R *MCOB 5.6.134R to MCOB 5.6.138G* apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example ~~secured bridging loans~~ *bridging loans*, secured overdrafts or *mortgage credit cards*.
- 5.6.134 R The heading for Section 6 of the *illustration* and the heading of the column on the right-hand side of this section must state the frequency with which payments must be made by the *customer*. (For example, if payments were to be made on a monthly basis, the heading for this section would be 'What you will need to pay each month' and the column would be headed 'Monthly payments'). Where no regular payments are required on the *regulated mortgage contract*, for example where all interest is rolled-up on a ~~secured bridging loan~~ *bridging loan*, then this section must be retained and the frequency of payments assumed must be 'monthly'.
- 5.6.135 R All the payments in Section 6 of the *illustration* must be calculated based on the frequency used for the purposes of the headings in *MCOB 5.6.40R* and must be shown in the column on the right-hand side of this section. If no payments are required, for example on a ~~secured bridging loan~~ *bridging loan* or secured overdraft, then this column should be marked on the *illustration* as nil.
- 5.6.136 R Section 6 of the *illustration* must contain the following information:

...

- (3) where no payments are required (or no payments are allowed), for example a ~~secured bridging loan~~ *bridging loan* or secured overdraft, then section 6 of the *illustration* should state if no payments are required or no payments can be made; or

...

Section 7: “Are you comfortable with the risks?”

- 5.6.139 R *MCOB 5.6.140R to MCOB 5.6.145R* apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example ~~secured bridging loans~~ *bridging loans*, secured overdrafts or *mortgage credit cards*.

...

5.7 **Business loans and loans to high net worth mortgage customers: tailored provisions**

- 5.7.1 R Where the *regulated mortgage contract* is for a business purpose or a high net

worth mortgage customer, a firm may choose to provide a *business illustration or high net worth illustration* (as applicable) (in compliance with MCOB 5.7.2R) instead of complying with MCOB 5.6.

5.7.1A G *Firms* are reminded that, in accordance with MCOB 1.2.3R, they should ~~either~~ comply in full with MCOB, but in doing so may opt to take account of ~~or~~ ~~comply with~~ all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers. Therefore, a firm may only follow the tailored provisions in MCOB 5.7 in relation to one of these sectors if it also follows all other tailored provisions in MCOB ~~if it also follows all other tailored provisions in MCOB~~ that relate to that sector. In either case, the rest of MCOB applies in full.

5.7.2 R A *business illustration or high net worth illustration* provided to a customer must:

...

(4) use font sizes and typefaces consistently throughout the *business illustration or high net worth illustration* which are sufficiently legible so that the *business illustration or high net worth illustration* can be easily read by a typical customer;

...

5.7.3 G ...

(3) A firm may also choose to include other information beyond that required by MCOB 5.6. However, when adding additional material a firm should have regard to:

(a) the intended use of the *business illustration or high net worth illustration* as an aid to comparison by customers; and

(b) the requirement in MCOB 2.2.6R that any communication should be clear, fair and not misleading.

(4) The *business illustration or high net worth illustration* provided in accordance with MCOB 5.7.2R should be based upon the total borrowing that the firm is willing to provide under the *regulated mortgage contract*. This means that there is no requirement for a firm to provide a further *business illustration or high net worth illustration* (or *business offer document or high net worth offer document*) where a customer redraws against payments made under the *regulated mortgage contract*, providing this redrawing does not exceed the borrowing described in the original *business offer document or high net worth offer document*.

(5) MCOB 5.6.6R(4) requires that where the term of the *regulated mortgage contract* is open-ended, the *business illustration or high net worth illustration* must be based on an assumed term of 12 months and

that this assumption must be stated. This does not mean that a *firm* is limited in the actual term of the *regulated mortgage contract*. A *firm* is able to include in the *business illustration or high net worth illustration* an explanation that while a 12-month term has been assumed for the purpose of the *business illustration or high net worth illustration*, the *regulated mortgage contract* itself will be open-ended.

- 5.7.4 R Any *business illustration or high net worth illustration* provided by a *firm* must be limited to facilities provided under a *regulated mortgage contract*.
- 5.7.5 R *MCOB 5.6.31R(2)*, *MCOB 5.6.52R(1)* and *MCOB 5.6.52R(4)* prescribe text that should be used to remind a *customer* with an *interest-only mortgage* that there is a need to separately arrange for the repayment of capital. The options for repayment of capital may be different where the *regulated mortgage contract* is for a business purpose or a high net worth mortgage customer, and a *firm* must vary the prescribed wording in the *business illustration or high net worth illustration* to reflect this. One approach may be for the *firm* to revise the wording to reflect how the *customer* has said he will repay the capital.
- 5.7.6 R (1) When providing a *business illustration or high net worth illustration* in accordance with *MCOB 5.7.2R* a *firm* should describe facilities provided under the *regulated mortgage contract* that are not a loan within section 12 (Additional features) of the *business illustration or high net worth illustration*.
- (2) In complying with (1), a *firm* should follow the requirements in *MCOB 5.6.92R - MCOB 5.6.108G* where these are relevant. Where the facility is of a type not considered in *MCOB 5.6.92R - MCOB 5.6.108G* the *firm* should provide in section 12:
- (a) a brief description of the facility involved;
 - (b) the term of the facility if different from the term described elsewhere in the *business illustration or high net worth illustration*; and
 - (c) a summary of any charges, including any *early repayment charges*, which apply to the operation of the facility.
- (3) Full information on any facility described in section 12 must be provided in supplementary materials that accompany the *business illustration or high net worth illustration*.
- 5.7.7 G (1) In accordance with *MCOB 5.7.6R(1)*, where the *regulated mortgage contract* includes a loan, the facilities described in section 12 of the *business illustration or high net worth illustration* should include the existence of, and a simple explanation of, any all monies charge, any contingent liabilities such as guarantees and so on.
- (2) Where the *regulated mortgage contract* includes more than one loan facility (such as a secured loan and a separate secured overdraft

facility) the *business illustration* or *high net worth illustration* should be based upon the primary facility and describe any other loan within section 12.

5.8 Home purchase plans

...

Financial information statement: timing

- 5.8.1 R ~~A~~ Except in the circumstances in MCOB 5.8.1AR, a firm dealing directly with a customer must ensure that the customer is, or has been, provided with an appropriate financial information statement for a home purchase plan in a durable medium:
- (1) before the *customer* submits an application for that particular plan to a *home purchase provider*; and
 - (2) without undue delay when any of the following occurs:
 - (a) ~~the firm makes a personal recommendation to~~ advises the particular *customer* to enter into a one or more home purchase plan plans, in which case a financial information statement must be provided at the point the advice is given (and financial information statements for all recommended home purchase plans must be provided), (unless the personal recommendation advice is made given by telephone, in which case a firm must ensure the financial statement is or has been provided as soon as practicable after the telephone call) the firm must provide a financial information statement within five business days; or
 - (b) ~~the firm provides written information that is specific to the amount of finance to be provided on a particular plan; or [deleted]~~
 - (c) ~~the customer requests written information from the firm that is specific to the amount of finance to be provided on a particular plan, unless the firm does not wish to do business with the customer. [deleted]~~
 - (d) the customer requests a financial information statement, unless the firm is aware that it is unable to offer that home purchase plan to him; or
 - (e) as part of an execution-only sale (or potential execution-only sale) the customer has provided the firm with the information in MCOB 4.10.9DR (Execution-only sales) (see MCOB 4.10.9BR and MCOB 4.10.9CR) to indicate which home purchase plan or variation he wishes to enter into.

- (3) A *firm* may comply with (1) and (2) by providing an *offer document* if this can be done as quickly as providing a financial information statement.

5.8.1A R A *firm* need not provide a financial information statement:

- (1) in relation to a *direct deal*; or
- (2) if the *customer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the *customer* is not interested in pursuing the enquiry; or
- (3) if the *firm* does not wish to do business with the *customer*.

5.8.1B R If the *firm* chooses not to give a financial information statement in the circumstances set out in *MCOB 5.8.1AR*, where it has given *advice* on a *direct deal*, the *firm* must give the *customer* a written record of the *advice*.

...

Financial information statement: format

...

- 5.8.5 R A financial information statement, if not set out in a separate document, must be:
- (1) in a prominent place within the ~~other~~ document and clearly identifiable as key information that the *customer* should read; and
- (2) separate from the other content of the document in which it is included.

...

Message to be given when providing information on home purchase plans

- 5.8.12 R (1) Except in the circumstances in (2), whenever a *firm* provides a *customer* with information specific to the amount of finance to be provided on a particular *home purchase plan* following an assessment of the *customer's* needs and circumstances in order to comply with *MCOB 4.10.5DR*, it must give, clearly and prominently, the following information:
- (a) the same information on the *firm's* product range as is required by *MCOB 4.4.A1R(1)*, *MCOB 4.4A.2R* and *MCOB 4.4A.4R (1)* (as applied in relation to *home purchase plans* by *MCOB 4.10.3AR*); and
- (b) that the *customer* has the right to request a financial information statement for any *home purchase plan* which the *firm* is able to

offer the customer.

- (2) A firm need not give the information in (1) if it has previously given that information in compliance with this rule within the last ten business days.

Message to be given when customer requests an execution-only sale

- 5.8.13 R Whenever, as part of an *execution-only sale* (or potential *execution-only sale*), a customer provides a firm with the information in MCOB 4.10.9DR (Execution-only sales) (see MCOB 4.10.9BR and MCOB 4.10.9CR) the firm must inform the customer, clearly and prominently, unless the firm has previously given this information in compliance with this rule within the last ten business days, that the customer has the right to request a financial information statement for any home purchase plan which the firm is able to offer the customer.

...

6.4 Mortgages: content of the offer document

...

Modifications to the illustration

- 6.4.4 R The *illustration* provided as part of the *offer document* in accordance with MCOB 6.4.1R(1) must meet the requirements of MCOB 5.6 (Content of illustrations) with the following modifications:

...

- (7) MCOB 5.6.52 R to MCOB 5.6.53 G is replaced by the following:
Where all or part of the *regulated mortgage contract* is an *interest-only mortgage*, the *illustration* in the *offer document* must:
- (a) clearly state that the payments on the *regulated mortgage contract* cover only interest, and not the capital borrowed; and
 - (b) ~~state the *repayment vehicle* the customer intends to use where the firm knows details of the specific *repayment vehicle* from the application by the customer; if the firm does not know how the customer intends to repay the capital borrowed, the firm must clearly state that the *repayment vehicle* is unknown, and must provide the customer with a clear reminder of the need to put suitable arrangements in place; and [deleted]~~
 - (c) include a statement reminding the *customer* to check regularly the performance of any *investment* used as a *repayment vehicle strategy*, to see whether it is likely to be adequate to repay the capital and, where applicable, pay the interest accrued at the end of the term of the *regulated mortgage contract*;

(7A) The illustration may state the repayment strategy the customer intends to use.

...

Other information contained in the offer

...

6.4.11A R If the illustration provided by the firm to the customer does not state the repayment strategy the customer intends to use, as permitted by MCOB 6.4.4R(7A), that information must be included in the offer document.

...

6.7 **Business loans and loans to high net worth mortgage customers: tailored provisions**

6.7.1 R (1) Where the *regulated mortgage contract* is for a business purpose or a high net worth mortgage customer, a firm may choose to provide a customer with a *business offer document* or high net worth offer document (as applicable) instead of the *offer document* referred to in MCOB 6.4.1R.

(2) If a firm provides a customer with a *business offer document* or high net worth offer document in accordance with (1), it must ensure that:

(a) an updated *business illustration* or high net worth illustration (as applicable), as required by MCOB 5.7 (~~Pre-application disclosure for business~~ Business loans and loans to high net worth mortgage customers: tailored provisions), forms part of the *business offer document* or high net worth offer document; and

(b) subject to the tailoring required by MCOB 5.7 (~~Pre-application disclosure for business~~ Business loans and loans to high net worth mortgage customers: tailored provisions), the *business offer document* complies with MCOB 6.4 (~~Mortgages: Content~~ content of the offer document).

6.7.1A G *Firms* are reminded that in accordance with MCOB 1.2.3R and MCOB 1.2.3AR, they should ~~either~~ comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers (as applicable). Therefore, a firm may only follow the tailored provisions in MCOB 6.7 in relation to one of these sectors if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.

6.7.2 G MCOB 6.7.1R(2) means, for example, that the required text in MCOB 6.4.4R(7) should be replaced by text that satisfies the requirements for

business illustrations or high net worth illustrations in MCOB 5.7.5R.

- 6.7.3 G A *firm* may supplement the first paragraph of text prescribed in MCOB 6.4.4R(5)(a) to clarify that, while the *regulated mortgage contract* is not binding until the relevant mortgage document has been signed and funds have been released, the *business offer document or high net worth offer document* may form part of a wider set of negotiated facilities and that the *customer* is separately bound by these.

...

6.9 Regulated sale and rent back agreements

Process for concluding regulated sale and rent back agreements

- 6.9.1 R A *SRB agreement provider* must not ~~enter into a~~ enter into a regulated sale and rent back agreement unless it follows the process outlined in this section.

Valuation of the property

- 6.9.2 R (1) A *SRB agreement provider* intending to ~~enter into a~~ enter into a specific regulated sale and rent back agreement with a *SRB agreement seller* and before it complies with the other requirements in this section, must ensure that the property is properly valued by a valuer: ...

...

...

7.4 Mortgages: disclosure at the start of the contract

Disclosure requirements

- 7.4.1 R (Subject to *MCOB 7.7.5R*) a *firm* that *enters into a regulated mortgage contract* with a *customer* must provide the *customer* with the following information before the *customer* makes the first payment under that *regulated mortgage contract*:

...

- (4) confirmation of whether, in connection with the *regulated mortgage contract*, insurance or *investments* (such as a *repayment ~~vehicle~~ strategy*, term assurance, buildings and contents insurance or payment protection insurance) have been purchased through the *firm*;

...

- (8) if all or part of the *regulated mortgage contract* is an *interest-only mortgage*, a reminder to the *customer* to check that a *repayment ~~vehicle~~ strategy* is in place, if the *repayment ~~vehicle~~ strategy* is not provided by the *firm*;

- (9) what to do if the *customer* falls into ~~arrears~~ a payment shortfall, explaining the benefit of making early contact with the *firm*, providing the address and telephone number of a contact point for the *firm* and drawing the *customer's* attention to the *arrears* charges set out in the *tariff of charges*.

...

7.5 Mortgages: statements

...

Annual statement: content

- 7.5.3 R The statement required by *MCOB 7.5.1R* must contain the following:
- (1) except in the case of *mortgage credit cards*, information on the type of *regulated mortgage contract*, including:

...

 - (b) a prominent reminder, where all of the *regulated mortgage contract* is an *interest-only mortgage*, that:
 - (i) the *customer's* payments to the *firm* do not include ~~the~~ any costs of ~~any the repayment vehicle strategy~~ (if that is the case); and...
 - (c) a prominent reminder, where only part of the *regulated mortgage contract* is an *interest-only mortgage*, that:
 - (i) the *customer's* payments to the *firm* do not include ~~the~~ any costs of ~~any the repayment vehicle strategy~~ (if that is the case); and...

...
 - (4) information at the date the statement is issued on:

...

 - (e) the cost of redeeming the *regulated mortgage contract* (this must be shown as the sum of *MCOB 7.5.3R(4)(a)* and *MCOB 7.5.3R(4)(d)* plus any *linked borrowing* that cannot be retained (including the outstanding balances) plus any other charges that can be quantified at the date the statement is issued); if additional charges are payable that cannot be quantified at the point that the statement is issued (for example if the *customer* is in ~~arrears~~ arrears) a warning must be included to that effect; and

...
- 7.5.4 R ~~In the limited circumstances where it would be unlikely for~~ Where payments are not being made for a repayment vehicle to be set up strategy for an interest-only mortgage (for example, for a short term bridging loan bridging loan) *MCOB 7.5.3R(1)(b)(ii)* or *MCOB 7.5.3R(1)(c)(ii)* is replaced with the following: "As all or part of your mortgage is an interest-only mortgage, it assumes that you pay back the total amount borrowed on an interest-only

basis as a lump sum at the end of the mortgage term."

...

Annual statement: additional content for customers in arrears

- 7.5.8 G If a *firm* chooses to use the annual statement to provide a *customer* with a regular written statement in accordance with *MCOB* 13.5.1R (Statements of charges), as described in *MCOB* 13.5.2G(4), it will need to include the actual ~~payment shortfall~~ payment shortfall in the annual statement.

...

7.6 Mortgages: event-driven information

...

Further advances

- 7.6.7 R Before a *customer* submits an application to a *firm* for a further advance on an existing *regulated mortgage contract* or for a further advance that is a new *regulated mortgage contract*, if the further advance requires the approval of the *mortgage lender*, the *firm* must provide the *customer* with an illustration that complies with the requirements of *MCOB* 5 (Pre-application disclosure) and *MCOB* 7.6.9R to *MCOB* 7.6.17R for the further advance, unless an illustration has already been provided or the *regulated mortgage contract* is for a business purpose and the *firm* has chosen to comply with the tailored provisions for *regulated mortgage contracts* for a business purpose or loans to high net worth mortgage customers (see *MCOB* 7.7 (Business loans and loans to high net worth mortgage customers: tailored provisions)).

...

- 7.6.9 R The *illustration* provided in accordance with *MCOB* 7.6.7R must:

...

- (4) include a clear statement, where all or part of the *regulated mortgage contract* is an *interest-only mortgage* and the amount paid in each instalment does not include the cost of a *repayment vehicle strategy*, to indicate that these payments do not include the cost of any savings plan or other investment.

...

7.7 Business loans and loans to high net worth mortgage customers: tailored provisions

Further advances

- 7.7.1 R (1) Where, in relation to a *regulated mortgage contract* for a business purpose or a high net worth mortgage customer, a *customer* either:

- (a) seeks an immediate increase in the borrowing provided under the *regulated mortgage contract*; or
- (b) overdraws on the borrowing under the *regulated mortgage contract*;

the further advance rules in *MCOB 7.6.7R* to *MCOB 7.6.17R* do not apply.

- (2) Where (1) applies, the *firm* must within five *business days* (for a loan for a business purpose) or in good time before the customer is bound by the regulated mortgage contract (for a high net worth mortgage customer) provide the *customer* with either:
 - (a) a *business illustration or high net worth illustration* (as applicable) for the new total borrowing; or

...

- 7.7.1A G *Firms* are reminded that in accordance with *MCOB 1.2.3R*, they should ~~either~~ comply in full with *MCOB*, but in doing so may opt to take account of ~~or~~ comply with all tailored provisions in *MCOB* that relate to business loans or loans to high net worth mortgage customers. Therefore, a *firm* may only follow the tailored provisions in *MCOB 7.7* in relation to one of these sectors if it also follows all other tailored provisions in *MCOB* that relate to that sector. In either case, the rest of *MCOB* applies in full.

...

- 7.7.3 R Where a *customer* applies for a further advance that is a *regulated mortgage contract* for a business purpose or a high net worth mortgage customer and *MCOB 7.7.1R* does not apply:
- (1) the *business illustration or high net worth illustration* must be based upon the total borrowing; and
 - (2) *MCOB 7.6.9R* to *MCOB 7.6.10G* and *MCOB 7.6.12G* do not apply.

Arrangements to repay capital

- 7.7.4 R Where *MCOB 7.6.28R(5)* applies, a *firm* may omit the final sentence of the required text where it is aware, in the context of an *interest-only mortgage*, that the *customer's* intention is not to use a savings plan as a *repayment vehicle strategy*.

Disclosure

- 7.7.5 R *MCOB 7.4* (Disclosure at the start of the contract) does not apply in relation to a *regulated mortgage contract* that is for a business purpose or a high net worth mortgage customer.

...

7.8 Home purchase plans

...

Annual statement – additional content for customers in arrears

- 7.8.4 G If a *firm* uses the annual statement to provide a *customer* with a written statement relating to *arrears*, it will need to include the actual ~~payment shortfall~~ payment shortfall in the annual statement (see *MCOB* 13.5.2G(4)).

...

8.1 Application

Who?

- 8.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB* 8.1.2 R in accordance with column (2) of that table.
- 8.1.2 R This table belongs to *MCOB* 8.1.1R

(1) Category of firm	(2) Applicable section
<i>equity release provider</i>	whole chapter except <i>MCOB</i> 8.5A and <i>MCOB</i> 8.7, <i>MCOB</i> 8.6A in accordance with <i>MCOB</i> 8.1.2AR
<i>equity release adviser</i>	whole chapter except <i>MCOB</i> 8.6 . <i>MCOB</i> 8.7 does not apply in relation to a <i>lifetime mortgage</i>
<i>equity release arranger</i>	whole chapter except <i>MCOB</i> 8.5A. <i>MCOB</i> 8.7 does not apply in relation to a <i>lifetime mortgage</i>

- 8.1.2A R *MCOB* 8.6A only applies to an *equity release provider* in relation to entering into an *equity release transaction* where there is no *firm* which is arranging (bringing about) the *equity release transaction* to which *MCOB* 8.6A applies.
- 8.1.2B G *MCOB* 8.1.2AR means that the situations where *MCOB* 8.6A applies to an *equity release provider* include where an *equity release intermediary* has been involved in arranging (bringing about) an *equity release transaction* but is no longer involved in the transaction.

What?

- 8.1.3 R (1) This chapter applies to a *firm* which in the course of carrying on an *equity release activity*: enters into, advises on or arranges an *equity release transaction* or a variation of the terms of an *equity release*

transaction.

- (a) ~~makes, or anticipates making, a *personal recommendation* about; or~~
- (b) ~~gives, or anticipates giving, personalised information relating to;~~

~~the *customer*:~~

- (c) ~~entering into an *equity release transaction*; or~~
- (d) ~~varying the terms of an *equity release transaction* entered into by the *customer*.~~

- (2) In respect of *arranging or advising on a home reversion plan* for a *customer* who is acting in his capacity as an *unauthorised reversion provider*, only MCOB 8.1, MCOB 8.2 and MCOB 8.7 apply.

...

- 8.1.5 G ~~If a *firm* is an *authorised professional firm*, MCOB 1.2.10R(3) has the effect that when the *firm* conducts *non-mainstream regulated activities* with a *customer*, MCOB 4.4 (Initial disclosure requirements) (as modified by MCOB 8) applies. The *firm* is only required to provide the initial disclosure information in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme (FSCS)?) of the *initial disclosure document* or *combined initial disclosure document*.
[deleted]~~

8.2 Purpose

- 8.2.1 G ~~The purpose of this chapter for *equity release transactions* is the same as that for *regulated mortgage contracts* and *home purchase plans* in MCOB 4.
[deleted]~~

- 8.2.2 G (1) This chapter amplifies *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and *Principle 9* (Customers: relationships of trust).

- (2) The purpose of this chapter is to ensure that:

- (a) *customers* are adequately informed about the nature of the service they may receive from a *firm* in relation to *equity release transactions*. In particular *firms* need to make clear to *customers* the range of *equity release transactions* available from them and the basis of the *firm's* remuneration;
- (b) where *advice* is given, it is suitable for the *customer*;

- (c) customers for equity release transactions receive advice in all cases;
 - (d) subject to certain limited exceptions (which are set out in MCOB 8.6A), execution-only sales are only provided where the customer has rejected advice which has been given, has been warned about the implications of proceeding and has specifically instructed the firm that he wishes to do so.
- (3) This chapter also implements certain requirements of the Distance Marketing Directive in relation to distance mortgage mediation contracts.

8.3 Application of rules in MCOB 4

- 8.3.1 R (1) (a) Subject to (c), MCOB 4.1 to MCOB 4.6A and MCOB 4.8 (with the modifications stated in MCOB 8.3.32BR and to MCOB 8.3.4R) apply to a firm where the home finance transaction is a lifetime mortgage.
- (b) MCOB 4.1 to MCOB 4.4A and MCOB 4.8 (with the modifications stated in MCOB 8.3.32BR and to MCOB 8.3.4R) apply to a firm where the home finance transaction is a home reversion plan, except for those provisions that by their nature are only relevant to regulated mortgage contracts.
- (c) MCOB 4.6A applies to a lifetime mortgage only if it is not an interest roll-up mortgage.
- ...
- 8.3.2 R In applying initial disclosure requirements to equity release transactions, the market for equity release transactions should be treated as one single market with two separate sectors. References to the 'whole market' must be read as references to the whole market for equity release transactions. This is unless the firm only gives personalised information or advice to customers on products in one market sector, in which case references to the 'whole market' must be read as references to the whole market for lifetime mortgages or home reversion plans as the case may be. [deleted]
- 8.3.2A G The effect of the rules on independence is that a firm that sells lifetime mortgages and home reversion plans from the whole market and enables the customer to pay a fee for the provision of the service, can hold itself out as being 'independent' for the equity release market (see MCOB 4.3.7 R). If the firm offers a service on this basis for only one of these market sectors, then it can only describe itself as 'independent' for that sector. [deleted]
- 8.3.2B R For the purposes of MCOB 4.4A.2R(1) there is one relevant market for equity release transactions. Accordingly, a firm offering a customer only

lifetime mortgages or only home reversion plans must include in its disclosure under MCOB 4.4A.1R(1) that it is limited in that regard in the range of products that it can offer to the customer.

8.3.2C G In the light of MCOB 8.3.2BR, a firm may wish to consider using a sentence appropriate to the circumstances, along the following lines:

- “We offer a comprehensive range of equity release products from across the market.”
- “We sell home reversion plans only and not lifetime mortgages, though we will consider all home reversion plans available in the market.”

8.3.3 R Table of modified cross-references to other rules: This table belongs to MCOB 8.3.1R.

Subject	Rule or guidance	Reference in rule or guidance	To be read as a reference to:
Advice or information from the whole market	MCOB 4.3.4R(2)	MCOB 4.7.2R	MCOB 8.5.2R
Initial disclosure requirement (for equity release transactions only)	MCOB 4.4.1R(1)(e) and (3)	MCOB 4 Ann 1R	MCOB 8 Ann 1R
Initial disclosure requirements	MCOB 4.4.3G	MCOB 4	MCOB 4 as modified by MCOB 8
Initial disclosure requirements where initial contact is by telephone (for equity release transactions only)	MCOB 4.4.7R(2)	MCOB 4 Ann 1R	MCOB 8 Ann 1R
Additional disclosure for distance mortgage mediation contracts	MCOB 4.5	MCOB 4	MCOB 4 as modified by MCOB 8
Non advised sales	MCOB 4.8.6G	MCOB 4.7	MCOB 8.5

8.3.4 R Table of rules in MCOB 4 replaced by rules in MCOB 8: This table belongs to MCOB 8.3.1 R.

Subject	Rule(s)	Rule(s) replaced by
Advised sales	MCOB 4.7A	MCOB 8.5A

transaction which satisfies the requirements of *MCOB* 8.5A.2R, the *firm* must nonetheless have regard to *MCOB* 13.3.

- 8.5A.6 R When a *firm* assesses whether the *equity release transaction* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB* 8.5A.5R(1), the factors it must consider include the following:
- (1) whether the benefits to the *customer* outweigh any adverse effect on:
 - (a) the *customer's* entitlement (if any) to means-tested benefits; and
 - (b) the *customer's* tax position (for example the loss of an Age Allowance);
 - (2) alternative methods of raising the required funds such as, in particular:
 - (a) (where relevant) a local authority (or other) grant; or
 - (b) taking a further advance under an existing *regulated mortgage contract* (including a *lifetime mortgage*), or a new *regulated mortgage contract* (including a *lifetime mortgage*) to replace an existing one, or an additional release under an existing *home reversion plan*;
 - (3) whether the *customer's* requirements appear to be within the *equity release provider's* known eligibility criteria for the *equity release transaction*;
 - (4) the *customer's* preferences for his estate (for example, whether the *customer* wishes to be certain of leaving a bequest to his family or others);
 - (5) the *customer's* health and life expectancy;
 - (6) the *customer's* future plans and needs (for example, whether the *customer* is likely to need to raise further funds or is likely to move house);
 - (7) whether the *customer* has a preference or need for stability in the amount of payments (where payments are required) especially having regard to the impact on the *customer* of significant interest rate changes in the future;
 - (8) whether the *customer* has a preference or need for any other features of an *equity release transaction*; and
 - (9) for *lifetime mortgages* only, whether it is more appropriate for the *customer* to pay any fees or charges in relation to the *lifetime mortgage* up front, rather than adding them to the sum advanced (see also *MCOB* 4.6A).
- 8.5A.7 G Examples of eligibility criteria in *MCOB* 8.5A.6R(3) are: the amount that

the *customer* wishes to borrow or to release; the loan-to-value ratio; the age of the *customer*; the value of the property which would be the subject of the *equity release transaction*.

The customer's needs and circumstances: means-tested benefits, customer's tax position and alternative methods of finance

8.5A.8 R In considering the factor at *MCOB* 8.5A.6R(1), where a *firm* has insufficient knowledge of means-tested benefits and tax allowances to reach a conclusion, the *firm* must refer a *customer* to an appropriate source or sources such as the Pension Service, HM Revenue and Customs or Citizens Advice Bureau (or other similar agency) to establish the required information.

8.5A.9 E (1) In considering the factor at *MCOB* 8.5A.6R(2)(a), a *firm* should:

- (a) establish, on the basis of information given by the *customer* about his needs and objectives, whether these appear to be within the general scope of a local authority (or other) grant (for example where the *customer* requires funds for essential repairs to his property); and
- (b) refer a *customer* to an appropriate source such as his local authority or Citizens Advice Bureau (or other similar agency) to identify whether such a grant is available to him.

(2) Compliance with (1) may be relied upon as tending to show compliance with *MCOB* 8.5A.6R(2)(a).

8.5A.10 R If for any reason a *customer*:

- (1) declines to seek further information on means-tested benefits, tax allowances or the scope for local authority (or other) grants; or
- (2) rejects the conclusion of a *firm* that alternative methods of raising the required funds are more suitable;

a *firm* can advise the *customer* (in accordance with the remaining requirements of this chapter) to enter into an *equity release transaction* where there is an *equity release transaction* (or more than one *equity release transaction*) that is appropriate to the needs and circumstances of the *customer*, but must confirm to the *customer*, in a *durable medium*, the basis on which the *advice* has been given.

Debt consolidation

8.5A.11 R In relation to *MCOB* 8.5A.5R(1), when a *firm* advises a *customer* in relation to entering into an *equity release transaction* where the main purpose for doing so is the consolidation of existing debts by the *customer*, it must also take account of the following in assessing whether the *equity release transaction* is suitable for the *customer*:

- (1) the costs associated with increasing the period over which a debt is to be repaid;
- (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and
- (3) where the *customer* is known to have payment difficulties, whether it would be more appropriate for the *customer* to negotiate an arrangement with his creditors than to enter into an *equity release transaction*.

8.5A.12 E An attempt by the *firm* to misdescribe the *customer's* purpose or to encourage the *customer* to tailor the amount he wishes to borrow so that *MCOB 8.5A.11R* does not apply may be relied on as tending to show contravention of *MCOB 2.5A.1R* (The customer's best interests).

Further advances

8.5A.13 R Where the *customer* is looking to increase the borrowing secured on the property which is the subject of an existing *regulated mortgage contract*, a *firm* must inform the *customer* (either orally or in writing) that it may be possible, and more appropriate, for the *customer* to take a further advance with the existing lender rather than entering into an *equity release transaction* with another provider.

8.5A.14 G *MCOB 8.5A.13R* does not mean that *firms* are under any obligation to explore whether a further advance with the existing lender is, in fact, more appropriate for the *customer*.

Other considerations when advising

8.5A.15 R When *advising a customer* on the suitability of an *equity release transaction*, a *firm* must explain to the *customer* that the assessment of whether the *equity release transaction* is appropriate to his needs and circumstances is based on the *customer's* current circumstances, which may change in the future.

8.5A.16 G Different considerations apply when dealing with a *customer* with a *payment shortfall*. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* should not be advised to enter into an *equity release transaction*. In such cases, a *firm* may still be able to *advise the customer* to enter into an *equity release transaction* where it is more suitable than the *customer's* existing *home finance transaction*.

8.5A.17 G *MCOB 8.5A.5R(3)* means that where the *advice* provided is based on a selection of *equity release transactions* from a single or limited number of providers, the assessment of suitability should not be limited to the types of *equity release transactions* which the *firm* offers. A *firm* cannot recommend the 'least worst' *equity release transaction* where the *firm* does not have access to products appropriate to the *customer's* needs and circumstances. This means, for example, that if a *firm* only has access to

lump sum *equity release transactions* it should not recommend or arrange one of these if approached by a *customer* requiring regular payments.

- 8.5A.18 G *MCOB 8.5A.5R(1)* does not require a *firm* to provide *advice on investments*. Whether such *advice* should be given will depend upon the individual needs and circumstances of the *customer*. *MCOB 8* does not restrict the ability of an adviser to refer the *customer* to another source of *investment advice* (for example, where the adviser is not qualified to provide *advice on investments*).

Record keeping

- 8.5A.19 R (1) A *firm* must make and retain a record:
- (a) of the *customer* information, including that relating to the *customer's* needs and circumstances and the *customer's* apparent satisfaction of the *equity release provider's* known eligibility criteria, that it has obtained for the purposes of *MCOB 8.5A*;
 - (b) that explains why the *firm* has concluded that any *advice* given to a *customer* complies with *MCOB 8.5A.2R* and satisfies the suitability requirement in *MCOB 8.5A.5R(1)*;
 - (c) of any *advice* which the *customer* has rejected, including the reasons why they were rejected and details of the *equity release transaction* which the *customer* has proceeded with as an *execution-only sale*; and
 - (d) where applicable, of the *customer's* positive choice in *MCOB 4.6A.2R* (Rolling up of fees or charges into loan).
- (2) The records in (1) must be retained for a minimum of three years from the date on which the *advice* was given or, in the case of (1)(d), the making of the choice.

MCOB 8.6 is deleted in its entirety and replaced with a new section *MCOB 8.6A*. The deleted text is not shown and the new text is not underlined.

8.6A Execution-only sales

Scope and application of this section

- 8.6A.1 G (1) *MCOB 8.6A* provides that a *firm* may only *enter into an equity release transaction* with a *customer*, or *arrange* such a transaction for a *customer*, as an *execution-only sale* if the *customer* has rejected *advice*, identified the product he wishes to purchase and positively elected to proceed with an *execution-only sale*.
- (2) The aim of *MCOB 8.6A* is to ensure that, in all sales of *equity release transactions*, there is one *firm* which *advises* the *customer*

on the *equity release transaction* and, where applicable, is responsible for ensuring that the conditions for an *execution-only sale* are satisfied. So, as provided in *MCOB 8.1.2AR*, *MCOB 8.6A* only applies to *equity release providers* in relation to *entering into equity release transactions* where there is no *firm* which is *arranging* the transaction and to which *MCOB 8.6A* applies.

The customer's best interests

- 8.6A.2 G *Firms* are reminded that *MCOB 2.5A.1R* (The customer's best interests) applies in all cases, including in relation to *execution-only sales*.
- 8.6A.3 R A *firm* must not encourage a *customer* to reject *advice* received by him on *equity release transactions*.

The conditions for execution-only sales

- 8.6A.4 R A *firm* must not *enter into* or *arrange* an *execution-only sale* for a *equity release transaction* unless:
- (1) the *customer* has rejected the *advice* given by the *firm* and instead requested an *execution-only sale* of an *equity release transaction*;
 - (2) the *customer* has identified which particular *equity release transaction* he wishes to purchase, and specified to the *firm* at least the required additional information (where applicable);
 - (3) after providing the required information in (2), the *customer* has been informed, clearly and prominently and in a *durable medium*, and that the *customer* will not benefit from the protection of the rules (in *MCOB 8.5A*) on assessing suitability.
 - (a) in any case where the *firm* has advised the *customer* that the *equity release transaction* is unsuitable for the *customer*, that that is the case; and
 - (b) in any other case, that in the provision of its services for the *execution-only sale* the *firm* is not required to assess the suitability of that *equity release transaction*;

and in either case that the *customer* will not benefit from the protection of the rules (in *MCOB 8.5A*) on assessing suitability. In any case where there is spoken dialogue between the *firm* and the *customer* at any point, the *firm* must also provide this information orally; and
 - (4) after the *customer* has been provided with the information in (3), in any case where there is spoken or other interactive dialogue between the *firm* and the *customer* at any point, the *customer* has confirmed in writing to the *firm* that he is aware of the consequences of losing the protections of the rules on assessing suitability and is making a positive election to proceed with an *execution-only sale*. The written

confirmation must be in the same document as the information in *durable medium* in (3), which must be separate from any other information and contractual documentation.

Exception: rate switches and other variations to lifetime mortgages

- 8.6A.5 R (1) The condition in *MCOB* 8.6A.4R(1) does not apply in the case of a variation of a *lifetime mortgage*, provided that:
- (a) the variation would not involve the *customer* taking on additional borrowing beyond the amount currently outstanding under the existing *lifetime mortgage*, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and
 - (b) where the variation will (in whole or part) change from one interest rate to another, the *firm* has presented to the *customer*, using a non-interactive channel, all products offered by it for which the *customer* is eligible, whether or not the *customer* then selects from those products using an interactive channel.
- (2) The reference to a variation in (1) (and in all other provisions which cross-refer to this *rule*) must be read as including any new *lifetime mortgage* which would replace an existing *lifetime mortgage* between the *customer* (or, where there are joint borrowers, at least one of them) and the *firm* (either as the original *equity release provider* or as the transferee of the existing contract).
- 8.6A.6 G (1) The variation in *MCOB* 8.6A.5R might involve the addition or removal of a borrower for joint mortgages or a change in payment method. This list is not exhaustive.
- (2) Examples of rate changes in *MCOB* 8.6A.5R(2) are: a transfer from a variable rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.
- (3) *Firms* are reminded that, if their presentation in *MCOB* 8.6A.5R(1)(b) has (either explicitly or implicitly) steered the *customer* towards any one or more of the products offered by them such as to constitute *advice*, the requirements of *MCOB* 8.5A will apply.
- 8.6A.7 R The required additional information in *MCOB* 8.6A.4R(2) is:
- (1) for a *lifetime mortgage* other than one falling within *MCOB* 8.6A.5R:
 - (a) the name of the *mortgage lender*;
 - (b) the rate of interest;
 - (c) the interest rate type;

- (d) the price or value of the property on which the *lifetime mortgage* would be secured (estimated where necessary); and
 - (e) the sum the *customer* wishes to borrow under it, either immediately or in the future (including the amount of any lump sum, any regular drawdown or flexible facility or any combination of amounts the *customer* wishes to apply for);
- (2) for a *home reversion plan*:
- (a) the name of the *equity release provider*;
 - (b) any initial lump sum required and any lump sum required in the future;
 - (c) the price or value of the property to which the *home reversion plan* would relate (estimated where necessary); and
 - (d) in the case of a *home reversion plan* which is not a full reversion, the amount or percentage of the value of the property that the *customer* wishes to retain.

8.6A.8 G Where the information in *MCOB 8.6A.4R(3)* is given by electronic means, the *firm* should ensure that the *customer* cannot progress to the next stage of the sale unless the information has been communicated to the *customer*.

Record keeping

- 8.6A.9 R (1) Whenever a *firm enters into* or *arranges an execution-only sale* for an *equity release transaction*, it must make and maintain a record of:
- (a) the required information provided by the *customer* which satisfies *MCOB 8.6A.4R(2)*;
 - (b) the information in *durable medium* in *MCOB 8.6A.4R(3)*;
 - (c) the confirmation by the *customer* in *MCOB 8.6A.4R(4)* (where applicable); and
 - (d) any *advice* from the *firm* which the *customer* rejected, including the reasons why it was rejected, before deciding to enter into an *execution-only sale*.
- (2) The record in (1) must be retained for a minimum of three years from the date on which the *equity release transactions* was *entered into* or *arranged*.

Forbearance

8.6A.10 R The restrictions in *MCOB 8.6A* on entering into *execution-only sales* do not apply to any variation which is made solely for the purposes of forbearance

where the *customer* has a *payment shortfall*, or in order to avoid a *payment shortfall*.

The following Annex is deleted in its entirety. The deleted text is not shown struck through.

8 Annex 1R: Initial Disclosure Document [deleted]

Amend the following as shown.

9.3 Pre-application disclosure

...

9.3.1 R ...

- (2) The table in *MCOB 9.3.2R* shows how the relevant *rules* and *guidance* in *MCOB 5* must be modified by replacing the cross-references with the relevant cross-references to *rules* and *guidance* in *MCOB 9.3* and *MCOB 9.4* applicable to *equity release transactions*.

...

...

9.3.2 R **Table of modified cross-references to other rules.**

This table belongs to *MCOB 9.3.1R*.

Subject	Rule or guidance	Reference in rule or guidance	To be read as a reference to:
...			
Applying for a <i>lifetime mortgage</i>	<i>MCOB 5.3.2G</i>	<i>MCOB 5.6.26R</i> and <i>MCOB 5.6.27R</i>	<i>MCOB 9.4.26R</i> and <i>MCOB 9.4.27R</i>
<u>Messages to be given when providing information on <i>equity release transactions</i></u>	<u><i>MCOB 5.4.18AR(1)</i></u> <u><i>MCOB 5.4.18AR(1)(a)</i></u>	<u><i>MCOB 4.7A.2R</i></u> <u><i>MCOB 4.4A.1R(1)</i></u> , <u><i>MCOB 4.4A.2R</i></u> and	<u><i>MCOB 8.5A.2R</i></u> <u><i>MCOB 4.4A.1R(1)</i></u> , <u><i>MCOB 4.4A.2R</i></u> and

		<u>MCOB 4.4A.4R(1)</u>	<u>MCOB 4.4A.4R(1)</u> , each as applied by <u>MCOB 8.3.1R</u> in modified form
<u>Messages to be given when customer requests an execution-only sale</u>	<u>MCOB 5.4.18BR(1)</u>	<u>MCOB 4.8A.14R(1) to (3)</u>	<u>MCOB 8.6A.4R(2)</u>
<u>Guidance relevant to messages given to customer</u>	<u>MCOB 5.4.18CG</u>	<u>MCOB 5 Annex 1R</u>	<u>MCOB 9 Annex 1R</u> for a lifetime mortgage; <u>MCOB 9 Annex 2R</u> for a home reversion plan.
<i>Tied products</i>	<i>MCOB 5.4.24G</i>	<i>MCOB 5.6.74R</i>	<i>MCOB 9.4.73R</i> or <i>MCOB 9.4.160R</i>
<u>Provision of illustrations: timing</u>	<u>MCOB 5.5.1R(2)(e)</u>	<u>MCOB 4.8A.14R(1), (2) or (3)</u>	<u>MCOB 8.6A.4R(2)</u>
...			

9.3.3 R **Table of rules in MCOB 5 replaced by rules in MCOB 9: This table belongs to MCOB 9.3.1R**

Subject	Rule(s) or guidance	Rule(s) or guidance replaced by:
...		
Information that is not an illustration	MCOB 5.4.14R	MCOB 9.3.11R
...		

9.3.4 R **Table of rules in MCOB 5 which do not apply to MCOB 9: This table**

belongs to *MCOB 9.3.1R*.

Subject	Rule(s)
Illustrations for repayment mortgages and interest only mortgages	<i>MCOB 5.5.13R</i>
Business loans <u>and loans to high net worth mortgage customers: tailored provisions</u>	<i>MCOB 5.7</i>
...	

...

9.3.11 R ~~Where a *firm* provides a *customer* with information specific to an *equity release transaction* on a screen:~~

- (1) ~~if the *customer* initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed equally prominently on each page on screen: This information does not contain all of the details you need to choose an equity release product . Make sure that you read the separate key facts illustration before you make a decision.~~
- (2) ~~a *firm* must not provide a customised print function where the information on the screen would not be in the form of an *illustration* if the information were printed in hard copy. [deleted]~~

9.3.12 R In meeting a request for ~~written information specific to the *customer's* requirements on an *illustration*~~ in relation to a particular *equity release transaction* (see *MCOB 5.5.1R(2)(e)(d)*), the *firm* must not delay the provision of the *illustration* by requesting information other than:

...

...

9.7 Disclosure at the start of the contract: lifetime mortgages

...

Disclosure requirements where interest payments are required

9.7.2 R A *firm* that enters into a *lifetime mortgage* with a *customer* where interest payments are required (whether or not they will be collected by deduction from the income from an annuity or other linked *investment* product) must provide the *customer* with the following information before the *customer* makes the first payment under the contract:

...

- (9) if it is possible for ~~arrears~~ a payment shortfall to occur, what to do if the *customer* ~~falls into arrears~~ has a payment shortfall, explaining the benefit of making early contact with the *firm*, providing the name, address and telephone of a contact point with the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the tariff of charges;

...

Disclosure requirements where a lump sum payment is made to the customer and interest is rolled up

- 9.7.8 R Where the *lifetime mortgage* provides for a lump sum payment to be made to the *customer*, and all or part of the interest will be rolled up during the life of the mortgage, the *firm* must provide the *customer* with the following information before the *customer* makes the first payment under the contract, or if no payment are required from the *customer*, within seven days of completion of the mortgage:

...

- (2) If payments are required from the customer:

...

(d) what to do if the *customer* ~~falls into arrears~~ has a payment shortfall, explaining the benefit of making early contact with the *firm*, providing the name, address and telephone of a contact point with the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the tariff of charges;

...

MCOB 11.1, 11.2 and 11.3 are deleted in their entirety and replaced with new sections MCOB 11.4 et seq. The deleted text is not shown and the new text is not underlined.

11 Responsible lending, and responsible financing of home purchase plans

11.1 Application [deleted]

11.2 Purpose [deleted]

11.3 Responsible lending, and responsible financing of home purchase plans [deleted]

11.4 Application

Who?

11.4.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB* 11.4.2R in accordance with column (2) of that table.

11.4.2 R This table belongs to *MCOB* 11.4.1R

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	Whole chapter
<i>home purchase provider</i>	Whole chapter except <i>MCOB</i> 11.6.1G (2), <i>MCOB</i> 11.6.5R (3) and (4), <i>MCOB</i> 11.6.18R, <i>MCOB</i> 11.6.19G, <i>MCOB</i> 11.6.20R (2) and (9), <i>MCOB</i> 11.6.40G to <i>MCOB</i> 11.6.59G, <i>MCOB</i> 11.6.60R(2)(e), (3) and (4) and <i>MCOB</i> 11.7.3 R

What?

11.4.3 R This chapter applies:

- (1) if a *firm* enters into a regulated mortgage contract or home purchase plan with a customer; or
- (2) if a *firm* varies an existing regulated mortgage contract or home purchase plan; and

throughout the term of any regulated mortgage contract or home purchase plan which a *firm* has entered into.

11.5 Purpose

11.5.1 G (1) This chapter requires a *firm* to treat customers fairly by assessing, before deciding to:

- (a) enter into a regulated mortgage contract or home purchase plan; or
- (b) vary a regulated mortgage contract or home purchase plan;

whether the customer will be able to repay the sums borrowed and interest (in the case of a regulated mortgage contract) or pay the sums due (in the case of a home purchase plan).

(2) This chapter aims to ensure that customers are not exploited by firms that provide finance in circumstances where the customers are self-evidently unable to repay (or pay) through income and have no alternative means of repayment (or payment).

(3) This chapter sets out some limited exceptions to the requirement to assess the customer's ability to repay (or pay), including

transitional arrangements in relation to *customers* with existing *regulated mortgage contracts* or *home purchase plans* which satisfy certain conditions.

- (4) This chapter also applies in relation to extending the term of a *bridging loan*.

11.6 Responsible lending and financing

Contents of this section

- 11.6.1 G (1) This section sets out *rules* and *guidance* for lenders and providers under *regulated mortgage contracts* and *home purchase plans*, in relation to the assessment of affordability for the *customer* of these contracts. *Firms* have the option of applying certain of the *rules* and *guidance* on a modified basis in relation to *regulated mortgage contracts* and *home purchase plans* which are solely for a business purpose or are with *high net worth mortgage customers*. This section also contains (at *MCOB* 11.6.41R to *MCOB* 11.6.52G) additional *rules*, with accompanying *guidance*, in relation to *regulated mortgage contracts* which are *interest-only mortgages*. These *rules*:
- (a) restrict the circumstances in which *interest-only mortgages* may be entered into, and impose additional requirements on *mortgage lenders* in those limited cases where they are permitted; and
 - (b) provide for an exception to the requirement to assess affordability in relation to those *interest-only mortgages* which are *interest roll-up mortgages*, and restrict the circumstances in which *interest roll-up mortgages* may be used (see *MCOB* 11.6.57R to *MCOB* 11.6.59G).
- (2) This section also contains (at *MCOB* 11.6.53E to *MCOB* 11.6.54G) special provisions for *mortgage lenders* in relation to *bridging loans*, including some which apply only where the *bridging loan* is an *interest-only mortgage*.

The assessment of affordability

- 11.6.2 R (1) Except as provided in *MCOB* 11.6.3R, *MCOB* 11.6.57R (Interest roll-up mortgages) and *MCOB* 11.7 (Transitional arrangements):
- (a) before *entering into*, or agreeing to vary, a *regulated mortgage contract* or *home purchase plan*, a *firm* must assess whether the *customer* (and any guarantor of the *customer's* obligations under the *regulated mortgage contract* or *home purchase plan*) will be able to pay the

sums due; and

- (b) the *firm* must not enter into the transaction in (a) unless it can demonstrate that the new or varied *regulated mortgage contract* or *home purchase plan* is affordable for the *customer* (and any guarantor).

(2) In *MCOB* 11.6, references to payment of sums due means:

- (a) in the case of a *regulated mortgage contract*, the making of the payments to repay the sums advanced and interest reasonably expected to be accrued under the *regulated mortgage contract*; and
- (b) in the case of a *home purchase plan*, the payment of sums due under the *home purchase plan*;

in each case as they fall due.

(3) In *MCOB* 11.6, references to the *customer* must be read as referring also to any guarantor of the *customer's* obligations under the *regulated mortgage contract*, where the context permits.

11.6.3 R (1) *MCOB* 11.6.2R does not apply to:

- (a) *entering into* a new *regulated mortgage contract* or *home purchase plan* as a replacement for an existing *regulated mortgage contract* or *home purchase plan* between the *customer* and the *firm* (either as the original *mortgage lender* or *home purchase provider* or as the transferee of the existing contract), whether or not the new contract relates to the same property; or
- (b) a variation of an existing *regulated mortgage contract* or *home purchase plan*;

provided the conditions in (2) are satisfied.

(2) The conditions referred to in (1) are that:

- (a) the proposed new or varied *regulated mortgage contract* or *home purchase plan* would not involve the *customer* taking on additional borrowing or (for a *home purchase plan*, increasing the amount of finance provided under the plan) beyond the amount currently outstanding under the existing *regulated mortgage contract* or *home purchase plan*, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and
- (b) there is no change to the terms of the *regulated mortgage contract* or *home purchase plan* which is likely to be

material to affordability.

- (3) *MCOB 11.6.2R* does not apply to a variation to the terms of a *regulated mortgage contract* or *home purchase plan* which is made solely for the purposes of forbearance where the *customer* has a *payment shortfall*, or in order to avoid a *payment shortfall*.
- 11.6.4 E (1) If a *firm* treats any of the following changes as not likely to be material to affordability, this may be relied upon as tending to show contravention of *MCOB 11.6.2R*:
- (a) an extension of the term of the *regulated mortgage contract* or *home purchase plan* which it is reasonable to expect will extend into the *customer's* retirement; or
 - (b) changing from a *repayment mortgage* to an *interest-only mortgage*, or vice versa; or
 - (c) the addition or removal of a *customer*.
- (2) The list in (1) is not exhaustive.
- 11.6.5 R When assessing for the purposes of *MCOB 11.6.2R* whether a *customer* will be able to pay the sums due, a *firm*:
- (1) must not base its assessment of affordability on the equity in the property which is used as security under the *regulated mortgage contract* or is subject to the *home purchase plan*, or take account of an expected increase in property prices;
 - (2) must take full account of:
 - (a) the income of the *customer*, net of income tax and national insurance; and, as a minimum
 - (b) (i) the *customer's* committed expenditure; and
 - (ii) the basic essential expenditure and basic quality-of-living costs of the *customer's* household;
 - (3) (if it is a *mortgage lender*) must assess affordability on the basis of both repayment of capital and payment of interest over the term, except where lending under an *interest-only mortgage* in accordance with *MCOB 11.6.41R(1)*; and
 - (4) (if it is a *mortgage lender*) must take account of the impact of likely future interest rate increases on affordability, as set out in *MCOB 11.6.18R*.
- 11.6.6 R For the purposes of *MCOB 11.6.2R*, a *firm* must not rely on a general declaration of affordability by the *customer* or his representative.

Income multiples

- 11.6.7 G A *firm* may wish to impose a limit, expressed as a multiple of the *customer's* income, on the amount it is prepared to advance under a *regulated mortgage contract* or *home purchase plan*. Such an approach is not, of itself, inconsistent with *MCOB* 11.6.2R but, in accordance with the *rules* in this section, the *firm* must be able to demonstrate that the loan is affordable, having taken full account of the *customer's* income and expenditure, and (for a *mortgage lender*) the impact of future likely interest rate increases on affordability.

Income

- 11.6.8 R In taking account of the *customer's* income (in accordance with *MCOB* 11.6.5R(2)(a)) for the purposes of its assessment of whether the *customer* will be able to pay the sums due:
- (1) a *firm* must obtain evidence of the income declared by the *customer* for the purposes of the *customer's* application for the *regulated mortgage contract* or *home purchase plan* (or variation). The evidence, whether document-based or derived through the use of automated systems, must be of a type and for a period which is adequate to support each element of income that the *firm* is taking into account, and subject to appropriate anti-fraud controls; and
 - (2) a *firm* must not accept self-certification of income by the *customer*, and the source of the evidence in (1) must be independent of the *customer*.
- 11.6.9 G In relation to taking account of the *customer's* income for the purposes of its assessment of whether the *customer* will be able to pay the sums due:
- (1) income may be derived from sources other than employment (such as pensions or investments), or from more than one job;
 - (2) the evidence necessary to comply with *MCOB* 11.6.8R will vary according to factors such as the employment status and the nature of the employment of the *customer* (for example, whether he is employed, self-employed, a contractor or retired), his length of employment and, in particular, any elements of income that are not contractually guaranteed. For example: income from overtime working may be evidenced by payslips over a period of time or by checking the level of income regularly paid into a bank account;
 - (3) for a self-employed *customer*, a *firm* may wish to consider using projections of future income, where these form part of a credible business plan;

- (4) a *firm* may use information it already holds about a *customer's* income, for example where the *customer* holds a current account with the *mortgage lender*;
- (5) the source of evidence may be independent of the *customer* even where it is supplied by the *customer*; for example, in the form of payslips, bank statements or tax returns;
- (6) a *firm* may use information provided to it by a *home finance intermediary* or other third party, including electronic sources of information, but the *firm* will retain responsibility for compliance with this chapter; and
- (7) *mortgage lenders* and *home purchase providers* are reminded of their obligations under SYSC 8 in respect of outsourcing where they choose to use a third party to verify income information.

Expenditure

- 11.6.10 R For the purposes of a *mortgage lender's* or *home purchase provider's* assessment of whether the *customer* will be able to pay the sums due:
- (1) the committed expenditure of a *customer* in MCOB 11.6.5R(2)(b)(i) is his credit and other contractual commitments which will continue after the *regulated mortgage contract* or *home purchase plan* (or variation) is entered into;
 - (2) the basic essential expenditure of a *customer's* household in MCOB 11.6.5R(2)(b)(ii) comprises expenditure for: housekeeping (food and washing); gas, electricity and other heating; water; telephone; council tax; buildings insurance; ground rent and service charge for leasehold properties; and essential travel (including to work or school); and
 - (3) the basic quality-of-living costs of a *customer's* household in MCOB 11.6.5R(2)(b)(ii) are its expenditure which is hard to reduce and gives a basic quality of life (beyond the absolute essential expenditure in (2)).
- 11.6.11 G (1) Examples of committed expenditure are: credit commitments such as loans and credit cards; hire purchase agreements; child maintenance; alimony; and the cost of a *repayment strategy* where the *customer* has an *interest-only mortgage* (where affordability has not been assessed on a capital and interest basis: see MCOB 11.6.48R (Assessing affordability under an interest-only mortgage)).
- (2) Examples of basic quality-of-living costs (which can be reduced, but only with difficulty) are: clothing; household goods (such as furniture and appliances) and repairs; personal goods (such as toiletries); basic recreation (television, some allowance for basic

recreational activities, some non-essential transport); and childcare.

- 11.6.12 R For the purposes of its assessment of whether the *customer* will be able to pay the sums due:
- (1) a *firm* may generally rely on any evidence of income or information on expenditure provided by the *customer* unless, taking a common sense view, it has reason to doubt the evidence or information;
 - (2) in taking account of the *customer's* committed expenditure, a *firm* must take reasonable steps to obtain details of the *customer's* actual outstanding commitments; and
 - (3) in taking account of the basic essential expenditure and basic quality-of-living costs of a *customer's* household, a *firm* may obtain details of the actual expenditure. Alternatively, it may use statistical data or other modelled data appropriate to the composition of the *customer's* household, including the *customer*, dependent children and other dependents living in the household. If it uses statistical or other modelled data a *firm* must apply realistic assumptions to determine the level of expenditure of the *customer's* household.
- 11.6.13 G (1) Examples of evidence of income in *MCOB* 11.6.12R(1) are payslips and bank statements.
- (2) If a *firm* obtains details of the *customer's* credit commitments from the *customer*, it should corroborate the information, for example by making a credit reference agency search or checking credit card or bank statements.
 - (3) Where the *customer's* credit or contractual commitments are due to end shortly after the *regulated mortgage contract* or *home purchase plan* (or variation) has been entered into, a *firm* should take a common sense approach to deciding whether to include those commitments in its assessment of whether the *customer* will be able to pay the sums due, according to such factors as the remaining term of the commitment and the magnitude of payments required under it.

Future changes to income and expenditure

- 11.6.14 R If a *firm* is, or should reasonably be aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the *customer* during the term of the *regulated mortgage contract* or *home purchase plan*, the *firm* must take them into account when assessing whether the *customer* will be able to pay the sums due for the purposes of *MCOB* 11.6.2R.

- 11.6.15 G (1) Examples of future changes to income and expenditure in *MCOB 11.6.14R* are: reductions in income that may come about following the *customer's* retirement; where it is known that the *customer* is being made redundant; or where the *firm* is aware of another loan commitment that will become due during the term of the *regulated mortgage contract* or *home purchase plan*, such as an equity loan to assist in property purchase.
- (2) If the term of a *regulated mortgage contract* or *home purchase plan* would extend beyond the date on which the *customer* expects to retire (or, where that date is not known, the state pension age), a *firm* should take a prudent and proportionate approach to assessing the *customer's* income beyond that date. The degree of scrutiny to be adopted may vary according to the period of time remaining to retirement when the assessment is made. The closer the *customer* is to retiring, the more robust the evidence of the level of income in retirement should be. For example, where retirement is many years in the future, it may be sufficient merely to confirm the existence of some pension provision for the *customer* by requesting evidence such as a pension statement; where the *customer* is close to retirement, the more robust steps may involve considering expected pension income from a pension statement. In accordance with *MCOB 11.6.12R(1)*, a *firm* should take a common sense view when assessing any information provided by the *customer* on his expected retirement date.
- (3) Where an additional loan commitment is expected to become due during the term of the *regulated mortgage contract* or *home purchase plan*, the *mortgage lender* should assess whether the *regulated mortgage contract* or *home purchase plan* will remain affordable when the loan commitment becomes due, unless there is an appropriate repayment strategy in place to repay that loan, such as through the sale of the property which is the subject of the *regulated mortgage contract* or *home purchase plan*.

Debt consolidation and credit-impaired customers

- 11.6.16 R (1) This *rule* applies where:
- (a) a purpose of a *regulated mortgage contract* or *home purchase plan* (or variation) is debt consolidation; and
- (b) the *customer* is a *credit-impaired customer*.
- (2) Subject to (3), where each of the conditions in (1) is satisfied and, if the debts which are to be repaid using the sums raised by the *regulated mortgage contract* or *home purchase plan* (or variation) were not repaid, the transaction would not be affordable for the *customer*, the *firm* must take reasonable steps to ensure that, on completion of the transaction, those debts are actually repaid.

- (3) The requirement in (2) does not apply if the *firm* has assumed that the *customer's* existing debts which are to be repaid using the sums raised by the *regulated mortgage contract* or *home purchase plan* (or variation) will not in fact be repaid and, accordingly, include them as committed expenditure in the affordability assessment for the *customer*.

- 11.6.17 G The requirement in *MCOB* 11.6.16R(2) for reasonable steps may be satisfied by the *mortgage lender's*, or *home purchase provider's*, repaying the committed expenditure directly to the creditors concerned as a condition of granting the *regulated mortgage contract* or *home purchase plan*.

Considering the effect of future interest rate rises

- 11.6.18 R (1) Under *MCOB* 11.6.5R(4), in taking account of likely future interest rate increases for the purposes of its assessment of whether the *customer* will be able to pay the sums due, a *mortgage lender* must consider the likely future interest rates over a minimum period of five years from the expected start of the term of the *regulated mortgage contract* (or variation), unless the interest rate under the *regulated mortgage contract* is fixed for a period of five years or more from that time, or for the duration of the *regulated mortgage contract* (or variation), if less than five years.
- (2) A *mortgage lender* must be able to justify the basis it uses for determining likely future interest rates for the purposes of this *rule* by reference to market expectations.
- (3) For the purposes of this *rule*, even if the basis used by the *mortgage lender* in (2) indicates that interest rates are likely to fall, or to rise by less than 1%, during the first five years of the *regulated mortgage contract* (or variation), a *mortgage lender* must assume that interest rates will rise by a minimum of 1% over that period.

- 11.6.19 G In relation to *MCOB* 11.6.18R(2):
- (1) an example of market expectations is the forward sterling rate published on the Bank of England website. A *mortgage lender* should not use its own forecast; and
- (2) a *mortgage lender* should not link its determination to market expectations without considering the likely effect of rate changes in accordance with the market expectations on the specific *regulated mortgage contract* in question.

Responsible lending or financing policy

- 11.6.20 R A *firm* must put in place, and operate in accordance with, a written policy (which may be contained in more than one document), approved by its *governing body*, setting out the factors it will take into account in

assessing a *customer's* ability to pay the sums due. The policy must address the following matters:

- (1) how income and expenditure is to be assessed, including (except as provided in *MCOB* 11.6.32R(1) and *MCOB* 11.6.39R(1)):
 - (a) details of the types of income which are acceptable;
 - (b) the proportion of different income streams which is acceptable;
 - (c) how variations in income over time, of which the *firm* is aware, are to be considered;
 - (d) what is acceptable evidence of income (including the time period to be covered by the evidence); and
 - (e) how committed expenditure, basic essential expenditure and basic quality-of-living costs are taken into account when assessing affordability;
- (2) how future interest rates are taken into account when assessing affordability;
- (3) the calculations used to determine whether the *regulated mortgage contract* or *home purchase plan* is affordable;
- (4) how the *mortgage lender's* or *home purchase provider's* anti-fraud controls are incorporated into affordability assessments;
- (5) how the *mortgage lender's* or *home purchase provider's* method of calculating the size of the advance for each *customer*, based on a consideration of the *customer's* income and expenditure, is to be monitored, including the timing of reviews and key performance indicators to be used (see *MCOB* 11.6.22R (Monitoring));
- (6) the actions to be taken if the *mortgage lender's* or *home purchase provider's* calculation method, referred to in (5), does not perform as expected;
- (7) how regular audits of compliance with the *mortgage lender's* or *home purchase provider's* responsible lending or financing policy established in accordance with this *rule* are to be undertaken (as required by *MCOB* 11.6.24R);
- (8) how the record keeping requirements in *MCOB* 11.6.60R are to be met;
- (9) (if applicable) the matters required by *MCOB* 11.6.50R (Interest-only policy); and
- (10) (if applicable) how the *firm* will apply the *rules* in *MCOB* 11.7

(Transitional arrangements) so as to permit exceptions to its procedures for affordability assessments, to include arrangements for use of management information to monitor its application of those exceptions.

- 11.6.21 G Examples of different income streams in *MCOB* 11.6.20R(1)(b) are: income derived from sources other than employment; income from more than one job; and elements of income that are not contractually guaranteed.

Monitoring

- 11.6.22 R A *firm* must put in place, and be able to demonstrate that it has, robust systems and controls (including the use of management information and key performance indicators) to monitor the effectiveness of its affordability assessments, including in preventing payment difficulties.
- 11.6.23 G Except as provided in *MCOB* 11.6.32R(2) and *MCOB* 11.6.39R(2), the monitoring in *MCOB* 11.6.22R should:
- (1) include use of management information, key performance indicators and root cause analysis to review and (where appropriate) adjust and improve the *mortgage lender's* or *home purchase provider's* method of calculating the size of the advance for each *customer*, based on a consideration of the *customer's* income and expenditure; and
 - (2) take place on a regular basis. However, a *firm* should put in place key performance indicators that trigger more frequent reviews; for example, if the incidence of *customers* being in *arrears*, or of early *arrears*, is higher than expected.
- 11.6.24 R A *firm* must ensure that its compliance with the responsible lending or financing policy required by *MCOB* 11.6.20R is reviewed at least once per calendar year:
- (1) in any case where the *firm* has an internal audit function or outsourced equivalent, by that function; and
 - (2) in any other case, by the *firm's* internal compliance function or an outsourced equivalent.

Alternative provisions for loans which are solely for a business purpose

- 11.6.25 R Where a *regulated mortgage contract* is solely for a business purpose, a *firm* may opt to apply *MCOB* 11.6.26R to *MCOB* 11.6.31R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G.
- 11.6.26 R When assessing for the purposes of *MCOB* 11.6.2R whether a *customer* will be able to pay the sums due, a *firm*:

- (1) must not base its assessment of affordability on the equity in the property which is used as security under the *regulated mortgage contract*, or take account of an expected increase in property prices;
- (2) must:
 - (a) where the repayments will be made from the resources of the *customer*:
 - (i) take full account of the income, net of income tax and national insurance, or net assets (or both) of the *customer*; and the *customer's* committed expenditure; and
 - (ii) take account, in general terms as a minimum, of the basic essential expenditure and basic quality-of-living costs of the *customer's* household; and
 - (b) where the repayments will be made from the financial resources of the business, take full account of the strength of those resources;
- (3) in a case falling within (2)(b), if the *customer* is relying on the business for his personal income, must as a minimum consider in general terms whether the business can support the *customer's* basic essential expenditure and basic quality-of-living costs;
- (4) must assess affordability on the basis of both repayment of capital and payment of interest over the term, except where lending under an *interest-only mortgage* in accordance with *MCOB* 11.6.41R(1); and
- (5) must take account of the impact of likely future interest rate increases on affordability.

11.6.27 R For the purposes of *MCOB* 11.6.2R, a *firm* must not rely on a general declaration of affordability by the *customer* or his representative.

11.6.28 R In taking account (in accordance with *MCOB* 11.6.26R(2)) of the *customer's* income or net assets (or both) and the resources of the business for the purposes of its assessment of whether the *customer* will be able to pay the sums due:

- (1) a *firm* must obtain evidence of the income or net assets (or both) of the *customer* and the resources of the business, as declared by the *customer* for the purpose of the *customer's* application for the *regulated mortgage contract* (or variation); and
- (2) a *firm* must not accept self-certification of income by the *customer*, and the source of the evidence in (1) must be

independent of the *customer*.

- 11.6.29 R In *MCOB* 11.6.26R, for the purposes of taking full account of committed expenditure and taking account in general terms of basic essential expenditure and basic quality-of-living costs, the meaning of those phrases is as set out in *MCOB* 11.6.10R.
- 11.6.30 G The information which a *firm* should consider when taking account, for the purposes of *MCOB* 11.6.26(2)(b), of the strength of the financial resources of the business will vary according to the characteristics of the business, but may include factors such as the cash flow, assets and liabilities of the business.
- 11.6.31 R If a *firm* is, or should reasonably be aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the *customer*, or the resources of the business, during the term of the *regulated mortgage contract*, the *firm* must take them into account when assessing whether the *customer* will be able to pay the sums due for the purposes of *MCOB* 11.6.2R.
- 11.6.32 R Where a *firm* chooses, in accordance with *MCOB* 11.6.25R, to apply the provisions of *MCOB* 11.6.26R to *MCOB* 11.6.31R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G:
- (1) its policy in *MCOB* 11.6.20R(1) need not address each of the matters prescribed in sub-paragraphs (a) to (e) of that *rule*;
 - (2) *MCOB* 11.6.23G does not apply; and
 - (3) in each case the record-keeping requirements in *MCOB* 11.6.60R(2)(a) to (d) apply only to the extent relevant, but the record in *MCOB* 11.6.60R(1) must also include, to the extent relevant:
 - (a) the *customer's* assets and the evidence relied on to assess them; and
 - (b) the details considered in relation to the resources of the business.

Alternative provisions for loans with high net worth mortgage customers

- 11.6.33 R Where a *regulated mortgage contract* is for a *high net worth mortgage customer*, a *firm* may opt to apply *MCOB* 11.6.34R to *MCOB* 11.6.38R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G.
- 11.6.34 R When assessing for the purposes of *MCOB* 11.6.2R whether a *customer* will be able to pay the sums due, a *firm*:
- (1) must not base its assessment of affordability on the equity in the property which is used as security under the *regulated mortgage*

contract, or take account of an expected increase in property prices;

- (2) must:
 - (a) take full account of the income, net of income tax and national insurance, or net assets (or both) of the *customer*; and the *customer's* committed expenditure; and
 - (b) take account, in general terms as a minimum, of the basic essential expenditure and basic quality-of-living costs of the *customer's* household;
- (3) must assess affordability on the basis of both repayment of capital and payment of interest over the term, except where lending under an *interest-only mortgage* in accordance with *MCOB* 11.6.41R(1); and
- (4) must take account of the impact of likely future interest rate increases on affordability.

- 11.6.35 R For the purposes of *MCOB* 11.6.2R, a *firm* must not rely on a general declaration of affordability by the *customer* or his representative.
- 11.6.36 R In taking account of the *customer's* income or net assets (or both) (in accordance with *MCOB* 11.6.34R(2)(a)) for the purposes of its assessment of whether the *customer* will be able to pay the sums due:
- (1) a *firm* must obtain evidence of the income or net assets (or both) declared by the *customer* for the purpose of the *customer's* application for the *regulated mortgage contract* (or variation); and
 - (2) a *firm* must not accept self-certification of income by the *customer*, and the source of the evidence in (1) must be independent of the *customer*.
- 11.6.37 R In *MCOB* 11.6.34R, for the purposes of taking full account of committed expenditure and taking account in general terms of basic essential expenditure and basic quality-of-living costs, the meaning of those phrases is as set out in *MCOB* 11.6.10R.
- 11.6.38 R If a *firm* is, or should reasonably be, aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the *customer* during the term of the *regulated mortgage contract*, the *firm* must take them into account when assessing whether the *customer* will be able to pay the sums due for the purposes of *MCOB* 11.6.2R.
- 11.6.39 R Where a *firm* chooses, in accordance with *MCOB* 11.6.33R, to apply the provisions of *MCOB* 11.6.34R to *MCOB* 11.6.38R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G:

- (1) its policy in *MCOB* 11.6.20R(1) need not address each of the matters prescribed in sub-paragraphs (a) to (e) of that *rule*;
- (2) *MCOB* 11.6.23G does not apply; and
- (3) in each case the record-keeping requirements in *MCOB* 11.6.60R(2)(a) to (d) apply only to the extent relevant, but the record in *MCOB* 11.6.60R(1) must also include, to the extent relevant, the *customer's* assets and the evidence relied on to assess them.

Interest-only mortgages

- 11.6.40 G The rules in this part (*MCOB* 11.6.41R to *MCOB* 11.6.49R) provide that *interest-only mortgages* may be *entered into* by mortgage lenders in limited circumstances.

Entering into interest-only mortgages

- 11.6.41 R (1) A mortgage lender may only enter into an *interest-only mortgage*, or switch a *repayment mortgage* onto an interest-only basis for all or part of its term, if:
- (a) it has evidence that the *customer* will have in place a clearly understood and credible *repayment strategy*; and
 - (b) as far as it is reasonably able to assess at that time, the *repayment strategy* has the potential to repay the capital borrowed and any interest reasonably expected to be accrued under the *interest-only mortgage*.
- (2) In *MCOB* 11.6, a reference to an *interest-only mortgage* is to be read as including any *regulated mortgage contract* which includes an interest-only period or where part of the sum is advanced on an interest-only basis.
- (3) A mortgage lender must not accept speculative *repayment strategies* for the purposes of (1).
- 11.6.42 G *Firms* are reminded that:
- (1) *interest-only mortgages* include those where some, but not all, interest is payable at the end of the term. Accordingly, the requirement in *MCOB* 11.6.41R(1)(b) applies equally to such *interest-only mortgages* as it does to those where all of the interest is accrued until the end of the term; and
 - (2) a *lifetime mortgage* is a type of *interest-only mortgage*, as full repayment of capital and interest is not required over the term. Accordingly, the requirements in the *Handbook* (including in *MCOB* 11.6 and *MCOB* 11.7) which apply to *interest-only*

mortgages apply to *lifetime mortgages*, unless specifically disapplied. Depending always on its terms, a *lifetime mortgage* may also be an *interest roll-up mortgage*, as noted in *MCOB* 11.6.59G.

- 11.6.43 R *MCOB* 11.6.41R(1) does not prevent a *mortgage lender*, when appropriate, from making a temporary concession, by which he accepts payment of interest only, with a *customer* who is in *arrears* or has a *payment shortfall*, or is at risk of *arrears* or a *payment shortfall*, on a *regulated mortgage contract*.
- 11.6.44 G *Firms* are reminded that whether it is appropriate to take the action contemplated by *MCOB* 11.6.43R will depend on all the circumstances of the particular case and must be considered having regard to, among other things, *Principle 6* and the *rules* in *MCOB* 13.
- 11.6.45 G The following are examples of *repayment strategies* that may, subject to the circumstances of the *customer*, be acceptable for the purposes of *MCOB* 11.6.41R(1):
- (1) regular deposits into a savings or investment product;
 - (2) the periodic repayment of capital from irregular sources of income (such as bonuses or some sources of income from self-employment); and
 - (3) the sale of assets such as another property or other land owned by the *customer*.
- 11.6.46 E Acceptance by a *mortgage lender* of any of the following *repayment strategies* for the purposes of *MCOB* 11.6.41R(1) may be relied upon as tending to show contravention of that *rule*:
- (1) an expectation that the value of the property which is the subject of the *regulated mortgage contract* will increase over its term sufficiently to enable the *customer* to sell the property to repay the capital borrowed and, where applicable, pay the interest accrued under the *interest-only mortgage*;
 - (2) an intention on the part of the *customer* to utilise an expected, but uncertain, inheritance to repay the capital borrowed and, where applicable, pay the interest accrued under the *interest-only mortgage*; and
 - (3) the sale of the property which is the subject of the *regulated mortgage contract*, where that is the *customer's* main residence and the *mortgage lender* does not consider whether the property will have the potential to:
 - (a) provide sufficient funds for the *customer* to repay the capital borrowed and, where applicable, the interest accrued under the *interest-only mortgage*; and

- (b) allow the *customer* to purchase a cheaper property to reside in or execute any other associated strategy.

The above list is not exhaustive.

- 11.6.47 G In complying with *MCOB* 11.6.41R(1), where a *customer's repayment strategy* is the sale of the property which is the subject of the *regulated mortgage contract*, a *mortgage lender* may wish to consider, as part of its assessment of that *repayment strategy*, factors such as the equity in the property when considered in relation to the level of property prices in the relevant area at the time of the consideration or, for a *lifetime mortgage*, the borrower's life expectancy.

Assessing affordability under an interest-only mortgage

- 11.6.48 R For the purposes of *MCOB* 11.6.2R, where a *mortgage lender* is lending under an *interest-only mortgage* in accordance with *MCOB* 11.6.41R(1), it may assess affordability on the basis of payment of interest only over the term (plus repayment of such capital as may be due to be repaid over the term). If it does so, it must consider as part of the *customer's* committed expenditure under *MCOB* 11.6.5R(2)(b)(i) (or the equivalent alternative provision for transactions with *high net worth mortgage customers* or solely for business purposes) the cost to the *customer* of the *repayment strategy*.

Review during the term of interest-only mortgages

- 11.6.49 R (1) This *rule* applies in relation to all *interest-only mortgages* which a *mortgage lender enters into* on or after 26 April 2014 except:
- (a) *lifetime mortgages*;
 - (b) *bridging loans*; and
 - (c) any other case where the repayment of capital borrowed and, if applicable, interest accrued, is certain.
- (2) Except as set out in (3), a *mortgage lender* must carry out a review (as a minimum, once) during the term of the mortgage, in which contact is made with the *customer*, to check that the *customer's repayment strategy* is still in place, and that it is still reasonable to expect that the *repayment strategy* has the potential to repay the capital borrowed and, where applicable, pay the interest reasonably expected to be accrued under the *interest-only mortgage*. The review must be carried out at a stage of the term when, if the *repayment strategy* is not in place, or not adequate, there is likely to be sufficient time prior to the end of the term for the *customer* to take appropriate steps to remedy the situation.
- (3) The review in (2) is not required in any case where, despite reasonable efforts to contact the *customer*, the *mortgage lender* has

been unable to do so.

- (4) Following the review in (1), where appropriate the *mortgage lender* must take reasonable steps to discuss with the *customer* what may be done to address the situation.

Interest-only policy

- 11.6.50 R A *mortgage lender* which enters into *interest-only mortgages* (unless they are only *lifetime mortgages*) must include in the policy which is required by *MCOB* 11.6.20R (Responsible lending and financing policy) a policy on *interest-only mortgages*, setting out its processes and procedures for ensuring compliance with *MCOB* 11.6.41R(1) and for safeguarding the interests of *customers* during the term of *interest-only mortgages*. This policy must include:
- (1) details of the *mortgage lender's* plans for lending by way of *interest-only mortgages*, including its planned volumes of lending on that basis over a specified period, and provision for reviewing the actual volumes of lending on that basis, including the timing and method of review;
 - (2) specification of the types of *repayment strategy* which will be considered acceptable, and the evidential requirements and other controls which will be applied to ensure that only such types will be accepted, including the controls to be applied where the *repayment strategy* is the sale of the property which is the subject of the *regulated mortgage contract*;
 - (3) the procedures for checking the existence and adequacy of the *repayment strategy* in line with the policy, including questions to be asked of the *customer*;
 - (4) the arrangements for monitoring and auditing compliance with the policy, processes and procedures (see *MCOB* 11.6.22R and *MCOB* 11.6.24R (Monitoring)); and
 - (5) the process for the review required by *MCOB* 11.6.49R which, as a minimum:
 - (a) prescribes the timing of the review;
 - (b) prescribes the content of the review, including the questions to be asked of the *customer* and the actions to be taken if the *customer* proves difficult to contact or otherwise does not co-operate with the review;
 - (c) sets out how it is to be decided whether the *customer's repayment strategy* meets the criteria in *MCOB* 11.6.49R(2); and

- (d) sets out the actions which will be appropriate to be considered during the discussions in *MCOB* 11.6.49R(2), depending on the circumstances of the *customer*.
- 11.6.51 G (1) The controls in *MCOB* 11.6.50R(2) may include, where appropriate: maximum loan to value limits; minimum equity requirements; regional factors such as property prices; or other eligibility requirements.
- (2) The policy and procedures for safeguarding the interests of a *customer* under an *interest-only mortgage* should not permit the *mortgage lender* to change the *interest-only mortgage* to a *repayment mortgage*, extend the term or otherwise change the features of the *interest-only mortgage* unless to do so is compatible with the duties of the *mortgage lender* under *Principle 6* and any other applicable *rules* and regulations, including those relating to *arrears* or *payment shortfall*. A *mortgage lender* should also have regard to the *Unfair Terms Regulations* when drafting the provisions of *regulated mortgage contracts* in relation to changes to their features.
- 11.6.52 G *MCOB* 11.6.50R sets out requirements for *mortgage lenders* to have appropriate procedures for managing *interest-only mortgages* in order to safeguard the interests of *customers*. *Firms* are reminded of the *rules* and *guidance* in *SYSC* (notably *SYSC* 7.1) relating to systems and controls for the management of risks to which *firms* themselves are exposed. *Firms* will need to consider whether their systems and controls are adequate in relation to the management of risks arising from *interest-only mortgages*.

Assessing the customer's repayment strategy for bridging loans

- 11.6.53 E For a *bridging loan* which is an *interest-only mortgage*, acceptance by a *mortgage lender* as a *repayment strategy* for the purposes of *MCOB* 11.6.41R(1) of an expectation that, by entering into the *bridging loan*, the *customer's* credit status will be sufficiently improved to enable him to refinance to a longer-term *regulated mortgage contract* (except where the *mortgage lender* has evidence of a guaranteed offer for such a longer-term contract) may be relied upon as tending to show contravention of that *rule*.
- 11.6.54 G For a *bridging loan* which is an *interest-only mortgage*, in complying with *MCOB* 11.6.41R(1):
- (1) where the *customer's repayment strategy* is the sale of his existing home, the *mortgage lender* may wish to consider asking for it to be supported by an independent valuation of that property, as a condition of accepting that *repayment strategy*; and
- (2) where the *customer's repayment strategy* is the replacement of the *bridging loan* with a mainstream *regulated mortgage contract*, the *mortgage lender* should not accept that *repayment strategy* unless

it is reasonably satisfied that a mainstream *mortgage lender* will be willing to enter into a *regulated mortgage contract* with the *customer*. A *firm* may wish to consider requesting evidence of a guaranteed offer or agreement in principle that will be in place once the existing term of the *bridging loan* has expired, or obtain the necessary income and expenditure information, in order to be so satisfied.

Extending the term of a bridging loan

- 11.6.55 R Except in relation to a secured overdraft which is solely for a business purpose or is with a *high net worth mortgage customer*:
- (1) when considering extending the term of a *bridging loan*, a *mortgage lender* must comply with *MCOB* 11.6.2R as if the *bridging loan* were a new loan;
 - (2) where *MCOB* 11.6.2R does not apply in relation to extending the term of a *bridging loan* (because the *bridging loan* is an *interest roll-up mortgage*, and therefore *MCOB* 11.6.57R applies), the *mortgage lender* must consider with the *customer*, before he commits himself to extend the term, the impact of the extension on the *customer's* remaining equity in the property which is the subject of the *bridging loan*; and
 - (3) a *firm* must not agree to extend the term of a *bridging loan* unless the *customer* has made a positive choice to do so.
- 11.6.56 G *Firms* are reminded that, when extending the term of a *bridging loan* to which *MCOB* 11.6.55R does not apply, in accordance with *MCOB* 2.5A.1R, they must act honestly, fairly and professionally in accordance with the best interests of their *customer*.

Interest roll-up mortgages

- 11.6.57 R The requirements in *MCOB* 11.6.2R (and any *Handbook* provisions applicable only to that *rule*) do not apply in relation to an *interest roll-up mortgage*.
- 11.6.58 R A *mortgage lender* may not enter into an *interest roll-up mortgage*, or vary an existing *regulated mortgage contract* so that it becomes an *interest roll-up mortgage*, unless it is:
- (1) a *lifetime mortgage*; or
 - (2) a *bridging loan*; or
 - (3) a loan to a *high net worth mortgage customer*; or
 - (4) a loan solely for business purposes.

- 11.6.59 G *Firms* are reminded that an *interest roll-up mortgage* is a type of *interest-only mortgage*, where no payments of interest or capital are required or anticipated until the mortgage comes to an end. Depending always on their terms, it is possible to structure the types of product set out in *MCOB* 11.6.58R(1) to (4) as an *interest roll-up mortgage*. Where that is the case, *MCOB* 11.6.2R will not apply in relation to them, but *MCOB* 11.6.40G to *MCOB* 11.6.52G will apply to all *interest roll-up mortgages*, to the extent they are permitted by *MCOB* 11.6.58R.

Record-keeping

- 11.6.60 R (1) A *firm* must make, in paper or electronic form, an adequate record of the steps it takes to comply with the *rules* in this chapter in relation to each *customer*.
- (2) The record in (1) must include the information taken into account in each affordability assessment, so that it is possible to understand from the record the basis of the *mortgage lender's* or *home purchase provider's* lending or financing decision, including (except as provided in *MCOB* 11.6.32R(3) and *MCOB* 11.6.39R(3)):
- (a) the *customer's* income, including, where relevant, a breakdown of the different income types;
 - (b) the *customer's* committed expenditure;
 - (c) the basic essential expenditure and basic quality-of-living costs of the *customer's* household (whether actual expenditure for that household or assumed expenditure from statistical or other modelled data, including information to show why the assumed data is appropriate to that *customer's* household);
 - (d) the evidence relied on to assess income and expenditure;
 - (e) the rate or assumptions used to test affordability against likely future interest rate rises;
 - (f) the repayment type and term of the *regulated mortgage contract*, or the term of the *home purchase plan*; and
 - (g) the calculation used to determine whether the *regulated mortgage contract, home purchase plan* is (or, where applicable, following the variation, remains) affordable for the *customer*.
- (3) In relation to *interest-only mortgages*, the record in (1) must include:
- (a) the reasons for each decision to offer an *interest-only*

- mortgage to a customer;*
- (b) the evidence of the *customer's repayment strategy* and, where applicable, its cost;
 - (c) details of the *firm's* attempts to contact the *customer* where required by *MCOB* 11.6.49R; and
 - (d) the outcome of each review required by *MCOB* 11.6.49R (whether conducted once during the term of the *interest-only mortgage* or more frequently).
- (4) In relation to the extension of the term of a *bridging loan* which falls within *MCOB* 11.6.55R, the record in (1) must include:
- (a) the *customer's* positive choice to extend the term;
 - (b) the reasons for the decision to extend the term; and
 - (c) the evidence of the *customer's repayment strategy* and its cost.
- (5) A *firm* must retain the records required by (1) to (4) for the term of the *regulated mortgage contract* or *home purchase plan*.
- (6) Where a *firm* enters into or varies a *regulated mortgage contract* or *home purchase plan* under *MCOB* 11.7 (Transitional arrangements), it must keep, for the term of the contract or plan, a record of:
- (a) the outstanding balance on the existing contract or plan;
 - (b) the cost of the repairs or maintenance work to the property, where relevant;
 - (c) any product fee or arrangement fee financed by any additional borrowing taken on under the contract or increase in the amount of finance provided under the plan; and
 - (d) the rationale for each decision made to enter into or vary a *regulated mortgage contract* or *home purchase plan* under *MCOB* 11.7 (Transitional arrangements), including why the *firm* considered it to be in the *customer's* best interests.
- (7) A *firm* must make, and keep up to date, an adequate record of the policy required by *MCOB* 11.6.20R. When the policy is changed, a record of the previous policy must be retained for so long as any *regulated mortgage contract* or *home purchase plan* to which it was applicable remains outstanding.

11.6.61 G For the purposes of *MCOB* 11.6.60R(2)(c) and (g), if it is not practicable

for the *firm* to record on the *customer's* file full details of the calculation method applied, it should record clearly which version of that method was applied in order that the file can be reviewed in conjunction with the applicable version of the method, so that it is possible to reconstruct the lending decision.

11.7 Transitional arrangements

- 11.7.1 R When considering *entering into* or varying a *regulated mortgage contract* or *home purchase plan*, a *firm* need not apply the rules in *MCOB* 11.6.2R to *MCOB* 11.6.18R inclusive (as modified by *MCOB* 11.6.25R to *MCOB* 11.6.31R and *MCOB* 11.6.33 to *MCOB* 11.6.38R, where applicable) if it has established, acting reasonably, that the following conditions are satisfied:
- (1) the *customer* has:
 - (a) an existing *regulated mortgage contract* (whether or not *entered into* on or after 31 October 2004) or *home purchase plan* (whether or not *entered into* on or after 6 April 2007) which was in existence prior to 26 April 2014; or
 - (b) an existing *regulated mortgage contract* or *home purchase plan* which was entered into in reliance on, and in compliance with, *MCOB* 11.7;
 - (2) subject to *MCOB* 11.7.2R, the proposed *regulated mortgage contract* or *home purchase plan*, or variation, would not involve the *customer* taking on additional borrowing (or, for a *home purchase plan*, increasing the amount of finance provided under the plan) beyond the amount currently outstanding under the existing *regulated mortgage contract* or *home purchase plan*, other than to finance any product fee or arrangement fee for the proposed new or varied contract;
 - (3) the proposed transaction would be in the *customer's* best interests; and
 - (4) the *customer* has not, after 26 April 2014 increased the size of the advance under the existing *regulated mortgage contract* or *home purchase plan* other than to finance any relevant product fee or arrangement fee in relation to, or the cost of essential repairs or maintenance to the property which is the subject of, that *regulated mortgage contract* or *home purchase plan*.
- 11.7.2 R The condition in *MCOB* 11.7.1R(2) does not apply if each of the following conditions is satisfied:
- (1) the *firm* is the *mortgage lender* or *home purchase provider* under

- the existing *regulated mortgage contract* or *home purchase plan* in *MCOB 11.7.1R(1)*;
- (2) the value of the property which is the subject of the *regulated mortgage contract* or *home purchase plan* is at risk if repairs or maintenance work to the property are not carried out;
 - (3) the funds generated by the additional borrowing or increase in finance provided are to be used to carry out the repairs or maintenance work; and
 - (4) the *firm* has obtained credible evidence which demonstrates that the additional borrowing or increase in finance are no more than the cost of the repairs or maintenance work.
- 11.7.3 R (1) When considering *entering into* or varying an *interest-only mortgage*, a *mortgage lender* need not apply the rules in *MCOB 11.6.41R(1)*, *MCOB 11.6.49R*, *MCOB 11.6.50R* and *MCOB 11.6.60R(3)* if the conditions in *MCOB 11.7.1R* are satisfied, and if it has established, acting reasonably, that the existing *regulated mortgage contract* in *MCOB 11.7.1R(1)* is an *interest-only mortgage*.
- (2) Where only part of the sum advanced under the existing *regulated mortgage contract* is on an interest-only basis, (1) applies, but only to that part.
- 11.7.4 G In accordance with its obligation under *Principle 6* to treat its *customers* fairly, a *firm* should not treat a *customer* with whom it enters into or varies a *regulated mortgage contract* or *home purchase plan* pursuant to this section 11.7 less favourably than it would treat other *customers* with similar characteristics, for example by offering less favourable interest rates or other terms.
- 11.7.5 G *Firms* should note the record-keeping requirements at *MCOB 11.6.60R(6)* which apply when *regulated mortgage contracts* and *home purchase plans* are *entered into* or varied under this section.

Amend the following as shown.

12.1 Application

...

What?

...

- 12.1.4 R The ~~arrears~~ *payment shortfall* charges and excessive charges requirements in this chapter will continue to apply to a *firm* after a *regulated mortgage contract* has come to an end following the sale of a *repossessed* property.

The excessive charges requirements will continue to apply to a *firm* after a *home reversion plan* has ended. References in this chapter to ‘*customer*’ will include references to a former *customer* as appropriate.

- 12.1.5 G The *FSA* will expect a *firm* to ensure that charges made to a *customer* arising from the sale of a *repossessed* property and charges arising in relation to a *sale shortfall* are not excessive and are subject to the same considerations as apply with respect to ~~arrears~~ payment shortfall charges under this chapter.

...

12.4 **Arrears Payment shortfall charges: regulated mortgage contracts**

- 12.4.1 R (1) A *firm* must ensure that any *regulated mortgage contract* that it enters into does not impose, and cannot be used to impose, a charge or charges for ~~arrears~~ a payment shortfall on a *customer* ~~except where that~~ unless the *firm* is able objectively to justify that the charge is equal to or lower than a reasonable estimate calculation of the cost of the additional administration required as a result of the *customer* being in arrears having a payment shortfall.
- (2) Paragraph (1) does not prevent a *firm* from entering into a ~~regulated mortgage contract with a *customer* under which the *firm* may change the rate of interest charged to the *customer* from a fixed or discounted rate of interest to the *firm*'s standard variable rate if the *customer* goes into arrears, providing that this standard variable rate is not a rate created especially for *customers* in arrears.~~ [deleted]
- 12.4.1A E The imposition of a charge for ~~arrears~~ a payment shortfall on a *customer* who is adhering to an arrangement under which the *customer* and the *firm* agree that the *customer* will make payments of a set amount per month (or other agreed period) on agreed dates may be relied upon as tending to show contravention of *MCOB* 12.4.1R(1).
- 12.4.1B R When a *customer* has a ~~payment shortfall~~ payment shortfall in respect of a *regulated mortgage contract*, a *firm* must ensure that any payments received from the *customer* are allocated first towards paying off the balance of the ~~shortfall~~ payment shortfall (excluding any interest or charges on that balance).
- 12.4.2 G For each type of payment shortfall charge (for example, a monthly arrears management charge), ~~A~~ a *firm* may calculate the same level of ~~arrears charges~~ additional administration costs and payment shortfall charges for all *regulated mortgage contracts* where the *customer* is in ~~arrears~~ payment shortfall, rather than performing a calculation on the basis of the individual *regulated mortgage contract* with the particular *customer*.

- 12.4.3 G *Firms* are also subject to requirements on information provision and standards relating to *arrears* and *repossessions* (see *MCOB* 13 (Arrears and repossessions)).
- 12.4.4 R In calculating the cost of the additional administration required as a result of a *customer* having a *payment shortfall*, a *firm* must not take into account:
- (1) the following types of costs:
 - (a) funding or capital;
 - (b) general bank charges that are not incurred as a result of a *customer* having a *payment shortfall*;
 - (c) unrecovered fees;
 - (d) advertising costs; and
 - (e) regulatory fines;
 - (2) the costs of preparing financial reports for the *firm* unless there is an objectively justifiable reason to do so and the costs relate solely to the analysis and management of accounts in *payment shortfall*;
 - (3) executive staff costs unless there is an objectively justifiable reason to do so and the costs relate to the day-to-day management of customers in *payment shortfall*.
- 12.4.5 R In *MCOB* 12.4, ‘executive staff’ means the staff or business owners responsible for the management of the *firm*’s business.
- 12.4.6 G (1) For some *firms*, their executive staff will be the executive board members.
- (2) Executive staff costs relating to company strategy, including *payment shortfall* strategy, should not be included as costs relating to the day-to-day management of *customers* in *payment shortfall*.
- (3) General financial reporting costs, including all legal and regulatory reporting costs, should not be included as costs relating solely to the analysis and management of accounts in *payment shortfall*.
- 12.4.7 G In calculating the cost of the additional administration required as a result of a *customer* having a *payment shortfall*, the *firm*:
- (1) may, where appropriate, take into account the following types of costs:
 - (a) providing information or documents;

- (b) non-executive staff costs;
- (c) premises costs;
- (d) human resources costs; and
- (e) information technology costs;

- (2) should consider the extent to which the cost of the additional administration is shared with the rest of its business; and
- (3) should, where a type of cost is absent from the lists in (1) and at MCOB 12.4.4R(1), before taking it into account, consider whether it is appropriate to do so.

12.4.8 R A firm must not impose a charge for a payment shortfall that is calculated as a proportion of the outstanding loan.

...

12.6 Business loans and loans to high net worth mortgage customers: tailored provisions

12.6.1 G *Firms are reminded that, in relation to a regulated mortgage contract which is solely for a business purpose or is with a high net worth mortgage customer in circumstances where MCOB 7.7.1R applies, if there is a new early repayment charge or a change to the existing early repayment charge, MCOB 7.7.1R(2) requires a firm to notify the customer within five business days of the maximum amount payable as an early repayment charge.*

12.6.2 G *Firms are also reminded that in accordance with MCOB 1.2.3R, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans solely for a business purpose or loans to high net worth mortgage customers.*

...

13 Arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans

13.1 Application

...

What?

...

13.1.5 G The FSA expects a firm to treat a sale shortfall in the same way that it

treats a ~~payment shortfall~~ payment shortfall.

...

13.3 Dealing fairly with customers ~~in arrears~~ with a payment shortfall: policy and procedures

...

13.3.1 R (1) A *firm* must deal fairly with any *customer* who:

- (a) ~~is in arrears~~ has a *payment shortfall* on a regulated mortgage contract or home purchase plan;

...

...

13.3.1A R (1) Where a *customer* has a *payment shortfall* in relation to a *regulated mortgage contract* or *home purchase plan*, a *firm* must not attempt to process more than two direct debit requests in any one calendar month.

- (2) Where a *firm's* direct debit request, in respect of a *customer* who has a *payment shortfall* on a *regulated mortgage contract* or *home purchase plan*, has been refused, on at least one occasion in each of two consecutive months, due to insufficient funds, the *firm* must:

- (a) consider whether the method of payment remains suitable for the *customer*;
- (b) make reasonable efforts to contact the *customer* to discuss whether the method of payment remains suitable for the *customer*; and
- (c) not pass on any costs to the *customer* which were incurred as a consequence of presenting direct debit requests during this period of consideration.

13.3.1B G *MCOB* 13.3.1AR(2)(c) does not prevent a *firm* from attempting to process up to two direct debit requests in any one calendar month provided the *firm* has made reasonable efforts to contact the *customer* and the *customer* has failed to respond.

...

13.3.2A R A *firm* must, when dealing with any *customer* in payment difficulties:

- (1) make reasonable efforts to reach an agreement with a *customer* over the method of repaying any ~~payment shortfall~~ *payment shortfall* or *sale shortfall*, in the case of the former having regard to the desirability of agreeing with the *customer* an alternative to taking

possession of the property;

- (2) liaise, if the *customer* makes arrangements for this, with a third party source of advice regarding the ~~payment shortfall~~ payment shortfall or *sale shortfall*;
- (3) allow a reasonable time over which the ~~payment shortfall~~ payment shortfall or *sale shortfall* should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the *customer*;

...

...

13.3.4A R In complying with *MCOB* 13.3.2AR(6):

- (1) a *firm* must consider whether, given the individual circumstances of the *customer*, it is appropriate to do one of more of the following in relation to the *regulated mortgage contract* or *home purchase plan* with the agreement of the *customer*:

...

- (d) treat the ~~payment shortfall~~ payment shortfall as if it was part of the original amount provided (but a *firm* must not automatically capitalise a ~~payment shortfall~~ payment shortfall where the impact would be material); or

...

...

13.3.4AA R In *MCOB* 13.3.4AR, the impact of a capitalisation would be material if, either on its own or taken together with previous automatic capitalisations, it increased:

- (1) the interest payable over the term of the *regulated mortgage contract* by £50 or more; or
- (2) the contractual monthly repayment amount under the *regulated mortgage contract* by £1 or more.

13.3.4B R ...

...

13.3.4D G In the *FSA*'s view, in order to comply with *Principle 6*, *firms* should not agree to capitalise a ~~payment shortfall~~ payment shortfall save where no other option is realistically available to assist the *customer*.

...

- 13.3.6 G In relation to adopting a reasonable approach to the time over which the ~~payment shortfall~~ payment shortfall or sale shortfall should be repaid, the FSA takes the view that the determination of a reasonable payment period will depend upon the individual circumstances. In appropriate cases this will mean that repayments are arranged over the remaining term.

...

Record keeping: ~~arrears~~ payment shortfalls and repossessions

- 13.3.9 R (1) A mortgage lender or administrator must make and retain an adequate record of its dealings with a customer whose account ~~is in arrears~~ has a payment shortfall or ~~who has~~ a sale shortfall, which will enable the firm to show its compliance with this chapter. That record must include a recording of all telephone conversations between the firm and the customer which discuss ~~the sums due~~ any amount in arrears or any amount subject to payment shortfall charges.
- (2) A mortgage lender or administrator must retain the record required by (1) for three years from the date of the dealing.
- 13.3.10 G The record referred to in MCOB 13.3.9R should contain, or provide reference to, matters such as:
- (1) the date of first communication with the customer, after the account was identified as ~~being in arrears~~ having a payment shortfall;
 - (2) in relation to correspondence issued to a customer ~~in arrears~~ with a payment shortfall, the name and contact number of the employee dealing with that correspondence, where known;
 - (3) the basis for issuing tailored information in accordance with MCOB 13.7.1R in relation to a loan solely for a business purpose;
 - (4) information relating to any new payment arrangements proposed;
 - (5) the date of issue of any legal documents;
 - (6) the arrangements made for sale after the repossession (whether legal or voluntary); ~~and~~
 - (7) the date of any communication summarising the customer's outstanding debt after sale of the *repossessed* property; and
 - (8) the date and time of each call for the purposes of MCOB 13.3.9R(1).

...

13.4 Arrears: provision of information to the customer of a regulated mortgage contract

13.4.1 R If a *customer* falls into *arrears* on a *regulated mortgage contract*, a *firm* must as soon as possible, and in any event within 15 *business days* of becoming aware of that fact, provide the *customer* with the following in a *durable medium*:

...

(3) the total sum of the ~~payment shortfall~~ payment shortfall;

(4) the charges incurred as a result of the ~~payment shortfall~~ payment shortfall;

...

(6) an indication of the nature (and where possible the level) of charges the *customer* is likely to incur unless the ~~payment shortfall~~ payment shortfall is cleared.

...

13.4.3 G (1) ...

(2) Where a *firm* provides the information in *MCOB* 13.4.1R when a ~~payment shortfall~~ payment shortfall occurs but before the *customer's* account falls into *arrears*, it need not repeat the provision of the information in *MCOB* 13.4.1R when the *customer's* account falls into *arrears*.

Customer in arrears within the past 12 months

13.4.4 R If a *customer's* account has previously fallen into *arrears* within the past 12 months (and at that time the *customer* received the disclosure required by *MCOB* 13.4.1R), the *arrears* have been cleared and the *customer's* account falls into *arrears* on a subsequent occasion a *firm* must either:

(1) ...

(2) provide, as soon as possible, and in any event within 15 *business days* of becoming aware of the further *arrears*, a statement, in a *durable medium*, of the payments due, the actual ~~payment shortfall~~ payment shortfall, any charges incurred and the total outstanding debt excluding any charges that may be added on redemption, together with information as to the consequences, including *repossession*, if the ~~payment shortfall~~ payment shortfall is not cleared.

...

13.5 Dealing with a customer in arrears or with a sale shortfall on a regulated mortgage contract

Statement of charges

- 13.5.1 R Where an account is in *arrears*, and the ~~payment shortfall~~ payment shortfall or *sale shortfall* is attracting charges, a *firm* must provide the *customer* with a regular written statement (at least once a quarter) of the payments due, the actual ~~payment shortfall~~ payment shortfall, the charges incurred and the debt.
- 13.5.2 G ...
- (3) ~~If an account in *arrears* is subject to a payment plan agreed between a *firm* and a *customer*, and the account is operating in accordance with that plan, the *firm* will still need to send the *customer* a written statement if the payment shortfall or *sale shortfall* is attracting charges.~~ [deleted]
- (4) Information provided should cover the period since the last statement. *Firms* may use the annual statement to comply with *MCOB* 13.5.1R, in which case the annual statement will need to be supplemented to include the actual ~~payment shortfall~~ payment shortfall.

...

13.7 **Business loans and loans to high net worth mortgage customers: tailored provisions**

- 13.7.1 R Where the *regulated mortgage contract* is for a business purpose or is with a *high net worth mortgage customer*, a *firm* may as an alternative to *MCOB* 13.4.1R(1) provide the following information in a *durable medium* instead of the *Money Advice Service* information sheet "Problems paying your mortgage":
- (1) details of the consequences if the ~~payment shortfall~~ payment shortfall is not cleared;
- (2) a description of the options available to the *customer* for clearing the ~~payment shortfall~~ payment shortfall; and
- (3) (in the case only of loans for a business purpose) details of sources of fee-free advice for business *customers*.
- 13.7.2 G *Firms* are reminded that in accordance with *MCOB* 1.2.3R, they should ~~either~~ comply in full with *MCOB*, but in doing so may opt to take account of or comply with all tailored provisions in *MCOB* that relate to ~~business loans~~ solely for a business purpose or loans to *high net worth mortgage customers*. Therefore, a *firm* may only follow the relevant tailored provisions in *MCOB* 13.7, if it also follows all other relevant tailored provisions in *MCOB*. In either case, the rest of *MCOB* applies in full.

...

Schedule 1 Record keeping requirements

...

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u>MCOB 1.2.9CR(1)</u>	<u>A high net worth mortgage customer</u>	Evidence of satisfaction of definition of <u>high net worth mortgage customer</u>	<u>When it is used or obtained</u>	Three years from when obtained or, if later, used
<u>MCOB 1.2.9CR(2)</u>	<u>A high net worth mortgage customer</u>	Written statement confirming the <u>customer is a high net worth mortgage customer</u>	<u>When it is used or obtained</u>	Three years from when obtained or, if later, used
<u>MCOB 1.2.9DR</u>	<u>A loan solely for a business purpose</u>	<u>Business plan</u>	<u>When it is used or obtained</u>	Three years from when obtained or, if later, used
<u>MCOB 1.2.9ER</u>	<u>A professional customer</u>	Evidence of satisfaction of definition of <u>professional customer</u>	<u>When it is used or obtained</u>	Three years from when obtained or, if later, used
...				
<u>MCOB 4.4A.23G</u>	<u>Disclosures</u>	<u>Appropriate records of disclosures required by section 4.4A</u>	<u>When disclosure made</u>	<u>As required by SYSC 9</u>
<u>MCOB 4.7.17R (1)(a)</u>	<u>Suitability</u>	Details of the customer information obtained, including the <u>customer's needs and circumstances, for the purpose of assessing the suitability of a regulated mortgage contract</u>	<u>When the personal recommendation is made</u>	Three years
<u>MCOB 4.7.17R (1)(b)</u>	<u>Suitability</u>	An explanation of the reasons why the <u>firm believes the personal recommendation complies with the suitability</u>	<u>When the personal recommendation is made</u>	Three years

		requirements in <i>MCOB 4.7.4 R(1)</i>		
<i>MCOB 4.7.17R (1)(b)</i>	Suitability	An explanation of the reasons why a <i>personal recommendation</i> has been made on a basis other than that described in <i>MCOB 4.7.13E(1)</i>	When the <i>personal recommendation</i> is made	Three years
<i>MCOB 4.8.7R</i>	Scripted questions	A record of the scripted questions used in non-advised sales	The date on which the scripted questions are first used	One year from the date on which the scripted questions are superseded by a more up-to-date record
<i>MCOB 4.6.11R</i>	Notice of cancellation	A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)	When the <i>firm</i> first becomes aware that notice has been served	Three years
<u><i>MCOB 4.7A.25R (1)(a)</i></u>	<u>Suitability of regulated mortgage contracts</u>	<u>Customer information obtained for the purposes of assessing suitability of a regulated mortgage contract</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB 4.7A.25R (1)(b)</i>	<u>Suitability of regulated mortgage contracts</u>	An explanation of why the <i>firm</i> has concluded its <u>advice is suitable</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB 4.7A.25R (1)(c)</i>	<u>Rolling-up of fees or charges into loan</u>	The <i>customer's</i> positive choice to add fees or charges to the sum advanced	<u>When choice made</u>	<u>Three years</u>
<i>MCOB 4.8A.18R (1)(a)</i>	<u>Execution-only sales of regulated mortgage contracts</u>	Information provided by the <i>customer</i> about the <u>regulated mortgage contract</u> he wishes to purchase.	The date a <u>regulated mortgage contract</u> was entered into or arranged	<u>Three years</u>
<i>MCOB 4.8A.18R (1)(b)</i>	<u>Execution-only sales of regulated mortgage</u>	The warning to the <i>customer</i> in a <u>durable medium</u> regarding his lack of protection of	The date a <u>regulated mortgage contract</u> was entered into or	<u>Three years</u>

	<u>contracts</u>	<u>the rules on assessing suitability</u>	<u>arranged</u>	
<u>MCOB 4.8A.18R (1)(c)</u>	<u>Execution-only sales of regulated mortgage contracts</u>	<u>The customer's confirmation of his positive election to proceed with an execution-only sale</u>	<u>The date a regulated mortgage contract was entered into or arranged</u>	<u>Three years</u>
<u>MCOB 4.8A.18R (1)(d)</u>	<u>Execution-only sales of regulated mortgage contracts</u>	<u>Details of advice rejected.</u>	<u>The date a regulated mortgage contract was entered into or arranged</u>	<u>Three years</u>
<u>MCOB 4.8A.18R (3)</u>	<u>Execution-only sales of regulated mortgage contracts</u>	<u>The firm's policy for managing execution-only sales</u>	<u>When the policy is made</u>	<u>One year from when the policy is changed</u>
<u>MCOB 4.10.9BR</u>	<u>Execution-only sales of home purchase plans</u>	<u>Information provided by the customer about the home purchase plan he wishes to purchase; the warning to the customer in a durable medium regarding his lack of protection of the rules on assessing suitability; the customer's confirmation of his positive election to proceed with an execution-only sale.</u> <u>The firm's policy for managing execution-only sales</u>	<u>The date a home purchase plan was entered into or arranged</u> <u>When the policy is made</u>	<u>Three years</u> <u>One year from when the policy is changed</u>
<u>MCOB 4.10.13R(1) (a)</u>	<u>Suitability of home purchase plans</u>	<u>Customer information obtained for the purposes of assessing suitability of a home purchase plan</u>	<u>When advice given</u>	<u>Three years</u>
<u>MCOB 4.10.13R(1) (b)</u>	<u>Suitability of home purchase plans</u>	<u>An explanation of why the firm has concluded its advice is suitable</u>	<u>When advice given</u>	<u>Three years</u>
<u>MCOB 4.10.13R(1) (c)</u>	<u>Advice on home purchase plans</u>	<u>Any advice rejected, including the reasons rejected and details of any home purchase plan the customer has</u>	<u>When advice given</u>	<u>Three years</u>

		<u>proceeded with as an execution-only sale</u>		
...				
<i>MCOB</i> 4.11.8R	<i>Customer</i> information on which an assessment of the <u>affordability and appropriateness suitability and basis of advice</u> for a <i>regulated sale and rent back agreement</i> was based	<i>Customer</i> information on his income, expenditure, resources, needs, objectives and individual circumstances	The date on which the <i>firm</i> reached a conclusion on affordability and appropriateness <u>assessed suitability</u>	Five years, or one year after the end of the fixed term of the tenancy agreement, if later
...				
<i>MCOB</i> 8.5.22R(1) (a)	Suitability	Details of the customer information obtained, including the <i>customer's</i> needs and circumstances, for the purpose of assessing the suitability of a <i>equity release transaction</i>	When the <i>personal recommendation</i> is made	Three years
<i>MCOB</i> 8.5.22R(1) (b)	Suitability	An explanation of the reasons why the <i>firm</i> believes the <i>personal recommendation</i> complies with suitability requirements in <i>MCOB 8.5.4R(1)</i>	When the <i>personal recommendation</i> is made	Three years
<i>MCOB</i> 8.5.22R(1) (b)	Suitability	An explanation of the reasons why a <i>personal recommendation</i> has been made on a basis other than that described in <i>MCOB 8.5.17E(1)</i>	When the <i>personal recommendation</i> is made	Three years
<i>MCOB</i> 8.3.1R(1)	Scripted questions	A record of the scripted questions used in non-advised sales	The date on which the scripted questions are first used	One year from the date on which the scripted questions

				are superseded by a more up-to-date record
<i>MCOB</i> 8.3.1R(1)	Notice of cancellation	A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)	When the <i>firm</i> first becomes aware that notice has been served	Three years
<i>MCOB</i> 8.5A.19R (1)(a)	<u>Suitability of equity release transactions</u>	<u>Customer information obtained for the purposes of assessing suitability of an equity release transaction</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB</i> 8.5A.19R (1)(b)	<u>Suitability of equity release transactions</u>	<u>An explanation of why the firm has concluded its advice is suitable</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB</i> 8.5A.19R (1)(c)	<u>Advice on equity release transactions</u>	<u>Any advice rejected, including the reasons rejected and details of any regulated mortgage contract the customer has proceeded with as an execution-only sale</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB</i> 8.5A.19R (1)(d)	<u>Rolling-up of fees or charges into loan</u>	<u>The customer's positive choice to add fees or charges to the sum advanced</u>	<u>When choice made</u>	<u>Three years</u>
<i>MCOB</i> 8.6A.9R	<u>Execution-only sales of equity release transactions</u>	<u>Information provided by the customer about the equity release transaction he wishes to purchase; the warning to the customer in a durable medium regarding his lack of protection of the rules on assessing suitability; the customer's confirmation of his positive election to proceed with an execution-only sale; any advice from the firm which the customer rejected,</u>	<u>The date a home purchase plan was entered into or arranged</u>	<u>Three years</u>

		<u>including the reasons why it was rejected.</u>		
...				
<i>MCOB</i> 11.3.1R(2)	Ability of the <i>customer</i> to repay advance	Evidence to demonstrate that the <i>firm</i> has taken into account the <i>customer's</i> ability to repay	When the assessment of the <i>customer's</i> ability to repay is made	One year from the date on which the <i>regulated mortgage contract</i> is entered into, or the further advance provided
<i>MCOB</i> 11.3.4R(2)	Responsible lending policy	A record of the <i>firm's</i> written policy setting out the factors the <i>firm</i> will take into account in assessing the <i>customer's</i> ability to repay	The date on which the policy is set	One year from the date on which the policy is replaced
<i>MCOB</i> <u>11.6.60R(1) to (4)</u>	<u>Responsible lending and financing</u>	<u>Steps taken to comply with rules including: information taken into account in each affordability assessment; in relation to <i>interest-only mortgages</i>, the reasons for the offer decision, evidence relating to the <i>customer's</i> repayment strategy, details of the <i>firm's</i> attempts to contact the <i>customer</i> and the outcome of each mid-term review; information relating to the extension of the term of <i>bridging loans</i> which are neither with a <i>high net worth mortgage customer</i> nor or a secured overdraft solely for a business purpose</u>	<u>When <i>regulated mortgage contract</i> or <i>home purchase plan</i> (or variation) is entered into, or the mid-term review takes place</u>	<u>The term of the contract or plan</u>
<i>MCOB</i> 11.6.60R(6) (a)	<u>Transitional arrangements</u>	<u>The outstanding balance on the existing contract</u>	<u>When new contract or variation is entered into</u>	<u>For the term of the <i>regulated</i></u>

				<u>mortgage contract or home purchase plan</u>
<u>MCOB 11.6.60R(6)(b)</u>	<u>Transitional arrangements</u>	<u>The cost of repairs or maintenance work to the property</u>	<u>When new contract or variation is entered into</u>	<u>For the term of the regulated mortgage contract or home purchase plan</u>
<u>MCOB 11.6.60R(6)(c)</u>	<u>Transitional arrangements</u>	<u>Any product fee or arrangement fee financed by any additional borrowing or increase in finance</u>	<u>When new contract or variation is entered into</u>	<u>For the term of the regulated mortgage contract or home purchase plan</u>
<u>MCOB 11.6.60R(6)(d)</u>	<u>Transitional arrangements</u>	<u>The rationale for each decision to enter into or vary a contract under MCOB 11.7</u>	<u>When new contract or variation is entered into</u>	<u>For the term of the regulated mortgage contract or home purchase plan</u>
<u>MCOB 11.6.60R(7)</u>	<u>Responsible lending and financing policy</u>	<u>The firm's policy, setting out the factors it will take into account in assessing a customer's ability to pay the sums due</u>	<u>When the policy is made</u>	<u>For so long as any regulated mortgage contract or home purchase plan to which it was applicable remains outstanding.</u>
<u>MCOB 13.3.9R</u>	<u>Dealings with customers in arrears with a payment shortfall, or with a mortgage sale shortfall debt</u>	<u>Details of all dealings with the customer (including a recording of all telephone conversations which discuss any arrears or any amount subject to payment shortfall charges); information relating to any repayment plan; date of issue of any legal</u>	<u>The date of the dealing</u>	<u>Three years from the date on which the record is made</u>

		proceedings; arrangements made for sale of a <i>repossessed</i> property; and the basis of any tailored information where the loan is for a business purpose.		

Part 2: Comes into force on 26 October 2012

11.8 Customers unable to change regulated mortgage contract, home purchase plan or provider

11.8.1 E Where a *customer* is unable to:

- (1) enter into a new *regulated mortgage contract* or *home purchase plan* or vary the terms of an existing *regulated mortgage contract* or *home purchase plan* with the existing *mortgage lender* or *home purchase provider*; or
- (2) enter into a new *regulated mortgage contract* or *home purchase plan* with a new *mortgage lender* or *home purchase provider*;

the existing *mortgage lender* or *home purchase provider* should not (for example, by offering less favourable interest rates or other terms) take advantage of the *customer's* situation or treat the *customer* any less favourably than it would treat other *customers* with similar characteristics. To do so may be relied on as tending to show contravention of *Principle 6* (Customers' interests).

Annex E

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')**

...

Section G: Training & Competence ('T&C')

...

Section G: guide for completion of individual fields

...	
What types of advice were provided?	For each type of advice, the <i>firm</i> should indicate whether or not staff have provided advice on that basis / business type. <u>In relation to their <i>home finance mediation activities</i>, firms are not required by <i>MCOB 4.4A</i> to use a label to describe the service they provide to <i>customers</i>. In filling out this section they should simply answer 'no' for each category relating to their <i>home finance mediation activities</i>.</u>
...	
Independent (whole of market plus option of fee-only)	To hold itself out as acting independently, a <i>firm</i> carrying on <i>home finance mediation activity</i> must consider products from across the whole of the market, and offer its clients the opportunity to pay by fee (<i>MCOB 4.3.7R</i>).
...	

Annex F

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, striking through indicates deleted text.

5.3 Reference to other sourcebooks or manuals

...

Mortgages: Conduct of business sourcebook

...

5.3.8 *MCOB* 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); and *MCOB* 3 (Financial promotion) ~~and to a limited extent *MCOB* 4.4 (Initial disclosure requirements).~~

Annex G

Amendments to the Perimeter Guidance manual (PERG)

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

4.4 What is a regulated mortgage contract?

...

Type of lending

- 4.4.11 G The definition of *regulated mortgage contract* also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as secured overdraft facility, a ~~secured bridging loan~~ bridging loan, a secured credit card facility and *regulated lifetime mortgage contracts* under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the interest) is not required until the property is sold, usually on the death of the borrower.

**PRUDENTIAL SOURCEBOOK FOR MORTGAGE AND HOME FINANCE FIRMS,
AND INSURANCE INTERMEDIARIES (NON-BANK LENDERS)
INSTRUMENT 2012**

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 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 26 April 2014.

Amendments to the Handbook

- D. The Glossary of definitions 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 Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (Non-Bank Lenders) Instrument 2012.

By order of the Board
27 September 2012

Annex A

Amendments to the Glossary of definitions

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

<i>exposure</i>	<p>...</p> <p>(2) (in accordance with Article 77 of the <i>Banking Consolidation Directive</i> and for the purposes of the calculation of the <i>credit risk capital component</i> and the <i>counterparty risk capital component</i> (including <i>BIPRU 3</i> (Standardised credit risk), <i>BIPRU 4</i> (The IRB approach), <i>BIPRU 5</i> (Credit risk mitigation), and <i>BIPRU 9</i> (Securitisation) <u>or for the purposes of the calculation of the credit risk capital requirement in <i>MIPRU 4.2</i> (Capital resources requirement)</u>) an asset or off-balance sheet item.</p> <p>...</p>
<i>risk weight</i>	<p>(in relation to an <i>exposure</i>) a degree of risk expressed as a percentage assigned to that <i>exposure</i> in accordance with:</p> <p>(a) whichever is applicable of the <i>standardised approach</i> to credit risk and the <i>IRB approach</i>, including (in relation to a <i>securitisation position</i>) under <i>BIPRU 9</i> (Securitisation); <u>or</u></p> <p>(b) <u>(for a <i>firm</i> to which <i>MIPRU 4</i> applies), <i>MIPRU 4.2A.10R</i> to <i>MIPRU 4.2A.13R</i>.</u></p>
<i>risk weighted exposure amount</i>	<p>(in relation to an <i>exposure</i>) the value of an <i>exposure</i> for the purposes of the calculation of <u>(in the case of a <i>BIPRU firm</i>) the <i>credit risk capital component</i> or (in the case of a <i>firm</i> to which <i>MIPRU 4</i> applies) the <i>credit risk capital requirement</i> under <i>MIPRU 4.2A.4R</i>, in both cases after application of a <i>risk weight</i>.</u></p>
<i>securitisation</i>	<p>...</p> <p>(2) (in accordance with Article 4(36) of the <i>Banking Consolidation Directive</i> (Definitions), and in <i>BIPRU</i> <u>and</u> <i>MIPRU 4</i>) a transaction or scheme whereby the credit risk associated with an <i>exposure</i> or pool of <i>exposures</i> is <i>tranche</i>d having the following characteristics:</p> <p>(a) payments in the transaction or scheme are dependent upon the performance of the <i>exposure</i> or pool of <i>exposures</i>; and</p> <p>(b) the subordination of <i>tranches</i> determines the distribution of <i>losses</i> during the ongoing life of the</p>

transaction or scheme.

sponsor

...

- (2) (in *BIPRU*), in accordance with Article 4(42) of the *Banking Consolidation Directive (Definitions)* and in *MIPRU 4* and in relation to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*, an *undertaking* other than an *originator* that establishes and manages an *asset backed commercial paper programme* or other *securitisation* scheme that purchases *exposures* from third party entities.

Annex B

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, unless otherwise stated.

4.2 Capital resources requirements

Applicable guidance within BIPRU

- 4.2.-1 **G** Unless otherwise specified, where *MIPRU 4.2* to *MIPRU 4.2D* refers to a *guidance provision* contained in *BIPRU*, a *firm* should regard that *guidance provision* as applying to it in the same way that that provision applies to a *BIPRU firm*.

General solvency requirement

- 4.2.1 **R** A *firm* must at all times ensure that it is able to meet its liabilities as they fall due.
- 4.2.1A **G** Specific liquidity requirements for a *firm* carrying on any *home financing* or *home finance administration* connected to *regulated mortgage contracts* are set out in *MIPRU 4.2D*.

...

- 4.2.10 **R** Table: Application of capital resources requirements

	Regulated activities	Provisions
1.	(a) <i>insurance mediation activity</i> ; or (b) <i>home finance mediation activity</i> (or both); and no other <i>regulated activity</i> .	<i>MIPRU 4.2.11R</i>
2.	(a) <i>home financing</i> <u>not connected to <i>regulated mortgage contracts</i></u> ; or (b) <i>home financing</i> and <i>home finance administration</i> (<u>not connected to <i>regulated mortgage contracts</i></u>); and no other <i>regulated activity</i> .	<i>MIPRU 4.2.12R</i> to <i>MIPRU 4.2.17E</i>
...		

6.	Any combination of <i>regulated activities</i> not within rows 1 to 5.	<i>MIPRU 4.2.22R</i> [deleted]
7.	(a) <i>home financing</i> connected to <i>regulated mortgage contracts</i> ; or (b) <i>home financing</i> and <i>home finance administration</i> connected to <i>regulated mortgage contracts</i> ; and no other <i>regulated activity</i> .	<i>MIPRU 4.2.23R</i>
8.	any combination of <i>regulated activities</i> not within rows 1 to 7.	<i>MIPRU 4.2.22R</i>

4.2.10A G *MIPRU 4.2.12R to MIPRU 4.2.23R* have the effect that a *firm* carrying on any *home financing* or *home finance administration* which is connected to *regulated mortgage contracts* will be subject to different capital requirements to a *firm* that carries on those activities without connection to *regulated mortgage contracts*. To identify which of the *rules* in *MIPRU 4.2.12R to MIPRU 4.2.23R* is applicable, a *firm* should consider which *regulated activities* it performs as part of its *home financing* and *home finance administration* activities and determine whether any of those *regulated activities* (no matter what proportion) are connected to *regulated mortgage contracts*.

...

Capital resources requirement: home financing and home finance administration not connected to regulated mortgage contracts (~~but not home finance administration only~~)

4.2.12 R (1) The capital resources requirement for a *firm* carrying on only *home financing* which is not connected to *regulated mortgage contracts*, or *home financing* and *home finance administration* which is not connected to *regulated mortgage contracts* (and no other *regulated activity*) is the higher of:

- (a) £100,000; and
- (b) 1% of:
 - (i) its total assets plus total undrawn commitments and unreleased amounts under the *home reversion plan*; less
 - (ii) excluded loans or amounts plus intangible assets (see Note 1 in the table in *MIPRU 4.4.4R*).

...

...

Capital resources requirement: home finance administration only

- 4.2.18 R The capital resources requirement for a *firm* carrying on *home finance administration* only, which has all or part of the *home finance transactions* that it administers on its balance sheet, is: ~~the amount which is applied to a firm carrying on home financing or home financing and home finance administration (and no other regulated activity) (see MIPRU 4.2.12R)~~
- (1) in the case of a firm carrying on only home finance administration which is not connected to regulated mortgage contracts, the amount which is applied to a firm under MIPRU 4.2.12R; or
- (2) in the case of a firm carrying on any home finance administration which is connected to regulated mortgage contracts, the amount which is applied to a firm under MIPRU 4.2.23R.

...

Capital resources requirement: insurance mediation activity and home financing or home finance administration

- 4.2.20 R The capital resources requirement for a *firm* carrying on *insurance mediation activity* and *home financing* or *home finance administration* is the sum of ~~the requirements which are applied to the firm by:~~
- (1) the capital resources requirement rule for a *firm* carrying on *insurance mediation activity* or *home finance mediation activity* (and no other *regulated activity*) (see MIPRU 4.2.11R); and
- (2) (a) in the case of a firm carrying on home financing which is not connected to regulated mortgage contracts, or home finance administration which is not connected to regulated mortgage contracts, the capital resources requirement rule for a firm carrying on home financing or home financing and home finance administration (and no other regulated activity) (see amount which is applied to a firm under MIPRU 4.2.12R); or
- (aa) in the case of a firm carrying on any home financing which is connected to regulated mortgage contracts or any home finance administration that it administers on its balance sheet which is connected to regulated mortgage contracts, the amount which is applied to a firm under MIPRU 4.2.23R; or
- (b) ~~if, in addition to its insurance mediation activity, the firm carries in the case of a firm carrying on home finance administration with all the assets~~ home finance transactions that it administers off balance sheet, the ~~capital resources rule for such~~ amount which is applied to a firm (see under MIPRU 4.2.19R).

Capital resources requirement: home finance mediation activity and home

financing or home finance administration

- 4.2.21 R (1) If a *firm* carrying on *home finance mediation activity* and *home financing* or *home finance administration* does not hold *client money* or other *client assets* in relation to its *home finance mediation activity*, the capital resources requirement is ~~the amount applied to a firm, according to the activities carried on by the firm, by:~~
- (a) in the case of a firm carrying on home financing which is not connected to regulated mortgage contracts or home finance administration which is not connected to regulated mortgage contracts, the capital resources requirement rule for a firm carrying on home financing or home financing and home finance administrator (and no other regulated activity) (see amount applied to a firm under MIPRU 4.2.12R); or
 - (aa) in the case of a firm carrying on any home financing which is connected to regulated mortgage contracts or any home finance administration that it administers on its balance sheet which is connected to regulated mortgage contracts, the amount applied to a firm under MIPRU 4.2.23R; or
 - (b) ~~if, in addition to its home finance mediation activity, the firm carries in the case of a firm carrying on home finance administration with all the assets home finance transactions that it administers off balance sheet, the amount applied to a firm under capital resources rule for such a firm (see MIPRU 4.2.19R).~~

...

Capital resources requirement: other combination of activities

- 4.2.22 R The capital resources requirement for a *firm* carrying on any ~~other~~ combination of *regulated activities* which is not set out in MIPRU 4.2.10R to MIPRU 4.2.21R and MIPRU 4.2.23R is: the amount which is applied to a firm carrying on insurance mediation activity and home financing or home finance administration (see MIPRU 4.2.20R)
- (1) if the combination of regulated activities includes carrying on any home financing connected to regulated mortgage contracts or home finance administration connected to regulated mortgage contracts, the sum of the amounts which are applied to a firm under:
 - (a) MIPRU 4.2.20R(1); and
 - (b) MIPRU 4.2.23R; or
 - (2) in all other cases, the sum of the amounts which are applied to a firm under:

- (a) MIPRU 4.2.20R(1); and
- (b) MIPRU 4.2.12R.

Capital resources requirement: home financing and home finance administration connected to regulated mortgage contracts

- 4.2.23 R The capital resources requirement for a *firm* carrying on any *home financing* which is connected to *regulated mortgage contracts*, or *home financing and home finance administration* which is connected to *regulated mortgage contracts* (and no other *regulated activity*), is the higher of:
- (1) £100,000; and
 - (2) the sum of:
 - (a) the credit risk capital requirement calculated in accordance with MIPRU 4.2A; and
 - (b) 1% of:
 - (i) its total assets plus total undrawn commitments and unreleased amounts under the *home reversion plan*; less
 - (ii) intangible assets (see Note 1 in the table in MIPRU 4.4.4R) plus loans, *securitisation positions* and *CIU* positions subject to MIPRU 4.2A.4R.

After MIPRU 4.2 insert the following new sections. The text is not underlined.

4.2A Credit risk capital requirement

Application

- 4.2A.1 R This section applies to a *firm* to which MIPRU 4.2.23R applies.

Purpose

- 4.2A.2 G The purpose of MIPRU 4.2A is to:
- (1) set out how a *firm* should calculate its credit risk capital requirement;
 - (2) set out how a *firm* should calculate its *risk weighted exposure amounts* for *exposures* on its balance sheet; and
 - (3) identify which provisions of BIPRU 3 will apply to a *firm*, in addition to the provisions of MIPRU 4.2A, to enable it to make those calculations.

- 4.2A.3 G A *firm* should refer to *BIPRU 5* (as amended by *MIPRU 4.2C.3R*) with regard to the effect of *credit risk mitigation* on the calculation of *risk weighted exposure amounts*.

Calculation of credit risk

- 4.2A.4 R The credit risk capital requirement of a *firm* is 8% of the total of its *risk weighted exposure amounts* for *exposures* that:

- (1) are on its balance sheet; and
- (2) derive from:
 - (a) a loan entered into; or
 - (b) a *securitisation position* originated; or
 - (c) a *CIU* position entered into;

on or after 26 April 2014; and

- (3) have not been deducted from the *firm's* capital resources under *MIPRU 4.4.4R*;

calculated in accordance with *MIPRU 4.2A*.

- 4.2A.5 R Any arrangements entered into on or after [date to be confirmed] which increase the amount of a loan already advanced or change the security to a loan already advanced or change the contractual terms (other than if the *firm* is exercising forbearance) of a loan already advanced will be subject to the credit risk capital requirement under *MIPRU 4.2A.4R(2)(a)* provided that, where the arrangements only increase the amount of a loan already advanced, such requirement shall only apply to the amount of such increase.

- 4.2A.5A G The arrangements excluded from the credit risk capital requirement include:

- (1) a loan acquired by a *firm* after 26 April 2014 if that loan was made before 26 April 2014;
- (2) arrangements made as a result of forbearance procedures, including:
 - (a) a change in the basis of interest payments from variable to fixed rate; or
 - (b) a change from a repayment mortgage to interest only; or
 - (c) the capitalisation of interest which increases the principal outstanding, where there is no element of new borrowing.

- 4.2A.6 R The *exposure* value of an asset item must be its balance sheet value.

4.2A.7 R When calculating *risk weighted exposure amounts*, a firm must comply with *BIPRU 3.2.3R*, *BIPRU 3.2.9R* to *BIPRU 3.2.19G*, and *BIPRU 3.2.38R* in the same way that these provisions apply to a *BIPRU firm*, except to the extent that a provision is modified or excluded in the table in *MIPRU 4.2A.8R*.

4.2A.8 R This table belongs to *MIPRU 4.2A.7R*

<i>BIPRU</i> provision	Adjustment
All provisions of <i>BIPRU 3.2</i>	A reference to a provision of <i>BIPRU 3</i> , <i>BIPRU 5</i> or <i>BIPRU 9</i> must be read in conjunction with <i>MIPRU 4.2A.8R</i> , <i>MIPRU 4.2B.3R</i> and <i>MIPRU 4.2C.3R</i>
All provisions of <i>BIPRU 3.2</i>	All references to <i>capital resources</i> in <i>BIPRU 3.2</i> are replaced by references to capital resources calculated under <i>MIPRU 4.4</i>
<i>BIPRU 3.2.14G</i>	The last two sentences do not apply
<i>BIPRU 3.2.38R</i>	The references to <i>BIPRU 14</i> , <i>BIPRU 13.3.13R</i> and <i>BIPRU 13.8.8R</i> (Exposure to a central counterparty) do not apply
<i>BIPRU 3.2.10R</i> and <i>BIPRU 3.2.19G</i>	The references to €1m are replaced by references to £1m.

4.2A.9 R For the purposes of applying a *risk weight*, the *exposure* value must be multiplied by the *risk weight* determined in accordance with *MIPRU 4.2A.10R*, *MIPRU 4.2A.11R*, *MIPRU 4.2A.12R* or *MIPRU 4.2A.13R*.

4.2A.10 R To calculate *risk weighted exposure amounts* on *exposures* secured by mortgages on residential property, *risk weights* must be applied to all such *exposures*, unless deducted from capital resources calculated under *MIPRU 4.4*, in accordance with *BIPRU 3.4.56R* to *BIPRU 3.4.88G*.

4.2A.11 R To calculate *risk weighted exposure amounts* on *exposures* in *CIUs*, *risk weights* must be applied to all such *exposures*, unless deducted from capital resources under *MIPRU 4.4*, in accordance with *BIPRU 3.4.114R* to *BIPRU 3.4.125R*.

4.2A.12 R *Risk weighted exposure amounts* for *securitised exposures* must be calculated in accordance with *MIPRU 4.2B*.

4.2A.13 R To calculate *risk weighted exposure amounts* on *exposures* other than those provided for in *MIPRU 4.2A.10R* to *MIPRU 4.2A.12R*, *risk weights* must be applied to all such *exposures*, unless deducted from capital resources calculated under *MIPRU 4.4*, in accordance with *BIPRU 3.5.5G* as though that provision were a *rule*.

- 4.2A.14 G Rather than *risk weighting exposures* individually under *MIPRU 4.2A.13R*, a *firm* should apply a single *risk weight* to all *exposures* in each *exposure* class.
- 4.2A.15 R If a *firm* calculates *risk weighted exposure amounts* under *MIPRU 4.2A.13R* and is directed by *BIPRU 3.5.5G* to the “normal rules”, it must, in the calculation of those *risk weighted exposure amounts*, comply with *BIPRU 3.4* in the same way that that section applies to a *BIPRU firm*.
- 4.2A.16 R *Exposures* must be assigned a *risk weight* of 100% if *MIPRU 4.2A.10R* to *MIPRU 4.2A.13R* do not set out a calculation for *risk weighted exposure amounts* applicable to that *exposure*.
- 4.2A.17 R A *firm* must apply *BIPRU 3.4.96R* to *BIPRU 3.4.102R* to all past items due.
- 4.2A.18 G A *firm* may apply *BIPRU 3.5.6G* and *BIPRU 3.5.7G* to *exposures*. *MIPRU 4.2C* sets out the amendments to the *BIPRU 5 rules* referenced within these provisions.

4.2B Securitisation

Application

- 4.2B.1 R This section applies to a *firm* to which *MIPRU 4.2.23R* applies.

Purpose

- 4.2B.2 G The purpose of *MIPRU 4.2B* is to set out:
- (1) how a *firm* that is required to calculate the credit risk capital requirement under *MIPRU 4.2.23R* should calculate the *risk weighted exposure amounts* for *securitisation positions*; and
 - (2) the requirements that investors, *originators* and *sponsors* of *securitisations* on the balance sheet will have to meet (*BIPRU 9.3.1AR* and *BIPRU 9.3.15R* to *BIPRU 9.3.20R*).

Calculation of risk weighted exposure amount for securitisation positions

- 4.2B.3 R To calculate the *risk weighted exposure amount* for *securitisation positions*, a *firm* must comply with *BIPRU 9* in the same way that that section applies to a *BIPRU firm*, except to the extent that a provision of *BIPRU 9* is modified or excluded in the table in *MIPRU 4.2B.4R*.
- 4.2B.4 R This table belongs to *MIPRU 4.2B.3R*

<i>BIPRU</i> provision	Adjustment
All sections of	All references to <i>capital resources</i> in <i>BIPRU 9</i> are replaced by references to capital resources calculated

<i>BIPRU 9</i>	under <i>MIPRU 4.4</i>
All sections of <i>BIPRU 9</i>	A reference to a provision of <i>BIPRU 3</i> , <i>BIPRU 5</i> or <i>BIPRU 9</i> must be read in conjunction with <i>MIPRU 4.2A.8R</i> , <i>MIPRU 4.2B.4R</i> and <i>MIPRU 4.2C.4R</i>
<i>BIPRU 9.1.1R</i>	This <i>rule</i> does not apply
<i>BIPRU 9.1.2G</i>	This provision does not apply
<i>BIPRU 9.1.8AG(3)</i>	The words “and these should be taken into account under the <i>overall Pillar 2 rule</i> ” do not apply
<i>BIPRU 9.1.9G</i>	This provision does not apply
<i>BIPRU 9.1.10G</i>	This provision does not apply
<i>BIPRU 9.2</i>	This section does not apply
<i>BIPRU 9.3.7R</i> to <i>BIPRU 9.3.14R</i>	These <i>rules</i> do not apply
<i>BIPRU 9.3.15R</i>	The first sentence of this <i>rule</i> is amended to read as follows: “A <i>firm</i> , whether acting as <i>sponsor</i> or <i>originator</i> , must apply the same sound and well defined criteria used for credit granting in respect of <i>exposures</i> held on its balance sheet to <i>exposures</i> to be securitised.”
<i>BIPRU 9.3.16R</i>	This <i>rule</i> is amended to read as follows: “A <i>firm</i> must apply the same standards of analysis to <i>exposures</i> under <i>BIPRU 9.3.15R</i> regardless of whether it has purchased or originated those <i>exposures</i> .”
<i>BIPRU 9.3.17R</i>	Where a <i>firm</i> is an <i>originator</i> , it must comply with this <i>rule</i> as it applies to a <i>credit institution</i>
<i>BIPRU 9.3.18R</i>	Where a <i>firm</i> is an <i>originator</i> or <i>sponsor</i> of a <i>securitisation</i> , it must comply with this <i>rule</i> in the same way that it applies to a <i>credit institution</i>
<i>BIPRU 9.3.19R</i>	Where a <i>firm</i> is an <i>originator</i> or <i>sponsor</i> of a <i>securitisation</i> , it must comply with this <i>rule</i> in the same way that it applies to a <i>credit institution</i>
<i>BIPRU 9.3.21G</i>	This provision does not apply
<i>BIPRU 9.3.22G</i>	This provision does not apply
<i>BIPRU 9.4.1R</i>	This <i>rule</i> is amended to read as follows: “The <i>originator</i> of a <i>traditional securitisation</i> may exclude <i>securitised exposures</i> from the calculation of <i>risk</i>

	<i>weighted exposure amounts and expected loss amounts if significant credit risk associated with the securitised exposures has been transferred to third parties and the transfer complies with the conditions in BIPRU 9.4.2R to BIPRU 9.4.10R.</i> ”
<i>BIPRU 9.4.11R to BIPRU 9.4.18G</i>	These provisions do not apply
<i>BIPRU 9.5.1R(1)</i>	This <i>rule</i> is amended to read as follows: “An <i>originator</i> of a <i>synthetic securitisation</i> may calculate <i>risk weighted exposure amounts</i> , and, as relevant, <i>expected loss amounts</i> , for the <i>securitised exposures</i> in accordance with <i>BIPRU 9.5.3R</i> and <i>BIPRU 9.5.4R</i> , if significant credit risk has been transferred to third parties, either through funded or unfunded credit protection, and the transfer complies with the conditions in (2) – (5).”
<i>BIPRU 9.5.1R(3)</i>	The reference to <i>BIPRU 4.10</i> (Credit risk mitigation under the IRB approach) does not apply
<i>BIPRU 9.5.1R(6)</i>	This <i>rule</i> does not apply
<i>BIPRU 9.5.1R(7)</i>	This <i>rule</i> does not apply
<i>BIPRU 9.5.1AG to BIPRU 9.5.1FG</i>	These provisions do not apply
<i>BIPRU 9.5.3R(1)</i>	The reference to <i>BIPRU 9.9 to BIPRU 9.14</i> is replaced by a reference to <i>BIPRU 9.9 to BIPRU 9.11</i> The reference to <i>BIPRU 3</i> is replaced by a reference to <i>MIPRU 4.2A</i> The reference to <i>BIPRU 4</i> (IRB approach) does not apply
<i>BIPRU 9.5.3R(2)</i>	This <i>rule</i> does not apply
<i>BIPRU 9.5.4R</i>	The reference to <i>BIPRU 9.9 to BIPRU 9.14</i> is replaced by a reference to <i>BIPRU 9.9 to BIPRU 9.11</i>
<i>BIPRU 9.5.7R</i>	The reference to <i>BIPRU 4.10</i> (Credit risk mitigation under the IRB approach) does not apply
<i>BIPRU 9.5.8R</i>	The reference to <i>BIPRU 9.9 to BIPRU 9.14</i> is replaced by a reference to <i>BIPRU 9.9 to BIPRU 9.11</i>
<i>BIPRU 9.6.8G</i>	This provision does not apply
<i>BIPRU 9.7.3G</i>	This provision does not apply

<i>BIPRU 9.8.1R</i>	The reference to <i>BIPRU 9</i> is replaced by a reference to <i>MIPRU 4.2B</i>
<i>BIPRU 9.8.2R</i>	The reference to <i>BIPRU 9</i> is replaced by a reference to <i>MIPRU 4.2B</i>
<i>BIPRU 9.8.7R</i>	The references to <i>BIPRU 4.10</i> (Credit risk mitigation under the IRB approach) do not apply
<i>BIPRU 9.9.1R</i>	The reference to <i>BIPRU 9.9</i> to <i>BIPRU 9.14</i> is replaced by a reference to <i>BIPRU 9.9</i> to <i>BIPRU 9.11</i>
<i>BIPRU 9.9.2R</i>	The reference to <i>BIPRU 9.9</i> to <i>BIPRU 9.14</i> is replaced by a reference to <i>BIPRU 9.9</i> to <i>BIPRU 9.11</i>
<i>BIPRU 9.9.4R(2)</i>	This <i>rule</i> does not apply
<i>BIPRU 9.9.5R</i>	This <i>rule</i> does not apply
<i>BIPRU 9.9.6R</i>	The reference to <i>BIPRU 9.14</i> does not apply
<i>BIPRU 9.9.7R</i>	The reference to <i>BIPRU 4.10</i> (Credit risk mitigation under the IRB approach) and the reference to <i>BIPRU 9.14</i> do not apply
<i>BIPRU 9.9.9R</i>	The words “subject to the provisions of <i>GENPRU</i> that deal with the deduction of <i>securitisation positions</i> at stage M in the relevant <i>capital resources table</i> ” do not apply
<i>BIPRU 9.10.1R</i>	The references to the <i>IRB approach</i> do not apply
<i>BIPRU 9.10.2R</i>	This <i>rule</i> does not apply
<i>BIPRU 9.10.3R</i>	The reference to <i>BIPRU 9.12.8R</i> does not apply
<i>BIPRU 9.10.4R</i> to <i>9.10.7R</i>	These <i>rules</i> do not apply
<i>BIPRU 9.12</i>	This section does not apply
<i>BIPRU 9.13</i>	This section does not apply
<i>BIPRU 9.14</i>	This section does not apply
<i>BIPRU 9.15</i>	This section does not apply

- 4.2B.5 G Subject to *BIPRU 9.3.6G*, for the purposes of *BIPRU 9.4.1R* and *BIPRU 9.5.1R* the transfer of credit risk to third parties should only be considered significant if the proportion of risk transferred is broadly commensurate with, or exceeds, the proportion by which *risk weighted exposure amounts*

are reduced.

4.2B.6 G For measuring the reduction in risk and *risk weighted exposure amounts*, an *originator* should assess the *securitisation positions* it holds against the underlying *exposures* as if they had never been *securitised*.

4.2B.7 G An *originator* should use an appropriate method, consistent with its own internal processes, to assess whether the risk transferred is significant.

4.2B.8 G If the result of:

(1) applying a *risk weight* of 1250% to all positions that an *originator* holds in the *securitisation*; or

(2) deducting all those positions from capital resources;

is a reduction in the *originator's* capital requirement compared to the capital requirements that would apply had it not transferred the *securitised exposures*, then the *originator* may treat the risk transferred as significant for the purposes of *BIPRU 9.4.1R* and *BIPRU 9.5.1R*.

4.2C Credit risk mitigation

Application

4.2C.1 R This section applies to a *firm* to which *MIPRU 4.2.23R* applies where that *firm* wishes to apply *credit risk mitigation* to the calculation of its *risk weighted exposure amounts* under *MIPRU 4.2A*.

Purpose

4.2C.2 G The purpose of *MIPRU 4.2C* is to set out which provisions of *BIPRU 5* a *firm* should comply with in the recognition of *credit risk mitigation* in the calculation of *risk weighted exposure amounts* for the purposes of the calculation of the credit risk capital requirement under *MIPRU 4.2.23R*.

General

4.2C.3 R A *firm* that wishes to recognise *credit risk mitigation* in the calculation of *risk weighted exposure amounts*, must comply with *BIPRU 5* in the same way that that section applies to a *BIPRU firm*, except to the extent that a provision of *BIPRU 5* is modified or excluded in the table in *MIPRU 4.2C.4R*.

4.2C.4 R This table belongs to *MIPRU 4.2C.3R*

BIPRU provision	Adjustment
All provisions of <i>BIPRU 5</i>	A reference to a provision of <i>BIPRU 3</i> , <i>BIPRU 5</i> or <i>BIPRU 9</i> must be read in conjunction with

	<i>MIPRU 4.2A.8R, MIPRU 4.2B.4R and MIPRU 4.2C.4R</i>
<i>BIPRU 5.1</i>	This section does not apply
<i>BIPRU 5.3.2R</i>	The words “without prejudice to <i>BIPRU 5.6.1R</i> ” do not apply
<i>BIPRU 5.4.1R</i>	This rule does not apply
<i>BIPRU 5.4.8R</i>	This rule does not apply
<i>BIPRU 5.4.16R</i>	This rule does not apply
<i>BIPRU 5.4.18R</i>	The second sentence of this <i>rule</i> does not apply The words “ <i>BIPRU 5.4.19R</i> to <i>BIPRU 5.4.21R</i> ” are replaced by the words “ <i>BIPRU 5.4.21R</i> ”
<i>BIPRU 5.4.19R</i>	This <i>rule</i> does not apply
<i>BIPRU 5.4.20R</i>	This <i>rule</i> does not apply
<i>BIPRU 5.4.22R</i>	The reference to <i>BIPRU 5.4.20R</i> does not apply
<i>BIPRU 5.4.23R</i> to <i>BIPRU 5.4.66R</i>	These provisions do not apply. A <i>firm</i> must only use the <i>financial collateral simple method</i>
<i>BIPRU 5.6</i>	This section does not apply
<i>BIPRU 5.7.4R</i>	This <i>rule</i> does not apply
<i>BIPRU 5.7.12R</i>	This <i>rule</i> does not apply
<i>BIPRU 5.7.19R</i>	This <i>rule</i> does not apply
<i>BIPRU 5.7.23R</i>	The words “ <i>BIPRU 3.2.20R</i> to <i>BIPRU 3.2.26R</i> ” are replaced by the words “ <i>MIPRU 4.2A.8R</i> to <i>MIPRU 4.2A.11R</i> and <i>MIPRU 4.2A.14R</i> ”
<i>BIPRU 5.7.23R(3)</i>	The first clause of this <i>rule</i> is amended to read as follows: “E is the <i>exposure</i> value according to <i>MIPRU 4.2A.5R</i> and <i>BIPRU 3.2.3R</i> ,” The second clause of this <i>rule</i> does not apply
<i>BIPRU 5.7.24R</i>	The words “ <i>BIPRU 3.2.20R</i> to <i>BIPRU 3.2.26R</i> ” are replaced by the words “ <i>MIPRU 4.2A.8R</i> to <i>MIPRU 4.2A.11R</i> and <i>MIPRU 4.2A.14R</i> ”.
<i>BIPRU 5.7.24R(1)</i>	This <i>rule</i> is amended to read as follows: “E is the <i>exposure</i> value according to <i>MIPRU 4.2A.5R</i> and

	<i>BIPRU 3.2.3R.</i> ”
<i>BIPRU 5.7.27R</i>	The references to <i>BIPRU 4.10R</i> and the <i>IRB approach</i> do not apply
<i>BIPRU 5.8.8R</i> and <i>BIPRU 5.8.9R</i>	These <i>rules</i> do not apply

4.2D Liquidity resources requirements

Application

- 4.2D.1 R This section applies to a *firm* carrying on any *home financing* or *home finance administration* connected to *regulated mortgage contracts*, unless as at 26 April 2014 its *Part IV permission* was and continues to remain subject to a restriction preventing it from undertaking new *home financing* or *home finance administration* connected to *regulated mortgage contracts*.

Adequacy of liquidity resources

- 4.2D.2 R 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.
- 4.2D.3 G In assessing the adequacy of liquidity 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. 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; and
 - (3) it maintains a prudent funding profile in which its assets are of appropriate maturities, taking into account the expected timing of its liabilities.

Systems and controls requirements

- 4.2D.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* over the appropriate set of time horizons for its business activities, to ensure that it maintains adequate levels of liquidity resources. These strategies, policies, processes, and systems must be appropriate to the *firm's* business lines, currencies in which it operates, and its *group* companies and must include adequate allocation mechanisms of liquidity costs, benefits and risks.
- 4.2D.5 R The strategies, policies, processes and systems referred to in *MIPRU 4.2D.4R* must be proportionate to the nature, scale and complexity of the

firm's activities and the risk profile of the *firm*.

4.2D.6 R A *firm* must have 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*.

4.2D.7 R A *firm* must ensure that its *governing body* reviews regularly (and not less frequently than annually) the continued adequacy of any strategies, policies, processes and systems in place in accordance with *MIPRU* 4.2D.4R

Stress testing and contingency funding plans

4.2D.8 R A *firm* must consider alternative scenarios in which its liquidity position could be impacted. The consideration of alternative scenarios must include and deal with off-balance sheet items and other contingent liabilities, including those of *securitisation special purpose entities (SSPEs)* or other special purpose entities, in relation to which the *firm* acts as *sponsor* or provides material liquidity support. These scenarios must be incorporated into the stress testing under *MIPRU* 4.2D.9R.

4.2D.9 R In order to ensure compliance with *MIPRU* 4.2D.2R, a *firm* must:

- (1) conduct on a regular basis appropriate stress tests so as to:
 - (a) identify sources of potential liquidity strain; and
 - (b) ensure that the risks of current liquidity exposures can be adequately managed; and
- (2) analyse the separate and combined impact of possible future liquidity stresses on its:
 - (a) cash flows;
 - (b) liquidity position; and
 - (c) solvency; and
- (3) make, as soon as is practicable after a test has been performed, and maintain a written record of all stress tests and their results

4.2D.10 R A *firm* must ensure that its *governing body* reviews regularly the stresses and scenarios tested and the assumptions underlying the funding position of the *firm* to ensure that their nature and severity remain appropriate and relevant to it.

4.2D.11 G For the purpose of *MIPRU* 4.2D.10R a review should take into account:

- (1) changes in market conditions;
- (2) changes in funding sources and inflows;

- (3) changes in the nature, scale or complexity of the *firm's* business model and activities; and
- (4) the *firm's* practical experience in periods of stress.
- 4.2D.12 R A *firm* must adjust its strategies, internal policies and limits on liquidity risk, taking into account the outcome of the alternative scenarios referred to in *MIPRU 4.2D.8R*.
- 4.2D.13 R (1) A *firm* must have in place contingency funding plans setting out adequate strategies and proper implementation measures in order to address potential liquidity shortfalls.
- (2) The contingency funding plans must be:
- (a) in writing;
- (b) approved by the *firm's governing body*;
- (c) regularly tested; and
- (d) updated on the basis of the outcome of the stress tests, testing alternative scenarios set out in *MIPRU 4.2D.8R*.
- 4.2D.14 G A contingency funding plan sets out a *firm's* strategies for managing liquidity shortfalls in emergency situations. Its aim should be to ensure that, in each of the stresses set out in *MIPRU 4.2D.11R*, it would have sufficient liquidity resources to ensure that it can meet its liabilities as they fall due.

Amend the following as shown.

4.4 Calculation of capital resources

The calculation of a firm's capital resources

...

- 4.4.8 R (1) This rule applies to a *firm* which:
- (a) carries on:
- (i) *insurance mediation activity*; or
- (ii) *home finance mediation activity* (or both); and
- (b) in relation to those activities, holds *client money* or other *client assets*; or

~~but is not carrying on home financing or home finance administration.~~

- (b) carries on home financing or home finance administration connected to regulated mortgage contracts (or both) unless as at 26 April 2014 its Part IV permission was and continues to remain subject to a restriction preventing it from undertaking new home financing or home finance administration connected to regulated mortgage contracts.

...

...

Schedule 1 Record keeping requirements

G ~~There are no record keeping requirements in MIPRU.~~

1 The aim of the guidance in the following table is to give the reader an overview 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.

<u>Handbook reference</u>	<u>Subject of record</u>	<u>Contents of record</u>	<u>When record must be made</u>	<u>Retention period</u>
<u>MIPRU 4.2D.9R (3)</u>	<u>Stress tests</u>	<u>All stress tests performed by a firm to which MIPRU 4.2D.1R applies, and the results of those tests</u>	<u>As soon as practicable after a test has been performed</u>	<u>Not specified</u>

COMPENSATION SOURCEBOOK (AMENDMENT NO 9) INSTRUMENT 2012

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 213 (The compensation scheme);
 - (d) section 214 (General); and
 - (e) section 215 (Rights of the scheme in 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 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 set out below:
- (1) Annex A and Part 1 of Annex B come into force on 1 October 2012;
 - (2) Part 2 of Annex B comes into force on 1 April 2013.

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.

Citation

- F. This instrument may be cited as the Compensation Sourcebook (Amendment No 9) Instrument 2012.

By order of the Board
27 September 2012

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

client money

...

- (4) (in *UPRU* and *COMP*) client money for the purposes of the relevant *client money rules*.

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: Comes into force on 1 October 2012

3.2.1 R The *FSCS* may pay compensation to an *eligible claimant*, subject to *COMP* 11 (Payment of compensation), if it is satisfied that:

- (1) an *eligible claimant* has, ~~for claims other than claims under a protected contract of insurance,~~ made an application for compensation (but see *COMP* 3.2.1AR);

...

Treating a person as having claimed

3.2.1A R The *FSCS* may treat *persons* who are or may be entitled to claim compensation as if they had done so.

...

Claims on behalf of another person

3.2.2 R ...

...

4.2.2 R Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

This table belongs to COMP 4.2.1R

...	
(7)	<i>Directors</i> and managers of the <i>relevant person in default</i> . However, this exclusion does not apply if:
	(a) both of the following apply:
	(i) the <i>relevant person in default</i> is a mutual association which is not a <i>large mutual association</i> ; and
	(ii) the <i>directors</i> and managers do not receive a salary or other remuneration of services performed by them for the <i>relevant person in default</i> , or
	(b) the <i>relevant person in default</i> is a <i>credit union</i> .

(8)	<i>Close relatives of persons excluded by (7) above [deleted]</i>
(9)	...
(10)	<i>Persons holding 5% or more of the capital of the relevant person in default, or of any body corporate in the same group [deleted]</i>
(11)	<i>The auditors of the relevant person in default, or of any body corporate in the same group as the relevant person in default, or any actuary appointed under SUP 4 (Actuaries) by a friendly society or insurance undertaking in default [deleted]</i>
...	

...

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 ~~(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*.
- (3) ...

Long term insurance

4.3.2 R A person other than one which comes within any of categories ~~(7)~~-(12) and (7), (9), (12) or (15) of *COMP* 4.2.2R is eligible to claim compensation in respect of a *long term insurance* contract.

...

Eligibility to claim in specified circumstances

4.3.8 R The FSCS may treat a person who comes within category (7) or (12) of COMP 4.2.2R as eligible to claim compensation where:

- (1) this is desirable to achieve the efficient performance of any of its functions, including without limitation, to facilitate a transfer of business or any part thereof, to secure the issue of policies by another firm to eligible claimants in substitution for their existing policies, to achieve the efficient payment of compensation, to secure under COMP 3.3.2CR the payment of benefits under a long term insurance contract; and
- (2) treating these persons as eligible to claim compensation would, in the opinion of the FSCS, be beneficial to the generality of eligible

claimants who will be affected by the action in (1).

...

5.3.1A R A protected deposit continues to be a protected deposit if, under a transfer of banking business, it is transferred to:

- (1) an establishment of a relevant person in the United Kingdom; or
- (2) a branch of a UK firm which is a credit institution established in another EEA State under an EEA right.

...

6.3.1 R A relevant person is in default if:

- (1) ...
- (2) (in relation to an *ICD claim* or *DGD claim*):
 - (a) the *FSA* has determined it to be *in default* under *COMP* 6.3.2R; or
 - (b) a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the *participant firm*, if that is earlier than (a); and

if a relevant person is in default in relation to an *ICD claim* or a *DGD claim* it shall be deemed to be in default in relation to any other type of protected claim.

...

7 Assignment or subrogation of rights

...

7.1.3 G The *FSCS* may (and in some cases must) make an offer of compensation conditional on the assignment of rights to it by a claimant. The *FSCS* may also be subrogated automatically to the claimant's rights. The purpose of this chapter is to make provision for and set out the consequences of an assignment or subrogation of the claimant's rights.

...

7.2.1 R The *FSCS*:

- (1) must or if the *FSCS* is subrogated automatically to the claimant's rights may make any payment of compensation to a claimant, in respect of a *protected deposit*, conditional on the claimant, in so far as able to do so, assigning the whole of his rights; and

...

...

- 7.2.3 R (1) Before taking assignment of rights from the claimant under *COMP 7.2.1R*, the *FSCS* must inform the claimant that if, after taking assignment of rights, the *FSCS* decides not to pursue recoveries using those rights it will, if the claimant so requests in writing, reassign the assigned rights to the claimant. The *FSCS* must comply with such a request in such circumstances (see *COMP 7.4.2R*).
- (2) [deleted] [Editor's Note: The text of this sub-paragraph has been moved to new *COMP 7.4.1R*.]
- (3) [deleted]

~~Specific provisions relating to claims for protected deposits~~

- 7.2.3A R [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.5.1R*.]
- 7.2.3B R [deleted] [Editor's Note: The amended text of this provision has been moved to new *COMP 7.5.2R*.]
- 7.2.3C G [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.5.3G*.]
- 7.2.3D G [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.5.4G*.]

Provisions relating to other classes of protected claim

- 7.2.3E R [deleted] [Editor's Note: The amended text of this provision has been moved to new *COMP 7.6.1R*.]
- 7.2.4 R [deleted] [Editor's Note: The amended text of this provision has been moved to new *COMP 7.6.2R*.]
- 7.2.4A R [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.6.3R*.]
- 7.2.5 R [deleted] [Editor's Note: The amended text of this provision has been moved to new *COMP 7.6.4R*.]
- 7.2.6 G [deleted] [Editor's Note: The text of this provision has been moved to new *COMP 7.6.5G*.]

...

After *COMP 7.2* insert the following new sections.

[Editor's Note: Some of the text of the new sections has been moved, with or without

amendment, from existing COMP provisions; where this is the case, the previous provision number is shown for the information of readers of this instrument above the new number, and underlining indicates new text added to, and striking through indicates deletions from, the text of the previous provision. New provisions and headings are shown underlined.]

7.3 **Automatic subrogation**

7.3.1 R The FSCS's powers in this section apply to all *claims* except those under *protected contracts of insurance*.

~~15.1.5~~
7.3.2 R The FSCS's powers in this section may be used:

- (1) separately or in any combination as an alternative and in substitution for the powers and processes elsewhere in this sourcebook;
- (2) ~~in respect of a *relevant person in default* irrespective of when the default occurred;~~ [deleted]
- (3) in relation to all or any part of a ~~*protected deposit*~~ or class of *protected deposits* ~~or class of *protected claim*~~ protected claim made with respect to the *relevant person*; and/or
- (4) (where the FSCS uses its powers to administer the payment of compensation on behalf of, or to pay compensation or make a payment on account or an advance and recover from, a Non-UK Scheme or Other Funder (see COMP 15.1.14R)) in respect of all or part of any *protected deposit* which is compensatable by and/or recoverable from the Non-UK Scheme or Other Funder, and the FSCS may make different provision for those parts of a *protected deposit* (and references to paying compensation shall be treated as referring to making a payment, making a payment on account or making an advance as appropriate) (for the purposes of this section the terms "Non-UK Scheme" and "Other Funder" have the same meaning as in COMP 15.1.14R).

~~15.1.6~~
7.3.3 R The FSCS may determine that the exercise of any power in this section is subject to such incidental, consequential or supplemental conditions as the FSCS considers appropriate.

Determinations by the FSCS

~~15.1.7~~
7.3.4 R (1) Any power conferred on the FSCS to make determinations under this section is exercisable in writing.

- (2) An instrument by which the ~~FSCS~~ FSCS makes the determination must specify the provision under which it is made, the date and time from which it takes effect and the *relevant person* and *protected deposits* ~~claims~~, parts of *protected deposits* ~~claims~~ and/or classes of *protected deposits* ~~claims~~ in respect of which it applies.

- (3) The *FSCS* must take appropriate steps to publish the determination as soon as possible after it is made. Such publication must be accompanied by a statement explaining the effect of *COMP 7.4.2R*.
- (4) Failure to comply with any requirement in this *rule* does not affect the validity of the determination.
- (5) A determination by the *FSCS* under this section may be amended, remade or revoked at any time and subject to the same conditions.

Verification of determinations

- ~~15.1.8~~
7.3.5
- R (1) The production of a copy of a determination purporting to be made by the *FSCS* under this section:
- (a) on which is endorsed a certificate, signed by a member of the *FSCS's* staff authorised by it for that purpose; and
 - (b) which contains the required statements;
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are:
- (a) that the determination was made by the *FSCS*; and
 - (b) that the copy is a true copy of the determination.
- (3) A certificate purporting to be signed as mentioned in (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A *person* who wishes in any legal proceedings to rely on a determination may require the *FSCS* to endorse a copy of the determination with a certificate of the kind mentioned in (1).

Effect of this section on other provisions in this sourcebook etc

- ~~15.1.9~~
7.3.6
- R Other provisions in this sourcebook and *FEES 6* are modified to the extent necessary to give full effect to the powers provided for in this section.
- ~~15.1.10~~
7.3.7
- R Other than as expressly provided for, nothing in this section is to be taken as limiting or modifying the rights or obligations of or powers conferred on the *FSCS* elsewhere in this sourcebook or in *FEES 6*.

Rights and obligations against the relevant persons and third parties

- ~~15.1.17~~
7.3.8
- R The *FSCS* may determine that:
- (1) the payment of compensation by the *FSCS*; and/or

- (2) the following actions by the *FSCS* (under *COMP 15.1.14R*):
- (a) administering the payment of compensation on behalf of; and/or
 - (b) paying and/or making a payment on account of compensation from;
- a Non-UK Scheme or Other Funder;

shall have all or any of the following effects:

- (3) the *FSCS* shall immediately and automatically be subrogated, subject to such conditions as the *FSCS* determines are appropriate, to all or any part (as determined by the *FSCS*) of the rights and claims in the *United Kingdom* and elsewhere of the claimant against the *relevant person* and/or any third party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the *relevant person* or third party is acting) in respect of or arising out of the *claim* in respect of which the payment of or on account of compensation was made;
- (4) the *FSCS* may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce such rights in its own name or in the name of, and on behalf of, the claimant or in both names against the *relevant person* and/or any third party;
- (5) the subrogated rights and claims conferred on the *FSCS* shall be rights of recovery and claims against the *relevant person* and/or any third party which are equivalent (including as to amount and priority and whether or not the *relevant person* is insolvent) to and not exceed the rights and claims that the claimant would have had; and/or
- (6) such rights and/or obligations (as determined by the *FSCS*) as between the *relevant person* and the claimant arising out of the *protected deposit claim* in respect of which the payment was made shall be transferred to, and subsist between, another *authorised person* with ~~permission to accept deposits~~ an appropriate permission and the claimant provided that the *authorised person* has consented (but the transferred rights and/or obligations shall be treated as existing between the *relevant person* and the *FSCS* to the extent of any subrogation, transfer or assignment for the purposes of (3) to (5) and *COMP 15.1.18R 7.3.9R*).

15.1.18 R The *FSCS* may alternatively or additionally make the actions in *COMP*
7.3.9 ~~15.1.17R(1) 7.3.8R(1) and *COMP 15.1.17R(2) (2)*~~ conditional on the claimant assigning or transferring the whole or any part of all such rights as he may have against the *relevant person* and/or any third party (including, for the avoidance of any doubt, any Non-UK Scheme or Other Funder) on

such terms as the *FSCS* determines are appropriate.

- ~~15.1.20~~ R (1) The *FSCS* may determine that:
- 7.3.10
- (a) if the claimant does not assign or transfer his rights under ~~COMP 15.1.18R~~ 7.3.9R;
 - (b) if it is impractical to obtain such an assignment or transfer; and/or
 - (c) if it is otherwise necessary or desirable in conjunction with the exercise of the *FSCS*'s powers under ~~COMP 15.1.17R~~ ~~to~~ COMP 7.3.8R or COMP 7.3.9R or COMP 15.1.19R;

that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *United Kingdom*, another *EEA State* or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.

- (2) The execution of any deed or document under (1) shall be as effective as if made in writing by the claimant or by his agent lawfully authorised in writing or by will.

7.4 Duty on *FSCS* to pursue recoveries

- ~~7.2.3R(2)~~ R If the *FSCS* takes assignment or transfer of rights from the claimant ~~under~~ ~~COMP 7.2.1R~~ or is otherwise subrogated to the rights of the claimant, it must pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue.

- 7.4.2 R If the *FSCS* decides not to pursue such recoveries and a claimant wishes to pursue those recoveries himself and so requests in writing, the *FSCS* must comply with that request and assign the rights back to the claimant.

7.5 Recoveries: protected deposits

- ~~7.2.3A~~ R If the *FSCS*, in relation to a *claim* for a *protected deposit*, makes recoveries from the *relevant person* or any third party in respect of that *protected deposit* the *FSCS* must:

- (1) retain from those recoveries a sum equal to the "FSCS retention sum"; and

- (2) as soon as reasonably possible after it makes the recoveries, pay to the claimant, or as directed by the claimant, a sum equal to the "top up payment".

~~7.2.3B~~
7.5.2

R The *FSCS* must calculate "FSCS retention sum" and the "top up payment" as follows:

- (1) calculate the "recovery ratio" of:
- (a) the amount recovered by the *FSCS* through rights assigned or transferred under ~~COMP 7.2.1R~~ or otherwise subrogated (taking into account any deduction from that amount the *FSCS* may make to cover part or all of its reasonable costs of recovery and of distribution, if any); to
 - (b) the claimant's overall *claim* for *protected deposits* against the *relevant person in default* less any liability of a *Home State* deposit guarantee scheme;
- (2) subtract the sum paid by the *FSCS* as compensation and any amount paid or payable by a *Home State* compensation scheme to the claimant from the total value of the claimant's overall *claim* for *protected deposits*, to give the "compensation shortfall";
- (3) apply the recovery ratio to the sum paid by the *FSCS* as compensation to the claimant, to give the "FSCS retention sum"; and
- (4) apply the recovery ratio to the compensation shortfall, to give the "top up payment".

~~7.2.3C~~
7.5.3

G (1) For example, if the claimant's overall *claim* for *protected deposits* against a *relevant person* was for £120,000, and the *FSCS* paid compensation of £85,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £96,000 (after the costs of recovery and of distribution), then:

- (a) the recovery ratio would be 80% ($£96,000 \div £120,000$);
- (b) the compensation shortfall would be £35,000 ($£120,000 - £85,000$);
- (c) the FSCS retention sum would be £68,000 ($80\% \times £85,000$);
- (d) the top up payment would be £28,000 (80% of £35,000);
- (e) the total payment to the claimant would be £113,000 (£85,000 of compensation plus £28,000 of top up payment); and
- (f) the total outlay by the *FSCS*, net of the FSCS retention sum,

would be £17,000 (20% x £85,000).

(2) In the example above, the amount recovered exceeds the amount of compensation. However, ~~COMP 7.2.4R~~ 7.5.1R also applies where the amount recovered is less than the amount of compensation. Therefore, for example, if the claimant's overall *claim* for *protected deposits* against a *relevant person* was for £120,000, and the *FSCS* paid compensation of £85,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £24,000 (after the costs of recovery and of distribution), then:

- (a) the recovery ratio would be 20% (£24,000 ÷ £120,000);
- (b) the compensation shortfall would be £35,000 (£120,000 - £85,000);
- (c) the *FSCS* retention sum would be £17,000 (20% x £85,000);
- (d) the top up payment would be £7,000 (20% of £35,000);
- (e) the total payment to the claimant would be £92,000 (£85,000 of compensation plus £7,000 of top up payment); and
- (f) the total outlay by the *FSCS*, net of the *FSCS* retention sum, would be £68,000 (80% x £85,000).

~~7.2.3D~~ 7.5.4 G In order to prevent a claimant suffering disadvantage arising solely from his prompt acceptance of the *FSCS*'s offer of compensation compared with what might have been the position had he delayed his acceptance, the *FSCS* shall apply the rule in *COMP* 12.2.7R(2).

7.6 Recoveries: claims other than for protected deposits

~~7.2.3E~~ 7.6.1 R If the *FSCS* makes recoveries ~~through rights assigned under *COMP* 7.2.4R~~ in relation to a *claim* that is not for a *protected deposit*, it may deduct from any recoveries paid over to the claimant under ~~*COMP* 7.2.4R~~ 7.6.2R part or all of its reasonable costs of recovery and distribution (if any).

~~7.2.4~~ 7.6.2 R Unless compensation was paid under *COMP* 9.2.3R or the *claim* was for a *protected deposit*, if a claimant ~~agrees to assign~~ assigns or transfers his rights to the *FSCS* or a claimant's rights and claims are otherwise subrogated to the *FSCS* and the *FSCS* subsequently makes recoveries through those rights or claims, those recoveries must be paid to the claimant:

- (1) to the extent that the amount recovered exceeds the amount of compensation (excluding interest paid under *COMP* 11.2.7R) received by the claimant in relation to the *protected claim*; or

- (2) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the FSCS at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated (see ~~COMP 7.2.5R~~ 7.6.4R).
- ~~7.2.4A~~ 7.6.3 R For the purpose of ~~COMP 7.2.4R~~ 7.6.2R compensation received by *eligible claimants* in relation to *Lloyd's policies* may include payments made from the *Central Fund*.
- ~~7.2.5~~ 7.6.4 R Except for a *claim* for a *protected deposit*, the *FSCS* must endeavour to ensure that a claimant will not suffer disadvantage arising solely from his prompt acceptance of the *FSCS's* offer of compensation or from the subrogation of his rights and claims to the FSCS compared with what might have been the position had he delayed his acceptance or had his claims not been subrogated.
- ~~7.2.6~~ 7.6.5 G As an example of the circumstances which ~~COMP 7.2.5R~~ COMP 7.6.4R is designed to address, take two claimants, A and B.
- (1) Both A and B have a *protected investment business claim* of £60,000 against a *relevant person in default*. The *FSCS* offers both claimants £50,000 compensation (the maximum amount payable for such claims under *COMP* 10.2.3R). A accepts immediately, and assigns his rights against the *relevant person* to the *FSCS*, but B delays accepting the *FSCS's* offer of compensation.
- (2) In this example, the liquidator is able to recover assets from the *relevant person in default* and makes a payment of 50p in the pound to all the *relevant person's* creditors. If the liquidator made the payment before any offer of compensation from the *FSCS* had been accepted, A and B would both receive £30,000 each from the liquidator, leaving both with a loss of £30,000 to be met by the *FSCS*. Both *claims* would be met in full.
- (3) However, if the payment were made by the liquidator after A had accepted the *FSCS's* offer of compensation and assigned his rights to the *FSCS*, but before B accepted the *FSCS* offer of compensation, A would be disadvantaged relative to B even though he has received £50,000 compensation from the *FSCS*. A would be disadvantaged relative to B because he promptly accepted the *FSCS's* offer and assigned his rights to the *FSCS*. Because A has assigned his rights to the *FSCS*, any payment from the liquidator will be made to the *FSCS* rather than A. In this case the *FSCS* has paid A more than £30,000, so the £30,000 from the liquidator that would have been payable to A will be payable in full to the *FSCS* and not to A.
- (4) B is able to exercise his rights against the liquidator because he delayed accepting the *FSCS's* offer and receives £30,000 from the

liquidator. B can then make a *claim* for the remaining £30,000 to the *FSCS* which the *FSCS* can pay in full (see *COMP* 10.2.2G). B therefore suffers no loss whereas A is left with a loss of £10,000, being the difference between his *claim* of £60,000 and the compensation paid by the *FSCS* of £50,000.

Amend the following as shown.

[Editor's Note: Some of the text of the new provisions shown below has been moved, with or without amendment, from existing COMP provisions; where this is the case, the previous provision number is shown for the information of readers of this instrument above the new number, and underlining indicates new text added to, and striking through indicates deletions from, the text of the previous provision. New provisions and headings are shown underlined.]

Form and method of paying compensation

- ~~15.1.13~~ 11.2.3A R The *FSCS* may pay compensation in any form and by any method (or any combination of them) that it determines is appropriate including, without limitation:
- (1) by paying the compensation (on such terms as the *FSCS* considers appropriate) to an *authorised person* with *permission to accept deposits* which agrees to become liable to the claimant in a like sum;
 - (2) by paying compensation directly into an existing deposit account of (or for the benefit of) the claimant, or as otherwise identified by (or on behalf of) the claimant, with an *authorised person* (but before doing so the *FSCS* must take such steps as it considers appropriate to verify the existence of such an account and to give notice to the claimant of its intention to exercise this power); ~~and/or~~
 - (3) (where two or more *persons* have a joint beneficial *claim*) by accepting communications from and/or paying compensation to any one of those *persons* where this is in accordance with the terms and conditions for communications and withdrawals of the *protected deposit*; ~~and/or~~
 - (4) by paying compensation to a *firm*, which makes a *claim* on behalf of its *clients*, if the *FSCS* is satisfied that:
 - (a) the business of a *relevant person in default* has been transferred to the *firm*;
 - (b) each *client* has a *claim* against the *relevant person in default* arising out of a *shortfall in client money* held by the *relevant person in default*;
 - (c) the *clients* in respect of which compensation is to be paid

satisfy the conditions set out in *COMP 3.2.2R(1)*; and

- (d) the firm has agreed, on such terms as the FSCS thinks fit, to pay, or credit the accounts of, without deduction, each client, that part of the compensation due to him.

...

Paying full compensation in return for rights

11.2.9 R Where the FSCS considers that the conditions in COMP 11.2.4R are satisfied but, in relation to a class of claim, in order to provide fair compensation for the generality of such claims it would be appropriate to take the approach in (1) and (2) rather than pay an appropriate lesser sum in final settlement or make a payment on account, it may for that class of claim:

- (1) receive whether by assignment, transfer or operation of law the whole or any part of a claimant's rights against the relevant person, or against any third party, or both on such terms as the FSCS thinks fit; and
- (2) disregard the value of the rights so received in determining the claimant's overall claim.

11.2.10 G Factors that the FSCS may take into account when considering taking the approach in COMP 11.2.9R(1) and (2) include whether the amount of claimants' overall claims are likely to be assessed within a reasonable time frame, the circumstances of the claimants, the circumstances of the claims and the nature of the products to which the claims relate.

...

Settlement of claims

~~15.1.21~~ 12.2.10 R (1) The FSCS may pay compensation without fully or at all investigating the eligibility of the claimant and/or the validity and/or amount of ~~that~~ the 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 be disproportionate to the likely benefit of such investigation; and
- (b) (as a result or otherwise) 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 or by Article 3 of the Investor Compensation Directive.

...

15 **Deposit payout Protected deposits: Payments from other schemes****15.1** **~~Accelerated compensation for depositors~~ Payments from other schemes**

...

15.1.1 G ~~When a *relevant person* is *in default* with claims against it for *protected deposits*, it is likely to be desirable for the *FSCS* to make accelerated payments of compensation, for the protection of consumers, to contribute to financial stability and to maintain market confidence. [deleted]~~

15.1.2 G ~~To facilitate an accelerated payment of compensation, this~~ 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*, the *FSCS* with the power to administer the payment of compensation on behalf of, or to pay compensation and recover from, another scheme or a government, to be subrogated automatically to the claimant's rights against the *relevant person* and/or any third party, and/or to settle claims. This section operates separately from Part XVA of the *Act*.

...

15.1.5 R ~~[deleted]~~ [Editor's Note: The amended text of this provision has been moved to new COMP 7.3.2R.]

15.1.6 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.3R.]

Determinations by the FSCS

15.1.7 R ~~[deleted]~~ [Editor's Note: The amended text of this provision has been moved to new COMP 7.3.4R.]

Verification of determinations

15.1.8 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.5R.]

Effect of this section on other provisions in this sourcebook etc

15.1.9 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.6R.]

15.1.10 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.7R.]

Payment of compensation without an application

- 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).~~ [deleted]

Early compensation for term or notice accounts

- 15.1.12 R [deleted]

Form and method of paying compensation

- 15.1.13 R [deleted] [Editor's Note: The text of this provision has been moved to new COMP 11.2.3AR.]

...

- 15.1.16 R If the FSCS has made a payment or advance attributable to a Non-UK Scheme or Other Funder, and has acquired a right of recovery against the *relevant person* or any third party in respect of that amount, the FSCS may determine that the whole or any part of any recoveries which it makes shall be held by it for the benefit of and/or shared amongst the FSCS, that Non-UK Scheme, that Other Funder and/or any other *person* which has provided prior funding in respect of a payment or advance attributable to any such body (and COMP 7.2.3AR 7.5.1R is modified accordingly).

Rights and obligations against the relevant person and third parties

- 15.1.17 R [deleted] [Editor's Note: The amended text of this provision has been moved to new COMP 7.3.8R.]
- 15.1.18 R [deleted] [Editor's Note: The text of this provision has been moved to new COMP 7.3.9R.]
- 15.1.19 R The FSCS may determine in accordance with COMP 7.3.4R that the making of an advance by the FSCS to the claimant (under COMP 15.1.14R(4)) shall have the effect that the FSCS may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce the rights and claims of the claimant referred to in ~~COMP 15.1.17R(3)~~ 7.3.8R(3) in the name of, and on behalf of, the claimant against the *relevant person* and/or any third party.
- 15.1.20 R [deleted] [Editor's Note: The text of this provision has been moved to new COMP 7.3.10R.]

Settlement of claims

- 15.1.21 R [deleted] [Editor's Note: The amended text of this provision has been

moved to new COMP 12.2.10R.]

...

....

TP1.1 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
...					
33	<u>Amendments introduced by Annex A and Part 1 of Annex B of the Compensation Sourcebook (Amendment No 9) Instrument 2012.</u>	R	<p><u>The changes referred to in (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before 1 October 2012. Notwithstanding the above:</u></p> <p><u>(a) to the extent that the provisions changed apply to <i>protected deposits</i>, all the changes in (2); and</u></p> <p><u>(b) the changes to COMP 12.2.10R; apply irrespective of when the default occurred.</u></p>	From 1 October 2012 indefinitely	From 1 October 2012

...

Part 2: Comes into force on 1 April 2013

- 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 compensation provided by the FSCS (including the amounts covered and eligibility to claim) please [insert as appropriate one or more of the following:] call us on [insert *firm’s* phone number] / contact your firm representative / ask at your local branch, refer to the FSCS website www.FSCS.org.uk or call the FSCS on [insert *FSCS* phone number]. Please note *only* compensation related queries should be directed to the FSCS.”

PROFESSIONAL FIRMS (AMENDMENT NO 2) INSTRUMENT 2012

Powers exercised

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

Commencement

- C. This instrument comes into force on 1 April 2013.

Amendments to the Handbook

- D. The Professional Firms sourcebook (PROF) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Professional Firms (Amendment No 2) Instrument 2012.

By order of the Board
27 September 2012

Annex

Amendments to the Professional Firms sourcebook (PROF)

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

- 5.2.1A R ~~The condition at PROF 5.2.1R(6) does not apply if the *designated professional body* of the *authorised professional firm* is any of:~~
- ~~(1) the Institute of Chartered Accountants in England and Wales;~~
 - ~~(2) the Institute of Chartered Accountants of Scotland;~~
 - ~~(3) the Institute of Chartered Accountants in Ireland;~~
 - ~~(4) the Association of Chartered Certified Accountants; and~~
 - ~~(5) the Law Society of Scotland. [deleted]~~

LISTING RULES (SPONSORS) (AMENDMENT NO 2) INSTRUMENT 2012

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 88 (Sponsors);
 - (3) section 89 (Public censure of sponsor);
 - (4) section 96 (Obligations of issuers of listed securities);
 - (5) section 101 (Part 6 Rules: general provisions); and
 - (6) schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. This instrument comes into force on 1 October 2012.

Amendments to the Handbook

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

Notes

- D. 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

- E. This instrument may be cited as the Listing Rules (Sponsors) (Amendment No 2) Instrument 2012.

By order of the Board
27 September 2012

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

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

Annual notifications

8.7.7 R ~~A sponsor must provide to the FSA on an annual basis~~ on or after the first business day of January in each year but no later than the last business day of January in each year:

- (1) written confirmation that it continues to satisfy the criteria for approval as a *sponsor* as set out in LR 8.6.5R; and
- (1A) for each of the criteria in that rule, details of the basis upon which it considers that it meets the criteria.
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]

8.7.7A R Written confirmation must be provided by submitting a completed Sponsor Annual Notification Form to the FSA at the FSA's address.

[Note: The Sponsor Annual Notification Form can be found on the UKLA section of the FSA's website.]

**LISTING RULES (CANCELLATION OF LISTING) (AMENDMENT)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 Rules);
 - (2) section 77 (Discontinuance and suspension of listing);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 101 (Part 6 Rules: general provisions);
 - (5) section 157(1) (Guidance); and
 - (6) schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. This instrument comes into force on 1 October 2012.

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 (Cancellation of Listing) (Amendment) Instrument 2012.

By order of the Board
27 September 2012

Annex

Amendments to the Listing Rules sourcebook (LR)

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

Cancellation as a result of schemes of arrangement etc

5.2.12 R *LR 5.2.5R and LR 5.2.8R do not apply to the cancellation of equity shares with a premium listing* as a result of:

- (1) a takeover or restructuring of the *issuer* effected by a scheme of arrangement under Part 26 of the Companies Act 2006; or
- (2) an administration or liquidation of the *issuer* pursuant to a court order under the Insolvency Act 1986, Building Societies Act 1986, Water Industry Act 1991, Banking Act 2009, Energy Act 2011 or the Investment Bank Special Administration Regulations 2011; or
- (3) the appointment of an administrator under paragraphs 14 (appointment by holder of floating charge) or 22 (appointment by company or directors) of Schedule B1 to the Insolvency Act 1986; or
- (4) a resolution for winding up being passed under section 84 of the Insolvency Act 1986; or
- (5) the appointment of a provisional liquidator by the court under section 135 of the Insolvency Act 1986; or
- (6) a company voluntary arrangement pursuant to Part 1 of the Insolvency Act 1986, subject to the time limits for the challenge of decisions made set out in Part 1 of the Insolvency Act 1986 having expired; or
- (7) statutory winding up or reconstruction measures in relation to an overseas issuer under equivalent overseas legislation having similar effect to those set out in (1) to (6).

5.2.13 G In determining whether the statutory winding up or reconstruction measures in relation to an overseas issuer under equivalent overseas legislation have a similar effect to those set out in LR 5.2.12R(1) to (6), the FSA will in particular have regard to whether those procedures require a court order, the approval of 75% of the shareholders entitled to vote on the resolution, or a formal declaration of the overseas issuer's insolvency or inability to pay its debts.

**LISTING, PROSPECTUS AND DISCLOSURE RULES (MISCELLANEOUS
AMENDMENTS NO 2) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 Rules);
 - (b) section 84 (Matters which may be dealt with by prospectus rules);
 - (c) section 89A (Transparency Rules); and
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on 1 October 2012.

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
Prospectus Rules sourcebook (PR)	Annex C
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex D

Citation

- D. This instrument may be cited as the Listing, Prospectus and Disclosure Rules (Miscellaneous Amendments No 2) Instrument 2012.

By order of the Board
27 September 2012

Annex A

Amendments to the Glossary of definitions

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

external management company (in *LR* and *PR*) has the meaning in *PR* 5.5.3AR.

Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text, unless otherwise stated.

Externally managed companies

6.1.26 R A company applying for the admission of equity shares to premium listing must satisfy the FSA that the discretion of its board to make strategic decisions on behalf of the company has not been limited or transferred to a person outside the issuer's group, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a person outside the issuer's group.

6.1.27 G In considering whether a company applying for the admission of equity shares to premium listing has satisfied LR 6.1.26R, the FSA will consider, among other things, whether the board of the issuer consists solely of non-executive directors and whether significant elements of the strategic decision-making of or planning for the company take place outside the issuer's group, for example with an external management company.

...

9.2.8A G (1) The Act provides that an individual who is not a director can still be a person discharging managerial responsibilities in relation to an issuer if they are a "senior executive of such an issuer" and they meet the criteria set out in the Act.

(2) An individual may be a "senior executive of such an issuer" irrespective of the nature of any contractual arrangements between the individual and the issuer and notwithstanding the absence of a contractual arrangement between the individual and the issuer, provided the individual has regular access to inside information relating, directly or indirectly, to the issuer and has power to make managerial decisions affecting the future development and business prospects of the issuer.

...

Externally managed companies

9.2.20 R An issuer must at all times ensure that the discretion of its board to make strategic decisions on behalf of the company has not been limited or transferred to a person outside the issuer's group, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a person outside the issuer's group.

...

Externally managed companies

15.4.26 R A closed-ended investment fund is not required to comply with LR 9.2.20R.

...

16.4.1 R An open-ended investment company must comply with:

- (1) LR 9 (Continuing obligations) except LR 9.2.6BR, LR 9.2.15R, LR 9.2.20R and LR 9.3.11R;
- (2) LR 15.5.1R;
- (3) LR 15.6.1R; and
- (4) the condition set out in LR 16.1.1R(1) or (2).

...

Appendix 1 Relevant definitions

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

<i>external management company</i>	has the meaning in <u>PR 5.5.3AR</u> (i.e., in relation to an <i>issuer</i> that is a <i>company</i> which is not a collective investment undertaking, a <i>person</i> who is appointed by the <i>issuer</i> (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by <i>officers</i> of the <i>issuer</i> and to make recommendations in relation to strategic matters).
------------------------------------	--

...

Transitional Provisions

...

TR 9 Transitional Provision for a company that has a premium listing of equity shares but does not comply with LR 9.2.20R

<u>(1)</u>	<u>(2) Material to which the transitional provisions applies</u>	<u>(3)</u>	<u>(4) Transitional provision</u>	<u>(5) Transitional provision: dates in force</u>	<u>(6) Handbook provision: coming into force</u>
<u>1.</u>	<u>LR 9.2.20R</u>	<u>R</u>	<u>(1) This rule applies to a company that has a premium listing of equity</u>	<u>From 1 October 2012 up to and including 31 December 2013</u>	<u>1 October 2012</u>

			<p><u>shares but does not comply with LR 9.2.20R on 1 October 2012.</u></p> <p><u>(2) LR 9.2.20R is not applicable to a company to which this rule applies.</u></p>		
--	--	--	---	--	--

Annex C

Amendments to the Prospectus Rules sourcebook (PR)

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

Equity shares

5.5.3 R ...

(2) Each of the following *persons* are responsible for the *prospectus*:

...

(b) if the *issuer* is a *body corporate*:

- (i) each *person* who is a *director* of that *body corporate* when the *prospectus* is published; ~~and~~
- (ii) each *person* who has authorised himself to be named, and is named, in the *prospectus* as a *director* or as having agreed to become a *director* of that *body corporate* either immediately or at a future time; and
- (iii) each *person* who is a senior executive of any *external management company* of the *issuer*;

...

5.5.3A R In PR 5.5.3R(2)(b)(iii), *external management company* means in relation to an *issuer* that is a *company* which is not a collective investment undertaking, a *person* who is appointed by the *issuer* (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by *officers* of the *issuer* and to make recommendations in relation to strategic matters.

5.5.3B G In considering whether the functions the *person* performs would ordinarily be performed by *officers* of the *issuer*, the *FSA* will consider, among other things:

- (1) the nature of the board of the *issuer* to which the *person* provides services, and whether the board has the capability to act itself on strategic matters in the absence of that *person's* services;
- (2) whether the appointment relates to a one-off transaction or is a longer term relationship; and
- (3) the proportion of the functions ordinarily performed by *officers* of the *issuer* that is covered by the arrangement.

...

Appendix 1 Relevant definitions

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

<i>limited liability partnership</i>	(a)	a <i>body corporate</i> incorporated under the Limited Liability Partnerships Act 2000;
	(b)	a <i>body corporate</i> incorporated under legislation having the equivalent effect to the Limited Liability Partnerships Act 2000.
<i>officer</i>	(in relation to a <i>body corporate</i>) (as defined in section 400(5) of the <i>Act</i> (Offences by bodies corporate etc)) a director, member of the committee of management, <i>chief executive</i> , <i>manager</i> , secretary, or other similar officer of the body, or a <i>person</i> purporting to act in that capacity or a <i>controller</i> of the body.	
<i>partnership</i>	(in accordance with section 417(1) of the <i>Act</i> (Definitions)) any partnership, including a partnership constituted under the law of a country or territory outside the <i>United Kingdom</i> , but not including a <i>limited liability partnership</i> .	

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

In this Annex, underlining indicates new text.

Notification of transactions by persons discharging managerial responsibilities

...

- 3.1.2A G (1) The Act provides that an individual who is not a *director* can still be a *person discharging managerial responsibilities* in relation to an issuer if they are a “senior executive of such an issuer” and they meet the criteria set out in the Act.
- (2) An individual may be a “senior executive of such an issuer” irrespective of the nature of any contractual arrangements between the individual and the *issuer* and notwithstanding the absence of a contractual arrangement between the individual and the *issuer*, provided the individual has regular access to inside information relating, directly or indirectly, to the *issuer* and has power to make managerial decisions affecting the future development and business prospects of the *issuer*.

LISTING RULES (REVERSE TAKEOVERS) INSTRUMENT 2012

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) of the Listing Rules.

Commencement

- B. This instrument comes into force on 1 October 2012.

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 “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 Listing Rules (Reverse Takeovers) Instrument 2012.

By order of the Board
27 September 2012

Annex A**Amendments to the Glossary of definitions**

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

reverse takeover (in *LR*) a transaction classified as a *reverse takeover* under *LR*
~~40~~ 5.6.

target (in *LR*) the subject of a *class 1 transaction* or reverse takeover.

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.

5 **Suspending, cancelling and restoring listing and reverse takeovers: All securities**

...

- 5.2.3 G The FSA will generally seek to cancel the *listing of ~~a listed company's~~ an issuer's equity shares or certificates representing equity securities* when ~~it~~ the issuer completes a *reverse takeover*.

[Note: LR 5.6 contains further detail relating to *reverse takeovers*.]

After LR 5.5 insert the following new section. The text is not underlined.

5.6 **Reverse takeovers**

Application

- 5.6.1 R This section applies to an *issuer* with:
- (1) a *premium listing*;
 - (2) a *standard listing (shares)*; or
 - (3) a *standard listing of certificates representing equity securities*.

Categories of reverse takeover to which this section does not apply

- 5.6.2 R *LR 5.6* does not apply where an *issuer* acquires the *shares or certificates representing equity securities* of a *target* with the same category of *listing* as the *issuer*.

Class 1 requirements

- 5.6.3 R Notwithstanding the effect of *LR 5.6.2R*, an *issuer* with a *premium listing* must in relation to a *reverse takeover* comply with the requirements of *LR 10.5* (Class 1 requirements) for that transaction.

Definition

- 5.6.4 R A *reverse takeover* is a transaction, whether effected by way of a direct acquisition by the *issuer* or a subsidiary, an acquisition by a new *holding*

company of the *issuer* or otherwise, of a business, a *company* or assets:

- (1) where any *percentage ratio* is 100% or more; or
- (2) which in substance results in a fundamental change in the business or in a change in board or voting control of the *issuer*.

When calculating the *percentage ratio*, the *issuer* should apply the *class tests*.

- 5.6.5 G For the purpose of LR 5.6.4R(2), the *FSA* considers that the following factors are indicators of a fundamental change:
- (1) the extent to which the transaction will change the strategic direction or nature of its business; or
 - (2) whether its business will be part of a different industry sector following the completion of the transaction; or
 - (3) whether its business will deal with fundamentally different suppliers and end users.

Requirement for a suspension

- 5.6.6 R An *issuer*, or in the case of an *issuer* with a *premium listing*, its *sponsor*, must contact the *FSA* as early as possible:
- (1) before announcing a *reverse takeover* which has been agreed or is in contemplation, to discuss whether a suspension of *listing* is appropriate; or
 - (2) where details of the *reverse takeover* have leaked, to request a suspension.
- 5.6.7 G Examples of where the *FSA* will consider that a *reverse takeover* is in contemplation include situations where:
- (1) the *issuer* has approached the *target's* board;
 - (2) the *issuer* has entered into an exclusivity period with a *target*; or
 - (3) the *issuer* has been given access to begin due diligence work (whether or not on a limited basis).
- 5.6.8 G Generally, when a *reverse takeover* is announced or leaked, there will be insufficient publicly available information about the proposed transaction and the *issuer* will be unable to assess accurately its financial position and inform the market accordingly. In this case, the *FSA* will often consider that suspension will be appropriate, as set out in LR 5.1.2G(3) and (4). However, if the *FSA* is satisfied that there is sufficient publicly available information about the proposed transaction it may agree with the *issuer* that a suspension is not required.

- 5.6.9 G *LR 5.6.10G to LR 5.6.18R* set out circumstances in which the *FSA* will generally be satisfied that a suspension is not required.

Target admitted to a regulated market

- 5.6.10 G The *FSA* will generally be satisfied that there is sufficient information in the market about the proposed transaction if:

- (1) the *target* has *shares* or *certificates representing equity securities* admitted to a *regulated market*; and
- (2) the *issuer* makes an announcement stating that the *target* has complied with the disclosure requirements applicable on that *regulated market* and providing details of where information disclosed pursuant to those requirements can be obtained.

- 5.6.11 R An announcement made for the purpose of *LR 5.6.10G(2)* must be published by means of an *RIS*.

Target subject to the disclosure regime of another market

- 5.6.12 G The *FSA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction if the *target* has *securities* admitted to an investment exchange or trading platform that is not a *regulated market* and the *issuer*:

- (1) confirms, in a form acceptable to the *FSA*, that the disclosure requirements in relation to financial information and *inside information* of the investment exchange or trading platform on which the *target's securities* are admitted are not materially different from the disclosure requirements under *DTR*; and
- (2) makes an announcement to the effect that:
 - (a) the *target* has complied with the disclosure requirements applicable on the investment exchange or trading platform to which its securities are admitted and provides details of where information disclosed pursuant to those requirements can be obtained; and
 - (b) there are no material differences between those disclosure requirements and the disclosure requirements under *DTR*.

- 5.6.13 R Where an *issuer* has a *premium listing*, a written confirmation provided for the purpose of *LR 5.6.12G(1)* must be given by the *issuer's sponsor*.

- 5.6.14 R An announcement made for the purpose of *LR 5.6.12G(2)* must be published by means of an *RIS*.

Target not subject to a public disclosure regime

- 5.6.15 G Where the *target* in a *reverse takeover* is not subject to a public disclosure regime, or if the *target* has *securities* admitted on an investment exchange or trading platform that is not a *regulated market* but the *issuer* is not able to give the confirmation and make the announcement contemplated by LR 5.6.12G, the *FSA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction such that a suspension is not required where the *issuer* makes an announcement containing:
- (1) financial information on the *target* covering the last three years. Generally, the *FSA* would consider the following information to be sufficient:
 - (a) profit and loss information to at least operating profit level;
 - (b) balance sheet information, highlighting at least net assets and liabilities;
 - (c) relevant cash flow information; and
 - (d) a description of the key differences between the *issuer's* accounting policies and the policies used to present the financial information on the *target*;
 - (2) a description of the *target* to include key non-financial operating or performance measures appropriate to the *target's* business operations and the information as required under *PR* Appendix 3 Annex 1 item 12 (Trend information) for the *target*;
 - (3) a declaration that the *directors* of the *issuer* consider that the announcement contains sufficient information about the business to be acquired to provide a properly informed basis for assessing its financial position; and
 - (4) a statement confirming that the *issuer* has made the necessary arrangements with the *target* vendors to enable it to keep the market informed without delay of any developments concerning the *target* that would be required to be released were the *target* part of the *issuer*.
- 5.6.16 R An announcement made for the purpose of LR 5.6.15G must be published by means of an *RIS*.
- 5.6.17 R Where an *issuer* has a *premium listing*, a *sponsor* must provide written confirmation to the *FSA* that in its opinion, it is reasonable for the *issuer* to provide the declarations described in LR 5.6.15G(3) and (4).
- 5.6.18 R Where the *FSA* has agreed that a suspension is not necessary as a result of an announcement made for the purpose of LR 5.6.15G the *issuer* must comply with *DTR* 2.2.1R on the basis that the *target* already forms part of the enlarged *group*.

Cancellation of listing

- 5.6.19 G The *FSA* will generally seek to cancel the *listing* of an *issuer's equity shares* or *certificates representing equity securities* when the *issuer* completes a *reverse takeover*.
- 5.6.20 G *LR 5.6.23G* to *LR 5.6.29G* set out circumstances in which the *FSA* will generally be satisfied that a cancellation is not required.
- 5.6.21 R Where the *issuer's listing* is cancelled following completion of a *reverse takeover*, the *issuer* must re-apply for the *listing* of the *shares* or *certificates representing equity securities* and satisfy the relevant requirements for *listing*, except that for an *issuer* with a *premium listing*, *LR 6.1.3R(1)(b)* and *LR 6.1.3R(1)(e)* will not apply in relation to the *issuer's* accounts.
- 5.6.22 G Notwithstanding *LR 5.6.21R*, financial information provided in relation to the *target* will need to satisfy *LR 6.1.3R(1)(b)* and *LR 6.1.3R(1)(e)*.

Acquisitions of targets from different listing categories: issuer maintaining its listing category

- 5.6.23 G Where an *issuer* acquires the *shares* or *certificates representing equity securities* of a *target* with a different *listing* category from its own and the *issuer* wishes to maintain its existing *listing* category, the *FSA* will generally be satisfied that a cancellation is not required on completion of a *reverse takeover* if:
- (1) the *issuer* will continue to be eligible for its existing *listing* category following completion of the transaction;
 - (2) the *issuer* provides an eligibility letter setting out how the *issuer* as enlarged by the acquisition satisfies each *listing rule* requirement that is relevant to it being eligible for its existing *listing* category; and
 - (3) the *issuer* makes an announcement or publishes a *circular* explaining:
 - (a) the background and reasons for the acquisition;
 - (b) any changes to the acquiring *issuer's* business that have been made or are proposed to be made in connection with the acquisition;
 - (c) the effect of the transaction on the acquiring *issuer's* obligations under the *listing rules*;
 - (d) (where appropriate) how the acquiring *issuer* will continue to meet the eligibility requirements referred to in *LR 5.6.21R*; and

(e) any other matter that the *FSA* may reasonably require.

- 5.6.24 R An announcement or circular published for the purpose of *LR 5.6.23G* must be published by means of an *RIS*.
- 5.6.25 R An eligibility letter prepared for the purposes of *LR 5.6.23G* must be provided to the *FSA* not less than 20 *business days* prior to the announcement of the transaction referred to in *LR 5.6.24R*.
- 5.6.26 R Where an *issuer* has a *premium listing*, the eligibility letter provided for the purposes of *LR 5.6.23G* must be provided by a *sponsor*.

Acquisitions of targets from different listing categories: issuer changing listing category

- 5.6.27 G The *FSA* will generally be satisfied that a cancellation is not required on completion of a *reverse takeover* if the *target* is *listed* with a different *listing* category from that of the *issuer* and the *issuer* wishes to transfer its *listing* to a different *listing* category in conjunction with the acquisition and the *issuer* as enlarged by the relevant acquisition complies with the relevant requirements of *LR 5.4A* to transfer to a different *listing* category.
- 5.6.28 G An *issuer* wishing to transfer a *listing* of its *equity shares* from a *premium listing (investment company)* to a *standard listing (shares)* should note *LR 5.4A.2G* which sets out limitations resulting from the application of *LR 14.1.1R* (application of the *listing rules* to a *company* with or applying for a *standard listing* of *shares*).
- 5.6.29 G Where an issuer is applying *LR 5.4A* in order to avoid a cancellation as contemplated by *LR 5.6.27G*, the *FSA* will normally waive the requirement for shareholder approval under *LR 5.4A.4R(2)(c)* where the *issuer* is obtaining separate shareholder approval for the acquisition.

Amend the following as shown.

10.2 Classifying transactions

...

- 10.2.2 R Except as otherwise provided in this chapter, transactions are classified as follows:
- ...
- (2) ...; and
- (3) ...; ~~and~~
- (4) ~~Reverse takeover: a transaction consisting of an acquisition by a listed company of a business, an unlisted company or assets where~~

~~any percentage ratio is 100% or more or which would result in a fundamental change in the business or in a change in board or voting control of the *listed company*. [deleted]~~

- 10.2.2A G If an issuer is proposing to enter into a transaction classified as a reverse takeover it should consider LR 5.6.

~~Certain reverse takeovers to be treated as class 1 transactions~~

- 10.2.3 R ~~A reverse takeover is to be treated as a class 1 transaction if all of the following conditions are satisfied in relation to the transaction:~~
- ~~(1) none of the percentage ratios resulting from the calculations under each of the class tests in LR 10 Annex 1G (as modified or added to by LR 10.7 where applicable) exceed 125%;~~
 - ~~(2) the subject of the acquisition is in a similar line of business to that of the acquiring company;~~
 - ~~(3) the undertaking the subject of the acquisition complies with all relevant requirements of LR 6;~~
 - ~~(4) there will be no change of board control of the listed company; and~~
 - ~~(5) there will be no change of voting control of the listed company. [deleted]~~

...

10.6 Reverse takeover requirements [deleted]

- 10.6.1 R ~~A listed company must in relation to a reverse takeover comply with the requirements of LR 10.5 (Class 1 requirements) for that transaction. [deleted]~~

~~Material change to terms of reverse takeover~~

- 10.6.1A G ~~LR 10.5.2R and LR 10.5.3G will apply if there is a material change to the terms of a reverse takeover. [deleted]~~

~~Cancellation of listing~~

- 10.6.2 G ~~When a listed company completes a reverse takeover, the FSA will generally cancel the listing of its equity shares (see LR 5.2.3G) and the company will be required to re-apply for the listing of the equity shares and satisfy the relevant requirements for listing (except that LR 6.1.3R(1)(b)) will not apply in relation to the listed company's accounts). [deleted]~~

~~Suspended listing~~

- 10.6.3 G ~~Before a listed company announces a reverse takeover which has been agreed or is in contemplation or where details of the reverse takeover have~~

leaked, a *listed company* should consider whether a suspension of *listing* is appropriate. Generally, when a *reverse takeover* is announced or leaked, because of its significant size there will be insufficient information in the market about the proposed transaction and the company will be unable to assess accurately its financial position and inform the market accordingly. So, suspension will often be appropriate (see *LR 5.1.2G(3)* and (4)). But, if the *FSA* is satisfied that there is sufficient information in the market about the proposed transaction it may agree with the company that a suspension is not required. [deleted]

...

15.5 Transactions

...

- 15.5.2 R A *closed-ended investment fund* must comply with *LR 10* (Significant transactions) and *LR 5.6*, except in relation to transactions that are executed in accordance within the scope of its published investment policy.

...

Appendix 1.1 Relevant definitions

<i>holding company</i>	(as defined in section 1159(1) of the Companies Act 2006 (Meaning of "subsidiary" etc) (in relation to another <i>body corporate</i> ("S")) a <i>body corporate</i> which:
	(a) holds a majority of the voting rights in S; or
	(b) is a member of S and has the right to appoint or remove a majority of its board of directors; or
	(c) is a member of S and controls alone, under an agreement with other shareholders and members, a majority of the voting rights in S.
<i>reverse takeover</i>	a transaction classified as a <i>reverse takeover</i> under <i>LR 10 5.6</i> .
<i>target</i>	the subject of a <i>class 1 transaction</i> or <i>reverse takeover</i> .

Transitional Provisions

...

TR 10 Transitional Provision in relation to new sponsor services

(1)	<u>(2) Material to which the transitional provisions applies</u>	<u>(3)</u>	<u>(4) Transitional provision</u>	<u>(5) Transitional provision: dates in force</u>	<u>(6) Handbook provision: coming into force</u>
1.	<u>LR 5.6.6R</u>	R	<p><u>(1) LR 5.6.6R does not apply to an issuer with a premium listing.</u></p> <p><u>(2) An issuer with a premium listing must contact the FSA as early as possible:</u></p> <p><u>(a) before announcing a reverse takeover which has been agreed or is in contemplation, to discuss whether a suspension of listing is appropriate; or</u></p> <p><u>(b) where details of a reverse takeover have leaked, to request a suspension.</u></p>	From 1 October 2012 up to and including 30 December 2012	1 October 2012
2.	<u>LR 5.6.13R, LR 5.6.17R, LR 5.6.26R</u>	R	<u>An issuer with a premium listing is not required to comply with LR 5.6.13R, LR 5.6.17R or LR 5.6.26R from 1 October 2012 to 30 December 2012.</u>	From 1 October 2012 up to and including 30 December 2012	1 October 2012

3.	<u>LR 13.5.27BR</u>	<u>R</u>	<p>(1) <u>LR 13.5.27BR does not apply.</u></p> <p>(2) <u>Where a <i>listed company</i> proposes to rely on <i>LR 13.5.27R(1)(b)</i>, it must submit to the <i>FSA</i> an assessment of the <u>appropriateness of the standards applicable to an investment exchange or <i>multilateral trading facility</i> against the factors set out in <i>LR 13.5.27AG (1) to (7)</i> and any other factors that it considers should be noted. The assessment must be submitted before or at the time the <i>listed company</i> submits the draft <i>class 1 circular</i>.</u></u></p>	<p><u>From 1 October 2012 up to and including 30 December 2012</u></p>	<p><u>1 October 2012</u></p>
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LISTING RULES SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2012

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) of the Listing Rules.

Commencement

- B. This instrument comes into force on 1 October 2012.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Listing Rules Sourcebook (Amendment No 8) Instrument 2012.

By order of the Board
27 September 2012

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 definition in the appropriate alphabetical position. The text is not underlined.

break fee arrangement (in LR) an arrangement falling within the definition in LR 10.2.6AR.

Amend the following as shown.

associate (1) (in LR) (in relation to a *director, substantial shareholder, or person exercising significant influence*, who is an individual):

- (a) that individual’s spouse, civil partner or child (together “the individual’s family”);
- (b) the trustees (acting as such) of any trust of which the individual or any of the individual’s family is a beneficiary or discretionary object (other than a trust which is either an *occupational pension scheme* or an *employees’ share scheme* which does not, in either case, have the effect of conferring benefits on persons all or most of whom are related parties;
- (c) any *company* in whose *equity securities* the individual or any member or members (taken together) of the individual’s family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:
 - (i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
 - (ii) to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters;
- (d) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual’s family are

directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:

- (i) a voting interest greater than 30% in the partnership;
or
- (ii) at least 30% of the partnership.

For the purpose of paragraph (c) ...

<i>break fee</i>	(in LR) a fee payable by a listed company if certain specified events occur which have the effect of materially impeding a transaction or causing the transaction to fail.
<i>class 3 transaction</i>	(in LR) a transaction classified as a class 3 transaction under LR 10.

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.

~~Overseas company applying for a premium listing~~

2.2.15 R ~~If the law of the country of its incorporation does not confer on *shareholders* rights which are at least equivalent to LR 9.3.11R, an *overseas company* applying for a *premium listing* must:~~

- ~~(1) ensure its constitution provides for rights which are at least equivalent to the rights provided for in LR 9.3.11R (as qualified by LR 9.3.12R); and~~
- ~~(2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation. [deleted]~~

...

Cancellation in relation to takeover offers

5.2.10 R LR 5.2.5R does not apply to the cancellation of *equity shares* with a *premium listing* when in the case of a takeover offer:

- (1) the *offeror* has by virtue of its shareholdings and acceptances of the offer, acquired or agreed to acquire issued *share* capital carrying 75% of the voting rights of the *issuer*; and
- (2) the *offeror* has stated in the offer *document* or any subsequent *circular* sent to the *security* holders that a notice period of not less than 20 *business days* prior to cancellation will commence either on the *offeror* attaining the required 75% as described in LR 5.2.10R(1) or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006 (Right of offeror to buy out minority shareholder).

5.2.10A G For the purposes of LR 5.2.10R(2), the offer *document* or *circular* must make clear that the notice period begins only when the *offeror* has announced that it has acquired or agreed to acquire *shares* representing 75% of the voting rights.

...

Pre-emption rights

6.1.25 R If the law of the country of its incorporation does not confer on *shareholders* rights which are at least equivalent to LR 9.3.11R, an *overseas company*

applying for a premium listing must:

- (1) ensure its constitution provides for rights which are at least equivalent to the rights provided for in LR 9.3.11R (as qualified by LR 9.3.12R); and
- (2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation.

...

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 for an open offer or offer for subscription of equity shares or at the time of agreeing the placing for a placing or vendor consideration placing (as the case may be).
- (2) In paragraph (1), the middle market price of *equity shares* means the middle market quotation for those *equity shares* as derived from the daily official list of the *London Stock Exchange* or any other publication of an *RIE* showing quotations for *listed securities* for the relevant date.
- (2A) If a listed company makes an open offer, placing, vendor consideration placing or offer for subscription of equity shares during the trading day it may use an appropriate on-screen intra-day price derived from another market.

...

- 9.5.10A G On each occasion that the listed company plans to use an on-screen intra-day price it should discuss the source of the price in advance with the FSA. The FSA may be satisfied that there is sufficient justification for its use if the alternative market has an appropriate level of liquidity and the source is one that is widely accepted by the market.

...

Meaning of "transaction"

- 10.1.3 R In this chapter (except where specifically provided to the contrary) a reference to a transaction by a *listed company*:

...

- (3) excludes a transaction of a revenue nature in the ordinary course of business;

...

...

Classifying transactions

...

- 10.2.2 R Except as otherwise provided in this chapter, transactions are classified as follows:

- (1) ~~Class 3 transaction: a transaction where all percentage ratios are less than 5%; [deleted]~~

...

...

Indemnities and similar arrangements

- 10.2.4 R (1) ...
- (2) Paragraph (1) does not apply to a *break fee arrangement* (see LR 10.2.6AR, LR 10.2.6BG and LR 10.2.7R which deal with *break fees fee arrangements*).

...

Break fees fee arrangements

- 10.2.6A R An arrangement is a *break fee arrangement* if the purpose of the arrangement is that a compensatory sum will become payable by a *listed company* to another party (or parties) to a proposed transaction if the proposed transaction fails or is materially impeded and there is no independent substantive commercial rationale for the arrangement.
- 10.2.6B G (1) The following arrangements will meet the definition of *break fee arrangements* in LR 10.2.6AR (although this list is not intended to be exhaustive): ‘no shop’ and ‘go shop’ type provisions, which require payment of a sum to a party in the event the seller finds an alternative purchaser; a requirement to pay another party’s wasted costs in the event a transaction fails; non refundable deposits.
- (2) In contrast, payments in the nature of damages (whether liquidated or unliquidated) for a breach of an obligation with an independent substantive commercial rationale, for example the typical business protection covenants that will apply between exchange and completion of a share or asset acquisition agreement or co-operation and information access obligations relating to obtaining merger or

other clearances, are not *break fee arrangements*.

- 10.2.7 R (1) ~~A *break fee* or *break fees*~~ Sums payable pursuant to *break fee arrangements* in respect of a transaction are to be treated as a *class 1 transaction* if the total value of ~~the fee or the fees in aggregate~~ those sums exceeds:
- (a) if the *listed company* is being acquired, 1% of the value of the *listed company* calculated by reference to the offer price; and
 - (b) in any other case, 1% of the market capitalisation of the *listed company*.
- (1A) The total value of sums payable pursuant to *break fee arrangements* for the purpose of paragraph (1) is the sum of:
- (a) any amounts paid or payable pursuant to *break fee arrangements* in relation to the same transaction or in relation to the same target assets or business in the 12 months prior to the date the most recent arrangements were agreed unless those arrangements were approved by shareholders; and
 - (b) the aggregate of the maximum amounts payable pursuant to *break fee arrangements* in relation to the transaction;
- save that if the arrangements are such that a particular sum will only become payable in circumstances in which another sum does not, the lower sum may be left out of the calculation of the total value.

...

...

Aggregating transactions

- 10.2.10 R (1) ...
- (2) Paragraph (1) does not apply in relation to ~~*break fees*~~ a *break fee arrangement* (see LR 10.2.6AR, LR 10.2.6BG and LR 10.2.7R which deal with *break fee arrangements*).

LR 10.3 (Class 3 requirements) is deleted in its entirety. The deleted text is not shown struck through.

Amend the following as shown.

Material change to terms of transaction

- 10.5.2 R ~~If, after the production of a *circular* and obtaining shareholder approval but before the completion of a *class 1 transaction* or a *reverse takeover*, there is a material change to the terms of the transaction, the *listed company* must comply again separately with LR 10.5.1R in relation to the transaction.~~

...

Supplementary circulars

- 10.5.4 R (1) If a *listed company* becomes aware of a matter described in (2) after the publication of a *circular* that seeks shareholder approval for a transaction expressly requiring a vote by the *listing rules*, but before the date of a general meeting, it must, as soon as practicable:
- (a) advise the *FSA* of the matters of which it has become aware; and
 - (b) send a supplementary *circular* to holders of its *listed equity shares* providing an explanation of the matters referred to in (2).
- (2) The matters referred to in (1) are
- (a) a material change affecting any matter the *listed company* is required to have disclosed in a *circular*; or
 - (b) a material new matter which the *listed company* would have been required to disclose in the *circular* if it had arisen at the time of its publication.
- (3) The *listed company* must have regard to LR 13.3.1R(3) when considering the materiality of any change or new matter under LR 10.5.4R(2).
- 10.5.5 G LR 13 applies in relation to a supplementary *circular*. It may be necessary to adjourn a convened shareholder meeting if a supplementary *circular* cannot be sent to holders of *listed equity shares* at least 7 days prior to the convened shareholder meeting as required by LR 13.1.9R.

...

Joint ventures

- 10.8.9 G ...
- (5) Where an *issuer* enters into a joint venture exit arrangement which takes the form of a put or call option and exercise of the option is solely at the discretion of the other party to the arrangement, the transaction should be classified at the time it is agreed as though the option had been exercised at that time.

10 Annex 1G The Class Tests

Class tests

...

The Profits test

- 4R (1) The profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the *listed company*.
- (2) For the purposes of paragraph (1), profits means:
- profits after deducting all charges except taxation; and
 - for an acquisition or disposal of an interest in an undertaking referred to in paragraph 2R (3)(a) or (b) of this Annex, 100% of the profits of the undertaking (irrespective of what interest is acquired or disposed of).
- (3) If the acquisition or disposal of the interest will not result in consolidation or deconsolidation of the *target* then the profits test is not applicable.

4AG The amount of loss is relevant in calculating the impact of a proposed transaction under the profits test. A *listed company* should include the amount of the losses of the *listed company* or *target* i.e. disregard the negative when calculating the test.

The Consideration test

...

- (3A) If the total consideration is not subject to any maximum (and the other class tests indicate the transaction to be ~~a class 3 transaction~~ a transaction where all *percentage ratios* are less than 5%) the transaction is to be treated as a *class 2 transaction*.

...

Figures used to classify assets and profits

8R ...

- (3) (a) The figures of the *listed company* must be adjusted to take account of subsequent completed transactions which have been notified to a *RIS* under *LR 10.4* or *LR 10.5*.
- (b) The figures of the target company or business must be adjusted to take account of subsequent completed transactions which would have been a *class 2 transaction* or greater when classified against the target as a whole.

...

Adjustments to figures

11G Where a *listed company* wishes to make adjustments to the figures used in calculating the class tests pursuant to 10G they should discuss this with the *FSA* before the class tests crystallise.

...

Definition of “related party transaction”

11.1.5 R In *LR*, a “*related party transaction*” means:

- a transaction (other than a transaction ~~of a revenue nature~~ in the ordinary course of business) between a *listed company* and a *related party*; or
- an arrangement (other than an arrangement in the ordinary course of

business) pursuant to which a *listed company* and a *related party* each invests in, or provides finance to, another undertaking or asset; or

- (3) any other similar transaction or arrangement (other than a transaction ~~of a revenue nature~~ in the ordinary course of business) between a *listed company* and any other *person* the purpose and effect of which is to benefit a *related party*.

...

Requirements for related party transactions

...

11.1.7A R If, after obtaining shareholder approval but before the completion of a related party transaction, there is a material change to the terms of the transaction, the listed company must comply again separately with LR 11.1.7R in relation to the transaction.

11.1.7B G The FSA would (amongst other things) generally consider an increase of 10% or more in the consideration payable to be a material change to the terms of the transaction.

11.1.7C R A listed company must comply with LR 10.5.4R in relation to a related party transaction.

...

Aggregation of transactions in any 12 month period

11.1.11 R (1) If a *listed company* enters into transactions or arrangements with the same *related party* (and any of its *associates*) in any 12 month period and the transactions or arrangements have not been approved by shareholders the transactions or arrangements, including transactions or arrangements falling under LR 11.1.10R, or small related party transactions under LR 11 Annex 1.1R(1), must be aggregated.

...

11 Annex 1R Transactions to which related party transaction rules do not apply

...

Directors' indemnities and loans

- 5 (1) A transaction that consists of:
- (a) ...
 - (b) ...
 - (c) a loan or assistance to a *director* by a *listed company* or any of its *subsidiary undertakings* if the terms of the loan or assistance are in accordance with those specifically permitted to be given to a *director* under section 204, ~~or 205~~ or 206 of the Companies Act 2006.
- (2) ...

...

12.2 Prohibition on purchase of own securities

- 12.2.1 R A *listed company* must not purchase or redeem (or make any early redemptions of) its own *securities* and must ensure that no purchases in its *securities* are effected on its behalf or by any member of its *group* during a *prohibited period* unless:
- (1) prior to the commencement of the *prohibited period* the *company* has put in place a buy-back programme where in which the dates and quantities of *securities* to be traded during the relevant period are fixed and have been disclosed in a notification made in accordance with LR 12.4.4R; or
 - (2) prior to the commencement of the *prohibited period* the *company* has put in place a buy-back programme managed by an independent third party which makes its trading decisions in relation to the *company's securities* independently of, and uninfluenced by, the *company*; or

...

...

Purchases of 15% or more

- 12.4.2 R Purchases by a *listed company* of 15% or more of any *class* of its *equity shares* (excluding *treasury shares*) pursuant to a general authority by the shareholders must be by way of a *tender offer* to all shareholders of that *class*.
- 12.4.2A R Purchases of 15% or more of any class of its own *equity shares* may be made by a *listed company*, other than by way of a *tender offer*, provided that the full terms of the *share* buyback have been specifically approved by shareholders.

...

Notification of capitalisation issues and of sales, transfers and cancellations of treasury shares

...

- 12.6.4 R Any sale for cash, transfer for the purposes of or pursuant to an *employees' share scheme* or cancellation of *treasury shares* ~~by a *listed company*~~ that represents over 0.5% of the *listed company's share capital* must be notified to a *RIS* as soon as possible and in any event by no later than 7:30 a.m. on the *business day* following the calendar day on which the sale, transfer or cancellation occurred. The notification must include:

...

...

Incorporation by reference

- 13.1.3 R Information may be incorporated in a *circular* issued by a *listed company* by reference to relevant information contained in:
- (1) ~~a~~ an approved prospectus or listing particulars of that listed company; or
 - (2) any other published *document* of that listed company that has been filed with the *FSA*.

...

Sending information to holders of listed equity shares

- 13.1.9 R A supplementary *circular* must be sent to holders of *listed equity shares* no later than 7 days prior to the date of a meeting at which a vote which is expressly required under the *listing rules* will be taken.
- 13.1.10 G It may be necessary for a convened shareholder meeting to be adjourned to comply with LR 13.1.9R.

...

Circulars not requiring approval

- 13.2.2 R A *circular* does not need to be approved under LR 13.2.1R if:
- (1) it is of a type referred to in LR 13.8, or only relates to a proposed change of name, or, ~~in any other case, the FSA has agreed that it does not need to be approved~~ is an information-only *circular* which does not relate to a shareholder vote, other than of a type referred to in LR 13.4.3R(3);
 - (2) it complies with LR 13.3 and also, if it is a *circular* referred to in LR 13.8, any relevant requirements in that section; and
 - (3) neither it, nor the transaction or matter to which it relates, has unusual features.
- 13.2.2A G The *FSA* may agree to waive the requirement for approval of a *circular* in circumstances other than those set out in LR 13.2.2R.

...

Sending approved circulars

- 13.2.10 R A *listed company* must send a *circular* to holders of its *listed equity shares*

as soon as practicable after it has been approved.

...

Class 1 circulars

13.4.1 R A *class 1 circular* must also include the following information:

...

(4) a declaration by the issuer and its directors in the following form (with appropriate modifications):

"The [issuer] and the directors of [the company issuer], whose names appear on page [], accept responsibility for the information contained in this document. To the best of the knowledge and belief of the [issuer] and the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.";

...

Related party circulars

13.6.1 R A *related party circular* must also include:

...

(7) ~~for a transaction where any *percentage ratio* is 25% or more, the information required to be included in a *class 1 circular*; [deleted]~~

...

...

Purchase of own equity shares

13.7.1 R (1) A *circular* relating to a resolution proposing to give the *company* authority to purchase its own *equity securities* must also include:

...

(e) ...; ~~and~~

(f) ...; and

(g) where LR 12.4.2AR applies, an explanation of the potential impact of the proposed *share buyback*, including whether control of the *listed company* may be concentrated following the proposed transaction.

...

Purchase of own equity shares

...

13.7.1A G In considering whether an explanation given in a *circular* satisfies the requirement in LR 13.7.1R(1)(g), the FSA would expect the following information to be included in the explanation:

- (1) the shareholdings of *substantial shareholders* in the *listed company* before and after the proposed transaction; and
- (2) the shareholdings of a holder of *equity shares* who may become a *substantial shareholder* in the *listed company* as a result of the proposed transaction.

...

13 Annex 1R Class 1 circulars

...

...

3 The information required by this Annex is modified as follows:

...

- (2) ...; ~~and~~
- (3) ...;
- (4) information required by Annex 1 item 4 should be provided only in respect of those risk factors which:
 - (a) are material risk factors to the proposed transaction;
 - (b) will be material new risk factors to the *group* as a result of the proposed transaction; or
 - (c) are existing material risk factors to the *group* which will be impacted by the proposed transaction; and
- (5) information required by Annex 1 item 24 must include a copy of the Sale and Purchase Agreement (or equivalent document) if applicable.

...

15.2.1 R To be *listed*, an *applicant* must comply with:

...

- (2) the following provisions of *LR 6* (Additional requirements for premium listing (commercial company)); ;

...

- (c) *LR 6.1.16R* to ~~*LR 6.1.24G*~~ *6.1.25R*; and

...

...

Transactions with related parties

...

- 15.5.4 R In addition to the definition in *LR 11.1.4R* a *related party* includes any *investment manager* of the *closed-ended investment fund* and any member of such *investment manager's* group.

Additional exemption from related party requirements

- 15.5.5 R (1) *LR 11.1.7R* to *LR 11.1.11R* do not apply to an arrangement between a *closed-ended investment fund* and its *investment manager* or any member of that *investment manager's* group where the arrangement is such that each invests in or provides finance to an entity or asset and the investment or provision of finance is either:

...

...

...

Appendix 1 Relevant definitions

Note: The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

<i>associate</i>	<p>in relation to a <i>director</i>, <i>substantial shareholder</i>, or <i>person exercising significant influence</i>, who is an individual:</p> <ul style="list-style-type: none"> (1) that individual's spouse, civil partner or child (together “the individual's family”); (2) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an <i>occupational pension scheme</i> or an <i>employees' share scheme</i> which does not, in either case, have the effect of conferring benefits on persons all or
------------------	---

	<p>most of whom are related parties;</p> <p>(3) any <i>company</i> in whose <i>equity securities</i> the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:</p> <p>(a) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or</p> <p>(b) to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters;</p> <p>(4) <u>any partnership whether a limited partnership or <i>limited liability partnership</i> in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:</u></p> <p>(a) <u>a voting interest greater than 30% in the partnership;</u> or</p> <p>(b) <u>at least 30% of the partnership.</u></p> <p>For the purpose of paragraph (3),</p> <p>...</p>
<i>body corporate</i>	<u>(in accordance with section 417(1) of the <i>Act</i> (Definitions)) any body corporate, including a body corporate constituted under the law of a country or territory outside the <i>United Kingdom</i>.</u>
<i>break fee</i>	a fee payable by a <i>listed company</i> if certain specified events occur which have the effect of materially impeding a transaction or causing the transaction to fail.
<i>break fee arrangement</i>	<u>an arrangement falling within the description in LR 10.2.6AR.</u>
<i>class 3 transaction</i>	a transaction classified as a class 3 transaction under LR 10.

<u>limited liability partnership</u>	<u>(a) a <i>body corporate</i> incorporated under the Limited Liability Partnerships Act 2000;</u> <u>(b) a <i>body corporate</i> incorporated under legislation having the equivalent effect to the Limited Liability Partnerships Act 2000.</u>
--------------------------------------	--

**LISTING RULES (FINANCIAL INFORMATION) (AMENDMENT)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
 - (a) section 73A (Part 6 Rules);
 - (b) section 84 (Matters which may be dealt with by prospectus rules);
 - (c) section 138 (General rule-making power); and
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on 1 October 2012.

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
Prospectus Rules sourcebook (PR)	Annex C

Citation

- D. This instrument may be cited as the Listing Rules (Financial Information) (Amendment) Instrument 2012.

By order of the Board
27 September 2012

Annex A

Amendments to the Glossary of definitions

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

CESR <u>ESMA</u> recommendations	the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004 published by the Committee of European Securities Regulators <u>European Securities and Markets Authority (ESMA/2011/81)</u> .
financial information table	(in LR) financial information presented in tabular form that covers the reporting period set out in LR 13.5.13R in relation to the entities set out in LR 13.5.14R, and to the extent relevant LR 13.5.15R and LR 13.5.16R <u>LR 13.5.17AR</u> .
mineral expert's report	(in LR) a report prepared in accordance with the CESR <u>ESMA</u> recommendations.
modified auditor's report	(in LR) an <u>accountant's or auditor's</u> report: <ul style="list-style-type: none"> (a) in which the auditor's opinion is qualified <u>modified</u>; or (b) which sets out: <ul style="list-style-type: none"> (i) a problem relating to the business as a going concern; or (ii) a significant uncertainty, the resolution of which is dependent upon future events. <p><u>contains an emphasis-of-matter paragraph.</u></p>

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

6 Additional requirements for listing for premium listing (commercial company)

6.1 Application

6.1.1 R This chapter applies to ~~an~~ a new applicant for the admission of equity shares to premium listing (commercial company) except where LR 6.1.1AR applies.

6.1.1A R This chapter does not apply where a company with an existing premium listing of equity shares introduces a new holding company to its existing group and no transaction as defined in LR 10.1.3R is being undertaken that would otherwise increase the assets or liabilities of the group.

...

~~Accounts~~ Historical financial information

- 6.1.3 R (1) A new applicant for the admission of equity shares to a premium listing must have published or filed ~~audited accounts~~ historical financial information that:
- (a) ~~cover~~ covers at least three years; [**Note:** article 44 *CARD*]
 - (b) ~~are the latest accounts for a period ended~~ has a latest balance sheet date that is not more than six months before the date of the prospectus or listing particulars for the relevant ~~securities~~ shares and not more than nine months before the date the shares are admitted to listing unless LR 5.6.21R applies;
 - (c) ~~are~~ includes the consolidated accounts for the applicant and all its subsidiary undertakings;
 - (d) ~~have~~ has been ~~independently~~ independently audited; or reported on in accordance with the ~~auditing~~ auditing standards ~~applicable in an EEA State or an equivalent standard~~ acceptable under item 20.1 of Annex I of the PD Regulation; and
 - (e) ~~have been reported on by the auditors without modification~~ is not subject to a modified report, except as set out in LR 6.1.3AG or LR 5.6.21R.
- (2) A new applicant must:
- (a) take all reasonable steps to ensure that ~~its auditors~~ the person

providing the opinion pursuant to LR 6.1.3R(1)(e) and LR 6.1.3DR(3) is ~~are~~ independent of it; and

- (b) obtain written confirmation from ~~its auditors~~ *the person* providing the opinion pursuant to LR 6.1.3R(1)(e) and LR 6.1.3DR(3) that ~~they comply~~ *it complies* with guidelines on independence issued or approved by ~~their~~ *its* national accountancy ~~and~~ or auditing bodies.

6.1.3A G The FSA may accept that LR 6.1.3R(1)(e) and LR 6.1.3DR(3) have been satisfied where a *modified report* is present only as a result of:

- (1) the presence of an emphasis-of-matter paragraph which arises in any of the earlier periods required by LR 6.1.3R and the opinion on the final period is unmodified; or
- (2) the opinion on the historical financial information for the final period under LR 6.1.3R includes an emphasis-of-matter paragraph with regard to going concern and LR 6.1.16R is complied with.

6.1.3B R The historical financial information required by LR 6.1.3R(1) must:

- (1) represent at least 75% of the *new applicant's* business for the full period referred to in LR 6.1.3R(1)(a); and
- (2) put prospective investors in a position to make an informed assessment of the business for which *admission* is sought.

6.1.3C G (1) In determining what amounts to 75% of the *new applicant's* business for the purpose of LR 6.1.3BR(1), the FSA will consider the size, in aggregate, of all of the acquisitions that the *new applicant* has entered into during the period required by LR 6.1.3R(1)(a) and up to the date of the *prospectus*, relative to the size of the *new applicant* as enlarged by the acquisitions.

(2) In ascertaining the size of the acquisitions relative to the *new applicant* for the purposes of LR 6.1.3BR, the FSA will take into account factors such as the assets, profitability and market capitalisation of the businesses.

(3) The figures used should be the latest available for the acquired entity and the *new applicant* as enlarged by the acquisition or acquisitions.

6.1.3D R Where the *new applicant* has made an acquisition or series of acquisitions such that its own consolidated financial information is insufficient to meet the 75% requirement in LR 6.1.3BR, there must be historical financial information relating to the acquired entity or entities which has been published or filed and that:

- (1) covers the period from at least three years prior to the date under LR 6.1.3R(1)(b) up to at least the date of acquisition by the *new*

applicant;

- (2) is presented in a form that is consistent with the accounting policies adopted in the financial information required by LR 6.1.3R;
- (3) is not subject to a *modified report*, except as set out in LR 6.1.3AG ; and
- (4) in aggregate with its own historical financial information represents at least 75% of the enlarged *new applicant's* business for the full period referred to in LR 6.1.3R(1)(a).

6.1.3E G The purpose of LR 6.1.3BR is to ensure that the *issuer* has representative financial information throughout the period required by LR 6.1.3R(1)(a) and to assist prospective investors to make a reasonable assessment of what the future prospects of the *new applicant's* business might be. Investors are then able to consider the *new applicant's* historic revenue earning record in light of its particular competitive advantages, the outlook for the sector in which it operates and the general macro economic climate. The FSA may consider that a *new applicant* does not have representative historical financial information and that its *equity shares* are not eligible for a *premium listing* if a significant part or all of the *new applicant's* business has one or more of the following characteristics:

- (1) a business strategy that places significant emphasis on the development or marketing of products or services which have not formed a significant part of the *new applicant's* historical financial information;
- (2) the value of the business on *admission* will be determined, to a significant degree, by reference to future developments rather than past performance;
- (3) the relationship between the value of the business and its revenue or profit-earning record is significantly different from those of similar companies in the same sector;
- (4) there is no record of consistent revenue, cash flow or profit growth throughout the period of the historical financial information;
- (5) the *new applicant's* business has undergone a significant change in its scale of operations during the period of the historical financial information or is due to do so before or after *admission*;
- (6) it has significant levels of research and development expenditure or significant levels of capital expenditure.

~~Nature and duration of business activities~~ Control of assets and independence

6.1.4 R A *new applicant* for the *admission of equity shares* to a *premium listing* must demonstrate that:

- (1) ~~at least 75% of the *applicant's* business is supported by a historic revenue earning record which covers the period for which accounts are required under LR 6.1.3R(1); [deleted]~~
 - (2) it controls the majority of its assets and has done so for at least the period referred to in ~~paragraph (1)~~ LR 6.1.3R(1)(a); and
 - (3) it will be carrying on an independent business as its main activity.
- 6.1.5 G ~~In determining what amounts to 75% of the *applicant's* business for the purposes of LR 6.1.4R(1), the FSA will take into account factors such as the assets, profitability and market capitalisation of the business. [deleted]~~
- 6.1.6 G ~~LR 6.1.4R is intended to enable prospective investors to make a reasonable assessment of what the future prospects of the *applicant's* business might be. Investors are then able to consider the *company's* historic revenue earning record in light of its particular competitive advantages, the outlook for the sector in which it operates and the general macro economic climate. [deleted]~~
- 6.1.7 G If an *applicant's* business has been in existence for the period referred to in LR 6.1.4R but part or all of its business has one or more of the following characteristics it may not satisfy that rule:
- (1) ~~a business strategy that places significant emphasis on the development or marketing of products or services which have not formed a significant part of the issuer's historic revenue earning record; or~~
 - (2) ~~the value of the business on admission will be determined, to a significant degree, by reference to future developments rather than past performance; or~~
 - (3) ~~the relationship between the value of the business and its revenue or profit earning record is significantly different from those of similar companies in the same sector; or~~
 - (4) ~~there is no record of consistent revenue, cash flow or profit growth throughout the historic revenue earning period; or~~
 - (5) ~~the applicant's business has undergone a significant change in its scale of operations during the period of the historic revenue earning period; or~~
 - (6) ~~it has significant levels of research and development expenditure or significant levels of capital expenditure. [deleted]~~

Mineral companies

- 6.1.8 R If a *mineral company* applies for the *admission* of its *equity shares* and cannot comply with LR 6.1.3R(1)(a) because it has been operating for a

shorter period:

- (1) ~~LR 6.1.3R(1)(a) does not apply to the application~~ it must have published or filed historical financial information since the inception of its business; and
- (2) ~~LR 6.1.3R(1)(b) to (e) and (2) apply to the mineral company only to the extent that it has published accounts~~ with regard to the period for which it has published or filed historical financial information pursuant to (1).

6.1.9 R ~~LR 6.1.3BR(1) and LR 6.1.4R does~~ do not apply to a mineral company that applies for the admission of its equity shares.

...

Scientific research based companies

6.1.11 R If a *scientific research based company* applies for the admission of its equity shares to a premium listing and cannot comply with LR 6.1.3R(1)(a) because it has been operating for a shorter period:

- (1) ~~LR 6.1.3 R(1)(a) does not apply to the application~~ it must have published or filed historical financial information since the inception of its business; and
- (2) ~~LR 6.1.3 R(1)(b) to (e) and (2) apply to the scientific research based company only to the extent that it has published accounts~~ with regard to the period for which it has published or filed historical financial information under (1).

6.1.12 R An applicant for the admission of equity shares to a premium listing of a *scientific research based company* does not need to satisfy LR 6.1.3BR or LR 6.1.4R but must:

- (1) demonstrate its ability to attract funds from sophisticated investors prior to the marketing at the time of listing;

...

Other cases where the FSA may modify accounts and track record requirements

6.1.13 G The FSA may modify or dispense with ~~LR 6.1.3R(1)(a) or LR 6.1.4R-LR 6.1.3BR~~ if it is satisfied that it is desirable in the interests of investors and that investors have the necessary information available to arrive at an informed judgment about the applicant and the equity shares for which a premium listing is sought. [**Note:** article 44 CARD]

6.1.14 G Before modifying or dispensing with ~~LR 6.1.4R~~ LR 6.1.3BR, the FSA must also be satisfied that there is an overriding reason for the applicant seeking a premium listing (rather than seeking admission to a market more suited to a company without a ~~historic revenue earning record~~ sufficient historical

financial information to be eligible for a *premium listing*).

...

Settlement

6.1.23 R To be *listed*, the constitution of the *company* and the terms of its *equity shares* must be ~~eligible for~~ compatible with electronic settlement.

...

6.1.24A G LR 6.1.23R is intended to ensure that that there is nothing inherent within the constitution of a *company* which prevents electronic settlement of its *equity shares*. The *FSA* recognises that for some companies there may be external factors which affect the eligibility of an *equity share* for electronic settlement.

...

9.2.18 R (1) ...
 (2) The first time a *listed company* publishes financial information as required by ~~LR 9.7 to LR 9.9~~ DTR 4.1 after the publication of the unaudited financial information, *profit forecast* or *profit estimate*, it must:

...

...

9.7A.1 R If a *listed company* prepares a preliminary statement of annual results:
 ...
 (4) the statement must give details of the nature of any likely modification or emphasis-of-matter paragraph that may be contained in the ~~auditors~~ auditors' report required to be included with the annual financial report; and

...

...

13.4 Class 1 circulars

...

13.4.2 R If a *class 1 circular* contains a ~~modified accountant's report~~ modified report, as described in LR 13.5.25R, the *class 1 circular* must set out:

- (1) whether the modification or emphasis-of-matter paragraph is significant to shareholders;
- (2) if the modification or emphasis-of-matter paragraph is significant to shareholders, the reason for its significance; and
- (3) a statement from the *directors* explaining why they are able to recommend the proposal set out in the *class 1 circular* notwithstanding the ~~modified accountant's report~~ modified report.

...

Acquisition or disposal of mineral resources

- 13.4.7 G ~~For a disposal, the~~ The FSA may modify the information requirements in LR 13.4.6R if it considers that the information set out would not provide significant additional information. In those circumstances the FSA would generally require only the following information, provided it is presented in accordance with reporting standards acceptable to the FSA:
- (1) details of mineral resources, and where applicable reserves (presented separately) and exploration results or prospects;
 - (2) anticipated mine life and exploration potential or similar duration of commercial activity in extracting reserves;
 - (3) an indication of the duration and main terms of any licences or concessions and the legal, economic and environmental conditions for exploring and developing those licences or concessions;
 - (4) indications of the current and anticipated progress of mineral exploration and/or extraction and processing including a discussion of the accessibility of the deposit; and
 - (5) an explanation of any exceptional factors that have influenced the matters in (1) to (4).

Acquisition of a scientific research based company or related assets

- 13.4.8 R If a *class 1 transaction* relates to the acquisition of a *scientific research based company* or related assets, the *class 1 circular* must contain an explanation of the transaction's impact on the acquirer's business plan and the information set out in Section 1c of Part III (Scientific research based companies) of the ~~CESR~~ ESMA recommendations.

13.5 Financial information in Class 1 Circulars

- 13.5.-1 G For the purposes of LR 13.5, references to consolidation include both consolidation and proportionate consolidation.

When financial information must be included in a class 1 circular

- 13.5.1 R Financial information, as set out in this section, must be included by a *listed company* in a *class 1 circular* if:
- (1) the *listed company* is seeking to acquire an interest in a *target* which will result in a consolidation of the *target's* assets and liabilities with those of the *listed company*; or
 - (2) the *listed company* is seeking to dispose of an interest in a *target* which will result in the assets and liabilities which are the subject of the disposal no longer being consolidated; or
 - (3) the *target* (“A”) has itself acquired a *target* (“B”) and:
 - (a) A acquired B within the three year accounting reporting period set out in LR 13.5.13R(1) or after the date of the last published accounts; and
 - (b) the acquisition of B, at the date of its acquisition by A, would have been classified as a *class 1 acquisition* in relation to the *listed company* at the date of acquisition of A by the *listed company*.
- 13.5.2 G ~~A *listed company* that is entering into a *class 1 transaction* which does not fall within LR 13.5.1R must include in a *class 1 circular* such financial information as the FSA may specify. [deleted]~~
- 13.5.3 G ~~LR 13.5.1R will not normally apply to a *property company* making an acquisition or disposal of *property*. [deleted]~~
- 13.5.3A R When a *listed company* is acquiring an interest in a *target* that will be accounted for as an investment, or disposing of an interest in a *target* that has been accounted for as an investment, and the *target's securities* that are the subject of the transaction are admitted to an investment exchange that enables intra-day price formation, the *class 1 circular* should include:
- (1) the amounts of the dividends or other distributions paid in the last three years; and
 - (2) the price per *security* and the imputed value of the entire holding being acquired or disposed of at the close of business at the following times:
 - (a) on the last *business day* of each of the six months prior to the issue of the *class 1 circular*;
 - (b) on the day prior to the announcement of the transaction; and
 - (c) at the latest practicable date prior to the submission for approval of the *class 1 circular*.

- 13.5.3B R When a *listed company* is acquiring or disposing of an interest in a *target* that was or will be accounted for using the equity method in the *listed company's* annual consolidated accounts, the *class 1 circular* should include:
- (1) for an acquisition,
 - (a) a narrative explanation of the proposed accounting treatment of the *target* in the *issuer's* next audited consolidated accounts;
 - (b) a *financial information table* for the *target*;
 - (c) a statement that the *target* financial information has been audited and reported on without modification or a statement addressing *LR 13.4.2R* and *LR 13.5.25R* with regard to any modifications; and
 - (d) a reconciliation of the financial information and opinion thereon in accordance with *LR 13.5.27R(2)(a)* or, where applicable, a statement from the *directors* in accordance with *LR 13.5.27R(2)(b)*;
 - (2) for a disposal, the line entries relating to the *target* from its last audited consolidated balance sheet and those from its audited consolidated income statement for the last three years together with the equivalent line entries from its interim consolidated balance sheet and interim consolidated income statement, where the *issuer* has published subsequent interim financial information.
- 13.5.3C R A *listed company* that is entering into a *class 1 transaction* which falls within *LR 13.5.1R*, *LR 13.5.3AR* or *LR 13.5.3BR* but cannot comply with *LR 13.5.12R* (inclusion of financial information table) or, for an investment, *LR 13.5.3AR(2)* (inclusion of price per *security* and the imputed value of the entire holding), must include an appropriate independent valuation of the *target* in the *class 1 circular*.
- 13.5.3D G The *FSA* may dispense with the requirement for an independent valuation under *LR 13.5.3CR* if it considers that this would not provide useful information for shareholders, in which case the *class 1 circular* must include such information as the *FSA* specifies.

~~Form of accounting information~~ Accounting policies

- 13.5.4 R (1) A *listed company* must present all financial information that is disclosed in a *class 1 circular* in a form that is consistent with the accounting policies adopted in its own latest annual consolidated accounts.
- (2) The requirement set out in ~~paragraph~~ (1) does not apply to when financial information is presented in accordance with: ~~*LR 13.5.36R*~~.

- (a) DTR 4.2.6R, in relation only to financial information for the listed company presented for periods after the end of its last published annual accounts; or
- (b) LR 13.3.3R (in relation to pro forma financial information); or
- (c) LR 13.5.27R or LR 13.5.30R (in relation to financial information presented for entities that are admitted to trading on a regulated market or admitted to an appropriate multilateral trading facility or overseas investment exchange); or
- (d) LR 13.5.30BR (in relation to financial information on disposal entities extracted from financial records from previous years); or
- (e) LR 13.5.3AR or LR 13.5.3BR (in relation to targets that are or will be treated as investments or accounted for using the equity method in the listed company's consolidated accounts); or
- (f) the accounting policies to be used in the issuer's next financial statements, provided the issuer's last published annual consolidated accounts have been presented on a restated basis consistent with those to be used in its next accounts on or before the date of the class 1 circular.

...

Synergy benefits

- 13.5.9A R Where a listed company includes details of estimated synergies or other quantified estimated financial benefits expected to arise from a transaction in a class 1 circular, it must also include in the class 1 circular:
- (1) the basis for the belief that those synergies or other quantified estimated financial benefits will arise;
 - (2) an analysis and explanation of the constituent elements of the synergies or other quantified estimated financial benefits (including any costs) sufficient to enable the relative importance of those elements to be understood, including an indication of when they will be realised and whether they are expected to be recurring;
 - (3) a base figure for any comparison drawn;
 - (4) a statement that the synergies or other quantified estimated financial benefits are contingent on the class 1 transaction and could not be achieved independently; and

- (5) a statement that the estimated synergies or other quantified estimated financial benefits reflect both the beneficial elements and relevant costs.

...

Financial information table

- 13.5.12 R *A listed company that is required by LR 13.5.1R or LR 13.5.3BR(1) to produce financial information in a class 1 circular must include in the circular a financial information table.*

Class 1 acquisitions

- 13.5.12A R LR 13.5.13R to LR 13.5.30R apply only in relation to a class 1 acquisition.

Financial information table: reporting period

- 13.5.13 R *A financial information table for a class 1 acquisition must cover one of the following reporting periods:*
- (1) a period of three years up to the end of the latest financial period for which the *target* or its parent has prepared audited accounts; or
 - (2) a lesser period than the period set out in ~~paragraph~~ (1) if the *target's* business has been in existence for less than three years; ~~or~~
 - (3) ~~for a class 1 disposal, the period set out in LR 13.5.19R.~~

Financial information table: class 1 acquisitions

...

- 13.5.15 R ~~*A listed company must include in a separate financial information table, financial information that covers those undertakings which are to become the target's subsidiary undertakings, if applicable. [deleted]*~~
- 13.5.16 R (1) ~~This rule applies if a listed company is seeking to acquire an interest in a target ("A") that has itself acquired a target ("B") and:~~
- (a) ~~A acquired B within the three year reporting period set out in LR 13.5.13R(1) or after the date of the last published accounts; and~~
 - (b) ~~the acquisition of B, at the date of its acquisition by A, would have been classified as a class 1 acquisition in relation to the listed company at the date of acquisition of A by the listed company.~~
- (2) ~~*A listed company must include in a financial information table pre-acquisition financial information on B that covers the period from the commencement of the three year reporting period set out in LR*~~

~~13.5.13R(1) up to the date of acquisition by A. [deleted]~~

- 13.5.17 G If the *target* made a series of acquisition that:
- (1) ~~are not caught individually by LR 13.5.16R; and~~
 - (2) ~~were made during or subsequent to the reporting period set out in LR 13.5.13R(1) or (2);~~

~~the FSA may require additional financial information about those acquisitions to be included in the *financial information table*. [deleted]~~

- 13.5.17A R If the *target* has made an acquisition or a series of acquisitions that were made during, or subsequent to, the reporting periods set out in LR 13.5.13R the listed company must include additional *financial information tables* so that the financial information presented by the listed company represents at least 75% of the enlarged target for the period from the commencement of the relevant three year reporting period set out in LR 13.5.13R(1) up to the date of the acquisition by the listed company or the last balance sheet date presented by it under LR 13.5.13R(1), whichever of the two is earlier.

- 13.5.17B G For the purposes of assessing whether the financial information presented in accordance with LR 13.5.17AR represents at least 75% of the enlarged target the FSA will take into account factors such as the assets, profitability and market capitalisation of the business.

...

Financial information table: class 1 disposal

- 13.5.19 R (1) ~~In the case of a *class 1 disposal*, a *financial information table* must include, for the *target*:~~
- (a) ~~the last audited consolidated balance sheet; and~~
 - (b) ~~the audited consolidated income statements for the last three years;~~
- ~~if audited accounts have been prepared for the *target*.~~
- (2) ~~If audited accounts have not been prepared for the *target*, the information required by paragraph (1) must be extracted from the consolidated schedules that underlie the *listed company's* audited consolidated accounts. The income statements must be drawn up to at least the level of profit or loss for the period.~~
- (3) ~~If the *target* has not been owned by the *listed company* for the entire reporting period set out in paragraph (1)(b), the information required by paragraph (1) may be extracted from the *target's* accounting records. [deleted]~~
- 13.5.20 G If a dispensation of LR 13.5.19R has been granted because it is not possible

to provide a meaningful allocation of costs, such as interest and tax, the *class 1 circular* should contain a statement to this effect. [deleted]

Financial information table: accountant's opinion

13.5.21 R ~~A financial information table must be accompanied by an accountant's opinion unless LR 13.5.27R, LR 13.5.28R or LR 13.5.29G applies. Unless LR 13.5.3AR, LR 13.5.3BR or LR 13.5.27R applies, a financial information table must disclose how the accounting policies used conform with LR 13.5.4R and be accompanied by an accountant's opinion as set out in LR 13.5.22R.~~

13.5.22 R An accountant's opinion must set out:

(1) whether, for the purposes of the *class 1 circular*, the *financial information table* gives a true and fair view of the financial matters set out in it; and

(2) ~~whether the financial information table has been prepared in a form that is consistent with the accounting policies adopted in the listed company's latest annual accounts.~~

...

13.5.25 R ~~If an accountant's report, which contains the accountant's opinion required by LR 13.5.21 R, is modified or contains an emphasis-of-matter paragraph, details of all material matters must be set out in the *class 1 circular*, including:~~

- (1) all the reasons for the modification or emphasis-of-matter paragraph; and
- (2) a quantification of the effects, if both relevant and practicable.

13.5.26 R ~~If the accounts historical financial information of a target that falls within LR 13.5.14R to LR 13.5.16R or LR 13.5.17AR contain a modified auditor's report is subject to a modified report, details of the material matters giving rise to the modification or emphasis-of-matter paragraph must be set out in the *class 1 circular*.~~

~~Accountant's opinion: acquisitions~~ Acquisitions of publicly traded companies

13.5.27 R (1) ~~This rule LR 13.5.27R(2) applies if where the target is:~~

- (a) *admitted to trading on a regulated market*; or
- (b) a company whose securities are either listed on an *overseas investment exchange that is not a regulated market* or admitted to trading ~~on an overseas regulated market~~ a multilateral trading facility, where appropriate standards as regards the production, publication and auditing of financial

information are in place;

~~and a material adjustment needs to be made to the *target's* financial statements to achieve consistency with the *listed company's* accounting policies and none of the financial information included in the *target's financial information table* is subject to a *modified report*, except where a dispensation has been granted under LR 13.5.27CR.~~

- (2) ~~Where LR 13.5.27R(1) or LR 13.5.3BR(1) applies the *A listed company* must include the following in the *class 1 circular* either:~~
- (a) ~~a reconciliation of financial information on the *target*, for all periods covered by the *financial information table*, on the basis of the *listed company's* accounting policies, accompanied by an accountant's opinion that sets out:~~
- ~~(i) whether the reconciliation of financial information in the *financial information table* has been properly compiled on the basis stated; and~~
- ~~(ii) whether the adjustments are appropriate for the purpose of presenting the financial information (as adjusted) on a basis consistent in all material respects with the *listed company's* accounting policies; or~~
- (b) ~~an accountant's opinion that sets out: a statement by the *directors* that no material adjustment needs to be made to the *target's* financial information to achieve consistency with the *listed company's* accounting policies.~~
- ~~(i) whether the reconciliation of financial information in the *financial information table* has been properly compiled on the basis stated; and~~
- ~~(ii) whether the adjustments are appropriate for the purpose of presenting the financial information (as adjusted) on a basis consistent in all material respects with the *listed company's* accounting policies.~~

13.5.27A G The FSA will make its assessment of whether the accounting and other standards applicable to an investment exchange or *multilateral trading facility* as a result of *securities* being admitted to trading are appropriate for the purpose of LR 13.5.27R(1)(b) having regard to at least the following matters in relation to the legal and regulatory framework applying to the *target* by virtue of its admission to that market:

- (1) the quality of auditing standards compared with International Standards on Auditing;
- (2) requirements for independence of auditors;

- (3) the nature and extent of regulation of audit firms;
- (4) the quality of accounting standards compared with International Financial Reporting Standards;
- (5) the requirements for the timeliness of publication of financial information;
- (6) the presence and effectiveness of monitoring of the timely production and publication of the accounts; and
- (7) the existence and level of external independent scrutiny of the quality of accounts and the disclosures therein.

13.5.27B R Where a *listed company* proposes to rely on LR 13.5.27R(1)(b), its *sponsor* must submit to the FSA an assessment of the appropriateness of the standards applicable to an investment exchange or *multilateral trading facility* against the factors set out in LR 13.5.27AG(1) to (7) and any other matters that it considers should be noted. The assessment must be submitted before or at the time the *listed company* submits the draft *class 1 circular*.

13.5.27C R The FSA may grant a dispensation from LR 13.5.27R(1) to allow the application of LR 13.5.27R(2) where a *modified report* on the *target's* financial information has been produced. In such circumstances the FSA will have regard to the factors set out in LR 6.1.3AG.

~~When an accountant's opinion is not required~~

13.5.28 R ~~An accountant's opinion is not required if the *target* is:~~

- ~~(1) *admitted to trading*; or~~
- ~~(2) *a company whose securities are listed on an overseas investment exchange or admitted to trading on an overseas regulated market;*~~

~~and no material adjustment needs to be made to the *target's* financial statements to achieve consistency with the *listed company's* accounting policies. [deleted]~~

13.5.29 G ~~In the case of a *class 1 disposal* a *listed company* is not required to include an accountant's opinion with the *financial information table*. [deleted]~~

Half-yearly and quarterly financial information

13.5.30 R ~~If the *target* of an acquisition has published half-yearly or quarterly financial information subsequent to the period set out in LR 13.5.13R(1) or (2), such financial information must be~~ If a *class 1 circular* includes half-yearly or quarterly or other interim financial information for the *target*, the financial information should be presented in accordance with LR 13.5.4R(1) and be accompanied by a confirmation from the *directors* of the

consistency of the accounting policies with those of the issuer, except:

- (1) reproduced in the class 1 circular; and where LR 13.5.27R(1) applies, the financial information should be presented in accordance with LR 13.5.27R(2) except that no accountant's opinion is required; or
- (2) reconciled in accordance with LR 13.5.27R(2), if applicable where LR 13.5.3BR applies, the financial information should be presented in accordance with LR 13.5.3BR(1)(b) and LR 13.5.3BR(1)(d).

Class 1 disposals

13.5.30A R LR 13.5.30BR to LR 13.5.30DG apply only in relation to a class 1 disposal.

- 13.5.30B R
- (1) In the case of a class 1 disposal, a financial information table must include for the target:
 - (a) the last annual consolidated balance sheet;
 - (b) the consolidated income statements for the last three years drawn up to at least the level of profit or loss for the period; and
 - (c) the consolidated balance sheet and consolidated income statement (drawn up to at least the level of profit or loss for the period) at the issuer's interim balance sheet date if the issuer has published interim financial statements since the publication of its last annual audited consolidated financial statements.
 - (2) The information in (1) must be extracted without material adjustment from the consolidation schedules that underlie the listed company's audited consolidated accounts or, in the case of (c), the interim financial information, and must be accompanied by a statement to this effect.
 - (3) If the information in (1) is not extracted from the consolidation schedules it must be extracted from the issuer's accounting records and where an allocation is made, the information must be accompanied by:
 - (a) an explanation of the basis for any financial information presented; and
 - (b) a statement by the directors of the listed company that such allocations provide a reasonable basis for the presentation of the financial information for the target to enable shareholders to make a fully informed voting decision.
 - (4) If the target has not been owned by the listed company for the entire reporting period set out in (1)(b), the information required by (1) or

(3) may be extracted from the *target's* accounting records.

13.5.30C R Where a change of accounting policies has occurred during the period covered by the *financial information table* required by LR 13.5.30BR the financial information must be presented on the basis of both the original and amended accounting policies for the year prior to that in which the new accounting policy is adopted unless the change did not require a restatement of the comparative. Therefore the *financial information table* should have four columns (or more where changes have occurred in more than one year).

13.5.30D G The FSA may modify LR 13.5.30BR(1)(b) and (c) where it is not possible for the *listed company* to provide a meaningful allocation of its costs in the *target's* audited consolidated income statements. The *class 1 circular* should contain a statement to this effect where this modification has been granted. The FSA would not normally expect to grant such modifications except in respect of non-operating costs such as finance costs and tax.

...

Profit forecasts and profit estimates

...

13.5.33 R If, prior to the *class 1 transaction*, a *profit forecast* or *profit estimate* was published that:

- (1) relates to any of the *listed company*, a significant part of the *listed company group*, ~~or~~ the *target* or a significant part of the *target*; and
- (2) ~~is still outstanding~~ relates to financial information including the period of the forecast which has yet to be published at the date of the *class 1 circular*;

~~the *listed company* must include that *profit forecast* or *profit estimate* in the *class 1 circular* or include an explanation of why the *profit forecast* or *profit estimate* is no longer valid~~ either:

- (3) include that *profit forecast* or *profit estimate* in the *class 1 circular* and comply with LR 13.5.32R; or
- (4) include the *profit forecast* or *profit estimate* in the *class 1 circular* together with an explanation of why the *profit forecast* or *profit estimate* is no longer valid and why reassessment of the *profit forecast* or *profit estimate* in the *class 1 circular* is not necessary for the *listed company* to comply fully with LR 13.3.1R(3).

13.5.33A G For the purposes of LR 13.5.33R, the fact that the *profit forecast* or *profit estimate* was prepared for a reason other than the *class 1 circular* does not itself indicate invalidity.

13.5.33B G For the purposes of LR 13.5.33R(1) a significant part of the *listed company* or *target* is any part that represents over 75% of the *listed company's group* or the *target* respectively. For these purposes the *FSA* will take into account factors such as the assets, profitability and market capitalisation of the business.

13.5.34 G A *listed company* should consider LR 9.2.18R regarding information that must be published after a *class 1 transaction*.

13.5.35 G ~~LR 13.5.32R and LR 13.5.33R do not apply to class 1 disposals. [deleted]~~

Subsequent publication of unaudited financial information

13.5.36 R (1) ~~A *listed company* that publishes unaudited financial information in a *class 1 circular* must:~~

(a) ~~reproduce that financial information in its next annual report and accounts;~~

(b) ~~produce and disclose in the annual report and accounts the actual figures for the same period covered by the information reproduced under paragraph (a); and~~

(c) ~~provide an explanation of the difference, if there is a difference of 10% or more between the figures required by paragraph (b) and those reproduced under paragraph (a).~~

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

(a) ~~pro forma financial information prepared in accordance with Annex 1 and Annex 2 of the *PD Regulation*; or~~

(b) ~~any preliminary statements of annual results or half yearly or quarterly reports that are reproduced in the *class 1 circular*; or~~

(c) ~~any additional analysis of financial information that is set out in a *financial information table*. [deleted]~~

...

13.8 Other circulars

...

Disapplying pre-emption rights

13.8.2 R A *circular* relating to a resolution proposing to disapply the statutory pre-emption rights under section 561 of the Companies Act 2006 (Existing shareholders' right of pre-emption) provided by LR 9.3.11R must include:

...

...

Appendix 1 Relevant definitions

CE <u>ESR</u> <u>ESMA</u> <i>recommendations</i>	the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004 published by the Committee of European Securities Regulators <u>European Securities and Markets Authority</u> (ESMA/2011/81).	
<i>financial information table</i>	financial information presented in tabular form that covers the reporting period set out in <i>LR 13.5.13R</i> in relation to the entities set out in <i>LR 13.5.14R</i> , and to the extent relevant <i>LR 13.5.15R</i> and <i>LR 13.5.16R</i> <u><i>LR 13.5.17AR</i></u> .	
<i>mineral expert's report</i>	a report prepared in accordance with the CE <u>ESR</u> <u>ESMA</u> <i>recommendations</i> .	
<i>modified auditor's report</i>	an <u>accountant's</u> or auditor's report:	
	(a)	in which the auditor's opinion is <u>qualified modified</u> ; or
	(b)	which sets out: <ul style="list-style-type: none"> (i) a problem relating to the business as a going concern; or (ii) a significant uncertainty, the resolution of which is dependent upon future events. <u>contains an emphasis-of-matter paragraph.</u>

Annex C

Amendments to Prospectus Rules sourcebook (PR)

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

~~CESR~~ ESMA recommendations

- 1.1.8 G In determining whether Part 6 of the *Act*, these *rules* and the *PD Regulation* ~~has~~ have been complied with, the *FSA* will take into account whether a *person* has complied with the ~~CESR~~ ESMA recommendations.

...

Property valuation reports

- 5.6.5 G To comply with paragraph 130 of the ~~CESR~~ ESMA recommendations, the *FSA* would expect a valuation report for a property company to be in accordance with either:

...

...

Appendix 1

<p>CESR <u>ESMA</u> recommendations</p>	<p>the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004 published by the Committee of European Securities Regulators <u>European Securities and Markets Authority</u> (ESMA/2011/81).</p>
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LISTING RULES (SPONSORS) (AMENDMENT NO 3) INSTRUMENT 2012

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 Listing Rules sourcebook of the Handbook.

Commencement

- B. This instrument comes into force on 31 December 2012.

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 (Sponsors) (Amendment No 3) Instrument 2012.

By order of the Board
27 September 2012

Annex A

Amendments to the Glossary of definitions

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

sponsor service a service relating to a matter referred to in *LR 8.2* that a *sponsor* provides or is requested or appointed to provide, ~~and that is for the purpose of the *sponsor* complying with *LR 8.3.1R* or *LR 8.4*. This definition includes~~ including preparatory work that a *sponsor* may undertake before a decision is taken as to whether or not it will act as *sponsor* for a *listed company* or *applicant* or in relation to a particular transaction, and including all the *sponsor's* communications with the *FSA* in connection with the service. But nothing in this definition is to be taken as requiring a *sponsor* when requested to agree to act as a *sponsor* for a *company* or in relation to a transaction.

Annex B

Amendments to Listing Rules sourcebook (LR)

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

8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

- 8.2.1 R A *company* with, or applying for, a *premium listing* of its *equity shares* must appoint a *sponsor* on each occasion that it:
- (1) ~~makes~~ is required to submit any of the following documents to the FSA in connection with an application for admission of equity shares to premium listing 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
 - (d) ~~requires the production of listing particulars and is referred to in LR 15.3.3R or LR 16.3.4R;~~ or
 - (2) is required to ~~produce~~ submit to the FSA a class 1 circular for approval; or
 - (3) is ~~producing~~ required to submit to the FSA a circular that proposes a reconstruction or a refinancing which does not constitute a class 1 transaction is required by LR 9.5.12R to include a working capital statement; or
 - (4) is ~~producing~~ required to submit to the FSA a circular for the proposed purchase of own shares which is required by LR 13.7.1R(2) to include a working capital statement; or
- [Note: This does not include a circular issued by a closed-ended investment company.]
- (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~~ or the transparency rules by the listed company; or

- (6) is required by LR 11.1.10R(2)(b) to provide the FSA with a confirmation that the terms of the proposed *related party transaction* are fair and reasonable; or
- (7) is required to submit to the FSA a *related party circular* which is required by LR 13.6.1R(5) to include a statement by the board that the transaction or arrangement is fair and reasonable; or
- (8) is required by LR 8.4.3R(4) to submit to the FSA a letter from a *sponsor* in relation to the *applicant's* eligibility; or
- (9) is required to make an announcement or request a suspension in connection with a *reverse takeover* under LR 5.6.6R; or
- (10) provides to the FSA a disclosure regime confirmation in connection with a *reverse takeover* under LR 5.6.12G(1); or
- (11) makes a disclosure announcement in connection with a *reverse takeover* under LR 5.6.15G that contains a declaration described in LR 5.6.15G(3) or (4); or
- (12) submits to the FSA a letter in relation to the *issuer's* eligibility in connection with a *reverse takeover* under LR 5.6.23G(2); or
- (13) provides confirmation to the FSA of its severe financial difficulty for the purposes of LR 10.8.3G(2); or
- (14) is required to provide an assessment of the appropriateness of an investment exchange or *multilateral trading facility* under LR 13.5.27BR.

...

Other transactions where a ~~listed~~ company with a *premium listing* must obtain a sponsor's guidance

- 8.2.2 R If a ~~listed~~ company with a *premium listing* 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 the~~ *disclosure rules* and the *transparency rules*.
- 8.2.3 R If a ~~listed~~ company with a *premium listing* 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 the~~ *disclosure rules* and the *transparency rules*.

8.3 Role of a sponsor: general

Responsibilities of a sponsor

- 8.3.1 R A *sponsor* must in relation to a *sponsor service*:

- (1) referred to in *LR 8.2.1R(1) to (4), LR 8.2.1R(11), LR 8.2.1AR* and, where relevant *LR 8.2.1R(5)*, provide assurance to the *FSA* when required that the responsibilities of the *listed company with or applying for a premium listing of its equity shares* ~~or applicant~~ under the *listing rules* have been met; and
- (1A) provide to the *FSA* any explanation or confirmation in such form and within such time limit as the *FSA* reasonably requires for the purposes of ensuring that the *listing rules* are being complied with by a *company with or applying for a premium listing of its equity shares*; and
- (2) referred to in *LR 8.2.1R, LR 8.2.2R or LR 8.2.3R*, guide the *listed company* ~~or applicant~~ *company with or applying for a premium listing of its equity shares* in understanding and meeting its responsibilities under the *listing rules*, ~~and~~ the *disclosure rules* and the *transparency rules*.

8.3.1A R A *sponsor* must, for so long as it provides a *sponsor service*:

- (1) take such reasonable steps as are sufficient to ensure that any communication or information it provides to the *FSA* in carrying out the *sponsor service* is, to the best of its knowledge and belief, accurate and complete in all material respects; and
- (2) as soon as possible provide to the *FSA* any information of which it becomes aware that materially affects the accuracy or completeness of information it has previously provided.

8.3.1B G Where a *sponsor* provides information to the *FSA* which is or is based on information it has received from a third party, in assessing whether a *sponsor* has complied with its obligations in *LR 8.3.1AR(1)* the *FSA* will have regard, amongst other things, to whether a *sponsor* has appropriately used its own knowledge, judgment and expertise to review and challenge the information provided by the third party.

8.3.2 G The *sponsor* will be the main point of contact with the *FSA* for any matter referred to in *LR 8.2*. The *FSA* expects to discuss all issues relating to a transaction and any draft or final document directly with the *sponsor*. However, in appropriate circumstances, the *FSA* will communicate directly with the ~~*listed company or applicant company with or applying for a premium listing of its equity shares*~~, or its advisers.

8.3.2A G A *sponsor* remains responsible for complying with *LR 8.3* even where a *sponsor* relies on the *company with or applying for a premium listing of its equity shares* or a third party when providing an assurance or confirmation to the *FSA*.

...

Principles for sponsors: ~~standard of conduct relations with the FSA~~

...

8.3.5A R ~~A *sponsor* must in relation to a~~ If, in connection with the provision of a *sponsor*

service, a sponsor becomes aware that it, or a company with or applying for a premium listing of its equity shares is failing or has failed to comply with its obligations under 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, the or disclosure rules or the and transparency rules, the sponsor must promptly notify the FSA.

8.3.5B R A sponsor must, in relation to a sponsor service, act with honesty and integrity.

...

Principles for sponsors: identifying and managing conflicts

8.3.7A G The purpose of ~~LR 8.3.7BR to LR 8.3.12G~~ 8.3.13G is to ensure that conflicts of interest do not adversely affect:

...

8.3.7B R A sponsor must take all reasonable steps to identify conflicts of interest that could adversely affect its ability to perform its functions properly under this chapter.

8.3.8 G ~~Conflicts to be identified include~~ In identifying conflicts of interest, sponsors should also take into account circumstances that could:

- (1) create a perception in the market that a sponsor may not be able to perform its functions properly; and
- (2) compromise the ability of a sponsor to fulfil its obligations to the FSA in relation to the provision of a sponsor service.

...

8.3.11 R If, in relation to a ~~transaction~~ sponsor service, a sponsor is not reasonably satisfied that its organisational and administrative arrangements will ensure that a conflict of interest will not adversely affect its ability to perform its functions properly under this chapter, it must decline or cease to provide the sponsor services on the transaction.

...

8.3.12A G LR 8.3.7BR, LR 8.3.9R and LR 8.3.11R apply for so long as the sponsor provides a sponsor service.

...

8.4 Role of a sponsor: transactions

Application for admission: new applicants

8.4.1 R LR 8.4.2R to LR 8.4.4G apply in relation to an application for admission of equity shares to premium listing if an applicant does not have equity shares already listed admitted to premium listing and LR 6.1.1R does not apply because of the operation

of LR 6.1.1AR, and:

...

- (3) the application is accompanied by a summary document as required by *PR 1.2.3R(8)*; or
- (4) the production of *listing particulars* is required in the circumstances referred to in *LR 15.3.3R* or *LR 16.3.4R*.

...

- 8.4.7 R *LR 8.4.8R* to *LR 8.4.10G* apply in relation to an application for *admission of equity shares* of an *applicant* that has *equity shares* already *listed* or in circumstances in which *LR 6.1.1AR* applies.

...

Applying for transfer between listing categories

- 8.4.14 R In relation to a proposed transfer under *LR 5.4A*, if a *sponsor* is appointed in accordance with *LR 8.2.1AR*, it must:

...

...

Reverse takeovers

- 8.4.17 R A *sponsor* acting on a *reverse takeover* where the *issuer* decides to make a disclosure announcement under *LR 5.6.15G* must:
- (1) submit to the *FSA* under *LR 5.6.17R* a completed *Sponsor's Disclosure Announcement Declaration*;
 - (2) not submit to the *FSA* the *Sponsor's Disclosure Announcement Declaration* unless it has come to a reasonable opinion, after having made due and careful enquiry, that it is reasonable for the *issuer* to provide the declarations described in *LR 5.6.15G(3)* and (4); and
 - (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering a proposed disclosure announcement under *LR 5.6.15G* have been disclosed with sufficient prominence in the announcement or otherwise in writing to the *FSA*.

[Note: The *Sponsor's Disclosure Announcement Declaration* can be found on the UKLA section of the *FSA* website.]

...

Cooperation with sponsors

- 8.5.6 R In relation to the provision of a *sponsor service*, a *company* with or applying for a *premium listing* of its *equity shares* must cooperate with its *sponsor* by providing the *sponsor* with all information reasonably requested by the *sponsor* for the purpose of carrying out the *sponsor service* in accordance with LR 8.
- ...
- 8.6.4 G When considering an application for approval as a *sponsor* the *FSA* may:
- ...
- (2) request that the applicant or its specified representative answer questions and explain any matter the *FSA* considers relevant to the application; and
- ...
- 8.6.12 G A *sponsor* will generally be regarded as having appropriate systems and controls if there are:
- (1) clear and effective reporting lines in place (including clear and effective management responsibilities);
- (2) effective systems and controls for the appropriate supervision of *employees providing engaged in the provision of sponsor services by the sponsor*;
- (3) effective systems and controls to ensure its compliance with all applicable *listing rules at all times, including when performing sponsor services*;
- (4) ...
- (5) ~~effective arrangements for creating and retaining for 6 years, adequate records of all matters relating to the provision of sponsor services to a listed company or applicant; [deleted]~~
- (6) effective systems and controls to ensure that it has appropriate staffing arrangements for the performance of *sponsor services* with due care and skill; ~~and~~
- (7) effective systems and controls to ensure that employees ~~performing engaged~~ in the provision of sponsor services by the sponsor receive appropriate guidance and training for the performance of those services with due care and skill; and
- (8) effective systems and controls to identify and manage conflicts of interest.
- ...
- 8.6.13A G A *sponsor* will generally be regarded as having appropriate systems and controls for identifying and managing conflicts if it has in place effective policies and procedures:

...

- (2) to monitor whether arrangements put in place to manage conflicts are effective; and
- (3) to ensure that individuals within the *sponsor* are appropriately trained to enable them to identify, escalate and manage conflicts of interest; ~~and~~
- (4) ~~to ensure that appropriate records are kept of decisions relating to identification and management of conflicts and the basis upon which it has reached those decisions. [deleted]~~

...

Systems and controls: record management

8.6.16A R A sponsor must have in place effective arrangements to create and retain for six years accessible records which are sufficient to be capable of demonstrating that it has provided sponsor services and otherwise complied with its obligations under LR 8 in accordance with the listing rules, including:

- (1) where a declaration is to be submitted under LR 8.4.3R(1), LR 8.4.9R(1), LR 8.4.13R(1), LR 8.4.14R(2) or LR 8.4.17R or where relevant pursuant to an appointment under LR 8.2.1R(5), the basis of each declaration given;
- (2) where any opinion, assurance or confirmation is provided by a sponsor to the FSA or a company with or applying for a premium listing in relation to a sponsor service, the basis of that opinion, assurance or confirmation;
- (3) where a sponsor provides guidance to a company with or applying for a premium listing pursuant to LR 8.2.2R, LR 8.2.3R or LR 8.3.1R(2), the basis upon which the guidance is given and upon which any judgments or opinions underlying the guidance have been made or given; and
- (4) the steps taken to comply with its conflicts obligations under LR 8.3.7BR, LR 8.3.9R and LR 8.3.11R and its ongoing eligibility obligations under LR 8.6.6R.

8.6.16B G Records should:

- (1) be capable of timely retrieval; and
- (2) include material communications which relate to the provision of sponsor services, including any advice or guidance given to a company with or applying for a premium listing in relation to their responsibilities under the listing rules, the disclosure rules and the transparency rules.

8.6.16C G In considering whether a sponsor has satisfied the requirements regarding sufficiency of records in LR 8.6.16AR, the FSA will consider whether the records would enable a person with general knowledge of the sponsor regime but no specific knowledge of the actual sponsor service undertaken to understand and

verify the basis upon which material judgments have been made throughout the provision of the *sponsor service*.

Regular review

- 8.6.17 R ~~A *sponsor* must carry out a regular review to ensure that:~~
- ~~(1) it continues to be competent to provide *sponsor services*; and~~
 - ~~(2) it has appropriate systems and controls in place to ensure that it can continue to carry out its role as a *sponsor* in accordance with this chapter.~~
~~[deleted]~~
- 8.6.18 R ~~A *sponsor* must create, and retain for 6 years, adequate records to demonstrate that it has carried out the regular reviews referred to in LR 8.6.17R setting out the basis upon which it has reached any conclusions about whether it continues to meet the criteria in that rule. [deleted]~~

Contact persons

- 8.6.19 R For each transaction for which it provides *sponsor services*, a *sponsor* must:
- ...
 - (2) ensure that the contact *person* or *persons*:
 - ...
 - (b) are available to answer queries from the *FSA* on any business day between 8am and 6pm.
- ...

Annual notifications

- 8.7.7 R A *sponsor* must provide to the *FSA* on or after the first *business day* of January in each year but no later than the last *business day* of January in each year:
- ...
 - (1A) for each of the criteria in that rule, details evidence of the basis upon which it considers that it meets ~~the criteria~~ that criterion.
 - ...

General notifications

- 8.7.8 R A *sponsor* must notify the *FSA* in writing as soon as possible if:
- (1) (a) the *sponsor* ceases to satisfy the criteria for approval as a *sponsor* set out in LR 8.6.5R or becomes aware of any matter which, in its reasonable opinion, would be relevant to the *FSA* in considering

whether the *sponsor* continues to comply with LR 8.6.6R; or

(b) the *sponsor* becomes aware of any fact or circumstance relating to the *sponsor* or any of its employees engaged in the provision of *sponsor services* by the *sponsor* which, in its reasonable opinion, would be likely to adversely affect market confidence in the sponsor regime; or

(2) the *sponsor*, or any of its *employees* engaged in the provision of ~~who provide~~ *sponsor services* by the *sponsor*, are:

...

(3) any of its *employees* ~~who provide~~ engaged in the provision of *sponsor services* by the *sponsor* are disqualified by a court from acting as a *director* of a *company* or from acting in a management capacity or conducting the affairs of any *company*; or

(4) the *sponsor*, or any of its *employees* ~~who provide~~ engaged in the provision of *sponsor services* by the *sponsor*, are subject to any public criticism, regulatory intervention or disciplinary action:

...

(9) ~~a review carried out under LR 8.6.17R reveals it identifies or otherwise becomes aware of any material deficiencies~~ deficiency in the *sponsor's* systems and controls; or

(10) there is intended to be a change of control of the *sponsor*, ~~or any restructuring of the *sponsor's* group, carries out any restructuring, which results in~~ or a re-organisation of or a substantial change to the *directors*, partners or *employees* who provide engaged in the provision of *sponsor services* by the *sponsor*; or

(11) there is expected to be a change in the financial position of the *sponsor* or any of its *group companies* that would be likely to adversely affect the *sponsor's* ability to perform the *sponsor services* or otherwise comply with LR 8.

8.7.8A R Where a *sponsor* is of the opinion that notwithstanding the circumstances giving rise to a notification obligation under LR 8.7.8R, it continues to satisfy the ongoing criteria for approval as a *sponsor* in accordance with LR 8.6.6R, it must include in its notification to the FSA a statement to that effect and the basis for its opinion.

...

Transaction notification rules: ~~conflicts declaration~~

8.7.12 R (1) ~~Each time a *sponsor* is appointed to act as a *sponsor* as required by the listing rules it must complete a Conflicts Declaration.~~

(2) ~~The completed Conflicts Declaration must be submitted to the FSA at the same time as any documents in connection with a transaction are first~~

~~submitted to the FSA. [deleted]~~

~~[Note: The Conflicts Declaration form can be found on the UKLA section of the FSA's website.]~~

8.7.13 R ~~If, after submitting a Conflicts Declaration but prior to the *day* of approval of the *prospectus*, *listing particulars*, *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. [deleted]~~

8.7.14 R ~~On the day of approval of the *prospectus*, *listing particulars*, *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. [deleted]~~

8.7.15 G ~~The FSA will notify the *sponsor* of any concerns it has in relation to the *sponsor's* independence as soon as possible following receipt of the Conflicts Declaration as set out in LR 8.7.12R or LR 8.7.14R or other notification regarding the *sponsor's* independence. [deleted]~~

...

Cancellation of a sponsor's approval at the sponsor's request

8.7.21 G ~~A *sponsor* that intends to request the FSA to cancel its approval as a *sponsor* will need to should comply with LR 8.7.22R.~~

8.7.21A G Examples of when a *sponsor* should submit a cancellation request pursuant to LR 8.7.22R include, but are not limited to:

(1) situations where the *sponsor* ceases to satisfy the ongoing criteria for approval as a *sponsor* in accordance with LR 8.6.6R and, following a notification made under LR 8.7.8R, there are no ongoing discussions with the FSA which could lead to the conclusion that the sponsor remains eligible; or

(2) where there is a change of control of the *sponsor* or any restructuring of the *sponsor's* group that will result in *sponsor services* being provided by a different person, in which case the person that is intended to provide the *sponsor services* should apply for approval as a *sponsor* under LR 8.6 before it provides any *sponsor services*.

8.7.22 R A request by a *sponsor* for its approval as a *sponsor* to be cancelled must be in writing and must include:

...

- (4) a signed confirmation that the *sponsor* will not ~~participate in~~ provide any services *sponsor services* described in LR 8.2 as of the date the request is submitted to the *FSA*; and

...

...

9.2.13A R In relation to the provision of a *sponsor service*, a company with a *premium listing* of its *equity shares* must cooperate with its *sponsor* by providing the *sponsor* with all information reasonably requested by the *sponsor* for the purpose of carrying out the *sponsor service* in accordance with LR 8.

...

Modified requirements for smaller related party transactions

11.1.10 R (1) ...

- (2) Where this rule applies, LR 11.1.7R does not apply but instead the *listed company* must before entering into the transaction or arrangement (as the case may be):

- (a) ...

- (b) provide the *FSA* with written confirmation from ~~an independent adviser acceptable to the *FSA*~~ a *sponsor* that the terms of the proposed transaction or arrangement with the *related party* are fair and reasonable as far as the shareholders of the *listed company* are concerned; and

...

...

13.2.4 R The following documents (to the extent applicable) must be lodged with the *FSA* in final form before it will approve a *circular*:

...

- (2) for a *class 1 circular* or *related party circular*, a letter setting out any items of information required by this chapter that are not applicable in that particular case; and
- (3) ~~the *sponsor's* Conflicts Declaration ; and [deleted]~~
- (4) any other document that the *FSA* has sought in advance from the *listed company* or its *sponsor*.

...

13.2.6 R ~~The *sponsor's* Conflicts Declaration in final form must be submitted at least 10~~

~~clear *business days* before the date on which it is intended to publish the *circular*.~~
~~[deleted]~~

...

Related party circulars

13.6.1 R A *related party circular* must also include:

...

- (5) a statement by the board that the transaction or arrangement is fair and reasonable as far as the *security* holders of the *company* are concerned and that the *directors* have been so advised by ~~an independent adviser acceptable to the FSA~~ a sponsor;

...

...

13.6.3 G For the purpose of advising the *directors* under LR 13.6.1R(5), ~~an independent adviser~~ a sponsor may take into account but not rely on commercial assessments of the *directors*.

...

15.3.3 R ~~In addition to the circumstances set out in LR 8.2.1R when a *sponsor* must be appointed, an~~ An applicant must appoint a *sponsor* on each occasion that it makes an application for *admission* of *equity shares* which requires the production of *listing particulars*.

...

16.3.4 R ~~In addition to the circumstances set out in LR 8.2.1R when a *sponsor* must be appointed, an~~ An applicant must appoint a *sponsor* when it makes an application for *admission* of *equity shares* which requires the production of *listing particulars*.

PROSPECTUS REGULATION (AMENDMENT NO 2) INSTRUMENT 2012**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 84 (Matters which may be dealt with by prospectus rules);
 - (3) section 87A (Criteria for approval of prospectus by competent authority);
 - (4) section 101 (Part 6 rules: general provisions);
 - (5) section 138 (General rule-making power);
 - (6) section 156 (General supplementary powers); and
 - (7) schedule 7 (The Authority as Competent Authority for Part 6).
- 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 28 September 2012.

Amendments to the Handbook

- D. The Prospectus Rules sourcebook (PR) is amended in accordance with the Annex to this instrument.

Non-FSA legislative text

- E. (1) In the Annex to this instrument, the legislative text marked “EU” in the margin is included for the convenience of readers but does not form part of the legislative text made by the Financial Services Authority.
- (2) Although European Union Legislation is reproduced in this instrument, only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

Notes

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

Citation

- F. This instrument may be cited as the Prospectus Regulation (Amendment No 2) Instrument 2012.

By order of the Board
27 September 2012

Annex

Amendments to the Prospectus Rules sourcebook (PR)

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

Contents of summary

2.1.4 EU ...

[**Note:** See transitional provisions in Regulation (EU) No 486/2012]

~~**NOTE:** The European Commission has published a draft Regulation amending the *PD Regulation* here:~~

~~http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm~~

~~The *FSA* will review *prospectuses* in accordance with the authoritative version of the *PD Regulation*, including any amendments made by the final published version of the above Regulation, which is the version that is published in the Official Journal of the European Union, from the date it is stated to be in force.~~

~~The *FSA Handbook* will be updated to reflect the final changes in due course.~~

~~Please also note that references to the *PD Regulation* in the *FSA Handbook* have been amended to take account of the amendments to the *PD Regulation* made by Regulation (EU) No 486/2012 which was published in the Official Journal on 9 June 2012.~~

...

2.2.10 EU ...

[**Note:** See transitional provisions in Regulation (EU) No 486/2012]

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2.2.11 EU ...

[**Note:** See transitional provisions in Regulation (EU) No 486/2012]

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...

2.3 Minimum information to be included in a prospectus

Minimum information

- 2.3.1 EU Articles 3 to 23 of the *PD Regulation* provide for the minimum information to be included in a *prospectus*:
Note: the Annexes (including *schedules* and *building blocks*) referred to in these articles are set out for information in *PR App 3*.

Article 3 Minimum information to be included in a prospectus
...
A prospectus shall contain the information items required in Annexes I to XVII and Annexes XX to XXIX <u>XXX</u> depending on the type of issuer or issues and securities involved. Subject to Article 4a(1), a competent authority shall not request <u>require</u> that a prospectus contains information items which are not included in Annexes I to XVII or Annexes XX to XXIX <u>XXX</u> .
In order to ensure conformity with the obligation referred to in Article 5(1) of Directive 2003/71/EC, the competent authority of the home Member State, when approving a prospectus in accordance with Article 13 of that Directive, may, on a case by case basis, require the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market to be completed, for each of the information items.
Where the issuer, the offeror or the person asking for the admission to trading on a regulated market is required to include a summary in a prospectus, in accordance with Article 5(2) of Directive 2003/71/EC, the competent authority of the home Member State, when approving the prospectus in accordance with Article 13 of that Directive, may, on a case by case basis, require certain information provided in the prospectus, to be

included in the summary.

[**Note:** See transitional provisions in Regulation (EU) No 862/2012]

...

Article 20a

Additional information building block for consent given in accordance with Article 3(2) of Directive 2003/71/EC

1.	<u>For the purposes of the third subparagraph of Article 3(2) of Directive 2003/71/EC, the prospectus shall contain the following:</u>	
	(a)	<u>the additional information set out in Sections 1 and 2A of Annex XXX where the consent is given to one or more specified financial intermediaries;</u>
	(b)	<u>the additional information set out in Sections 1 and 2B of Annex XXX where the issuer or the person responsible for drawing up the prospectus chooses to give its consent to all financial intermediaries.</u>
2.	<u>Where a financial intermediary does not comply with the conditions attached to consent as disclosed in the prospectus, a new prospectus shall be required in accordance with the second paragraph of Article 3(2) of Directive 2003/71/EC.</u>	
	[Note: See transitional provisions in Regulation (EU) No 862/2012]	

...

Article 22

Minimum information to be included in a base prospectus and its related final terms

1.	A base prospectus shall be drawn up by using one or a combination of schedules and building blocks provided for in this Regulation according to the combinations for various types of securities set out in Annex XVIII.
	A base prospectus shall contain the information items required in Annexes I to XVII, Annex XX and Annexes XXIII to XXIX <u>XXX</u> depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in this Regulation. A competent authority <u>Competent authorities</u> shall not request <u>require</u> that a base prospectus contains information items which are not included in Annexes I to XVII, Annex XX or Annexes XXIII to XXIX <u>XXX</u> .
	...

[**Note:** See transitional provisions in Regulation (EU) No 486/2012 and in Regulation (EU) No 862/2012]

...

...

NOTE: The European Commission has published a draft Regulation amending the *PD Regulation* here:

http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm

The *FSA* will review *prospectuses* in accordance with the authoritative version of the *PD Regulation*, including any amendments made by the final published version of the above Regulation, which is the version that is published in the Official Journal of the European Union, from the date it is stated to be in force.

The *FSA Handbook* will be updated to reflect the final changes in due course.

Please also note that references to the *PD Regulation* in the *FSA Handbook* have been amended to take account of the amendments to the *PD Regulation* made by Regulation (EU) No 486/2012 which was published in the Official Journal on 9 June 2012.

...

2.4.6 EU ...

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...

3.2.9 EU ...

NOTE: The European Commission has published a draft Regulation amending the *PD Regulation* here:

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...

Appendix 3 Schedules and Building Blocks and Table of Combinations of Schedules and Building Blocks

App EU The following *schedules* and *building blocks* and tables of combinations
3.1.1 are copied from the *PD Regulation*:
[Note: See transitional provisions in Regulation (EU) No 486/2012 and Regulation (EU) No 862/2012]

ANNEX I

Minimum Disclosure Requirements for the Share Registration Document (schedule)

...	
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
	(a) <u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b) <u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c) <u>this financial information has not been audited.</u>
...	

...

ANNEX III
Minimum Disclosure Requirements for the Share Securities Note
(schedule)

...	
3.	KEY <u>ESSENTIAL</u> INFORMATION
...	

ANNEX IV
Minimum Disclosure Requirements for the Debt and Derivative Securities
Registration Document (schedule)
(Debt and derivative securities with a denomination per unit of less than
EUR 100 000)

...	
9.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
	(a) <u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b) <u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c) <u>this financial information has not been audited.</u>
...	

ANNEX V
Minimum Disclosure Requirements for the Securities Note related to Debt
securities (schedule)
(Debt securities with a denomination per unit of less than EUR 100 000)

...	
3.	KEY <u>ESSENTIAL</u> INFORMATION
...	

...

ANNEX X

Minimum Disclosure Requirements for the Depository Receipts issued over shares (schedule)

INFORMATION ABOUT THE ISSUER OF THE UNDERLYING SHARES

...	
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
	(a) <u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b) <u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c) <u>this financial information has not been audited.</u>
...	
31.	KEY <u>ESSENTIAL</u> INFORMATION ABOUT THE ISSUE OF THE DEPOSITORY RECEIPTS
...	

ANNEX XI

Minimum Disclosure Requirements for the Banks Registration Document (schedule)

...	
8.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
	(a) <u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b) <u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c) <u>this financial information has not been audited.</u>
...	

ANNEX XII

Minimum Disclosure Requirements for the Securities Note for derivative securities (schedule)

...	
3.	<u>KEY ESSENTIAL INFORMATION</u>
...	
4.2.2	... - where the underlying is an index;
	· <u>the name of the index, and a description of the index if it is composed by the issuer. If the index is not composed by the issuer, where information about the index can be obtained</u>
	· <u>a description of the index if it is composed by the issuer or by any legal entity belonging to the same group.</u>
	· <u>a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless</u>

	<u>the prospectus contains the following statements:</u>
	- <u>the complete set of rules of the index and information on the performance of the index are freely accessible on the issuer's or on the index provider's website;</u>
	<u>and</u>
	- <u>the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria.</u>
	<u>If the index is not composed by the issuer, where information about the index can be obtained.</u>
	...
...	

ANNEX XIII

Minimum Disclosure Requirements for the Securities Note for debt securities with a denomination per unit of at least EUR 100 000 (schedule)

...	
3.	KEY <u>ESSENTIAL</u> INFORMATION ...
...	

...

ANNEX XV

Minimum disclosure requirements for the registration document for securities issued by collective investment undertakings of the closed-end type (schedule)

...	
2.10	Point (a) of item 2.2 does not apply to a collective investment undertaking whose investment objective is to track, without material modification, that of a broadly based and recognised published index. A description of the composition of the index must be provided. <u>A statement setting out details of where information about the index can be obtained shall be included.</u>
...	

...

ANNEX XX

List of securities note schedules and building block(s)

	ANNEX V	
...		
3.	KEY <u>ESSENTIAL</u> INFORMATION	
...		
	ANNEX XII	
...		
3.	KEY <u>ESSENTIAL</u> INFORMATION	
...		
4.1.13	(i) a description of how any return on derivative securities takes place ([see footnote in Regulation (EU) No 486/2012]) ...	Category B
...		
4.2.2	... (ii) where the underlying is an index:	
	• the name of the index;	Category C
	• a description of the index if it is composed by the issuer <u>or by any legal entity belonging to the same group.</u>	Category A
	• <u>a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless the prospectus contains the following statements:</u>	<u>Category A</u>
	<u>– the complete set of rules of the index and information on the performance of the index are freely accessible on the issuer’s or on the index provider’s website;</u>	
	<u>and</u>	

	– the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria.	
	• If <u>if</u> the index is not composed by the issuer, <u>an indication of where to obtain</u> information about the index <u>can be obtained</u> .	Category C
...		
	ANNEX XIII	
...		
3.	KEY <u>ESSENTIAL</u> INFORMATION	
...		
	ANNEX VI	
...		
4.	Documents on display	
	Indication of the places where the public may have access to the material contracts and other documents relating to the guarantee.	Category A
	<u>ANNEX XXX</u>	
<u>1.</u>	<u>Information to be provided regarding consent by the issuer or person responsible for drawing up the prospectus</u>	
<u>1.1</u>	<u>Express consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus and statement that it accepts responsibility for the content of the prospectus also with respect to subsequent resale or final placement of securities by any financial intermediary which was given consent to use the prospectus.</u>	<u>Category A</u>
<u>1.2</u>	<u>Indication of the period for which consent to use the prospectus is given.</u>	<u>Category A</u>
<u>1.3</u>	<u>Indication of the offer period upon which subsequent resale or final placement of securities</u>	<u>Category C</u>

	<u>by financial intermediaries can be made.</u>	
1.4	<u>Indication of the Member States in which financial intermediaries may use the prospectus for subsequent resale or final placement of securities.</u>	<u>Category A</u>
1.5	<u>Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.</u>	<u>Category C</u>
1.6	<u>Notice in bold informing investors that, in the event of an offer being made by a financial intermediary, this financial intermediary will provide information to investors on the terms and conditions of the offer at the time the offer is made.</u>	<u>Category A</u>
2A	<u>Additional information to be provided where a consent is given to one or more specified financial intermediaries</u>	
2A.1	<u>List and identity (name and address) of the financial intermediary or intermediaries that are allowed to use the prospectus.</u>	<u>Category C</u>
2A.2	<u>Indication how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus, the base prospectus or the filing of the final terms, as the case may be, is to be published and where it can be found.</u>	<u>Category A</u>
2B	<u>Additional information to be provided where a consent is given to all financial intermediaries</u>	
2B.1	<u>Notice in bold informing investors that any financial intermediary using the prospectus has to state on its website that it uses the prospectus in accordance with the consent and the conditions attached thereto.</u>	<u>Category A</u>

...

ANNEX XXII

Disclosure requirements in summaries

...

...		
All	A.1	Warning that: • [this] summary should be read as introduction to the

		<p>prospectus;</p> <ul style="list-style-type: none"> • any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor; • where a claim relating to the information contained in [the] prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and • civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.
<u>All</u>	<u>A.2</u>	<ul style="list-style-type: none"> • <u>Consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus for subsequent resale or final placement of securities by financial intermediaries.</u>
		<ul style="list-style-type: none"> • <u>Indication of the offer period within which subsequent resale or final placement of securities by financial intermediaries can be made and for which consent to use the prospectus is given.</u>
		<ul style="list-style-type: none"> • <u>Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.</u>
		<ul style="list-style-type: none"> • <u>Notice in bold informing investors that information on the terms and conditions of the offer by any financial intermediary is to be provided at the time of the offer by the financial intermediary.</u>
...		

ANNEX XXIII

Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for Rights Issues

...	
8.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or

	estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:</u>
(a)	<u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
(b)	<u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
(c)	<u>this financial information has not been audited.</u>
...	

ANNEX XXIV

Proportionate Schedule for Minimum Disclosure Requirements for the Share Securities Note for Rights Issues

...	
3.	KEY <u>ESSENTIAL</u> INFORMATION
...	

ANNEX XXV

Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for SMEs and companies with reduced market capitalisation

...	
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report</u>

	<u>shall not be required provided that the prospectus includes all of the following statements:</u>	
	(a)	<u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b)	<u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c)	<u>this financial information has not been audited.</u>

...

ANNEX XXVI

Proportionate Schedule for Minimum Disclosure Requirements for the Debt and Derivative Securities <100 000 EUR Registration Document for SMEs and companies with reduced market capitalisation) ~~(see footnote in Regulation (EU) No 486/2012)~~

...

ANNEX XXVII

Proportionate Schedule for Minimum Disclosure Requirements for the Debt and Derivative Securities ≥100 000 EUR Registration Document for SMEs and companies with reduced market capitalisation (schedule) ~~(see footnote in Regulation (EU) No 486/2012)~~

...

ANNEX XXVIII

Proportionate Schedule for Minimum Disclosure Requirements for the Depositary Receipts issued over shares for SMEs and companies with reduced market capitalisation ~~(see footnote in Regulation (EU) No 486/2012)~~

...	
13.2	A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
	<u>Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report</u>

	shall not be required provided that the prospectus includes all of the following statements:	
	(a)	<u>the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;</u>
	(b)	<u>independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;</u>
	(c)	<u>this financial information has not been audited.</u>
...		
31.	KEY ESSENTIAL INFORMATION ABOUT THE ISSUE OF THE DEPOSITARY RECEIPTS	
...		

ANNEX XXIX

Proportionate Schedule for Minimum Disclosure Requirements for Issues by Credit Institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

Minimum Disclosure Requirements for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC (see footnote in Regulation (EU) No 486/2012)

...

NOTE: The European Commission has published a draft Regulation amending the *PD Regulation* here: http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm
The *FSA* will review *prospectuses* in accordance with the authoritative version of the *PD Regulation*, including any amendments made by the final published version of the above Regulation, which is the version that is published in the Official Journal of the European Union, from the date it is stated to be in force.

The *FSA Handbook* will be updated to reflect the final changes in due course.

Please also note that references to the *PD Regulation* in the *FSA Handbook* have been amended to take account of the amendments to the *PD Regulation* made by Regulation (EU) No 486/2012 which was published in the Official Journal on 9 June 2012.

ANNEX XXX

Additional information regarding consent as referred to in Article 20a
(Additional building block)

<u>1</u>	<u>Information to be provided regarding consent by the issuer or person responsible for drawing up the prospectus</u>
<u>1.1</u>	<u>Express consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus and statement that it accepts responsibility for the content of the prospectus also with respect to subsequent resale or final placement of securities by any financial intermediary which was given consent to use the prospectus.</u>
<u>1.2</u>	<u>Indication of the period for which consent to use the prospectus is given.</u>
<u>1.3</u>	<u>Indication of the offer period upon which subsequent resale or final placement of securities by financial intermediaries can be made.</u>
<u>1.4</u>	<u>Indication of the Member States in which financial intermediaries may use the prospectus for subsequent resale or final placement of securities.</u>
<u>1.5</u>	<u>Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.</u>
<u>1.6</u>	<u>Notice in bold informing investors that, in the event of an offer being made by a financial intermediary, the financial intermediary will provide information to investors on the terms and conditions of the offer at the time the offer is made.</u>
<u>2A</u>	<u>Additional information to be provided where a consent is given to one or more specified financial intermediaries</u>
<u>2A.1</u>	<u>List and identity (name and address) of the financial intermediary or intermediaries that are allowed to use the prospectus.</u>
<u>2A.2</u>	<u>Indication how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus, the base prospectus or the filing of the final terms, as the case may be, is to be published and where it can be found.</u>
<u>2B</u>	<u>Additional information to be provided where a consent is given to all financial intermediaries</u>
<u>[2B.1]</u>	<u>Notice in bold informing investors that any financial intermediary using the prospectus has to state on its website that it uses the prospectus in accordance with the consent and the conditions</u>

	<u>attached thereto.</u>
--	--------------------------

SHORT SELLING REGULATION INSTRUMENT 2012

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

Commencement

- C. This instrument comes into force on 1 November 2012

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
Financial Stability and Market Confidence sourcebook (FINMAR)	Annex B
General Provisions (GEN)	Annex C
Supervision manual (SUP)	Annex D
Decision Procedure and Penalties manual (DEPP)	Annex E

Amendments to material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex F to this instrument. The general guidance in EG does not form part of the Handbook.

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 Short Selling Regulation Instrument 2012.

By order of the Board
31 October 2012

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 order. The text is not underlined.

<i>authorised primary dealer</i>	(as defined in article 2(1)(n) of the <i>short selling regulation</i>) a natural or legal person who has signed an agreement with a <i>sovereign issuer</i> or who has been formally recognised as a primary dealer by or on behalf of a <i>sovereign issuer</i> and who, in accordance with that agreement or recognition, has committed to dealing as principal in connection with primary and secondary market operations relating to debt issued by that <i>sovereign issuer</i> .
<i>authorised primary dealer exemption</i>	an exemption from articles 7, 13 and 14 of the <i>short selling regulation</i> for the activities of an <i>authorised primary dealer</i> pursuant to article 17 of the <i>short selling regulation</i> .
<i>market maker exemption</i>	an exemption from articles 5, 6, 7, 12, 13 and 14 of the <i>short selling regulation</i> for transactions performed due to <i>market making activities</i> pursuant to article 17 of the <i>short selling regulation</i> .
<i>market making activities</i>	(as defined in article 2(1)(k) of the <i>short selling regulation</i>) the activities of an <i>investment firm</i> , a <i>credit institution</i> , a third-country entity, or a firm as referred to in point (1) of article 2(1) of <i>MIFID</i> , which is a member of a <i>trading venue</i> or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the European Commission pursuant to article 17(2) of the <i>short selling regulation</i> where it deals as principal in a <i>financial instrument</i> , whether traded on or outside a <i>trading venue</i> , in any of the following capacities: <ul style="list-style-type: none"> (a) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market; or (b) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade; or (c) by hedging positions arising from the fulfilment of tasks under points (a) and (b).
<i>short selling regulation</i>	regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.
<i>sovereign issuer</i>	(as defined in article 2(1)(d) of the <i>short selling regulation</i>) any of the

following that issues debt instruments:

- (a) the *EU*; or
- (b) a Member State including a government department, an agency, or a special purpose vehicle of the Member State; or
- (c) in the case of a federal Member State, a member of the federation; or
- (d) a special purpose vehicle for several Member States; or
- (e) an international financial institution established by two or more Member States which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or
- (f) the European Investment Bank.

Amend the following as shown.

<i>breach</i>	<p>in <i>DEPP</i>:</p> <p>...</p> <p>(6) a contravention in respect of which the <i>FSA</i> is empowered to take action pursuant to section 131G (Breach of short selling rules etc <u>short selling regulation</u>: Power to impose penalty or issue censure) of the <i>Act</i>.</p>
<i>competent authority</i>	<p>...</p> <p>[Note: article 1(7) of the <i>Market Abuse Directive</i>.]</p> <p>(7) <u>the authority designated by each <i>EEA State</i> in accordance with article 32 of the <i>short selling regulation</i>.</u></p>
<i>disclosable short position</i>	<p>a net short position which represents an economic interest of one quarter of 1% or more of the issued capital of a company, excluding any interest held in the capacity of a market maker.</p>
<i>disclosure</i>	<p>disclosure of a <i>disclosable short position</i> which:</p> <ul style="list-style-type: none"> (a) is 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 or exceeds a <i>disclosable short position</i> of 0.25% of the issued capital of a company; and (b) includes the name of the person who has the <i>disclosable short position</i>, the amount of the <i>disclosable short position</i> and the name

	of the company in relation to which the person has that position.
<i>discretionary investment manager</i>	(in COBS , FINMAR and (in relation to <i>firm type</i>) in SUP 16.10 (Confirmation of standing data)) a <i>person</i> who, acting only on behalf of a <i>client</i> , manages <i>designated investments</i> in an account or portfolio on a discretionary basis under the terms of a discretionary management agreement.
<i>EEA regulator</i>	<p>(1) a <i>competent authority</i> for the purposes of any of the <i>Single Market Directives</i> or the <i>auction regulation</i>.</p> <p>(2) <u>(in DEPP 7) (as defined in section 131FA of the Act) the competent authority of an EEA State other than the United Kingdom for the purposes of the short selling regulation.</u></p>
<i>market maker</i>	<p>(1) (except in COBS and FINMAR) (in relation to an <i>investment</i>) a <i>person</i> who (otherwise than in his capacity as the <i>operator</i> of a <i>regulated collective investment scheme</i>) holds himself out as able and willing to enter into transactions of sale and purchase in <i>investments</i> of that description at prices determined by him generally and continuously rather than in respect of each particular transaction.</p> <p>...</p> <p>(3) (in FINMAR) a person who, ordinarily as part of his business, deals as principal in financial instruments (whether OTC or exchange traded):</p> <p>(a) to fulfil orders received from another person in response to that person's request to trade or to hedge positions arising out of those dealings; or</p> <p>(b) in a way that ordinarily has the effect of providing liquidity on a regular basis to the financial markets on both bid and offer sides of the market in comparable size. [deleted]</p>
<i>net short position</i>	<p>(1) (except in IPRU(INV) 13 and FINMAR) a net short position which gives rise to an economic exposure to the issued <i>share</i> capital of a company. Any calculation of whether a <i>person</i> has a short position must take account of any form of economic interest in the <i>shares</i> of the company.</p> <p>...</p> <p>(3) (in FINMAR) a position which gives rise to an economic exposure to the issued capital of a company, calculated in accordance with FINMAR 2. [deleted]</p>
<i>non-discretionary investment</i>	(in FINMAR and in relation to <i>firm type</i> in SUP 16.10 (Confirmation of standing data)) a <i>person</i> who, acting only on behalf of a <i>client</i> , manages

<i>manager</i>	<i>designated investments</i> in an account or portfolio on a non-discretionary basis under the terms of a non-discretionary management agreement.
<i>ongoing disclosure</i>	disclosure of a <i>disclosable short position</i> which: <ol style="list-style-type: none"> (a) is made on a RIS by no later than 3.30pm on the business day following the day on which the position reaches, exceeds or falls below a net short position of 0.25%, 0.35%, 0.45% and 0.55% of the issued capital of a company and each 0.1% threshold thereafter; and (b) includes the name of the person who has the disclosable short position, the amount of the disclosable short position and the name of the company in relation to which the person has that position.
<i>relevant financial instrument</i>	(in accordance with sections 131C(4) and 131C(5) of the Act) a <i>financial instrument</i> that: <ol style="list-style-type: none"> (a) is admitted to trading on a regulated market or any other prescribed market in an EEA State; or (b) has such other connection with a market in an EEA State as may be specified by the short selling rules.
<i>rights issue</i>	(in LR, FINMAR and DTR 5) an offer to existing <i>security</i> holders to subscribe or purchase further <i>securities</i> in proportion to their holdings made by means of the issue of a renounceable letter (or other negotiable document) which may be traded (as “nil paid” rights) for a period before payment for the <i>securities</i> is due.
<i>rights issue period</i>	the period that commences on the date a company announces a rights issue and which ends on the date that the securities issued under the rights issue are admitted to trading on a prescribed market.
<i>short selling rules</i>	(in accordance with section 131B(8) of the Act) rules concerning the prohibition or disclosure of short selling in relation to relevant financial instruments.
<i>trading day</i>	<ol style="list-style-type: none"> (1) (in MAR 7 (Disclosure of information on certain trades undertaken outside a regulated market or MTF) and SUP 17 (Transaction reporting)) in relation to post-trade information to be made public about a share under MAR 7.2.10EU, any day of normal trading in a share on a <i>trading venue</i> in the <i>relevant liquid market</i> for this share. [Note: article 4(2) of the MiFID Regulation] (2) other than in (1) or (3), a day included in the calendar of trading days published by FSA at www.fsa.gov.uk. (3) <u>(in FINMAR) as defined in article 2(1)(p) of the short selling regulation, a trading day as referred to in article 4 of Regulation</u>

(EC) No 1287/2006.

trading venue

(1) *(except in FINMAR) a regulated market, MTF or systematic internaliser acting in its capacity as such, and, where appropriate, a system outside the EU with similar functions to a regulated market or MTF.*

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

(2) *(in FINMAR) (as defined in article 2(1)(1) of the short selling regulation) a regulated market or an MTF.*

Annex B

Amendments to the Financial Stability and Market Confidence sourcebook (FINMAR)

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

2.1 Application and purpose

Application

- 2.1.1 R ~~This chapter applies to all persons who:~~
- (1) ~~engage, or are intending to engage, in short selling in relation to *relevant financial instruments*; or~~
 - (2) ~~have engaged in short selling in relation to *relevant financial instruments* where the resulting short position is still open. [deleted]~~

- 2.1.1A G This chapter is relevant to all natural and legal persons to whom the *short selling regulation* applies, whether or not they are regulated by the FSA.

Purpose

- 2.1.2 G The purpose of this chapter is to ~~set out rules and~~ provide *guidance* in relation to ~~short selling in order to promote the FSA's statutory objectives of: the FSA's functions under the *short selling regulation*.~~
- (1) ~~maintaining confidence in the *UK financial system*; and~~
 - (2) ~~contributing to the protection and enhancement of the stability of the *UK financial system*.~~

Note: Other parts of the *Handbook* that may also be relevant to natural and legal persons to whom the *short selling regulation* applies include:

Chapter 2 of *SUP* (the Supervision manual) and *DEPP* (the Decision Procedure and Penalties manual).

The following Regulatory Guides are also relevant:

1. the Enforcement Guide (*EG*)

FINMAR 2.2 (Disclosure of disclosable short positions) is deleted in its entirety. The text of the section is not shown.

FINMAR 2.3 (Calculation of net short position) is deleted in its entirety. The text of the section is not shown.

FINMAR 2.4 (Responsibility for disclosure) is deleted in its entirety. The text of the section is not shown.

After FINMAR 2.4 [deleted] insert the following new sections. The text is not underlined.

2.5 Measures to prohibit, restrict or limit transactions in short selling

Approach to imposing measures

2.5.1 G The *FSA* is required by article 23 of the *short selling regulation* to consider whether to impose measures to prohibit or restrict short selling or otherwise limit transactions in a *financial instrument* on a *trading venue* where the price of that *financial instrument* on that *trading venue* has fallen significantly during a single *trading day* in relation to the closing price on that venue on the previous *trading day*. In fulfilling this obligation, the *FSA* will assess:

- (1) whether the price fall is or may become disorderly; and, if so in either case,
- (2) whether the imposition of measures to prohibit, restrict or limit transactions will prevent a further disorderly decline in the price of the *financial instrument*.

2.5.2 G The *FSA* will assess whether the price fall in a *financial instrument* on a *trading venue* is or may become disorderly having regard to at least the following factors:

- (1) whether there have been violent movements in the price of the particular *financial instrument* on a particular *trading venue*, including any sudden or significant movements in price of a *financial instrument* during the *trading day*;
- (2) whether there is evidence of unusual or improper trading in the *financial instrument* on a particular *trading venue* which could indicate that there was pressure to set the price of the *financial instrument* at a level that would be considered abnormal for that *financial instrument*; and
- (3) whether there are unsubstantiated rumours or dissemination of false or misleading information regarding the *financial instrument*.

The list above is not exhaustive and the *FSA* will consider such other factors as it considers appropriate.

2.5.3 G The *FSA* may consider that the price fall in a *financial instrument* is not disorderly, for example, if the *FSA* considers that there is legitimate cause for a price fall in trading, such as the announcement of poor financial results.

2.5.4 G The *FSA* will consider at least the following factors when assessing whether measures to prohibit or restrict short selling or otherwise limit transactions are necessary or likely to prevent a further disorderly decline in the price of the *financial instrument*:

- (1) the volume of trading in that *financial instrument* on the *trading venue* as compared with the total trading volume in the *financial instrument* over at least that *trading day*; and
- (2) whether the price of the *financial instrument* has stabilised after the significant fall in price.

The list above is not exhaustive and the *FSA* will consider such other factors as it considers appropriate.

- 2.5.5 G Where the *FSA* imposes measures under article 23 of the *short selling regulation* it will normally specify that the measures will not apply to natural or legal persons who have satisfied the criteria to use the *market maker exemption* or the *authorised primary dealer exemption* and who are included on the list maintained and published by *ESMA* pursuant to article 17(13) of the *short selling regulation*.

Exchange rate calculations

- 2.5.6 G
- (1) For the purposes of article 23(1)(b) of Commission Delegated Regulation (EU) No 918/2012 the *FSA* will convert the figure of EUR 0.50 into pounds sterling using the daily spot foreign exchange rate of Sterling to Euro of the Bank of England applicable at the end of the first *business day* of October 2012 rounded up to the nearest £0.01. The *FSA* will state this figure (the ‘sterling figure’) on its public website.
 - (2) The rate will be calculated on the same basis at the end of the first *business day* of October every subsequent year, unless the situation in (3) occurs in the intervening period, in which case the *FSA* will recalculate the sterling figure.
 - (3) The situation referred to in (2) is if the daily spot foreign exchange rate of the Bank of England of Sterling to Euro fluctuates for a period of 20 consecutive *business days* by more than 10% from the rate last used to calculate the sterling figure.
 - (4) If the situation in (3) occurs more than once in a year, the *FSA* will convert the figure of EUR 0.50 into pounds sterling using the daily spot foreign exchange rate of Sterling to Euro of the Bank of England applicable at the end of the 20th *business day* of the period referred to in (3).
- 2.5.7 G The *FSA* will treat the FTSE 100 index as the main national equity index of the Member State for the purposes of article 6(4) of Commission Implementing Regulation (EU) No 827/2012 and article 4 of Commission Delegated Regulation (EU) No 826/2012 and article 23(1) of Commission Delegated Regulation (EU) No 918/2012, all subject to approval by European Parliament and Council.

2.6 Procedures relating to the market maker exemption and the authorised primary dealer exemption

Decision on use of the market maker exemption or the authorised primary dealer exemption

[**Note:** The *FSA* has powers under the *short selling regulation* to prohibit a natural or legal person from using the *market maker exemption* and the *authorised primary dealer exemption* if the *FSA* considers that that person does not satisfy the conditions of the exemption that that person has notified the *FSA* it intends to use.]

- 2.6.1 G Pursuant to the Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (SI 2012/2554), the *FSA* will direct how notifications to use the *market maker exemption* or the *authorised primary dealer exemption* shall be made. Such directions will be published on the *FSA* website and listed in *FINMAR 2 Annex 1G*.
- 2.6.2 G (1) If the *FSA* considers that a natural or legal person ('P') who has notified the *FSA* of his intention to use either the *market maker exemption* or the *authorised primary dealer exemption* does not satisfy the criteria to use the *market maker exemption* or the *authorised primary dealer exemption*, the *FSA* will send a letter to P setting out the reasons why it is minded to prohibit P from using the *market maker exemption* or the *authorised primary dealer exemption*.
- (2) P will be given the opportunity to make written representations to the *FSA* concerning P's use of the *market maker exemption* or the *authorised primary dealer exemption*.
- (3) The *FSA* will decide whether to prohibit P's use of either the *market maker exemption* or the *authorised primary dealer exemption* having regard to P's notification and any written representations made by P. The decision whether or not to prohibit the use by P of either the *market maker exemption* or the *authorised primary dealer exemption* will be made by senior staff members of the *FSA* who were not involved in the initial consideration of P's notification.

Review of a decision to prohibit the market maker exemption or the authorised primary dealer exemption

- 2.6.3 G If P is not satisfied with the *FSA*'s decision to prohibit P's use of the *market maker exemption* or the *authorised primary dealer exemption*, P may seek a review of the decision. This will be conducted by a group of at least three senior *FSA* staff. None of the group conducting the review will have been connected with the earlier decision taken in respect of P's use of the *market maker exemption* or the *authorised primary dealer exemption*. The review may take place after the expiry of the 30 day period in which the notification should be made under the *short selling regulation*, but within 3 months of the decision referred to in *FINMAR 2.6.2G(3)*.

After FINMAR 2.6 insert the following new Annex.

2 Annex 1G List of directions on how notifications to use the market maker exemption or authorised primary dealer exemption should be made

This table belongs to *FINMAR* 2.6.1G

[to follow]

Amend the following as shown.

Schedule 4 Powers Exercised

Sch 4.1G

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> , statements of policy and guidance in <i>FINMAR</i> :	
	Section 131B (Short selling rules)
	...

Annex C

Amendments to the General Provisions (GEN)

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

Schedule 4 Powers exercised

...

Sch 4.2G

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> :	
	...
	Section 131B (Short selling rules)
	...

Annex D

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

2.3 Information gathering by the FSA on its own initiative: cooperation by firms

...

Access to premises

- 2.3.5 R (1) A *firm* must permit representatives of the *FSA*, or *persons* appointed for the purpose by the *FSA*, to have access, with or without notice, during reasonable business hours to any of its business premises in relation to the discharge of the *FSA*'s functions under the *Act* or its obligations under the *short selling regulation*.

...

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

1.1 Application and Purpose

Application

- 1.1.1 G This manual (*DEPP*) is relevant to *firms, approved persons* and other *persons*, whether or not they are regulated by the *FSA*. It sets out:

...

- (3) the *FSA*'s policy with respect to the conduct of interviews by investigators appointed in response to a request from an ~~overseas regulator~~ overseas regulator or an EEA regulator (*DEPP* 7).

Purpose

- 1.1.2 G The purpose of *DEPP* is to satisfy the requirements of sections 63C(1), 69(1), 93(1), 124(1), 131FA, 131J(1), 169(9), 210(1) and 395 of the *Act* that the *FSA* publish the statements of procedure or policy referred to in *DEPP* 1.1.1G.

...

7 **Statement of policy on ~~section 169(7)~~ interviews conducted on behalf of overseas and EEA regulators**

...

Application

- 7.1.1 G *DEPP* 7 applies when the *FSA*:
- (1) has appointed an investigator at the request of an *overseas regulator*, under section 169(1)(b) (Assistance to overseas regulators) or of an EEA regulator under section 131FA of the *Act*; and
 - (2) has directed, or is considering directing, the investigator, under section 169(7) or section 131FA of the *Act*, to permit a representative of the *overseas regulator* or of the EEA regulator to attend, and take part in, any interview conducted for the purposes of the investigation.
- 7.1.2 G In *DEPP* 7, a "~~section 169(7) requested~~ interview" means any interview conducted for the purposes of an investigation under section 169(1)(b) or section 131FA of the *Act* in relation to which the *FSA* has given a direction under section 169(7) or section 131FA of the *Act*.

Purpose

- 7.1.3 G The purpose of *DEPP 7* is to set out the *FSA's* statement of policy on the conduct of interviews to which a direction under section 169(7) or section 131FA has been given or the *FSA* is considering giving. The *FSA* is required to prepare and publish this statement of policy by section 169(9) and (11) and section 131FA of the *Act*. As required by section 169(10) and section 131FA of the *Act*, the Treasury has approved the statement of policy.
- 7.1.4 G The *FSA* is keen to promote co-operation with *overseas regulators* and EEA regulators. It views provision of assistance to *overseas regulators* and EEA regulators as an essential part of the principles set out in section 2(3)(e) of the *Act* to which it must have regard in discharging its general functions.

...

Appointment of investigation and confidentiality of information

- 7.2.1 G Under section 169(1)(b) and section 131FA of the *Act*, the *FSA* may appoint an investigator to investigate any matter at the request of an *overseas regulator* or EEA regulator. The powers of the investigator appointed by the *FSA* (referred to here as the '*FSA's* investigator') include the power to require *persons* to attend at a specified time and place and answer questions (the compulsory interview power).
- 7.2.2 G Where the *FSA* appoints an investigator in response to a request from an *overseas regulator* or EEA regulator it may, under section 169(7) or section 131FA of the *Act*, direct him to permit a representative of that regulator to attend and take part in any interviews conducted for the purposes of the investigation. The *FSA* may only give a direction under section 169(7) or section 131FA if it is satisfied that any information obtained by an *overseas regulator* or EEA regulator as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the *Act*.

...

Policy on use of investigative powers

- 7.2.4 G The *FSA's* policy on how it will use its investigative powers, including its power to appoint investigators, in support of *overseas regulators* and EEA regulators, is set out in the *FSA's* Enforcement Guide (*EG*).

Use of direction powers

- 7.2.5 G The *FSA* may need to consider whether to use its direction power at two stages of an investigation:
- (1) at the same time that it considers the request from the *overseas regulator* or EEA regulator to appoint investigators;

- (2) after it has appointed investigators, either at the request of the *overseas regulator* or *EEA regulator* or on the recommendation of the investigators.

7.2.6 G Before making a direction under section 169(7) or section 131FA the *FSA* will discuss and determine with the *overseas regulator* or *EEA regulator* how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the *FSA* will at this stage determine the extent to which the representative of the *overseas regulator* or *EEA regulator* will be able to participate in the interview. The *overseas regulator* or *EEA regulator* will be notified of this determination on the issuing of the direction.

7.2.7 G The direction will contain the identity of the representative of the *overseas regulator* or *EEA regulator* that is permitted to attend any interview and the role that he will play in the interview. If the *FSA* envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the ~~overseas~~ representative is allowed to attend.

Conduct of interview

...

7.2.9 G The *FSA*'s investigator will act on behalf of the *FSA* and under its control. He may be instructed to permit the representative of the *overseas regulator* or *EEA regulator* to assist in the preparation of the interview. Where the *FSA* considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in *DEPP* 7.2.6G

7.2.10 G If the direction does permit the representative of an *overseas regulator* or *EEA regulator* to attend the interview and ask the interviewee questions, the *FSA*'s investigator will retain control of the interview throughout. Control of the interview means the following will apply:

- (1) The *FSA*'s investigator instigates and concludes the interview, introduces everyone present and explains the procedure of the interview. He warns the interviewee of the possible consequences of refusing to answer questions and the uses to which any answers that are given can and cannot be put. The *FSA*'s investigator will always ask preliminary questions, such as those establishing the identity of the interviewee.
- (2) The *FSA*'s investigator determines the duration of the interview and when, if at all, there should be any breaks in the course of it.
- (3) The *FSA*'s investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the *overseas regulator* or *EEA regulator* was either present or not present.

- (4) Where the *FSA*'s investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making that decision he will bear in mind the terms of the direction, any agreement made with the *overseas regulator* or *EEA regulator* as to the conduct of the interview and the contents of this statement of policy.
- 7.2.11 G The *FSA* will in general provide written notice of the appointment of an investigator to the *person* under investigation pursuant to the request of an *overseas regulator* or *EEA regulator*. Whether or not the interviewee is the *person* under investigation, the *FSA*'s investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the *overseas regulator* or *EEA regulator* is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the *FSA* believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.
- 7.2.12 G The interviewee will normally be given a copy of the direction issued under section 169(7) or section 131FA in advance of the interview unless to do so would be likely to result in the investigation being frustrated. The interviewee will also be provided with a copy of this statement of policy.
- ...
- 7.2.14 G When the *FSA*'s investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the *overseas regulator* or *EEA regulator*. It will also state that in criminal proceedings or proceedings for *market abuse* the *FSA* will not use as evidence against the interviewee any information obtained under compulsion during the interview.
- 7.2.15 G The *FSA*'s investigator may decide which *documents* or other information may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the documents before the interview takes place. Where the *overseas regulator* or *EEA regulator* wishes to ask questions about *documents* during the interview and the *FSA*'s investigator wishes to inspect those *documents* before the interview, he will be given the opportunity to do so. If the *FSA*'s investigator wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.
- 7.2.16 G When the *FSA*'s investigator has exercised the compulsory interview power, the *FSA*'s investigator will require the *person* attending the interview to answer questions. Where appropriate, questions may also be posed by the representative of the *overseas regulator* or *EEA regulator*. The interviewee

will also be required to answer these questions. The *FSA*'s investigator may intervene at any stage during questioning by the representative of the *overseas regulator* or *EEA regulator*.

Language

- 7.2.17 G Interviews will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English. If a translator is employed at the request of the representative of the *overseas regulator* or *EEA regulator* then the translation costs will normally be met by the *overseas regulator* or *EEA regulator*. Where interviews are being conducted in pursuance of an *EU* law obligation these costs will be met by the *FSA*. In any event, the meeting of costs in relation to translators and, where applicable, the translation of documents will always be agreed in advance with the *overseas regulator* or *EEA regulator*.

Tape-recording

- 7.2.18 G All compulsory interviews will be tape-recorded. The method of recording will be decided on and arranged by the *FSA*'s investigator. Costs will be addressed similarly to that set out in the preceding paragraph. The *FSA* will not provide the *overseas regulator* or *EEA regulator* with transcripts of the tapes of interviews unless specifically agreed to, but copies of the tapes will normally be provided where requested. The interviewee will be provided with a copy of tapes of the interview but will only be provided with transcripts of the tapes or translations of any transcripts if he agrees to meet the cost of producing them.

Representation

- 7.2.19 G The interviewee may be accompanied at the interview by a legal adviser or a non-legally qualified observer of his choice. The costs of any representation will not be met by the *FSA*. The presence at the interview of a representative of the *overseas regulator* or *EEA regulator* may mean that the interviewee wishes to be represented or accompanied by a *person* either from or familiar with that regulator's jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the *FSA* reserves the right to proceed with the interview if it is not possible to find such a *person* within a reasonable time or no such *person* is able to attend at a suitable venue.
- 7.2.20 G In relation to the publication of investigations by *overseas regulators* or *EEA regulators*, the *FSA* will pursue a policy similar to the policy that relates to its own investigations.

...

Sch 3.2G

The <i>FSA</i> 's power to impose financial penalties is contained in:
--

	<u>section 131G (Power to impose penalty or issue censure) of the Act</u>
	section 206 (Financial penalties) of the Act
	...

Sch 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 statements of policy in <i>DEPP</i> :	
	...
	Section 131J (<u>Impositions of penalties under section 131G: Statement statement of policy</u>)
	...

...

Annex F

Amendments to the Enforcement Guide (EG)

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

1 Introduction

...

1.2 In the areas set out below, the *Act* expressly requires the FSA to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of *statutory notices*.

...

(3) ...

(3-A) section 131FA requires the FSA to publish a statement of its policy on the conduct of certain interviews in response to requests from *EEA regulators*; and

(3A) ...

...

...

Assisting overseas regulators

2.16 The FSA views co-operation with its overseas counterparts as an essential part of its regulatory functions. Section 354 of the *Act* imposes a duty on the FSA to take such steps as it considers appropriate to co-operate with others who exercise functions similar to its own. This duty extends to authorities in the UK and overseas. In fulfilling this duty the FSA may share information which it is not prevented from disclosing, including information obtained in the course of the FSA's own investigations, or exercise certain of its powers under Part XI of the *Act*. Further details of the FSA's powers to assist overseas regulators are provided at *EG* 3.12 – 3.15 (Investigations to assist overseas authorities), *EG* 3.15A – D (Information requests and investigations to assist EEA regulators in relation to short selling), *EG* 4.8 (Use of statutory powers to require the production of documents, the provision of information or the answering of questions), *EG* 4.25 – 4.27 (Interviews in response to a request from an overseas regulator or EEA regulator), and *EG* 8.18 – 8.25 (Exercising the power under section 47 to vary or cancel a firm's part IV permission in support of an overseas regulator). The FSA's statement of policy in relation to interviews which representatives of overseas regulators or EEA regulators attend and participate in is set out in *DEPP* 7.

...

Use of information gathering and investigation powers

- 3.1 The FSA has various powers under sections 97, 131E, 131FA, 165 to 169 and 284 of the *Act* to gather information and appoint investigators, and to require the production of a report by a *skilled person*. In any particular case, the FSA will decide which powers, or combination of powers, are most appropriate to use having regard to all the circumstances. Further comments on the use of these powers are set out below.

...

Information requests and investigations to assist EEA regulators in relation to short selling

- 3.15A The FSA may use its section 131E power to require information and documents from natural or legal persons to support both its monitoring and its enforcement functions.
- 3.15B An officer with authorisation from the FSA may exercise the section 131E power to require information and documents from natural or legal persons. This includes an FSA employee or an agent of the FSA.
- 3.15C The FSA's power to conduct investigations to assist *EEA regulators* in respect of the *short selling regulation* is contained in section 131FA of the *Act*. The section provides that at the request of an *EEA regulator* or ESMA, the FSA may either use its power under section 131E to require the production of information, or appoint a person to investigate any matter.
- 3.15D Section 131FA states that the FSA must, in deciding whether or not to exercise its investigative power, consider whether the exercise of that power is necessary to comply with an obligation under the *short selling regulation*.

...

Use of statutory powers to require the production of documents, the provision of information or the answering of questions

- 4.8 The FSA's standard practice is generally to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. This is for reasons of fairness, transparency and efficiency. It will sometimes be appropriate to depart from this standard practice, for example:

...

- (3) In some cases, the FSA is asked by *overseas regulators* or *EEA regulators* to obtain documents or conduct interviews on their behalf. In these cases, the FSA will not necessarily adopt its standard approach as it will consider with the *overseas regulator* or *EEA regulator* the most appropriate method for obtaining evidence for use in their country.

...

Interviews in response to a request from an overseas regulator or EEA regulator

4.25 Where the FSA has appointed an investigator in response to a request from an *overseas regulator* or *EEA regulator*, it may, under ~~section~~ sections 169(7) or 131FA of the *Act* respectively, direct the investigator to allow a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation. However, the FSA may only use this power if it is satisfied that any information obtained by an *overseas regulator* or *EEA regulator* as a result of the interview will be subject to safeguards equivalent to those in Part XXIII of the *Act* (~~section~~ sections 169(8) and 131FA respectively).

...

4.27 Under ~~section~~ sections 169(9) and 131FA respectively, the FSA is required to prepare a statement of policy with the approval of the Treasury on the conduct of interviews attended by representatives of *overseas regulators* or *EEA regulators*. The statement is set out in *DEPP 7*.

...

7.2 The FSA has the following powers to impose a financial penalty and to publish a *public censure*.

(1) It may publish a statement:

...

(ea) if a ~~person~~ natural or legal person has contravened any provision of the short selling ~~rules~~ regulation, or any requirement imposed on ~~the person~~ that person under section 131E or 131F, under section 131G of the *Act*; and

...

(2) It may impose a financial penalty:

...

(ca) on a ~~person~~ natural or legal person who has contravened any provision of the short selling ~~rules~~ regulation, or any requirement imposed on ~~the person~~ that person under section 131E or 131F, or any ~~person~~ natural or legal person who was knowingly concerned in the contravention, under section 131G of the *Act*; and

...

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND
INVESTMENT FIRMS (LARGE EXPOSURES) (AMENDMENT)
INSTRUMENT 2012**

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 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 purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 2 November 2012.

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.

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 Prudential Sourcebook for Banks, Building Societies and Investment Firms (Large Exposures) (Amendment) Instrument 2012.

By order of the Board
31 October 2012

Annex A

Amendments to the Glossary of definitions

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

Amend the following definitions as shown.

<i>connected counterparty</i>	(for the purposes of <i>BIPRU 10</i> (Large exposures requirements) and in relation to a <i>firm</i>) has the meaning set out in <i>BIPRU 10.3.8R</i> (Connected counterparties), which is in summary a <i>person</i> to whom the <i>firm</i> has an <i>exposure</i> and who fulfils at least one of the conditions set out in <i>BIPRU 10.3.8R</i> .
<i>group of connected clients</i>	(in accordance with Article 4(45) of the <i>Banking Consolidation Directive</i> (Definitions)) one of the following: <ul style="list-style-type: none"> (a) two or more <i>persons</i> who, unless it is shown otherwise, constitute a single risk because one of them is the <i>parent undertaking</i>, direct or indirect, of the other or others; or (b) two or more <i>persons</i> between whom there is no relationship as set out in (a) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would be likely to encounter funding or repayment difficulties. <u>has the meaning given to it in <i>BIPRU 10.3.5R</i>.</u>
<i>individual counterparty CNCOM</i>	has the meaning in <i>BIPRU 10.10A.8R</i> (How to calculate the concentration risk capital component), which is in summary the sum of a <i>firm's individual CNCOMs</i> with respect to its <i>connected counterparties</i> <u>counterparties</u> falling within <i>BIPRU 10.10A.1R</i> .
<i>large exposure</i>	has the meaning set out in <i>BIPRU 10.5.1R</i> , which in summary is the <i>total exposure</i> of a <i>firm</i> to a <i>counterparty</i> , <i>connected counterparties</i> or a <i>group of connected clients</i> , whether in the <i>firm's non-trading book</i> or <i>trading book</i> or both, <u>and counterparties falling within <i>BIPRU 10.10A.1R</i> within the trading book</u> , which in aggregate equals or exceeds 10% of the <i>firm's capital resources</i> .
<i>total exposure</i>	(in relation to a <i>counterparty</i> or <i>group of connected clients</i> and a <i>person</i> or in relation to a <i>person</i> and its <i>connected counterparties</i> <u><i>counterparties</i></u> falling within <i>BIPRU 10.10A.1R</i>) all that <i>person's exposures</i> to that <i>counterparty</i> or <i>group of connected clients</i> or to that <i>person's</i> <i>connected counterparties</i> <u><i>counterparties</i></u> falling within <i>BIPRU 10.10A.1R</i> , or the total amount of those <i>exposures</i> .

Annex B

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

10 Large exposures requirements

10.2 Identification of exposures and recognition of credit risk mitigation

...

The financial collateral comprehensive method

- 10.2.14 R A *firm* which uses the *financial collateral comprehensive method* (but not under the full IRB approach (see *BIPRU* 10.2.10R)) may calculate the value of its *exposures* to a *counterparty* or to a *group of connected clients* ~~or to connected counterparties~~ as being the fully-adjusted value of the *exposures* to the *counterparty* or *group of connected clients* ~~or connected counterparties~~ calculated in accordance with the *financial collateral comprehensive method* under *BIPRU* 5 (Credit risk mitigation) and, if relevant, *BIPRU* 4.10 (The IRB approach: Credit risk mitigation) taking into account the *credit risk mitigation*, volatility adjustments and any maturity mismatch (E*) in accordance with those *rules*.

[Note: *BCD* Article 114(1) first paragraph]

...

Firms using full IRB approach

- 10.2.19 R A *firm* that uses the full IRB approach (see *BIPRU* 10.2.10R) may recognise the effects described in (1) in calculating the value of its *exposures* to a *counterparty* or to a *group of connected clients* ~~or to connected counterparties~~ for the purposes of *BIPRU* 10.5 (Limits on exposures) if:

...

...

10.3 Identification of counterparties

...

Groups of connected clients

- 10.3.5 G ~~The Glossary defines a group of connected clients.~~ A group of connected
R clients means one of the following:

- (1) two or more *persons* who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others; or
- (2) two or more *persons* between whom there is no relationship of control as set out in (1) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would be likely to encounter funding or repayment difficulties.

[Note: Article 4(45) of the *Banking Consolidation Directive*]

- 10.3.5A R Control in this context means control as defined in Article 1 of the Seventh Council Directive 83/349/EEC (the *Seventh Company Law Directive*) or a similar relationship between any *person* and an *undertaking*.
- 10.3.5B G Where there is a relationship of control, there is a presumption of single risk unless shown otherwise.
- 10.3.6 G (1) In identifying a *group of connected clients*, a *firm* should consider both third party *clients* and *counterparties* that are, or may be, connected to the *firm* itself.
- (2) Relationships between individual *counterparties* or between the *firm* and a *counterparty* which might be considered to constitute a single risk for the purposes of the definition of *group of connected clients* include:
- (1) *undertakings* in the same *group*;
(a)
- (2) *companies* whose ultimate owner (whether wholly or significantly) is the same individual or individuals, and which do not have a formal group structure;
(b)
- (3) *companies* having common directors or management; ~~and~~
(c)
- (4) *counterparties* linked by cross guarantees where the same *persons* significantly influence the *governing body* of each of the *undertakings*;
(d)
- (e) where the *firm* has an *exposure* to an *undertaking* that was not incurred for the clear commercial advantage of the *firm* or the *firm's group* and which is not on an arm's length basis;
- (f) *counterparties* linked by cross guarantees;
- (g) where it is likely that the financial problems of one *counterparty* would cause difficulties for the other

counterparty or counterparties in terms of full and timely repayment of liabilities;

- (h) where the funding problems of one counterparty are likely to spread to another due to a one-way or two-way dependence on the same main funding source, which may be the firm itself;
- (i) where counterparties rely on the firm for their main funding source, for example through explicit or implicit liquidity support or credit support; and
- (j) where the insolvency or default of one of them is likely to be associated with the insolvency or default of the other(s).

...

Connected counterparties

- 10.3.8 R (1) ~~Subject to (2), for the purposes of BIPRU 10, and in relation to a firm, a connected counterparty means another person ('P') to whom the firm has an exposure and who fulfils at least one of the following conditions:~~
- ~~(a) P is closely related to the firm; or~~
 - ~~(b) P is an associate of the firm; or~~
 - ~~(c) the same persons significantly influence the governing body of P and of the firm; or~~
 - ~~(d) the firm has an exposure to P that was not incurred for the clear commercial advantage of the firm or the firm's group and which is not on an arm's length basis.~~
- (2) ~~Where P is Business Growth Fund plc or another financial institution which makes venture capital investments and the firm is entitled to ignore that financial institution in accordance with GENPRU 2.2.209R(2) for the purposes of determining whether there is a material holding, (1) applies with the following modifications to the definition of associate:~~
- ~~(a) paragraph (3)(c) (community of interest) of that definition does not apply; and~~
 - ~~(b) in applying paragraph (3)(a) (affiliated company) of that definition, paragraph (1)(e) (participating interests) of the definition of group does not apply. [deleted]~~
- 10.3.8A G (1) The Committee of European Banking Supervisors (CEBS) has issued guidelines in relation to the definition of a *group of connected clients*, in particular with reference to the concepts of "control" and

“economic interconnection”. These guidelines can be found at <http://www.c-eps.org/Publications/Standards-Guidelines/CEBS-Guidelines-on-the-revised-large-exposures-reg.aspx- Part I>.

- (2) In applying the CEBS guidelines in relation to counterparties that are connected to the firm itself, the FSA has issued guidance in respect of structured finance vehicles. This guidance can be found at <http://www.fsa.gov.uk/library/policy/policy/2012/12-21.shtml>

Exposures to counterparties, and groups of connected clients ~~and connected counterparties~~

...

- 10.3.11 R ~~A firm's total exposure to connected counterparties must be calculated by summing its exposures to all the firm's connected counterparties, including both trading book exposures and non trading book exposures. [deleted]~~

...

Exposures to trustees

...

- 10.3.13 G When considering whether the treatment described in *BIPRU* 10.3.12G is misleading, factors a firm should consider include:

...

- (4) ~~for a connected counterparty~~ counterparty that is connected to the firm itself, whether the exposure arises from a transaction entered into on an arm's length basis.

- 10.3.14 G In deciding whether a transaction is at arm's length for the purposes of ~~*BIPRU* 10.3.8R(4)~~ *BIPRU* 10.3.6G(2)(f), ~~and *BIPRU* 10.3.13G(4)~~ and *BIPRU* 10.10A.1R(1)(d), the following factors should be taken into account:

...

...

10.5 Limits on exposures

Definition of large exposure

- 10.5.1 R A large exposure of a firm means its total exposure to a counterparty, ~~connected counterparties~~ or a group of connected clients, whether in the firm's non-trading book or trading book or both, which in aggregate equals or exceeds 10% of the firm's capital resources.

[Note: BCD Article 108]

...

Large exposure limits

10.5.6 R A *firm* must ensure that the total amount of its *exposures* to the following does not exceed 25% of its *capital resources* (as determined under *BIPRU* 10.5.2R, *BIPRU* 10.5.3R and *BIPRU* 10.5.5R):

- (1) a *counterparty*; or
- (2) a *group of connected clients*; ~~or~~
- (3) ~~its connected counterparties.~~

[Note: BCD Article 111(1) first paragraph]

10.5.7 G ~~If a connected counterparty is also a member of a group of connected clients the limit in BIPRU 10.5.6R covers the aggregate of the total amount of the firm's exposures to its connected counterparties and of the total amount of its exposures to that group of connected clients. [deleted]~~

...

10.6 Exemptions

General exemptions

10.6.1 ~~R This section only applies to exposures, whether in the trading book or and~~
 G the non-trading book, to counterparties which are not connected counterparties.

...

Institutional exemption

...

10.6.33 G Article 111(4) of the *Banking Consolidation Directive* allows the *FSA* to waive the 100% limit on a case-by-case basis ~~in exceptional circumstances~~. The *FSA* will consider an application for such a *waiver* in the light of the criteria in section 148 of the *Act* (Modification or waiver of rules).

...

10.9A Intra-group exposures: non-core large exposures group

Application

...

- 10.9A.2 G ~~A firm must treat the exposures to its connected counterparties that are not members of its non-core large exposures group as exposures to a single undertaking and must ensure that the total amount of its exposures to such connected counterparties does not exceed the 25% limit in BIPRU 10.5.6R (Large exposure limit) and, if applicable, the trading book limits in BIPRU 10.10A (Connected counterparties: trading book limits). [deleted]~~

...

10.10A ~~Connected counterparties: trading~~ Trading book limits

Application

- 10.10A.1 R This section only applies to *exposures* in a firm's trading book to ~~its connected counterparties~~ counterparties which fulfil the following conditions:
- (1) subject to (2), and in relation to a firm, a counterparty ('P') to whom the firm has an exposure and who fulfils at least one of the following conditions:
 - (a) P is closely related to the firm; or
 - (b) P is an associate of the firm; or
 - (c) the same persons significantly influence the governing body of P and of the firm; or
 - (d) the firm has an exposure to P that was not incurred for the clear commercial advantage of the firm or the firm's group and which is not on an arm's length basis;
 - (2) where P is Business Growth Fund plc or another financial institution which makes venture capital investments and the firm is entitled to ignore that financial institution in accordance with GENPRU 2.2.209R(2) for the purposes of determining whether there is a material holding, (1) applies with the following modifications to the definition of associate:
 - (a) paragraph (3)(c) (community of interest) of that definition does not apply; and
 - (b) in applying paragraph (3)(a) (affiliated company) of that definition, paragraph (1)(e) (participating interests) of the definition of group does not apply.

- 10.10A.1A G In deciding whether a transaction is at arm's length for the purposes of BIPRU 10.10A.1R(1)(d), the factors set out in BIPRU 10.3.14G should be taken into account.

Trading book limits

- 10.10.A.2 R *Exposures in a firm's trading book to ~~its connected counterparties~~ counterparties falling within BIPRU 10.10A.1R are exempt from the 25% limit in BIPRU 10.5.6R (large exposures limit) if:*
- (1) the total amount of the *exposures* on the *firm's non-trading book to ~~its connected counterparties~~ counterparties falling within BIPRU 10.10A.1R* does not exceed the limit laid down in that *rule*, calculated with reference to the definition of *capital resources* calculated at stage (N) of the calculation in the *capital resources* table (Total tier one capital plus tier two capital after deductions) as set out in *BIPRU 10.5.2R, BIPRU 10.5.3R and BIPRU 10.5.5R*, so that the excess arises entirely on the *trading book*; and

...

- 10.10A.2A G The applicable limit for the purposes of BIPRU 10.10A.2R(1) is the total amount of the *exposures* on the *firm's non-trading book to counterparties falling within BIPRU 10.10A.1R*, even though there is no explicit limit to such *counterparties* in *BIPRU 10.5.6R (large exposures limit)*.

- 10.10A.3 R A *firm* must ensure that the total amount of its *trading book exposures* to its ~~*connected counterparties*~~ *counterparties falling within BIPRU 10.10A.1R* does not exceed 500% of the *firm's capital resources* calculated at stage (T) of the *capital resources table* (Total capital after deductions).

...

How to calculate the concentration risk capital component

...

- 10.10A.6 R An *individual counterparty CNCOM* is the amount a *firm* must calculate in accordance with *BIPRU 10.10A.8R* with respect to its *exposures* to its ~~*connected counterparties*~~ *counterparties falling within BIPRU 10.10A.1R*.

...

- 10.10A. 8 R A *firm* must calculate its *individual counterparty CNCOM* for its *exposures* to its ~~*connected counterparties*~~ *counterparties falling within BIPRU 10.10A.1R* as follows:

...

- (4) a *firm* must allocate (in the order set out in (6)) *trading book exposures* to its ~~*connected counterparties*~~ *counterparties falling within BIPRU 10.10A.1R* to the unutilised portion of the 25% limit of the *firm's capital resources* calculated at stage (T) of the *capital resources table* (Total capital after deductions) remaining after deducting the *non-trading book exposures* in accordance with (3);
- (5) no further *trading book exposures* can be allocated once the 25% limit in (4) has been reached; the remaining *trading book exposures* constitute the *trading book concentration risk excess* with respect to its ~~*connected counterparties*~~ *counterparties falling within BIPRU 10.10A.1R*;

...

...

Transitional provisions and schedules

...

TP 33 Intra-group exposures: Transitional provisions for core UK group and large exposures

...

Effect of this section on intra-group exemptions in BIPRU 10

...

- 33.8 G The effect of *BIPRU* TP 33.7 is that a *firm* should not apply *BIPRU* 10.8A (Intra-group exposures: core UK group) to *BIPRU* 10.9A (Intra-group exposures: exposures outside the core UK group) to some *exposures to core concentration risk group counterparties*, or *non-core concentration risk group counterparties* ~~or *connected counterparties*~~ and this section to others. The purpose of *BIPRU* TP 33.7R is that a *firm* should choose between treating intra-group *exposures* under *BIPRU* 10.8A (Intra-group exposures: core UK group) to *BIPRU* 10.9A (Intra-group exposures: exposures outside the core UK group) and treating them under this section but that it should not mix the approaches.

**CAPITAL REQUIREMENTS DIRECTIVE (HANDBOOK AMENDMENTS NO 5)
INSTRUMENT 2012**

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 November 2012.

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 Capital Requirements Directive (Handbook Amendments No 5) Instrument 2012.

By order of the Board
31 October 2012

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.

13 **The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions**

...

Conditions for recognition

13.7.6 R A *firm* may treat contractual netting as risk-reducing only under the following conditions:

...

(2) the *firm* must be in a position to provide to the *FSA*, if requested, written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would, in the cases described under (1), find that the *firm's* claims and obligations would be limited to the net sum, as described in (1), under:

- (a) the law of the jurisdiction in which the counterparty is incorporated and, if a foreign *branch* of an *undertaking* is involved, also under the law of the jurisdiction in which the *branch* is located; ~~or~~
- (b) the law that governs the individual transactions included; ~~or~~ and
- (c) the law that governs any contract or agreement necessary to effect the contractual netting;

...

**PRUDENTIAL REQUIREMENTS FOR INSURERS (AMENDMENT NO 6)
INSTRUMENT 2012**

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 (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 Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force on 31 December 2012. The amendments to IPRU(FSOC) and IPRU(INS) apply to all FSA returns for financial years ending on or after 31 December 2012.

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)
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

- E. This instrument may be cited as the Prudential Requirements for Insurers (Amendment No 6) Instrument 2012.

By order of the Board
31 October 2012

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		
Liability insurer (classes 10-15)	Directive mutual	€ 2.625 <u>2.775</u> million
	Non-directive insurer	€350,000
	Other (including mixed insurer but excluding pure reinsurer)	€ 3.5 <u>3.7</u> million
Other insurer	Directive mutual	€ 1.725 <u>1.875</u> million
	Non-directive insurer (classes 1 to 8, 16 or 18)	€260,000
	Non-directive insurer (classes 9 or 17)	€175,000
	Mixed insurer	€ 3.5 <u>3.7</u> million
	Other (excluding pure reinsurer)	€ 2.3 <u>2.5</u> million
Long-term insurance business		
Mutual	Directive	€ 2.625 <u>2.775</u> million
	Non-directive mutual	€700,000
Any other insurer (including mixed insurer but excluding pure reinsurer)		€ 3.5 <u>3.7</u> million
All business (<i>general insurance business</i> and <i>long-term insurance business</i>)		

<i>Pure reinsurer</i> excluding <i>captive reinsurer</i>	€ 3.5 <u>3.7</u> million
<i>Captive reinsurer</i>	€ 1.4 <u>1.2</u> million

...

Calculation of the base capital resources requirement

2.3.9 R The amount of the *base capital resources requirement* for the *members* in aggregate is:

- (1) for *general insurance business*, €~~2~~ 3.7 million; and
- (2) for *long-term insurance business*, €~~2~~ 3.7 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 ~~€7.5~~ €1.3 million; multiplied by

...

...

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 ~~€10.3~~ €2.9 million; multiplied by

...

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.

Appendix 2

GENERAL INSURANCE BUSINESS SOLVENCY MARGIN

Part I: the Premiums Basis

...

4. If the amount arrived at under 3 is more than ~~57.5~~ 61.3 million Euro, it must be divided into two portions, the former consisting of ~~57.5~~ 61.3 million Euro and the latter comprising the excess.

...

Part II: the Claims Basis

...

18. If the amount arrived at under 17 is more than ~~40.3~~ 42.9 million Euro, it must be divided into two portions, the former consisting of ~~40.3~~ 42.9 million Euro and the latter comprising the excess.

...

Appendix 10

Prudential Reporting Forms

...

FSC3 - FORM 11 (Sheet 1)

Returns under the Friendly Societies Prudential Rules

General insurance business: Calculation of required margin of solvency – first method

FSC3 – Form11 (Sheet 1)

Name of Society

Period ended 31 December

	Reg No	Units £/£000
<div style="border: 1px solid black; width: 60px; height: 25px;"></div>	<div style="border: 1px solid black; width: 60px; height: 25px;"></div>	<div style="border: 1px solid black; width: 60px; height: 25px;"></div>

2 Last 12 months of previous period

Name of Fund/Summary

1 Last 12 months of this 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 57.5 61.3 M Euro x 18/100	17	
		Excess (if any) over 57.5 61.3 M Euro x 16/100	18	
	Health insurance	Up to and including sterling equivalent of 57.5 61.3 M Euro x 6/100	19	
		Excess (if any) over 57.5 61.3 M 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 57.5 61.3 M Euro x 18/100	28	
		Excess (if any) over 57.5 61.3 M Euro x 16/100	29	
	Health insurance	Up to and including sterling equivalent of 57.5 61.3 M Euro x 6/100	30	
		Excess (if any) over 57.5 61.3 M Euro x 16/300	31	
Sub-total I (28 + 29 + 30 + 31)	32			

FSC3 - FORM 11 (Sheet 2)

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
<input type="text"/>	<input type="text"/>	<input type="text"/>

Name of Fund/Summary <input type="text"/>		1 Last 12 months of this period	2 Last 12 months of this period
Sub-total J (greater of sub-total B and sub-total I)	40	<input type="text"/>	<input type="text"/>
Claims paid in 3 year period	41	<input type="text"/>	<input type="text"/>
Claims outstanding carried forward at the end of the period	43	<input type="text"/>	<input type="text"/>
Claims outstanding brought forward at the beginning of the period	45	<input type="text"/>	<input type="text"/>
Sub-total C (41 + 43 – 45)	46	<input type="text"/>	<input type="text"/>
Amounts recoverable from reinsurers in respect of claims included in Sub-total C	47	<input type="text"/>	<input type="text"/>
Sub-total D (46 – 47)	48	<input type="text"/>	<input type="text"/>
First result $\text{Sub-total J} \times \frac{\text{Sub-total D}}{\text{Sub-total C}} \quad (\text{or, if } 0.5 \text{ is greater, } \times 0.5)$	49	<input type="text"/>	<input type="text"/>
Provisions for claims outstanding (before discounting and net of reinsurance)	50	<input type="text"/>	<input type="text"/>
Brought forward amount (12.43.2 x 50.1 / 50.2 or, if less, 12.43.2)	51	<input type="text"/>	<input type="text"/>
Greater of lines 49 and 51	52	<input type="text"/>	<input type="text"/>

NOTES

- Entries in column 2, lines 17-20 and 28-31 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.
- 51.2 must be 11.51.2 from the previous year's return.

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
<input type="text"/>	<input type="text"/>	<input type="text"/>

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 40.3 42.9M Euro x 26/100 (note 3)	32	
		Excess (if any) over 40.3 42.9M Euro x 23/100 (note 3)	33	
	Health insurance	Up to and including sterling equivalent of 40.3 42.9M Euro x 26/300 (note 3)	34	
		Excess (if any) over 40.3 42.9M Euro x 23/300 (note 3)	35	
Sub-total G (32 to 35)		39		
Second result Sub-total G x $\frac{\text{Sub-total D}}{\text{Sub-total C}}$ (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.

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.

APPENDIX 9.1 (rules 9.12 and 9.13)

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

...

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

R11	Company registration number	GL/UK/CM	day	month	year	units	£000

		This financial year 1		Previous year 2	
Gross premiums written		11			
Premium taxes and levies (included in line 11)		12			
Premiums written net of taxes and levies (11-12)		13			
Premiums for classes 11, 12 or 13 (included in line 13)		14			
Premiums for "actuarial health insurance" (included in line 13)		15			
Sub-total A (13 + ½ 14 - ⅔ 15)		16			
Gross premiums earned		21			
Premium taxes and levies (included in line 21)		22			
Premiums earned net of taxes and levies (21-22)		23			
Premiums for classes 11, 12 or 13 (included in line 23)		24			
Premiums for "actuarial health insurance" (included in line 23)		25			
Sub-total H (23 + ½ 24 - ⅔ 25)		26			
Sub-total I (higher of sub-total A and sub-total H)		30			
Adjusted sub-total I if financial year is not a 12 month period to produce an annual figure		31			
Division of gross adjusted premiums amount: x 0.18		32			
sub-total I (or adjusted sub-total I if appropriate) Excess (if any) over 57.5 <u>61.3</u> M EURO x 0.02		33			
Sub-total J (32-33)		34			
Claims paid in period of 3 financial years		41			
Claims outstanding carried forward at the end of the 3 year period	For insurance business accounted for on an underwriting year basis	42			
		43			
	For insurance business accounted for on an accident year basis	44			
Claims outstanding brought forward at the beginning of the 3 year period	For insurance business accounted for on an underwriting year basis	45			
	For insurance business accounted for on an accident year basis	46			
Sub-total C (41+42+43-44-45)		47			
Amounts recoverable from reinsurers in respect of claims included in Sub-total C		48			
Sub-total D (46-47)		49			
Reinsurance ratio (Sub-total D / sub-total C or, if more, 0.50 or, if less, 1.00)		50			
Premiums amount (Sub-total J x reinsurance ratio)		51			
Provision for claims outstanding (before discounting and net of reinsurance)		52			
Provision for claims outstanding (before discounting and gross of reinsurance) if both 51.1 and 51.2 are zero, otherwise zero.		53			
Brought forward amount (See instruction 4)		54			
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
					This financial year 1	Previous year 2
Reference period (No. of months) See <i>INSPRU</i> 1.1.63R			11			
Claims paid in reference period			21			
Claims outstanding carried forward at the end of the reference period	For insurance business accounted for on an underwriting year basis		22			
	For insurance business accounted for on an accident year basis		23			
Claims outstanding brought forward at the beginning of the reference period	For insurance business accounted for on an underwriting year basis		24			
	For insurance business accounted for on an accident year basis		25			
Claims incurred in reference period (21+22+23-24-25)			26			
Claims incurred for classes 11, 12 or 13 (included in 26)			27			
Claims incurred for "actuarial health insurance" (included in 26)			28			
Sub-total E (26 + ½ 27 - 2/3 28)			29			
Sub-total F – Conversion of sub-total E to annual figure (multiply by 12 and divide by number of months in the reference period)			31			
Division of sub-total F (gross adjusted claims amount)	x 0.26		32			
	Excess (if any) over 40.3 42.9M EURO x 0.03		33			
			39			
Sub-total G (32 - 33)			41			
Claims amount Sub-total G x reinsurance ratio (11.49)			42			
Higher of premiums amount and brought forward amount (11.54)			43			
General insurance capital requirement (higher of lines 41 and 42)						

CONDUCT OF BUSINESS SOURCEBOOK (PENSION TRANSFER VALUE ANALYSIS) (AMENDMENT) INSTRUMENT 2012

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 1 January 2013.

Amendments to the Handbook

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

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Pension Transfer Value Analysis) (Amendment) Instrument 2012.

By order of the Board
31 October 2012

Annex A**Amendments to the Glossary of definitions**

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

<i>CPI</i>	the Consumer Prices Index.
<i>limited price indexation</i>	in relation to transfer value analysis, benefits which increase in line with a recognised index but subject to a minimum and/or maximum rate.
<i>RPI</i>	the Retail Prices Index.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

19.1 Pension transfers and opt-outs

Preparing and providing a transfer analysis

...

19.1.4 R When a *firm* compares the benefits likely to be paid under a *defined benefits pension scheme* with the benefits afforded by a *personal pension scheme* or *stakeholder pension scheme* (COBS 19.1.2R(1)), it must:

(1) assume that:

(a) the annuity interest rate is the intermediate rate of return appropriate for a level or fixed rate of increase annuity in (COBS 13 Annex 2 3.1R(6)) unless COBS 19.1.4BR applies or the rate for annuities in payment (if less);	
(b) the retail prices index <u>RPI</u> is	2.5%
(c) the average earnings index and the rate for section 21 orders is	4.0%
(d) <u>for benefits linked to the RPI</u> , the pre-retirement <i>limited price indexation</i> revaluation is	2.5%
(e) the annuity <u>interest rate</u> for post-retirement limited price increases <u>limited price indexation</u> based on the <u>RPI</u> with maximum <u>pension</u> increases less than or equal to 3.5% or with minimum <u>pension</u> increases more than or equal to 3.5% is the rate in (a) above <u>allowing for increases at the maximum rate of pension increase</u> ; otherwise it is the rate in (f) below;	
(f) the index linked pensions <u>annuity interest rate for pension benefits linked to the RPI</u> is the intermediate rate of return in COBS 13 Annex 2 3.1R(6) for annuities linked to the retail prices index <u>RPI</u> unless COBS 19.1.4BR applies;	
(g) the mortality rate used to determine the annuity is based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PCMA00 and PCFA00 and including mortality improvements derived from each of the male and female annual mortality projections models, in equal parts;	

<u>(h) for benefits linked to the <i>CPI</i>, the pre-retirement <i>limited price indexation</i> revaluation is</u>	<u>2.0%</u>
<u>(i) the index linked annuity interest rate for pension benefits linked to the <i>CPI</i> is the intermediate rate of return in <i>COBS 13 Annex 2 3.1R(6)</i> for annuities linked to the <i>RPI</i> plus 0.5% unless <i>COBS 19.1.4BR</i> applies in which case it is the annuity rate in <i>COBS 19.1.4BR</i> plus 0.5%;</u>	
<u>(j) the annuity interest rate for post-retirement <i>limited price indexation</i> based on the <i>CPI</i> with maximum pension increases less than or equal to 3.0% or with minimum pension increases more than or equal to 3.5% is the rate in (a) above allowing for increases at the maximum rate of pension increase; where minimum pension increases are more than or equal to 3% but less than 3.5% the annuity rate is the rate in (a) above allowing for increases at the minimum rate of pension increase otherwise it is the rate in (i) above;</u>	

or use more cautious assumptions;

(2) calculate the interest rate in deferment; and

(3) have regard to benefits which commence at difference times.

**CONDUCT OF BUSINESS SOURCEBOOK (PROJECTIONS) (AMENDMENT)
INSTRUMENT 2012**

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 as follows:
- (1) Part 1 of the Annex to this instrument comes into force on 6 April 2014;
 - (2) the remainder of this instrument comes into force on 6 April 2013.

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 Conduct of Business Sourcebook (Projections) (Amendment) Instrument 2012.

By order of the Board
31 October 2012

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

Part 1: Comes into force on 6 April 2014

13 Annex 2 Projections

...

R			
Assumptions: rates of return			
2.3	A <i>standardised deterministic projection</i> must be calculated using <u>rates that accurately reflect the investment potential of the product and do not exceed the following maximum</u> rates of return:		
Nominal rates	Lower rate	Intermediate rate	Higher rate
tax-exempt business held in a <i>wrapper</i> or by a <i>friendly society</i> <i>personal pension schemes, stakeholder pension schemes</i> and investment-linked annuities	5% <u>2%</u>	7% <u>5%</u>	9% <u>8%</u>
all other products	4% <u>1½%</u>	6% <u>4½%</u>	8% <u>7½%</u>

R	
Exception	
2.4	A <i>standardised deterministic projection</i> :
	(1) must be calculated using lower rates of return, if the rates described in this section overstate the investment potential of the product; [deleted]
	(2) may be calculated using a lower rate of return if a retail client requests it.

...

Part 2: Comes into force on 6 April 2013

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
<u>2.5B</u>	<u>COBS 13 Annex 2 2.3</u>	<u>R</u>	<u>A firm may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Projections) (Amendment) Instrument 2012 as if the amendments to the Handbook set out in that instrument were in force.</u>	<u>From 6 April 2013 to 5 April 2014</u>	<u>6 April 2014</u>
<u>2.5C</u>	<u>COBS 13 Annex 2 2.4</u>	<u>R</u>	<u>A firm may comply with the provision listed in column (2) as amended by the Conduct of Business Sourcebook (Projections) (Amendment) Instrument 2012 as if the amendments to the Handbook set out in that instrument were in force.</u>	<u>From 6 April 2013 to 5 April 2014</u>	<u>6 April 2014</u>
...					

**CONDUCT OF BUSINESS SOURCEBOOK (PENSION SCHEME DISCLOSURE)
INSTRUMENT 2012**

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 April 2013.

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 Conduct of Business Sourcebook (Pension Scheme Disclosure) Instrument 2012.

By order of the Board
31 October 2012

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

13.4.1 R *A key features illustration must include appropriate charges information, information about any interest that will be paid to clients on money held within a personal pension scheme bank account and, if it is a packaged product which is not a financial instrument:*

(1) must include a *standardised deterministic projection*;

...

...

13.4.4 R There is no requirement under COBS 13.4.1R to include a *projection* in a *key features illustration*:

(1) ...; or

(2) if the product is:

~~(a) a SIPP from which no income withdrawals are being taken;~~
~~or~~

~~(b) a life policy that will be held in a CTF or sold with basic advice (unless the policy is a stakeholder pension scheme).~~

...

13 Annex 2 Projections

This annex belongs to COBS 13.4.1R (Contents of a key features illustration), COBS 13.5.1R (Projections for in-force products) and COBS 13.5.2R (Projections: other situations).

...

G		
2.7	...	
	(7)	<u>If a personal pension scheme is invested in assets that are volatile or difficult to value, the standardised deterministic projection should be prepared using the best available reasonable assumptions.</u>

...

13 Annex 3 Charges information for a packaged product

(except for a personal pension scheme and a stakeholder pension scheme where adviser charges or consultancy charges are to be facilitated by the product)

This annex belongs to COBS 13.4.1R (Contents of a key features illustration)

R		
Charges		
1	Appropriate charges information	
1.1	<i>Appropriate charges information</i> comprises:	
	(1)	(a) a description of the nature and amount of the <i>charges</i> a <i>client</i> will or may be expected to bear in relation to the product and, if applicable, any investments within the product;
		(b) if applicable, a description of the nature and amount of the <i>adviser charges</i> a <i>retail client</i> has agreed may be taken, including whether it is taken before or after the investment into the product;
	(2)	an ‘effect of charges’ table; and
	(3)	‘reduction in yield’ information; <u>and</u>
	(4)	<u>in relation to a <i>personal pension scheme</i>, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated), if any, which a <i>personal pension scheme operator</i> or <i>pension scheme trustee</i> will receive as retained interest in relation to money held within the <i>personal pension scheme</i>.</u>
1.2	...	
1.2A	<u>The information described in 1.1(4) must be disclosed alongside information about any other <i>charges</i> the <i>client</i> will be expected to bear, and information about any interest that will be paid to <i>clients</i> on money held within a <i>personal pension scheme</i> bank account.</u>	
Exceptions		
1.3	An effect of charges table and reduction in yield information are not required for:	
	...	
	(2)	a <i>SIPP</i> [deleted];
	...	

...

13 Annex 4 Charges information for a personal pension scheme and a stakeholder pension scheme

(where adviser charges or consultancy charges are facilitated by the product)

This annex belongs to COBS 13.4.1R (Contents of a key features illustration)

R		
Charges		
1	Appropriate charges information	
1.1	<i>Appropriate charges information</i> comprises:	
	(1)	(a) a description of the nature and amount of the <i>charges</i> a <i>client</i> will or may be expected to bear in relation to the product and, if applicable, any investments within the product;
		(b) if applicable, a description of the nature and amount of the <i>adviser charges</i> and <i>consultancy charges</i> a <i>retail client</i> or employer has agreed may be taken before investment into the product;
		(c) if applicable, a description of the nature and amount of the <i>adviser charges</i> and <i>consultancy charges</i> a <i>retail client</i> or employer has agreed may be taken after investment into the product;
	(2)	an ‘effect of charges’ table; and
	(3)	‘reduction in yield’ information; <u>and</u>
	(4)	<u>in relation to a <i>personal pension scheme</i>, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated), if any, which a <i>personal pension scheme operator</i> or <i>pension scheme trustee</i> will receive as retained interest in relation to money held within the <i>personal pension scheme</i>.</u>
1.2	...	
1.2A	<u>The information described in 1.1(4) must be disclosed alongside information about any other <i>charges</i> the <i>client</i> will be expected to bear, and information about any interest that will be paid to <i>clients</i> on money held within a <i>personal pension scheme</i> bank account.</u>	
...		

The provision rules

14.2.1 R A *firm* that sells:

...

(3) the variation of a *life policy* or *personal pension scheme* to a *retail client*, must provide that *client* with sufficient information about the

variation for the *client* to be able to understand the consequences of the variation (~~unless the policy or scheme is a *SIPP*~~);

...

on condition that it complies with each of the other *rules* in this section in relation to the provision of the document, as if references in those *rules* to a “*key features document*” or “*simplified prospectus*” were a reference to the “NURS KII document”.

**CLIENT ASSETS SOURCEBOOK (FIRM CLASSIFICATION, OPERATIONAL
OVERSIGHT, AND MANDATE RULES) INSTRUMENT 2012**

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 (Approved persons);
 - (2) section 138 (General rule-making power);
 - (3) section 139 (Miscellaneous ancillary matters);
 - (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 A, Annex B, and Part 1 of Annex C of this instrument come into force on 1 January 2013; and
 - (2) Part 2 of Annex C of this instrument comes into force on 28 February 2013.

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
Client Assets sourcebook (CASS)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Client Assets Sourcebook (Firm Classification, Operational Oversight, and Mandate Rules) Instrument 2012.

By order of the Board
31 October 2012

Annex A

Amendments to the Glossary of definitions

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

mandate any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in CASS 8.2.1R.

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

1A CASS firm classification and operational oversight

1A.1 Application

1A.1.1 R (1) Subject to (2) ~~and~~, (3) and (4), this chapter applies to a *firm* to which either or both of CASS 6 (Custody rules) and CASS 7 (Client money rules) applies.

...

(4) This chapter does not apply to a *firm* to which only CASS 6 applies, applied or is projected to apply, merely because it is, was, or is projected to be a *firm* which arranges safeguarding and administration of assets.

1A.2 CASS firm classification

1A.2.1 G The application of certain *rules* in this chapter depends upon the 'CASS firm type' within which a *firm* falls. The 'CASS firm types' are defined in accordance with CASS 1A.2.7R. The 'CASS firm type' within which a *firm* falls is also used to determine whether it is required to have the CASS *operational oversight function* described in CASS 1A.3.1AR and whether the reporting obligations ~~that apply to it~~ in SUP 16.14 (Client money and asset return) apply to it.

1A.2.2 R (1) A *firm* must once every year, and ~~within the time limit provided for by~~ by the time it is required to make a notification in accordance with CASS 1A.2.9R(4), determine whether it is a CASS *large firm*, CASS *medium firm* or a CASS *small firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in CASS 1A.2.7R.

...

...

1A.2.5 R ...

(2) The conditions to which (1) refers are that in either case:

(a) the election is ~~made by including it in the notice~~ notified to

the *FSA* provided under ~~CASS 1A.2.8R or CASS 1A.2.9R~~ in writing;

- (b) ~~it is given the notification in accordance with (a) is made~~ at least one week before the election is intended to take effect; and
- (c) the *FSA* has not objected.

...

- 1A.2.8 R ~~In relation to the calendar year ending on 31 December 2011, a firm must notify the *FSA* in writing:~~
- (1) ~~by 31 January 2011 of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, if it held *client money* or *safe custody assets* in that previous year; or~~
 - (2) ~~by 31 January 2011 of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during 2011, if it did not hold *client money* or *safe custody assets* in the previous calendar year but at the date of its notification to the *FSA* projects that it will do so in 2011; or~~
 - (3) ~~in any other case, before the date on which the *firm* begins to hold *client money* or *safe custody assets*, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the remainder of 2011; and~~
 - (4) ~~in every case, of its 'CASS firm type' classification. [deleted]~~
- 1A.2.8A R ~~In addition, in relation to the calendar year ending on 31 December 2011, a CASS *small firm* must by 31 July 2011 notify the *FSA* in writing of:~~
- (1) ~~the highest total amount of *client money* and the highest total value of *safe custody assets* held during the period between 1 January 2011 and 30 June 2011; or~~
 - (2) ~~if it did not hold *client money* or *safe custody assets* in that period, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects, as at the date of its notification to the *FSA* under this *rule*, it will hold between 1 July 2011 and 31 December 2011. [deleted]~~
- 1A.2.9 R ~~In relation to each calendar year beginning with that which ends on 31 December 2012, a *firm* must notify the *FSA* in writing: Once every calendar year a *firm* must notify to the *FSA* in writing the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the *day* specified in (1) to (4):~~

- (1) ~~within 15 business days of 31 December of the previous calendar year, of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, if it held *client money* or *safe custody assets* in that previous calendar year~~ if it held *client money* or *safe custody assets* in the previous calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
- (2) ~~within 15 business days of 31 December of the previous year, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the then current calendar year, if it did not hold *client money* or *safe custody assets* in the previous calendar year but at the date of its notification to the *FSA* projects that it will do so in the then current calendar year~~ if it did not hold *client money* or *safe custody assets* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
- (3) ~~in any other case, before the date on which the *firm* begins to hold *client money* or *safe custody assets*, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the remainder of the then current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money* or *safe custody assets*; and~~
- (4) in every case, of its 'CASS firm type' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3).

1A.2.10 R For the purpose of the annual notification to which ~~CASS 1A.2.8R and CASS 1A.2.9R refer~~ refers, and for the purpose of the notification to which ~~CASS 1A.2.8AR refers~~, a *firm* must apply the calculation rule in CASS 1A.2.3R.

1A.2.11 G For the purpose of CASS 1A.2.9R(1), the *FSA* will treat that obligation as satisfied if a *firm* ~~submits~~ submitted a *CMAR* for each period within the previous calendar year ~~the month ending 31 December~~ in compliance with SUP 16.14.3R.

1A.2.12 R A *firm*'s 'CASS firm type' and any change to it takes effect:

- (1) if the *firm* notifies the *FSA* in accordance with CASS 1A.2.9R(1) or

CASS 1A.2.9R(2), on 1 February following the notification; or

- (2) if the *firm* notifies the *FSA* in accordance with CASS 1A.2.9R(3), on the *day* it begins to hold *client money* or *safe custody assets*; or
- (3) if the *firm* makes an election under CASS 1A.2.5R(1), and provided the conditions in CASS 1A.2.5R(2) are satisfied, on the *day* the notification made under CASS 1A.2.5R(2)(a) states that the election is intended to take effect.

1A.2.13 G Any written notification made to the *FSA* under this chapter should be marked for the attention of: “Client Assets Firm Classification”.

1A.3 Responsibility for CASS operational oversight

1A.3.1 R A *CASS small firm* must allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:

- (1) oversight of the *firm’s* operational compliance with CASS; and
- (2) reporting to the *firm’s* governing body in respect of that oversight; and
- ~~(3) completing and submitting a *CMAR* to the *FSA* in accordance with *SUP 16.14*.~~

...

1A.3.1C R If, at the time a *firm* becomes a *CASS medium firm* or a *CASS large firm* in accordance with CASS 1A.2.12R(1) or CASS 1A.2.12R(2), the *firm* is not able to comply with CASS 1A.3.1AR because it has no *director* or *senior manager* who is an *approved person* in respect of the *CASS operational oversight function*, the *firm* must:

- (1) take the necessary steps to ensure that it complies with CASS 1A.3.1AR as soon as practicable, which must at least include submitting an application for a *candidate* in respect of the *CASS operational oversight function* within 30 business days of the *firm* becoming a *CASS medium firm* or a *CASS large firm*; and
- (2) until such time as it is able to comply with CASS 1A.3.1AR, allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:
 - (a) oversight of the *firm’s* operational compliance with CASS;
 - (b) reporting to the *firm’s* governing body in respect of that oversight; and

- (c) completing and submitting the CMAR to the FSA in accordance with SUP 16.14.

...

- 1A.3.3 R (1) Subject to (2), a *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with CASS 1A.3.1R, ~~or CASS 1A.3.1AR~~ or CASS 1A.3.1CR(2).

...

8 Mandates

8.1 Application

- 8.1.1 R This chapter (the mandate rules) applies to a *firm* (~~including in its capacity as trustee under CASS 5.4~~) in respect of any written authority from a *client* ~~under which the *firm* may control a *client's* assets or liabilities~~ when it has a *mandate* in the course of, or in connection with, the *firm's*:
- (1) *designated investment business* (including *MiFID business*); ~~and~~ or
 - (2) *insurance mediation activity*, *except where it relates to a reinsurance contract.*
- 8.1.2 G ~~Mandates or similar authorities for the purpose of this chapter include a *firm's* authority over a *client's* safe custody account, for example for stock lending purposes, a *firm's* authority over a *client's* bank or building society account including direct debits in favour of the *firm*, and a *firm* holding a *client's* credit card details. [deleted]~~
- 8.1.2A R The *mandate rules* do not apply to a *firm*:
- (1) in relation to *client money* that the *firm* is holding in accordance with CASS 5 or CASS 7 (including *client money* that the *firm* has allowed another *person* to hold or control in accordance with CASS 7.5.2R);
or
 - (2) in relation to *safe custody assets* that the *firm* is holding, or in respect of which the *firm* is carrying on *safeguarding and administration of assets* (without arranging) in accordance with CASS 6; or
 - (3) in relation to a *client's* assets that the *firm* is holding or has received under an arrangement to which CASS 3 applies; or
 - (4) when it acts as the *operator* of a *regulated collective investment scheme* in relation to property held for or within the *scheme*.
- 8.1.2B G (1) CASS 8.1.2AR is not an absolute exemption, but it excludes the application of the *mandate rules* in relation to *money* or assets that a

firm has received, is holding, or is responsible for (as appropriate and in the circumstances described in CASS 8.1.2AR).

- (2) This means that, for example in respect of CASS 8.1.2AR(1), a firm holding client money in accordance with CASS 5 or CASS 7 does not also need to comply with the mandate rules in relation to the client money which it actually holds, but the mandate rules would apply if the firm has a mandate under which it can receive a client's money from another person in the course of, or in connection with, the activities set out at CASS 8.1.1R(1) and (2).
- (3) Similarly, in respect of CASS 8.1.2AR(4), the mandate rules apply to a firm that is the operator of a regulated collective investment scheme if, for example, it has a mandate under which it can receive a client's money from another person for the purposes of investing it in the scheme.

...

Purpose

- 8.1.4 G ~~The mandate rules apply to those firms that control, rather than hold, clients' assets or are able to create liabilities in the name of a client. These rules seek to ensure that~~ require firms to establish and maintain records and internal controls to prevent the misuse of a mandate the authority granted by the client.
- 8.1.4A G The mandate rules only apply to a firm that has a mandate, and do not affect the duties of any other person to whom the firm is able to give the types of instructions referred to in CASS 8.2.1R(4). For example, if a person (A) has accepted a deposit from a client, and a firm (B) has a mandate in respect of that client's deposit held by A, the mandate rules only apply to B, and do not affect the duties of A in relation to the deposit.

General

- 8.1.5 R ~~A firm that holds authorities of the sort referred to in this chapter, must establish and maintain adequate records and internal controls in respect of its use of the mandates, which must include:~~
- (1) ~~an up-to-date list of the authorities and any conditions placed by the client or the firm's management on the use of them;~~
 - (2) ~~a record of all transactions entered into using the authority and internal controls to ensure that they are within the scope of authority of the person and the firm entering into the transaction;~~
 - (3) ~~the details of the procedures and authorities for the giving and receiving of instructions under the authority; and~~
 - (4) ~~where the firm holds a passbook or similar documents belonging to the client, internal controls for the safeguarding (including against~~

~~loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*. [deleted]~~

After CASS 8.1 insert the following new sections. The text is not underlined.

8.2 Definition of mandate

- 8.2.1 R A *mandate* is any means that give a *firm* the ability to control a *client's* assets or liabilities, which meet the conditions in (1) to (5):
- (1) they are obtained by the *firm* from the *client*, and with the *client's* consent;
 - (2) they are in written form at the time they are obtained from the *client*;
 - (3) they are retained by the *firm*;
 - (4) they put the *firm* in a position where it is able to give any or all of the types of instructions described in (a) to (d):
 - (a) instructions to another *person* in relation to the *client's* money that is credited to an account maintained by that other *person* for the *client*;
 - (b) instructions to another *person* in relation to any money to which the *client* has an entitlement, where that other *person* is responsible to the *client* for that entitlement (including where that other *person* is holding *client* money for the *client* in accordance with CASS 5 or CASS 7);
 - (c) instructions to another *person* in relation to an asset of the *client*, where that other *person* is responsible to the *client* for holding that asset (including where that other *person* is *safeguarding and administering investments*);
 - (d) instructions to another *person* such that the *client* incurs a debt or other liability to that other *person* or any other *person* (other than the *firm*); and
 - (5) their circumstances are such that the *client's* further involvement would not be necessary for the *firm's* instructions described in 4(a) to 4(d) to be given effect.

Written form

- 8.2.2 G A *mandate* can take any written form and need not state that it is a *mandate*. For example it could take the form of a standalone document containing certain information or conferring a certain authority on the *firm*, a specific provision within a document or agreement that also relates to other matters, or a combination of provisions within a number of documents which

together meet the conditions in CASS 8.2.1R.

Retention by the firm

- 8.2.3 G (1) If a *firm* receives information that puts it in the position described in CASS 8.2.1R(4) in order to effect transactions immediately on receiving that information, then such information could only amount to a *mandate* if the *firm* retains it (for example by not destroying the relevant document):
- (a) after it uses it to effect those immediate transactions; or
 - (b) because those transactions are not, for whatever reason, effected immediately.
- (2) If a *firm* receives information that puts it in the position described in CASS 8.2.1R(4) and the *firm* retains that information (for example in accordance with its record-keeping procedures or in order to effect transactions in the future or over a period of time) then such information could amount to a *mandate*.

Ability to give instructions to another person

- 8.2.4 G The instructions referred to at CASS 8.2.1R(4) are all instructions given by a *firm* to another *person* who also has a relationship with the *firm's client*. For example, the other person may be the *client's bank*, intermediary, *custodian* or credit card provider. This means, for example, that any means by which a *firm* can control a *client's money* or assets for which it is itself responsible to the *client* (rather than any other *person*) would not amount to a *mandate*. This includes where the *firm* is holding a *client's money* or assets other than in accordance with CASS 5, CASS 6 or CASS 7 (for example, because of an exemption in those *rules*).
- 8.2.5 G A *mandate* in relation to the type of instructions referred to in CASS 8.2.1R(4)(a) could include a direct debit instruction over a *client's bank* account in favour of the *firm*.
- 8.2.6 G A *mandate* in relation to the type of instructions referred to in CASS 8.2.1R(4)(d) could include written information that sets out the *client's* credit card details.

Conditions on use of mandate and client's further involvement

- 8.2.7 G (1) If a *firm* obtains the means by which it can give the types of instructions referred to in CASS 8.2.1R(4), but its use of those means is subject to any limits or conditions, then this does not necessarily prevent those means from being a *mandate*. For example, a *client* might require that a *firm* uses a *mandate* only in connection with transactions up to a certain value.
- (2) However, if a *firm* obtains the means by which it can give the types of instructions referred to in CASS 8.2.1R(4), but the *firm* cannot, in

practice, use those means without the *client's* further involvement, then the condition in CASS 8.2.1R(5) would not be met. For example, a *firm* might have the means by which it can give instructions of the type referred to in CASS 8.2.1R(4)(a) in relation to an account maintained by another *person* for a *client*, but that other *person* might require the *client's* signature or other authorisation before it gives effect to those instructions.

8.3 Records and internal controls

- 8.3.1 R A *firm* that has *mandates* must establish and maintain adequate records and *internal controls* in respect of its use of the *mandates*.
- 8.3.2 R The records and *internal controls* required by CASS 8.3.1R must include:
- (1) an up-to-date list of each *mandate* that the *firm* has obtained, including a record of any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
 - (2) a record of each transaction entered into under each *mandate* that the *firm* has;
 - (3) *internal controls* to ensure that each transaction entered into under each *mandate* that the *firm* has is in accordance with any conditions placed by the *client* or the *firm's* management on the use of the *mandate*;
 - (4) the details of the procedures and *internal controls* around the giving of instructions under the *mandates* that the *firm* has (such instructions being those referred to in CASS 8.2.1R(4)); and
 - (5) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls* for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.
- 8.3.3 G A *firm* should distinguish between conditions placed by a *client* on the *firm's* use of a *mandate*, and criteria to which transactions effected by a *firm* with or for a *client* may be subject.
- (1) The requirements in CASS 8.3.2R(1) and CASS 8.3.2R(3) apply only in respect of conditions placed around the *firm's* use of a *mandate* itself or around the instructions described in CASS 8.2.1G(4). Examples of these include conditions under which a *mandate* may only be used by the *firm* in connection with transactions up to a certain value, or under which instructions under a *mandate* may only be given by certain personnel within the *firm*.

- (2) The requirements in CASS 8.3.2R(1) and CASS 8.3.2R(3) do not apply in respect of criteria which relate to the nature and circumstances of transactions effected by a *firm* with or for a *client*. Examples of those criteria include investment restrictions or exposure limits for a managed portfolio, and required or preferred execution prices or execution venues.

Amend the following as shown.

9 Prime brokerage

...

9.3 Prime brokerage agreement disclosure annex

...

9.3.2 G ...

- (2) A *prime brokerage firm* should not enter into a “right to use arrangements” for a *client’s safe custody assets* unless:

- (a) in the case of a *CASS small firm* or a *firm to which CASS 1A.3.1CR applies*, the person in that *firm* to whom the responsibilities set out in CASS 1A.3.1R or in CASS 1A.3.1CR(2) respectively have been allocated; or

...

are each satisfied that the *firm* has adequate systems and controls to discharge its obligations under *Principle 10*...

10 CASS resolution pack

10.1 Application, purpose and general provisions

...

- 10.1.14 R The individual to whom responsibility for CASS operational oversight has been allocated under CASS 1A.3.1R, CASS 1A.3.1AR or, as the case may be, ~~CASS 1A.3.1AR~~ 1A.3.1CR(2), must report at least annually to the *firm’s governing body* in respect of compliance with the *rules* in this chapter.
- 10.1.15 G Individuals allocated functions relating to CASS operational oversight pursuant to CASS 1A.3.1R, CASS 1A.3.1AR or, as the case may be, ~~CASS 1A.3.1AR~~ 1A.3.1CR(2), are reminded that their responsibilities include compliance with the provisions in this chapter.

...

Sch 1 Record keeping requirements

...

Sch
1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
CASS 1A.3.3R	Allocation of the CASS oversight responsibilities in CASS 1A.3.1 R or ₂ of the CASS <i>operational oversight function</i> , <u>or of the responsibilities in CASS 1A.3.1CR(2)</u> , as relevant	The <i>person</i> to whom the CASS oversight responsibilities have been allocated, subject to the provisions of CASS 1A.3.3R, or to whom the CASS <i>operational oversight function</i> has been allocated in accordance with CASS 1A.3.1AR ₂ <u>or to whom the responsibilities in CASS 1A.3.1CR(2) have been allocated</u>	Upon allocation	5 years (from the date the record was made)
...				
CASS 8.1.5R <u>8.3.1R</u>	Adequate records and internal controls in respect of the <i>firm's</i> use of mandates <u>mandates</u> (see CASS 8.1.5R (1) <u>8.3.2R(1)</u> to CASS 8.1.5R (4) <u>8.3.2R(5)</u>)	Up to date list of <i>firm's</i> authorities <u>mandates</u> and any conditions regarding the use of authorities <u>mandates</u> , all transactions entered into, details of procedures and authorities <u>internal controls</u> for giving and receiving of instructions under authorities	Maintain current full details	Not specified

		<i>mandates</i> , and important <i>client</i> documents held by the <i>firm</i>		
...				

Sch 2 Notification requirements

Sch
2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
CASS 1A.2.8R(1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.8R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.8R.	The coming into force of CASS 1A.2.8R	31 January 2011 unless contrary provision is made in CASS 1A.2.8R. [deleted]
CASS 1A.2.8R(4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The coming into force of CASS 1A.2.8R	31 January 2011 unless contrary provision is made in CASS 1A.2.8R. [deleted]
CASS 1A.2.8AR	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>CASS small firm</i> , as more fully described in CASS 1A.2.8AR	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>CASS small firm</i> , as more fully described in CASS 1A.2.8AR	The need to comply with CASS 1A.2.8AR	31 July 2011 unless contrary provision is made in CASS 1A.2.8AR [deleted]

CASS 1A.2.9R(1) - (3)	The highest total amount of <i>client money</i> and the highest total value of <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9R	The highest total amount of <i>client money</i> and <i>safe custody assets</i> held by a <i>firm</i> , as more fully described in CASS 1A.2.9R.	The need to comply with CASS 1A.2.9R(1) - (3)	Within 15 <i>business days</i> from the end of December of the previous calendar year <u>By the fifteenth <i>business day</i> of January</u> unless contrary provision is made in CASS 1A.2.9R
CASS 1A.2.9R(4)	A <i>firm's</i> 'CASS firm type' classification	A <i>firm's</i> 'CASS firm type' classification	The need to comply with CASS 1A.2.9R(4)	Within 15 <i>business days</i> from the end of December of the previous calendar year unless contrary provision is made in CASS 1A.2.9R <u>At the same time the <i>firm</i> makes the notification under CASS 1A.2.9R(1), (2) or (3)</u>
CASS 1A.3.2R	The <i>person</i> to whom the responsibilities in CASS 1A.3.1R have been allocated	The name of the <i>person</i>	Upon allocation	Until 31 January 2011 [deleted]
...				

Annex C

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 1 January 2013

16 Reporting requirements

...

16.14 Client money and asset return

...

Report

- 16.14.3 R (1) ~~A~~ Subject to (3), a firm must submit a completed *CMAR* to the *FSA* within 15 *business days* of the end of each month.
- (2) In this *rule* month means a calendar month and *SUP* 16.3.13R(4) does not apply.
- (3) A firm which changes its 'CASS firm type' and notifies the FSA that it is a CASS medium firm or a CASS large firm in accordance with CASS 1A.2.9R is not required to submit a CMAR in respect of the month in which the change to its 'CASS firm type' takes effect in accordance with CASS 1A.2.12R, unless it was a firm to which the requirement in (1) applied immediately prior to that change taking effect.
- 16.14.4 R For the purposes of the *CMAR*:
- (1) *client money* is that to which the *client money rules* in *CASS* 7 apply; and
- (2) *safe custody assets* are those to which the *custody rules* in *CASS* 6 apply but only in relation to the holding of financial instruments (in the course of MiFID business) and the safeguarding and administration of assets (without arranging) (in the course of business that is not MiFID business).
- 16.14.5 G For the avoidance of doubt, the effect of *SUP* 16.14.4R(1) is that the following are any client money held in accordance with CASS 5 is to be excluded from any calculations which the *CMAR* requires:
- (1) any client money held by the firm in accordance with CASS 5;
- (2) any safe custody assets in respect of which the firm is merely

arranging safeguarding and administration of assets in accordance with CASS 6; and

- (3) any client money or safe custody assets in respect of which the firm merely has a mandate in accordance with CASS 8.

...

Part 2: Comes into force on 28 February 2013

Delete 16 Annex 29R and insert the following new annex in its place. The text is not underlined.

16 Annex 29R Client Money and Asset Return (CMAR)

This annex consists only of one or more forms. Forms are to be found through the following address:

Client Money and Asset Return - SUP 16 Annex 29R

see next page

Amend the following as shown.

16 Annex 29AG Guidance notes for the data item in SUP 16 Annex 29R

Client Money and Asset Return (CMAR)

This annex contains *guidance* on the *CMAR* and is therefore addressed only to a *firm* which is subject to *SUP 16.14*.

General

Terms used in the *CMAR* bear the meaning ascribed to those terms in the *Glossary*, even though they do not appear in italicised form on the face of the *data item*, unless a contrary indication is given in this *guidance*.

A *firm* is reminded that the effect of *SUP 16.14.4R* is that in relation to a *firm* to which *CASS 5* (Client money: insurance mediation activity) and *CASS 7* (Client money rules) apply, that *firm* should not report in the *data item* shown in *SUP 16 Annex 29R* any *client money* that it holds in accordance with *CASS 5*.

SUP 16.14.4R also has the effect that the data reported by a *firm* on the *CMAR* should only relate to *client money* and/or *safe custody assets* held by the *firm*, and should not relate to *client money* and/or *safe custody assets* in respect of which the *firm* merely has a *mandate* or any *safe custody assets* in respect of which the *firm* merely *arranges safeguarding and administration of assets*.

Firms are reminded of their obligation to determine their ‘*CASS firm type*’ categorisation in accordance with *CASS 1A.2.2R*.

A *firm* should include in any amount of *client money* that it reports any *client money* which it has allowed another *person* to hold or control in accordance with *CASS 7.5.2R* (for example, an exchange, *clearing house* or *intermediate broker*).

Reporting Period

The reporting period for the *CMAR* is the calendar month for which a *CMAR* is required to be completed in accordance with *SUP 16.14.3R*, including the first *day* and the last *day* of that month. For example, the January reporting period will be January 1 to January 31, regardless of whether or not any *day* in January is a *business day*.

Valuation

~~Where this *data item* asks for a *firm* to report or calculate the value of *safe custody assets* that it holds on any given *day*, that *firm* should~~

- (a) ~~if it has the previous *day's* mark to market value of the *safe custody asset* in question, use that value; or~~
- (b) ~~if it does not have the previous *day's* mark to market value, calculate the value of that asset using the most recent mark to market value that it does have; and~~

~~in either case, apply a consistent mark to market methodology that reflects its normal accounting practice.~~

For the purposes of the *CMAR*, the *FSA* does not prescribe any particular methodology or frequency for valuing *safe custody assets*.

Reporting Client Money Balances using internal reconciliations

The *guidance* in this annex assumes that a *firm* uses the *standard method of internal client money reconciliation*. *Firms* that use a different method of internal reconciliation in accordance with *CASS 7.6.7R* should read the *guidance* in this annex in so far as it is consistent with that different method.

Where this *data item* requires a *firm* to report any *client money* balances, unless otherwise specified the *firm* should report on the basis of balances used for its internal reconciliation carried out on the first *business day* following the reporting period in question. This means using the values contained in the *firm's* accounting records, for example its cash book, rather than values contained in statements received from its banks and other third parties.

Currency

The reporting currency for this *data item* should be GBP (sterling). For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given *day* during a reporting period, a *firm* should, in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or that *safe custody asset* into sterling at the previous *day's* closing spot exchange rate.

Section 1 Firm information

1 Name of *CASS* audit firm

A *firm* should report the name of the auditor that provides its client assets report (see *SUP 3.10*). It is not possible for the *CMAR* to list all auditors in this data field. However, certain auditors are named for convenience, and the *FSA* does not in any way recommend or endorse the auditors that are named. If the auditor is not listed on the menu, where available, a *firm* should choose select 'Other' and complete data field 2 if its auditor is not named.

2 Name of *CASS* audit firm (if 'Other' was selected above)

If a *firm* selects 'Other' in (1), it should enter the name of ~~its auditor~~ the auditor that provides its client assets report (see *SUP 3.10*).

3 ~~Does~~ Did the *firm* hold *client money* during the reporting period?

A *firm* should state “Yes” or “No”.

A *firm* should not take into account *client money* in respect of which it merely had a *mandate* in accordance with CASS 8 during the reporting period, or *client money* that it held in accordance with CASS 5 during the reporting period.

- 4 ~~Does~~ Did the *firm* safeguard and administer *safe custody assets* during the reporting period?

A *firm* should state “Yes” or “No”.

A *firm* should not take into account *safe custody assets* in respect of which it was merely *arranging safeguarding and administration of assets* in accordance with CASS 6 during the reporting period.

- 5 ~~Is~~ Was the *firm* subject to a *CFTC Part 30 exemption order* during the reporting period?

A *firm* should state “Yes” or “No”. *Handbook* provisions dealing with the *CFTC Part 30 exemption order* are set out CASS 7.4.32G to CASS 7.4.35R.

- 6 ~~Does~~ Did the *firm* operate the alternative approach during the reporting period (see CASS 7.4.14G to CASS 7.4.19G)?

A *firm* should state “Yes” or “No”. *Handbook* provisions dealing with the alternative approach are set out in CASS 7.4.14G to CASS 7.4.19G.

- 7 Has the alternative approach been signed off by the *firm*'s auditor?

A *firm* should state “Yes” or “No”. CASS 7.4.15R provides that a *firm* that does not operate the normal approach must first send a written confirmation to the *FSA* from the *firm*'s auditor that the *firm* has in place systems and controls which are adequate to enable it to operate another approach effectively.

- 8A Type of business activity

A *firm* should identify in this data field the investment activities or services in the course of which it holds *client money* or *safe custody assets* belonging to a *client* and may do so using its own description of the activity or service in question.

In completing this data field a *firm* should use a separate row to distinguish between each type of business activity or service to which CASS 6 or CASS 7 applies, in a way that the *firm* considers reasonably appropriate.

The rows do not necessarily need to distinguish between *regulated activities* or *client categories*, and could for example reflect the distinctions between business lines that a *firm* makes in its internal management reporting or published accounts, or the different business units within the *firm*.

Where possible a firm should also identify, as a separate single business activity, any allocated but unclaimed client money or safe custody assets held by the firm which the firm continues to treat as such. This would include, for example, client money balances or safe custody assets held in respect of clients whom the firm is no longer able to contact. The firm should only use one row in this data field for this purpose (so the amounts stated in that row would reflect the aggregate of allocated but unclaimed client money or safe custody assets across all its relevant business activities or services).

8B Number of *clients*

In relation to each of the investment activities or services identified, a firm should report in this data field the number of *clients* for whom it holds *client money* or *safe custody assets* in respect of the activity or service in question.

If a firm holds client money or safe custody assets in respect of more than one activity or service for the same client, the firm should include this client in the number reported for each activity or service as appropriate. This means that the same client may be reported for more than one activity or service in this data field.

8C Balance of *client money* ~~as at reporting period end date~~

In relation to each of the investment activities or services identified, a firm should report in this data field the total amount of *client money* that it ~~holds~~ held belonging to *clients* in respect of the activity or service in question.

A firm should report client money balances on the basis of balances used in the internal reconciliation that the firm carried out on the first business day following the reporting period in question.

Paragraph 8A describes how allocated but unclaimed client money should, where possible, be identified as a separate business activity in its own row (together with allocated but unclaimed safe custody assets). The balance shown in that row may also include any balance that is included in data field 17.

8D Value of *safe custody assets* as at reporting period end date

In relation to each of the investment activities or services identified, a firm should report in this data field the total value of *safe custody assets* that it holds belonging to *clients* in respect of the activity or service in question, as at the last business day of the reporting period.

Paragraph 8A describes how allocated but unclaimed safe custody assets should, where possible, be identified as a separate business activity in its own row (together with allocated but unclaimed client money).

Section 2 Balances

9 Highest *client money* balance held during the reporting period

A *firm* should report the highest total amount of *client money* that it held at any point during the reporting period.

- 10 Lowest *client money* balance held during the reporting period

A *firm* should report the lowest total amount of *client money* that it held at any point during the reporting period.

- 11 Highest value of *safe custody assets* held during the reporting period

A *firm* should report the highest total value of *safe custody assets* that it held at any point during the reporting period.

- 12 Lowest value of *safe custody assets* held during the reporting period

A *firm* should report the lowest total value of *safe custody assets* that it held at any point during the reporting period.

In relation to data fields 9 to 12, a *firm* should ensure that it includes in the amount or value reported any *client money* or *safe custody assets* that it is holding or in respect of which it is safeguarding and administering investments, which has or have been placed with a ~~sub-custodian~~ third party custodian, either by a ~~eustodian~~ custodian with which that *firm* has deposited that *money* or those assets, or by that *firm* if it is a ~~eustodian~~ custodian.

In relation to data fields 9 to 12, a *firm* should determine the lowest and highest figures by reference to the data that it has recorded from internal reconciliations ~~over~~ that relate to the reporting period in question.

~~Other than in relation to a CMAR submitted in January and in circumstances in which a CMAR has been submitted on time in each of the preceding eleven months, submission of a CMAR will not have an effect on a firm's categorisation as either a CASS large firm or as a CASS medium firm. As CASS 1A.2.2R indicates, a firm's obligation to determine its categorisation arises once each year in January of the year in question.~~

Section 3 Segregation of client money

- 13A Type

A *firm* should identify the types of institution with which it has placed *client money*. CASS 7.4.1R identifies the type of institution with which a *firm* must promptly place into one or more accounts *client money* that it receives. CASS 7.5.2R identifies a limited number of circumstances in which a *firm* may allow another *person*, such as an exchange, a *clearing house* or an *intermediate broker*, to hold or control *client money*.

- 13B Institution where *client money* held

A *firm* should report the full name and FSA firm reference number (if applicable) of the individual legal entity with which it has placed *client money*.

13C *Client money* balances

A *firm* should report the total amount of *client money* which it has placed with each institution identified in 13B.

A *firm* should report *client money* balances on the basis of balances used in the internal reconciliation that the *firm* carried out on the first *business day* following the reporting period in question.

A *firm* should include in the *client money* balance the aggregate balance of any allocated but unclaimed *money* which a *firm* continues to treat as *client money*. For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact.

The balance shown in that row may also include any balance that is included in data field 17.

13D Country of incorporation of the institution

A *firm* should report the name of the country in which each institution with which it places *client money* is incorporated using the appropriate two letter ISO code.

13E Group entity

A *firm* should indicate in this data field whether each institution with which it has placed *client money* is or is not a relevant group entity within the meaning of CASS 7.4.9BR. A *firm* should note that the definition in CASS 7.4.9BR is specific to CASS and the entities which comprise it may not be the same as those which comprise the *firm's* group.

Section 4 Client money requirement and resource14 *Client money* requirement

In relation to a *firm* that follows the *standard method of internal client money reconciliation*, that *firm* should report its *client money* requirement, calculated in accordance with CASS 7 Annex 1G paragraph 6.

A *firm* should report its *client money* requirement on the basis of the internal reconciliation that the *firm* carried out on the first *business day* following the reporting period in question.

~~Included~~ A *firm* should include in the *client money* requirement is the aggregate balance of any allocated but unclaimed *money* which a *firm* continues to treat as *client money*; For example, *client money* balances held in respect of *clients* whom the *firm* is no longer able to contact.

The balance reported for the *client money* requirement should be inclusive of the balances that a *firm* is also reporting for data fields 15-18.

- 15 Unallocated to individual *clients* but identified as *client money*

A firm should report the amount of unallocated *client money* that it holds. Examples of this might include a *client* entitlement as described in CASS 7.4.27G or *money received into a *client bank account* that has not yet been allocated to an individual *client*. A firm may be unable to allocate *client money* to an individual *client* on initial receipt of that *money* because of differences in trading hours, late journal adjustments or a failure by a third party to mark *money* (such as a dividend payment) that it sends to the *firm* as being for the account of the *client* in question.*

- 16 Unidentified *client money* in ~~*client money*~~ bank accounts

A firm should report the amount of *money other than *client money** that is held in that *firm's client bank accounts* and *client transaction accounts* which is the subject of enquiry by that *firm* to determine whether that *money* is *client money*.

- 17 Uncleared payments e.g. unrepresented cheques sent to *clients*

A firm should report the amount of *client money* it holds in respect of ~~accounted for by as yet~~ uncleared payments to ~~that the~~ *firm's clients* drawn on a *client bank account* of the *firm*. In this data field a *firm* should therefore include any uncleared cheques and other payable orders of any age, including electronic bank payments, in favour of a *client* but which have not been paid by the bank.

- 18 Excess cash in segregated accounts

~~In relation to a *firm* that follows the standard method of internal *client money* reconciliation, that~~ A firm should report the amount of *client money* that it holds in *client bank accounts* and *client transaction accounts* which exceeds the amount reported in data field 14 the *firm* included in its *client money* requirement as a result of the *firm's* application of CASS 7.4.21R. CASS 7.4.21R explains when such an excess might arise. A *firm* should not include balances for this data field that it is reporting in data fields 15-17.

- 19 *Client money* resource

~~In relation to a *firm* that follows the standard method of internal *client money* reconciliation, that *firm* should report the amount of its *client money* resource, as defined in CASS 7 Annex 1G paragraph 1 in respect of a *firm* that adopts the normal approach and as defined in paragraph 2 of that annex in respect of a *firm* that adopts the alternative approach.~~

A firm should report its *client money* resource on the basis of the *client money* resource used in the internal reconciliation that the *firm* carried out on the first *business day* following the reporting period in question (which should be the same

internal reconciliation used by the firm to report its client money requirement in data field 14).

A firm should include in the client money resource the aggregate balance of any allocated but unclaimed money which a firm continues to treat as client money. For example, client money balances held in respect of clients whom the firm is no longer able to contact.

- 20 Surplus (+)/ deficit (-) of *client money* resource against *client money* requirement

A firm should report in this data field the amount by which its *client money* resource exceeds its *client money* requirement (to be reported in the *data item* as a positive amount), or as the case may be, the amount by which its *client money* requirement exceeds its *client money* resource (to be reported in the *data item* as a negative amount).

Where a surplus or deficit does not exist following a firm's internal client money reconciliation, the firm should report '0' for this data field.

- 21 Adjustments made to withdraw an excess or rectify a deficit identified as a result of an internal reconciliation.

~~In relation to a firm whose client money resource and client money requirement were shown in the penultimate internal reconciliation carried out in the reporting period to be unequal, that~~ A firm should report the amount of money that it added to correct a *shortfall* or, as the case may be, that it withdrew reflecting ~~an excess~~ a surplus.

In relation to data fields 14 to ~~20~~ 21, a firm should report by reference to the results of its internal reconciliation carried out on the ~~reporting period end date, or if that date is not a business day, by reference to those carried out on the business day nearest to the reporting period end date~~ the first business day following the reporting period in question.

Data fields 15-18 relate to client money balances identified in a firm's accounting records, for example its cash book, that form part of the client money requirement reported in data field 14. Data fields 15-18 will not equal the client money requirement reported in data field 14 unless the balances reported for data fields 15-18 include all balances that are allocated to individual clients.

Section 5 Client money reconciliations

- 22 *Client money* internal reconciliation

A firm should identify in this data field the frequency with which it performs internal reconciliations.

- 23 *Client money* external reconciliation

A *firm* should identify in this data field the frequency with which it performs external reconciliations.

24 *Client money* unreconciled items

A *firm* should identify in this data field the number of unreconciled *client money* items and allocate each item to one of the specified time bands according to the length of time for which it has remained unreconciled.

For the purposes of this data field, the number of unreconciled *client money* items refers to the number of individual discrepancies/breaks identified as part of a *firm's* internal and external reconciliations which have remained unresolved for period of 6 calendar *days* or more. For the purposes of this data field unreconciled items should include any unresolved differences that have not yet been allocated to individual *clients* and any unidentified *client money* balances, but should not include items that were in fact reconciled by taking into account timing differences between a *firm's* own accounting records (e.g. cash book entries) and *client bank account* statements.

~~For the purpose of this data field, a *firm* should calculate the number of calendar *days* between the date on which an internal reconciliation in respect of that item should have been carried out, but was not, and the reporting date.~~

A *firm* should also report the balances of these individual unreconciled items as appropriate in data fields 15 and 16.

Section 6 Segregation of safe custody assets

In order to complete this section a *firm* will need to group the *safe custody assets* it held at the reporting period end date by the method of registration used (25A), the means by which the assets were held (25G) and the name of the institution with which the assets were deposited (25B). Each group of *safe custody assets* so identified should be reported as a separate row.

25A ~~Where and how held~~ How registered

~~A *firm* should identify in this data field at least those:~~

- ~~(a) — *safe custody assets* which it holds in its physical possession;~~
- ~~(b) — *safe custody assets* the legal title to which is registered and recorded in the name of a *nominee company*;~~
- ~~(c) — *safe custody assets* which it has deposited with a third party custodian;~~
- ~~(d) — *safe custody assets* which, if the *firm* is a custodian, it has deposited with a sub-custodian;~~
- ~~(e) — *safe custody assets* which it has deposited with any other third party.~~

~~In relation to any asset which falls into more than one of the available categories in 25A, a *firm* should report its holding of that asset in each of the available categories. However, for validation purposes, a *firm* should enter the 25D positive value of that asset in one only of those categories and enter a value of zero in each of the other available categories. A *firm* may choose in which of the available categories it reports the 25D positive value of that asset.~~

For each group of *safe custody assets* that a *firm* (in carrying on the *regulated activity of safeguarding and administering investments*) held at the reporting period end date, the *firm* should identify the method of registration it used in accordance with CASS 6.2.3R, by specifying one of the following categories of *person* in whose name legal title to the *safe custody assets* were registered during the reporting period:

- (a) the *client*;
- (b) the *firm*;
- (c) a third party;
- (d) a *nominee company* which is controlled by the *firm*;
- (e) a *nominee company* which is controlled by an *affiliated company*;
- (f) a *nominee company* which is controlled by an investment exchange;
- (g) a *nominee company* which is controlled by a third party with whom *financial instruments* are deposited under CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties).

Firms that registered the legal title to *safe custody assets* in joint names should select option (a) if one of those names is the *client's* name. If none of those names are the *client's* name then the *firm* should select an option that corresponds to any one of those named *persons*.

In relation to *safe custody assets* that a *firm* held in its physical possession and for which the *firm* did not register legal title (for example bearer notes), the *firm* should select option (b).

25B Name of institution where held

~~For each group of *safe custody assets* that a *firm* (in carrying on the *regulated activity of safeguarding and administering investments*) held at the reporting period end date, the *firm* should report, as relevant, the identity of the *nominee company* to which is registered and recorded the legal title to the *safe custody assets* in question, or the identity of the third party institution with which it has deposited the *safe custody assets*. In relation to any non-dematerialised *safe custody assets* which it holds held in its physical possession, a *firm* should enter its own name in the data field.~~

~~In identifying any *nominee company* or third party institution in this data field, a *firm* should ensure that it specifies the full name or the *FSA* firm reference number (if applicable) of the individual legal entity with which the *safe custody assets* have been were deposited.~~

In relation to any dematerialised *safe custody assets* which a *firm* held as the sole *custodian* the *firm* should report the name of the central securities depositary where

the safe custody assets were deposited, for example CREST, Euroclear, etc. and should select ‘deposited with any other third party’ when completing data field 25G.

25C Number of lines of stock

In relation to each ~~nominee company or third party institution identified in 25B~~ combination of registration and holding method identified in 25A and 25G, a *firm* should report the total number of lines of stock being *safe custody assets* that the firm held at the reporting period end date to which in the case of a nominee company legal title has been registered and recorded in its name and in any other case which it has deposited with a third party institution. As a *firm* is only being asked to enter the total number of lines of stock in relation to each identified institution, it is not expected to identify separately *safe custody assets* belonging to an individual *client*.

For the purpose of this data field, a *firm* should treat each stock which bears its own CUSIP or ISIN number as a separate line of stock.

25D Value of *safe custody assets* as at reporting period end date

As at the reporting period end date, a *firm* should calculate the total value of the *safe custody assets* ~~held by each institution identified in 25B~~ reported on each row and enter that value in the data field. ~~In completing 25D a firm should have regard to the guidance given in relation to 25A.~~

25E Country of incorporation of the institution

In relation to each institution identified in 25B, a *firm* should report the name of the country in which that institution is incorporated using the appropriate two letter ISO code.

25F Group entity

A *firm* should indicate in this data field whether each institution with which it has placed *safe custody assets* is or is not a member of that *firm's* group.

25G Where held

For each group of *safe custody assets* that a *firm* (in carrying on the regulated activity of safeguarding and administering investments) held at the reporting period end date, the *firm* should identify in this data field whether the *safe custody assets* were:

- (a) held in the *firm's* physical possession (for example any non-dematerialised assets such as bearer notes);
- (b) deposited with a third party *custodian* (this may include any third party that has responsibility to the *firm* for the *safe custody assets*, such as a sub-custodian or a fund manager);
- (c) deposited with a third party exchange;
- (d) deposited with a third party *clearing house*;
- (e) deposited with a third party intermediary; or

(f) deposited with any other third party (where none of the above options adequately describe how the *safe custody assets* are held).

In relation to any dematerialised *safe custody assets* which a *firm* held as the sole *custodian* the *firm* should select option (f) and report the name of the central securities depository where the *safe custody assets* were deposited, for example CREST, Euroclear, etc. when completing data field 25B.

Section 7 Safe Custody Assets Reconciliations

26 *Safe custody assets* unreconciled items

A *firm* should identify in this data field the number of unreconciled *safe custody assets* items and allocate each item to one of the specified time bands according to the length of time for which it has remained unreconciled.

~~For the purpose of this data field, a *firm* should calculate the number of calendar *days* between the date on which an internal reconciliation in respect of that item should have been carried out, but was not, and the reporting date.~~

For the purposes of this data field, the number of unreconciled *safe custody assets* items refers to the number of individual discrepancies/custody breaks identified as part of a *firm*'s external reconciliation which have remained unresolved for a specific period of time.

In relation to the 30-day field, a *firm* should report items which have remained unreconciled for ~~no more than 30 *days*~~ at least 30 *days* but no more than 59 *days*.

In relation to the 60-day field, a *firm* should report items which have remained unreconciled for at least ~~31~~ 60 *days*, but no more than ~~60~~ 89 *days*.

~~In relation to the 90-day field, a *firm* should report:~~

~~(a) — items which have remained unreconciled for at least 61 *days*, but no more than 90 *days*; and~~

~~(b) — items which have remained unreconciled for 91 *days* or more.~~

In relation to the 90-day field, a *firm* should report items which have remained unreconciled for at least 90 *days*.

27A Method

In relation to each type of *safe custody asset* identified in 27C, a *firm* should report the method of internal reconciliation that it ~~applies~~ applied to that type of asset. CASS 6.5.2R to CASS 6.5.5R set out *rules* and *guidance* in relation to internal reconciliation methods.

27B Frequency

In relation to each method identified in 27A, a *firm* should report the frequency with which it ~~conducts~~ conducted internal reconciliations using that method.

27C Type of *safe custody asset*

A *firm* should report the different types of *safe custody asset* that it ~~holds~~ held and may do so using its own description of an asset type.

Section 8 Record keeping and breaches

28 Client bank account

Client bank account has the same meaning as in the Glossary in the context of CASS 7 and CASS 7A.

28F Explanation of discrepancies

A firm should provide a brief explanation for any difference between the number of client bank accounts reported for 28D and the number of trust/acknowledgement letters to cover these accounts reported for 28E (see CASS 7.8.1R).

29 Client transaction account

Client transaction account has the same meaning as in the Glossary.

29F Explanation of discrepancies

A firm should provide a brief explanation where there is a difference between the number of client transaction accounts reported for 29D and the number of trust/acknowledgement letters to cover these accounts reported for 29E (see CASS 7.8.2R).

31 Has the firm complied with the requirements in Did the firm fail to comply with any of the requirements set out in CASS 6.5.1R, CASS 6.5.2R, and CASS 6.5.6R and CASS 6.5.10R?

A firm should indicate whether, at any point during the reporting period, it has complied in all material respects failed to comply with any of the requirements set out in CASS 6.5.1R, CASS 6.5.2R and CASS 6.5.6R.

If a firm, having carried out a reconciliation during the reporting period, failed to comply with CASS 6.5.10R, it should also record that fact in this data field.

CASS 6.5.10R provides that a firm must promptly correct any discrepancies which are revealed in the reconciliations envisaged by CASS 6.5 and make good, or provide the equivalent of, any unreconciled shortfall for which there are reasonable grounds for concluding that the firm is responsible.

32 Following reconciliation, is the firm unable, in any material respect, to comply with CASS 6.5.10R? If yes, was a notification made to the FSA?

If a firm, having carried out a reconciliation, has not complied with or is unable in any material respect to comply with CASS 6.5.10R, it should record that fact in this data

~~field. CASS 6.5.10R provides that a *firm* must promptly correct any discrepancies which are revealed in the reconciliations envisaged by CASS 6.5, and make good, or provide the equivalent of, any unreconciled *shortfall* for which there are reasonable grounds for concluding that the *firm* is responsible.~~

If in data field 31 the *firm* has acknowledged a failure to comply with any of the specified *rules*, it should confirm in this data field whether a notification was made to the FSA in accordance with CASS 6.5.13R.

Where the *firm's* response to data field 31 relates to multiple instances of non-compliance, it should only answer "Yes" in this data field if all instances were notified.

- 33 ~~Has the *firm* complied with the requirements in Did the *firm* fail to comply with any of the requirements set out in CASS 7.6.1R, CASS 7.6.2R, and CASS 7.6.9R and CASS 7.6.13R to CASS 7.6.15R?~~

~~A *firm* should indicate whether, at any point during the reporting period it has complied in all material respects failed to comply with any of the requirements set out in CASS 7.6.1R, CASS 7.6.2R and CASS 7.6.9R.~~

~~If a *firm*, having carried out a reconciliation during the reporting period, failed to comply with one or more of the obligations found in CASS 7.6.13R to CASS 7.6.15R, it should also record that fact in this data field.~~

~~CASS 7.6.13R to CASS 7.6.15R set out requirements which apply to a *firm* in relation to internal and external reconciliation discrepancies.~~

- 34 ~~Following reconciliation, is the *firm* unable, in any material respect, to comply with CASS 7.6.13R to CASS 7.6.15R If yes, was a notification made to the FSA?~~

~~If a *firm*, having carried out a reconciliation, has not complied with or is unable to comply with one or more of the obligations found in CASS 7.6.13R to CASS 7.6.15R, it should record that fact in this data field. CASS 7.6.13R to CASS 7.6.15R set out requirements which apply to a *firm* in relation to internal and external reconciliation discrepancies.~~

If in data field 33 the *firm* has acknowledged a failure to comply with any of the specified *rules*, it should confirm in this data field whether a notification was made to the FSA in accordance with CASS 7.6.16R.

Where the *firm's* response to data field 33 covers multiple instances of non-compliance, it should only answer "Yes" in this data field if all instances were notified.

In relation to data fields 31 and 33, a *firm* should ~~only report in the affirmative~~ answer “Yes” if it ~~has been in compliance with~~ failed to comply with any of the *rules* specified in those data fields at ~~all times throughout~~ any point during the reporting period in question, ~~whether or not it is in compliance at the end of the reporting period.~~

A *firm*'s responses to data fields 31 and 33 should only relate to breaches that occurred within the particular reporting period in question and not to any breach that may have occurred in a previous reporting period, even if the breach remains unresolved.

A *firm* should answer “N/A” as appropriate to data fields 31 and 33 if it did not hold *client money* or *safe custody assets* during the reporting period.

In relation to data fields 32 and 34, a *firm* should ~~report the fact of its non-compliance if it has any time during the reporting period failed to comply with the specified *rules* in the way envisaged by CASS 6.5.13R(2) and CASS 7.6.16R(2), whether or not it is in compliance at the period end date~~ only answer “Yes” if the *firm* has acknowledged any breaches in data fields 31 or 33, and all such breaches were notified as required within the reporting period in question.

CASS 6.5.13R and CASS 7.6.16R require that the *FSA* be informed without delay of any of the matters in respect of which notification is required by those *rules*. Submission of the *CMAR* within the time limit specified in *SUP* 16.14.3R does not discharge the obligations in those *rules* and a *firm* remains obliged to notify the *FSA* as soon as it becomes aware that any of the circumstances described in those *rules* has arisen.

A *firm* should answer ‘N/A’ for data fields 32 and 34 if the *firm* has answered either ‘No’ or ‘N/A’ for data fields 31 and 33 respectively.

Section 9 Outsourcing and offshoring

In relation to its business that is subject to *CASS*, a *firm* should report in data field 35 outsourcing and offshoring arrangements that it has established which it judges to be material to that business, either by reason of their scale or their importance.

For the purposes of data fields 35A to 35D, ‘outsourcing’ refers to where a *firm* outsources part of its *client money* and/or *custody asset* operations to a third party and ‘offshoring’ refers to where a *firm*'s *client money* and/or *custody asset* operations are managed through a *branch* established by it outside the *United Kingdom*.

35A Who do you outsource or offshore your *client money* and/or *custody asset* operations to?

A firm should state either:

- (a) the full name of the legal entity that business has been outsourced to;
or
- (b) if the business is offshored, the name of the firm itself.

An FSA firm reference number should also be provided for any firm which is authorised by or registered with the FSA.

Validation

Validation number	Data element	Sign	Formula
1	8B	=>	0 (NIL)
2	8C(total)	=	$8CT = \sum 8C$
3	8C (total)	=	$8CT = 13CT$
4	8D (total)	=	$8DT = \sum 8D$
5	8D (total)	=	$8DT = 25DT$
6	10A	<=	9A
7	12A	<=	11A
8	13C(total)	=	$13CT = \sum 13C$
9	20A	=	19A-14A
10	25D(total)	=	$25DT = \sum 25D$
11	28D	=	28A+28B-28C
12	29D	=	29A+29B-29C
13	30D(total)	=	$30DT = 28D + 29D$

**SUPERVISION MANUAL (REMUNERATION REPORTING)
INSTRUMENT 2012**

Powers exercised

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

Commencement

- C. This instrument comes into force on 1 November 2012.

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
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Supervision Manual (Remuneration Reporting) Instrument 2012.

By order of the Board
31 October 2012

Annex A**Amendments to the Glossary of definitions**

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

high earner (in *SYSC* and *SUP*) an *employee* whose total annual *remuneration* is EUR 1 million or more per year or its equivalent in another currency determined by reference to the conversion rate applicable to the corresponding High Earners Report under *SUP* 16.17.

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.

19A.1 General application and purpose

...

Purpose

19A.1.6 G ...

- (2) The *Remuneration Code* implements the main provisions of the Third Capital Requirements Directive (Directive 2010/76/EU) which relate to *remuneration*. The Committee of European Banking Supervisors published 'Guidelines on Remuneration Policies and Practices' on 10 December 2010. Provisions of the Third Capital Requirements Directive relating to Pillar 3 disclosures of information relating to ~~remuneration~~ *remuneration* have been implemented through amendments to *BIPRU 11* (specifically the *rules* and *guidance* in *BIPRU 11.5.18R* to *BIPRU 11.5.21G*). Provisions of the Capital Requirements (Amendment) Regulations 2012 (SI 2012/917) together with the European Banking Authority's Guidelines to article 22(3) and (5) of the *Banking Consolidation Directive* relating to the collection of *remuneration* benchmarking information and *high earners* information have been implemented through *SUP 16 Annex 33AR* and *SUP 16 Annex 34AR*. The Guidelines can be found at <http://www.eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2012/EBA-GL-2012-04---GL-4-on-remuneration-benchmarking-exercise-.pdf> and <http://www.eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2012/EBA-GL-2012-05---GL-5-on-remuneration-data-collection-exercise-.pdf>.

Annex C

Amendments to the Supervision manual (SUP)

After SUP 16.16 insert the following new section. The text is not underlined.

16.17 Remuneration reporting

Purpose

- 16.17.1 G The purpose of this section is to ensure that the *FSA* receives regular and comprehensive information about *remuneration* in a standard format to assist it to benchmark *remuneration* trends and practices and to collect *remuneration* information on *high earners*. It also takes account of the Capital Requirements (Amendment) Regulations 2012 (SI 2012/917) together with the European Banking Authority's Guidelines to article 22(3) and (5) of the *Banking Consolidation Directive*.

Interpretation

- 16.17.2 R In this section "UK lead regulated group" means a *UK consolidation group* that is headed either by an *EEA parent institution* or by an *EEA parent financial holding company*.

Remuneration Benchmarking Reporting Requirements

- 16.17.3 R (1) A *firm* to which this *rule* applies must submit a Remuneration Benchmarking Information Report to the *FSA* annually.
- (2) The *firm* must complete that report in the format set out in *SUP* 16 Annex 33AR.
- (3) The *firm* must submit that report to the *FSA* within four months of the *firm's accounting reference date*.
- (4) A *firm* that:
- (a) is not part of a UK lead regulated group must complete that report on an unconsolidated basis in respect of *remuneration* awarded to *employees* of the *firm* in the last completed financial year;
- (b) is part of a UK lead regulated group must not complete that report on either a solo consolidation basis or an unconsolidated basis. The *firm* must complete that report on a consolidated basis in respect of *remuneration* awarded to all *employees* in the UK lead regulated group in the last completed financial year.
- (5) The *firm* must complete the report in the currency of its annual

audited accounts.

(6) A *firm* to which this *rule* applies on the date it comes into effect must submit two reports by 31 December 2012: one for each of the previous two complete financial years that ended before this *rule* came into effect.

(7) This *rule* applies to:

- (a) a *BIPRU firm*; and
- (b) a *third country BIPRU firm*;

that:

- (c) is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*; and
- (d) is not, and does not have, an *EEA parent institution* or an *EEA parent financial holding company*;

and that *firm* had total assets equal to or greater than £50 billion on an unconsolidated basis on the *accounting reference date* immediately prior to the *firm's* last complete financial year.

(8) This *rule* also applies to:

- (a) a *BIPRU firm*; and
- (b) a *third country BIPRU firm*;

that:

- (c) is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*; and
- (d) is part of a UK lead regulated group;

and that *firm* had total assets equal to or greater than £50 billion on an unconsolidated basis on the *accounting reference date* immediately prior to the *firm's* last complete financial year.

(9) In this rule “total assets” means

- (a) in relation to a *BIPRU firm*, the *firm's* total assets as set out in its balance sheet on the relevant *accounting reference date*; and
- (b) in relation to a *third country BIPRU firm*, the total assets of the *firm* as set out in its balance sheet on the relevant *accounting reference date* that cover the activities of the branch operation in the *United Kingdom*.

High Earners Reporting Requirements

- 16.17.4 R (1) A *firm* to which this *rule* applies must submit a High Earners Report to the *FSA* annually.
- (2) The *firm* must submit that report to the *FSA* within four months of the end of the *firm's accounting reference date*.
- (3) A *firm* that is not part of a UK lead regulated group must complete that report on an unconsolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* of the *firm* who mainly undertook their professional activities within the *EEA*.
- (4) A *firm* that is part of a UK lead regulated group must not complete that report on either a solo consolidation basis or an unconsolidated basis. The *firm* must complete that report on a consolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* who mainly undertook their professional activities within the *EEA* at:
- (a) the *EEA parent institution* or *EEA parent financial holding company* of the UK lead regulated group; and
 - (b) each *subsidiary* of the UK lead regulated group that has its registered office (or, if it has no registered office, its head office) in an *EEA State*; and
 - (c) each *branch* of the UK lead regulated group that is established or operating in an *EEA State*.
- (5) The *firm* must complete a separate template, in the format set out in *SUP 16 Annex 34AR*, for each *EEA State* in which there is a *high earner*. Those templates together form the report.
- (6) *High earners* who carried out their professional activities in an *EEA State* should be classified under that *EEA State*.
- (7) *High earners* who carried out their professional activities in more than one *EEA State* should be classified under the *EEA State* where they mainly undertook their professional activities.
- (8) A *firm* to which this section applies on the date it comes into effect must submit two reports by 31 December 2012: one for each of the previous two complete financial years that ended before this section came into force.
- (9) The information in the report must be denominated in euros determined, if necessary, by reference to the conversion rate table specified from time to time by the European Banking Authority as applicable to that year's High Earners Report.

- (10) This *rule* applies to a *BIPRU firm* and a *third country BIPRU firm* that:
- (a) is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*; and
 - (b) is not, and does not have, an *EEA parent institution* or an *EEA parent financial holding company*.
- (11) This *rule* also applies to a *BIPRU firm* and a *third country BIPRU firm* that:
- (a) is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*; and
 - (b) is part of a UK lead regulated group.
- (12) This *rule* also applies to a *BIPRU limited licence firm* or a *BIPRU limited activity firm*:
- (a) that is part of a UK lead regulated group; and
 - (b) where that UK lead regulated group contains a *BIPRU firm* or a *third country BIPRU firm* that is not a *BIPRU limited licence firm* or a *BIPRU limited activity firm*.

16.17.5 G *Firms'* attention is drawn to SUP 16.3.25G regarding a single submission for all *firms* in a *group*.

After SUP 16 Annex 32 insert the following new annexes. The text is not underlined.

16 Annex 33AR Remuneration Benchmarking Information Report

Information on the remuneration of all staff

		A
1	Name of institution/group:	<input style="width: 100%;" type="text"/>
2	Financial year for which the remuneration is awarded (Year N):	<input style="width: 100%;" type="text"/>

Business areas:

		A	B	C	D
		Investment banking	Retail banking	Asset management	All other
3	Total number of staff	<input style="width: 100%; height: 20px;" type="text"/>			

		A
4	Total net profit in Year N	<input style="width: 100%;" type="text"/>

		A	B	C	D
		Investment banking	Retail banking	Asset management	All other
5	Total remuneration	<input style="width: 100%; height: 20px;" type="text"/>			

6	Of which: Total variable remuneration			
---	---------------------------------------	--	--	--

Information on the remuneration of identified staff

Business areas:

A B C D

	Investment banking	Retail banking	Asset management	All other
7	Number of identified staff			

A

8	Number of identified staff in senior management positions	
9	Number of identified staff in control functions	

A B C D

	Investment banking	Retail banking	Asset management	All other
10	Total fixed remuneration			
11	Total variable remuneration			
12	Total variable in cash			

13	Total variable in shares and share-linked instruments				
14	Total variable in other types of instruments				
15	Total amount of variable remuneration deferred in Year N				
16	Total deferred variable in cash				
17	Total deferred variable in shares and share-linked instruments				
18	Total deferred variable in other types of instruments				
19	Amount of explicit ex post performance adjustment applied in Year N for remuneration awarded in previous years				
20	Number of recipients of guaranteed variable remuneration				
21	Total amount of guaranteed variable remuneration				
22	Number of recipients of severance payments				
23	Total amount of severance payments paid in Year N				
24	Number of recipients of discretionary pension benefits				
25	Total amount of discretionary pension benefits				

A

26 If you have used column D "All Other", please use this column to explain in which business areas these individuals work.

16 Annex 33BG Guidance notes for data items in SUP 16 Annex 33AR

Financial year for which the remuneration is awarded

A *firm's* financial year should be designated by reference to the calendar year in which it ends. For example, if a *firm's* *accounting reference date* is 31 March, the financial year that begins on 1 April 2011 and ends on 31 March 2012 will be the *firm's* 2012 financial year.

Consolidation

When reporting on a consolidated basis as a UK lead regulated group, *firms* should where possible treat the consolidation group as a single entity (i.e. line-by-line) rather than on an aggregation basis.

Currency

Firms should report in the currency of their annual audited accounts. Figures should be reported in millions.

Data Elements

These are referred to by row first, then by column, so data element 2B will be in row 2 and column B.

3-25A Investment banking:

Include corporate finance advice services, private equity, capital markets, trading and sales.

3-25B Retail banking:

Include total lending activity (to individuals and enterprises).

3-25C Asset management:

Include portfolio management, managing of UCITS and other forms of asset management.

3-25D All other:

This column should include staff that cannot be allocated to one of the designated business areas. In this case, institutions should use data element 26A to explain in which business areas these staff work.

3A-D Total number of staff:

The numbers of staff provided should be expressed in full time equivalents (FTEs) and be based on year-end numbers.

4A Total net profit in Year N:

Net profits should be based on the accounting system used for regulatory reporting. For groups, it is the profit (or loss) of the whole group (i.e. the amount attributable to the equity holders of the parent and to the minority interest).

- 5A-D Total remuneration:
Total remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices. The amounts of remuneration provided should be gross numbers, including all costs for the institutions, except mandatory contributions by the institutions to social security and comparable schemes.
- 6A-D Total remuneration: Of which: Total variable remuneration:
Variable remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices. This includes deferred and non-deferred variable remuneration. This also includes discretionary pension benefits, amounts regarding guaranteed variable remuneration and severance payments.
- 7A-D Number of identified staff:
Identified staff according to paragraph 16 of the CEBS Guidelines on Remuneration Policies and Practices.
- 8A Number of identified staff in senior management positions:
This is equivalent to the first and second category of identified staff as explained in paragraph 16 of the CEBS Guidelines on Remuneration Policies and Practices.
- 10A-D Total fixed remuneration:
Fixed remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices.
- 11A-D Total variable remuneration:
Variable remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices. This includes deferred and non-deferred remuneration. This also includes discretionary pension benefits, amounts regarding guaranteed variable remuneration and severance payments.
- 14A-D Total variable in other types of instruments:
Different types of instruments defined in section 4.4.2 of the CEBS Guidelines on Remuneration Policies and Practices.
- 15A-D Total amount of variable remuneration deferred in Year N:
Deferred remuneration according to section 4.4.1 of the CEBS Guidelines on Remuneration Policies and Practices.
- 18A-D Total deferred variable in other types of instruments:
Different types of instruments defined in section 4.4.2 of the CEBS Guidelines on Remuneration Policies and Practices.
- 19A-D Amount of explicit ex post performance adjustment applied in Year N for remuneration awarded in previous years:
Explicit ex post performance adjustment according to paragraphs 134 to 139 of the CEBS Guidelines on Remuneration Policies and Practices.
- 20A-D Number of recipients of guaranteed variable remuneration:
Guaranteed variable remuneration according to section 3.2.1 of the CEBS Guidelines on Remuneration Policies and Practices.

25A-D Total amount of discretionary pension benefits:

Discretionary pension benefits according to section 3.1.2.of the CEBS Guidelines on Remuneration Policies and Practices.

26A All other:

If you have used data element 3-25D, please use data element 26A to record in which business areas staff included in this column work.

16 Annex 34AR High Earners Report

Information on the remuneration of high earners

	A
1 Name of institution/group:	
2 Member state to which the data relate:	
3 Financial year for which the remuneration is awarded (Year N):	

Business areas:

	A	B	C	D
	Investment banking	Retail banking	Asset management	All other
4 Total number of individuals				
5 Of which: Number of identified staff				
6 Total fixed remuneration				
7 Total variable remuneration				
8 Of which: Total discretionary pension benefits				
9 Of which: Total variable remuneration deferred in Year N				

10 If you have used column D "All Other", please use this column to explain in which business areas these individuals work.

A

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16 Annex 34BG Guidance notes for data items in SUP 16 Annex 34AR

Financial year for which the remuneration is awarded

A *firm's* financial year should be designated by reference to the calendar year in which it ends. For example, if a *firm's* *accounting reference date* is 31 March, the financial year that begins on 1 April 2011 and ends on 31 March 2012 will be the *firm's* 2012 financial year.

Consolidation

When reporting on a consolidated basis as a UK lead regulated group, *firms* should where possible treat the consolidation group as a single entity (i.e. line-by-line) rather than on an aggregation basis.

Currency

Firms should report in Euros. To convert into Euros, *firms* must use the rates published by the European Commission for financial programming and budget. The table is published on the European Commission's website (http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm). The table contains monthly exchange rates. A list sorted by country name can be generated using the 'access by list of countries' function. Institutions should use the exchange rate applicable for the month in which the financial year ended. Figures should be reported in millions.

Data Elements

These are referred to by row first, then by column, so data element 2B will be in row 2 and column B.

Separate Templates

Firms should submit a separate template for each EEA Member State where the group is operating.

- 4-9A Investment banking:
Include corporate finance advice services, private equity, capital markets, trading and sales.
 - 4-9B Retail banking:
Include total lending activity (to individuals and enterprises).
 - 4-9C Asset management:
Include portfolio management, managing of UCITS and other forms of asset management.
 - 4-9D All other:
This column should include staff that cannot be allocated to one of the designated business areas. In this case, institutions should use data element 10A to explain in which business areas these staff work.
- 4A-D Total number of individuals:

The numbers of staff provided should be expressed in full time equivalents (FTEs) and be based on year-end numbers.

5A-D Of which: Number of identified staff:
Identified staff according to paragraph 16 of the CEBS Guidelines on Remuneration Policies and Practices.

6A-D Total fixed remuneration:
Fixed remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices.

7A-D Total variable remuneration:
Variable remuneration according to paragraph 11 of the CEBS Guidelines on Remuneration Policies and Practices. This includes deferred and non-deferred variable remuneration. This also includes discretionary pension benefits, amounts regarding guaranteed variable remuneration and severance payments.

8A-D Of which: Total discretionary pension benefits:
Discretionary pension benefits according to section 3.1.2 of the CEBS Guidelines on Remuneration Policies and Practices.

9A-D Of which: Total variable remuneration deferred in Year N:
Deferred remuneration according to section 4.1.1 of CEBS Guidelines on Remuneration Policies and Practices.

10A All other:
If you have used data element 4-9D, please use data element 10A to record in which business areas staff included in this column work.

**RECOGNISED AUCTION PLATFORMS (PENALTY AND CENSURE POLICY)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of its powers under section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 1 November 2012.

Amendments to the Handbook

- C. The Decision Procedure and Penalties manual (DEPP) 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.

Material outside the Handbook

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

Citation

- F. This instrument may be cited as the Recognised Auction Platforms (Penalty and Censure Policy) Instrument 2012.

By order of the Board
31 October 2012

Annex A

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text which is to be inserted as a new table after the 'Electronic Money Regulations' table in DEPP 2 Annex 1G.

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

...

<u>Recognised Auction Platforms Regulations 2011</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 5A</u>	<u>where the FSA is proposing or deciding to publish a statement censuring an RAP, or to impose a financial penalty on an RAP</u>	<u>REC 2A.4</u>	<u>RDC</u>

Annex B

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

After REC 2A.3, insert the following new section. The text is not underlined.

2A.4 Power and procedure for RAP penalties and censures

- 2A.4.1 G Under regulation 5A (Power to impose civil penalties) of the *RAP Regulations*, where the *FSA* considers that an *RAP* has contravened any requirement in articles 19, 20(7), 21(1) or (2), or 54 of the *auction regulation*, the *FSA* has the power to impose a civil penalty on that *RAP*.
- 2A.4.2 G Where the *FSA* is entitled to impose a penalty on an *RAP*, it may instead publish a statement censuring it.
- 2A.4.3 G The provisions of the *auction regulation* referred to in *REC 2A.4.1G* are directly applicable to an *RAP* and require it to, in summary:
- (1) only grant admission to bid to applicants that comply with the conditions set out in article 19 of the *auction regulation*, including the prerequisite that the applicants are eligible to bid in accordance with article 18 of the *auction regulation*;
 - (2) require an applicant for admission to bid to ensure that its clients, and the clients of its clients, are able to comply with information requirements, interviews, investigations and verifications carried out or required by the *RAP*;
 - (3) refuse to grant admission to bid, or revoke or suspend that admission, to any person:
 - (a) that is not, or is no longer, eligible to bid (under article 18 of the *auction regulation*); does not meet, or no longer meets, the requirements of articles 18, 19 or 20 of the *auction regulation*; or is wilfully or repeatedly in breach of the *auction regulation*, the terms and conditions of its admission to bid or other related instructions or agreements; or
 - (b) where the *RAP* suspects the person is involved with money laundering, terrorist financing, criminal activity or market abuse, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities under the *auction regulation* to pursue or apprehend the perpetrators of those activities; and
 - (4) monitor the relationship with bidders admitted to bid in its auctions.

- 2A.4.4 G The power in regulation 5A of the *RAP Regulations* to impose a civil penalty or publish a statement adds to the *FSA's* other supervisory powers in relation to *RAPs* (see *REC 4*) and its power to impose penalties on an *RAP* under the *Money Laundering Regulations*. The *FSA* will use this power under the *RAP Regulations* where it is appropriate to do so and with regard to the relevant factors listed in *DEPP 6.2.1G*. In deciding between a civil penalty or a public statement, the *FSA* will also have regard to the relevant factors listed in *DEPP 6.4*.
- 2A.4.5 G The *FSA* will notify the subject of the investigation that it has appointed officers to carry out an investigation under either or both the *RAP Regulations* or the *Money Laundering 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.
- 2A.4.6 G Where the *FSA* uses the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive and with regard to relevant factors listed in *DEPP 6.5* to *6.5D* in determining the appropriate level of financial penalty.
- 2A.4.7 G The *FSA* will also have regard to whether the person followed any of the *FSA's* guidance and will not take action under regulation 5A where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.
- 2A.4.8 G When the *FSA* proposes or decides to take action against an *RAP* in exercise of its power in regulation 5A of the *RAP Regulations*, it must give the *RAP* a *warning notice* or a *decision notice* respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a *warning notice*, the *RAP* has a right to make representations on the *FSA's* proposed decision.
- 2A.4.9 G Where the *FSA* is proposing or deciding to publish a statement censuring an *RAP* or impose a penalty on the *RAP* under regulation 5A of the *RAP Regulations*, the *FSA's* decision maker will be the *RDC*. This is to ensure that the *FSA's* power to censure or impose a penalty on an *RAP* has the same layer of separation in the decision making process, and is exercised consistently with, similar penalty and censure powers of the *FSA* under other legislation. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*. An *RAP* that receives a *decision notice* under regulation 5A of the *RAP Regulations* may refer the matter to the *Tribunal*.
- 2A.4.10 G Sections 393 and 394 of the *Act* apply to notices referred to in this section. See *DEPP 2.4* (Third party rights and access to *FSA* material).
- 2A.4.11 G As with cases under the *Act*, the *FSA* may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in *DEPP 6.7* applies to penalties

imposed under the *RAP Regulations*.

2A.4.12 G The *FSA* will apply the approach to publicity that it has outlined in *EG 6*.

Annex C

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text.

19 Non-FSMA powers

...

Recognised Auction Platforms Regulations 2011

19.120 The FSA's policy for using the powers given to it by the *RAP Regulations* is set out in *REC*. This includes, for example, its policy in relation to the power to impose a financial penalty on or censure an *RAP* (*REC 2A.4*) and its policy in relation to the power to give directions to an *RAP* (*REC 4.6*).

FINANCIAL CRIME GUIDE (AMENDMENT) INSTRUMENT 2012

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;
 - (2) Regulation 93(1) (Guidance) of the Payment Services Regulations 2009; and
 - (3) Regulation 60(1) (Guidance) of the Electronic Money Regulations 2011.

Commencement

- B. This instrument comes into force on 1 November 2012.

Amendments to Financial crime: a guide for firms

- C. Part 1 of Financial crime: a guide for firms (FC) is amended in accordance with Annex A to this instrument.
- D. Part 2 of FC is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Financial Crime Guide (Amendment) Instrument 2012.

By order of the Board
31 October 2012

Annex A

Amendments to Part 1 of Financial crime: a guide for firms

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

Contents

...

Box 2.5 Staff recruitment, vetting, training, ~~and~~ awareness and remuneration

...

Box 3.15 Case study – poor AML controls: PEPs and high risk customers

Box 3.16 Case study – poor AML controls: risk assessment

...

Box 1.1: Financial crime: a guide for firms	
...	
...	<p>Examples of poor practice</p> <ul style="list-style-type: none"> • ... • These do not identify all cases <u>do not identify all cases</u> where conduct may give rise to regulatory breaches or criminal offences.

...

2 Financial crime systems and controls

Box 2.5: Staff recruitment, vetting, training, and awareness <u>and remuneration</u>
... Vetting and training should be appropriate to employee’s roles.
<u>Firms should manage the risk of staff being rewarded for taking unacceptable financial crime risks. In this context, Remuneration Principle 12(h), as set out in SYSC 19A.3.51R and 19A.3.52E, may be relevant to firms subject to the Remuneration Code.</u>
Self-assessment questions:

...	
<p>Examples of good practice</p> <ul style="list-style-type: none"> • Staff in higher-risk roles are subject to more thorough vetting. • Temporary staff in higher risk roles are subject to the same level of vetting as <u>permanent members of staff in similar roles</u>. • Where employment agencies are used, the firm periodically satisfies itself that the agency is adhering to the agreed <u>vetting standard</u>. • ... 	<p>Examples of poor practice</p> <ul style="list-style-type: none"> • ... • Staff vetting is a one-off exercise. • <u>The firm fails to identify changes that could affect an individual's integrity and suitability.</u> • <u>The firm limits enhanced vetting to senior management roles and fails to vet staff whose roles expose them to higher financial crime risk.</u> • <u>The firm fails to identify whether staff whose roles expose them to bribery and corruption risk have links to relevant political or administrative decision-makers.</u> • <u>Poor compliance records are not reflected in staff appraisals and remuneration.</u> • ...

...

3 Money laundering and terrorist financing

<p>Who should read this chapter?</p> <p>...</p> <p>This guidance does not apply to payment institutions, which are supervised for compliance with the ML Regulations by Her Majesty's <u>HM Revenue and Customs</u>. But it may be of interest to them, to the extent that we may refuse to authorise them, or remove their authorisation, if they do not satisfy us that they comply with the ML Regulations.</p> <p>...</p>
--

...

Box 3.2: The Money Laundering Reporting Officer (MLRO)	
...	
Examples of good practice • ... • The MLRO has, and makes appropriate use of, a direct reporting line to executive management or the board.	...

...

Box 3.10: Record keeping and reliance on others	
...	
Examples of good practice • ... • Where the firm routinely relies on checks done by a third party (for example, a fund provider <i>fund provider</i> relies on an IFA's checks), it requests sample documents to test their reliability.	...

ML Reg 7(3)(b)

...

Box 3.15: Case study – poor AML controls: PEPs and high risk customers

We fined Coutts & Company £8.75 million in March 2012 for poor AML systems and controls. Coutts failed to take reasonable care to establish and maintain effective anti-money laundering systems and controls in relation to their high risk customers, including in relation to customers who are Politically Exposed Persons.

- Coutts failed adequately to assess the level of money laundering risk posed by prospective and existing high risk customers.
- The firm failed to gather sufficient information to establish their high risk customers' source of funds and source of wealth, and to scrutinise appropriately the transactions of PEPs and other high risk accounts.
- The firm failed to keep the information held on existing high risk customers up to date.

These failings were serious, systemic and were allowed to persist for almost three years. They were particularly serious because Coutts is a high profile bank with a leading position in the private banking market, and because the weaknesses resulted in an unacceptable risk of handling the proceeds of crime.

This was the largest fine yet levied by the FSA for failures related to financial crime.

See our press release for more information:

<http://www.fsa.gov.uk/library/communication/pr/2012/032.shtml>

Box 3.16: Case study - poor AML controls: risk assessment

We fined Habib Bank £525,000, and its MLRO £17,500, in May 2012 for poor AML systems and controls.

- Habib failed adequately to assess the level of money laundering risk associated with its business relationships. For example, the firm excluded higher risk jurisdictions from its list of high risk jurisdictions on the basis that it had group offices in them.
- Habib failed to conduct timely and adequate enhanced due diligence on higher risk customers by failing to gather sufficient information and supporting evidence.
- The firm also failed to carry out adequate reviews of its AML systems and controls.

The MLRO failed properly to ensure the establishment and maintenance of adequate and effective anti-money laundering risk management systems and controls.

See our press release for more information:

<http://www.fsa.gov.uk/library/communication/pr/2012/055.shtml>

...

3.7 To find out more on **customer payments**, see:

- Chapter 1 of Part III (Transparency in electronic payments (Wire transfers)) of the JMLSG's guidance, which will be banks' chief source of guidance on this topic: www.jmlsg.org.uk/download/6130 www.jmlsg.org.uk/download/7323

...

4 Fraud

...

Box 4.5: Investment fraud

This section applies to *retail deposit takers*.

UK consumers lose over £500m a year to share sale fraud (sometimes referred to as 'boiler

room fraud') and other investment scams e.g. involving land banking and unauthorised deposit taking. Fraudsters are increasingly receiving the proceeds of these crimes in 'collection accounts' held with UK high-street banks. There is a common pattern of activity for such accounts. They typically receive large numbers of relatively small incoming payments from individuals before substantial, regular outgoing payments are then made to other accounts, usually based overseas, as the criminals disperse their proceeds.

Firms have obligations under the Proceeds of Crime Act 2002, the Money Laundering Regulations 2007 and our rules to:

- identify customers (including understanding the nature of the business relationship);
- monitor account activity;
- report suspicious activity to the Serious Organised Crime Agency; and
- have policies and procedures in place to prevent activities related to money laundering and to counter the risk of being used to further financial crime.

Chapter 3 on anti-money laundering provides guidance to help firms fulfil these obligations.

Firms should be vigilant in identifying and reporting transactions where there are suspicions of financial crime. By doing so, they can prevent consumer loss by enabling the relevant authorities to identify quickly the proceeds of unauthorised business and, where appropriate, freeze funds.

What procedures does your firm have in place to avoid facilitating payments to investment fraudsters such as boiler rooms or unauthorised deposit takers?

Box 4.5: Investment fraud

UK consumers are targeted by share-sale frauds and other scams including land-banking frauds, unauthorised collective investment schemes and Ponzi schemes. Customers of UK deposit-takers may fall victim to these frauds, or be complicit in them. We expect these risks to be considered as part of deposit-takers' risk assessments, and for this to inform management's decisions about the allocation of resources to (a) the detection of fraudsters among the customer base and (b) the protection of potential victims.

Self-assessment questions:

- Have the risks of investment fraud (and other frauds where customers and third parties suffer losses) been considered by the firm?
- Are resources allocated to mitigating these risks as the result of purposive decisions by management?
- Are the firm's anti-money laundering controls able to identify customers who are

<u>complicit in investment fraud?</u>	
<u>Examples of good practice</u> <ul style="list-style-type: none"> • <u>A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.</u> • <u>A bank contacts customers if it suspects a payment is being made to an investment fraudster.</u> • <u>A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules.</u> 	<u>Examples of poor practice</u> <ul style="list-style-type: none"> • <u>A bank has performed no risk assessment that considers the risk to customers from investment fraud.</u> • <u>A bank fails to use actionable, credible information it has about known or suspected perpetrators of investment fraud in its financial crime prevention systems.</u> • <u>Ongoing monitoring of commercial accounts is allocated to customer-facing staff incentivised to bring in or retain business.</u> • <u>A bank allocates excessive numbers of commercial accounts to a staff member to monitor.</u>

...

4.3

...

- Chapter 14 summarises the findings of our thematic review Banks' defences against investment fraud. It contains guidance directed at deposit-takers with retail customers on:
 - o Governance (Box 14.1)
 - o Risk assessment (Box 14.2)
 - o Detecting perpetrators (Box 14.3)
 - o Automated monitoring (Box 14.4)
 - o Protecting victims (Box 14.5)
 - o Management reporting and escalation of suspicions (Box 14.6)
 - o Staff awareness (Box 14.7)
 - o Use of industry intelligence (Box 14.8).

...

6 Bribery and corruption

Box 6.1: Governance

<p>...</p> <p>A firm's senior management are responsible for ensuring that the firm conducts its business with integrity and tackles the risk that the firm, or anyone acting on its behalf, engages in bribery and corruption. <u>A firm's senior management should therefore be kept up to date with, and stay fully abreast of, bribery and corruption issues.</u></p> <p>...</p>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> • The firm is committed to carrying out business fairly, honestly and openly. • <u>Senior management lead by example in complying with the firm's anti-corruption policies and procedures.</u> • Responsibility for anti-bribery and corruption systems and controls is clearly documented and apportioned to a single senior manager <u>or a committee</u> with appropriate terms of reference <u>and senior management membership</u> who reports ultimately to the board. • ... 	<p>Examples of poor practice</p> <ul style="list-style-type: none"> • ... • Little or no management information is sent to the board about <u>existing and emerging bribery and corruption risks faced by the business, including: higher-risk third-party relationships or payments; the systems and controls to mitigate those risks; the effectiveness of these systems and controls; and legal and regulatory developments.</u>

Box 6.2: Risk assessment

<p>...</p> <p>Self-assessment questions:</p> <ul style="list-style-type: none"> • How do you define bribery and corruption? Does it <u>your definition cover all forms of bribery and corrupt behaviour not captured by the falling within the definition of 'financial crime' referred to in SYSC 3.2.6R and SYSC 6.1.1R, or is it limited to 'bribery' as that term is defined in the Bribery Act 2010 definition?</u> • ... • Has the risk of staff or third parties acting on the firm's behalf offering or receiving bribes <u>or other corrupt advantage</u> been assessed across the business? • <u>Who is responsible for carrying out a bribery and corruption risk assessment and keeping it up to date? Do they have sufficient levels of expertise and seniority?</u> • Could remuneration structures increase the risk of bribery and
--

corruption?	
<p>Examples of good practice</p> <ul style="list-style-type: none"> • ... • The firm assesses and manages the risk of remuneration structures rewarding staff for taking unacceptable corruption and bribery risks to generate business. • <u>The firm considers factors that might lead business units to downplay the level of bribery and corruption risk to which they are exposed, such as lack of expertise or awareness, or potential conflicts of interest.</u> 	<p>Examples of poor practice</p> <ul style="list-style-type: none"> • Compliance departments are ill equipped to identify and assess corruption risk. Departments responsible for identifying and assessing bribery and corruption risk are ill equipped to do so. • For fear of harming the business, the firm classifies as low risk a jurisdiction generally associated with high risk. • <u>The risk assessment is only based on generic, external sources.</u>

Box 6.3: Policies and procedures	
<p>The guidance in Box 2.4 on policies and procedures in relation to financial crime and in Box 2.5 on staff recruitment, vetting, training, awareness and remuneration also applies to bribery and corruption.</p> <p>...</p> <p>Self-assessment questions:</p> <ul style="list-style-type: none"> • <u>Do your anti-bribery and corruption policies adequately address all areas of bribery and corruption risk to which your firm is exposed, either in a stand-alone document or as part of separate policies? (for example, do your policies and procedures cover: expected standards of behaviour; escalation processes; conflicts of interest; expenses, gifts and hospitality; the use of third parties to win business; whistleblowing; monitoring and review mechanisms; and disciplinary sanctions for breaches?)</u> • <u>Have you considered the extent to which corporate hospitality might influence, or be perceived to influence, a business decision? Do you impose and enforce limits that are appropriate to your business and proportionate to the bribery and corruption risk associated with your business relationships?</u> • ... 	
<p>Examples of good practice</p> <ul style="list-style-type: none"> • ... • Risk-based, appropriate 	<p>Examples of poor practice</p> <ul style="list-style-type: none"> • ... • A firm relies on passages in the

<p>additional monitoring and due diligence are undertaken for jurisdictions, sectors and business relationships identified as higher risk.</p> <ul style="list-style-type: none"> • <u>Staff responsible for implementing and monitoring anti-bribery and corruption policies and procedures have adequate levels of anti-corruption expertise.</u> • <u>Where appropriate, the firm refers to existing sources of information, such as expense registers, policy queries and whistleblowing and complaints hotlines, to monitor the effectiveness of its anti-bribery and corruption policies and procedures.</u> • <u>Political and charitable donations are subject to appropriate due diligence and are approved at an appropriate management level, with compliance input.</u> • <u>Firms who do not provide staff with access to whistleblowing hotlines have processes in place to allow staff to raise concerns in confidence or, where possible, anonymously, with adequate levels of protection.</u> 	<p>staff code of conduct that prohibit improper payments, but has no other controls.</p> <ul style="list-style-type: none"> • <u>The firm does not record corporate hospitality given or received.</u> • The firm does not respond to internal or external events that may highlight weaknesses in its anti-bribery and corruption systems and controls. • <u>The firm fails to consider whether clients or charities who stand to benefit from corporate hospitality or donations have links to relevant political or administrative decision-makers.</u> • <u>The firm fails to maintain records of incidents and complaints.</u>
---	--

Box 6.4: Dealing with third parties

...

Self-assessment questions:

- ...
- To what extent are third-party relationships **monitored** and **reviewed**? Is the frequency and depth of the monitoring and review commensurate to the risk associated with the relationship?
- ...
- Is the risk assessment and due diligence information kept **up to date**?

<p>How?</p> <ul style="list-style-type: none"> • <u>Do you have effective systems and controls in place to ensure payments to third parties are in line with what is both expected and approved?</u> 	
<p>Examples of good practice</p> <ul style="list-style-type: none"> • ... • Third parties are paid directly for their work. • <u>The firm includes specific anti-bribery and corruption clauses in contracts with third parties.</u> • <u>The firm provides anti-bribery and corruption training to third parties where appropriate.</u> • ... 	<p>Examples of poor practice</p> <ul style="list-style-type: none"> • ...

...

Box 6.6: Case study – inadequate anti-bribery and corruption systems and controls

...

This fine was the largest yet levied by the FSA for failures related to financial crime.

...

6.4

- ...
- Chapter 9...
- Chapter 13 summarises the findings of our thematic review *Anti-bribery and corruption systems and controls in investment banks* and includes guidance on:
 - Governance and management information (Box 13.1)
 - Assessing bribery and corruption risk (Box 13.2)
 - Policies and procedures (Box 13.3)
 - Third party relationships and due diligence (Box 13.4)
 - Payment controls (Box 13.5)
 - Gifts and hospitality (Box 13.6)
 - Staff recruitment and vetting (Box 13.7)
 - Training and awareness (Box 13.8)
 - Remuneration structures (Box 13.9)
 - Incident reporting and management (Box 13.10)

...

7.5 To find out more on financial sanctions, see:

...

- Part III of the Joint Money Laundering Steering Group's guidance, which is a chief source of guidance for firms on this topic:

www.jmlsg.org.uk/download/6130 www.jmlsg.org.uk/download/7323

...

7.6 To find out more on trade sanctions and proliferation, see:

- Part III of the Joint Money Laundering Steering Group's guidance on the prevention of money laundering and terrorist financing, which contains a chapter on proliferation financing that should be firms' chief source of guidance on this topic:

www.jmlsg.org.uk/download/6130 www.jmlsg.org.uk/download/7323

...

Annex 1: Common terms

...

<u>Action Fraud</u>	The UK's national fraud reporting centre. See: http://www.actionfraud.police.uk/home
...	
boiler room	An unauthorised firm which defrauds the public by using hard sell tactics, usually over the telephone, to sell shares as an investment opportunity while knowing they are worthless or fictional. www.fsa.gov.uk/Pages/consumerinformation/scamsandswindles/index.shtml See 'share sale fraud'.
...	
<u>carbon credit scams</u>	Firms may sell carbon credit certificates or seek investment directly in a 'green' project that generates carbon credits as a return. Carbon credits can be sold and traded legitimately and there are many reputable firms operating in the sector. We are, however, concerned that an increasing number of firms are using dubious, high-pressure sales tactics and targeting vulnerable consumers. See: www.fsa.gov.uk/consumerinformation/scamsandswindles/investment_scams/carbon_credit
...	
corruption	Corruption is the abuse of public or private office to obtain an undue advantage. Corruption includes <u>not only</u> bribery <u>but also</u> other forms

	of misconduct or improper behaviour. This behaviour may or may not be induced by the prospect of obtaining an undue advantage from another person.
...	
enhanced due diligence (EDD)	The Money Laundering Regulations 2007 require firms to apply additional, 'enhanced' customer due diligence measures in higher-risk situations (see Boxes 3.6 to 3.8).
...	
FATF Recommendations	<p>Forty Recommendations issued by the FATF on the structural, supervisory and operational procedures that countries should have in place to combat money laundering. <u>These were revised in February 2012, and now incorporate the nine Special Recommendations on the prevention of terrorist financing that were previously listed separately.</u></p> <p>The Forty Recommendations can be downloaded from the FATF's website: www.fatf-gafi.org/dataoecd/7/40/34849567.PDF www.fatf-gafi.org/dataoecd/49/29/49684543.pdf</p>
FATF Special Recommendations	<p>Nine Recommendations on the prevention of terrorist financing were introduced by FATF in October 2001. <u>These were incorporated into the revised 40 Recommendations in February 2012 and are no longer separately listed. The Nine Special Recommendations can be downloaded from the FATF's website: www.fatf-gafi.org/dataoecd/8/17/34849466.pdf</u></p>
...	
fraud (types of)	<p>...</p> <p>See also: 'advance fee fraud', 'boiler room', '<u>carbon credit scams</u>', '<u>investment fraud</u>', '<u>land banking scams</u>', 'long firm fraud', '<u>mass-marketing fraud</u>', 'Missing Trader Inter-Community fraud', '<u>Ponzi and pyramid schemes</u>', 'share sale fraud'.</p>
...	
fuzzy matching	<p>The JMLSG suggests the term 'fuzzy matching' 'describes any process that identifies non-exact matches. Fuzzy matching software solutions identify possible matches where data – whether in official lists or in firms' internal records – is misspelled, incomplete, or missing. They are often tolerant of multinational and linguistic differences in spelling, formats for dates of birth, and similar data. A sophisticated system will have a variety of settings, enabling greater or less fuzziness in the matching process'. See Part III of the</p>

	JMLSG's guidance: www.jmlsg.org.uk/download/6130 www.jmlsg.org.uk/download/7323
...	
<u>investment fraud</u>	<u>UK-based investors lose money every year to share sale frauds and other scams including, but not limited to, land-banking frauds, Ponzi schemes, and rogue carbon credit schemes. See: www.fsa.gov.uk/consumerinformation/scamsandswindles/investment_scams</u>
...	
<u>land banking scams</u>	<u>Land banking companies divide land into smaller plots to sell it to investors on the basis that once it is available for development it will soar in value. However, the land is often in rural areas, with little chance of planning permission being granted. See: www.fsa.gov.uk/consumerinformation/scamsandswindles/investment_scams/land_banking</u>
....	
<u>mass-marketing fraud</u>	<u>Action Fraud (the UK's national fraud reporting centre) says "Mass marketing fraud is when you receive an uninvited contact by email, letter, phone or adverts, making false promises to con you out of money." Share sale fraud is a type of mass marketing fraud. See: http://www.actionfraud.police.uk/types-of-fraud/mass-marketing-fraud</u>
...	
<u>Ponzi and pyramid schemes</u>	<u>Ponzi and pyramid schemes promise investors high returns or dividends not usually available through traditional investments. While they may meet this promise to early investors, people who invest in the scheme later usually lose their money; these scheme collapse when the unsustainable supply of new investors dries up. Investors usually find most or all of their money is gone, and the fraudsters who set up the scheme claimed much of it for themselves. See: www.fsa.gov.uk/consumerinformation/scamsandswindles/investment_scams/ponzi_pyramid</u>
...	
<u>pyramid schemes</u>	<u>See 'Ponzi and pyramid schemes'.</u>
...	
<u>share sale fraud</u>	<u>Share scams are often run from 'boiler rooms' where fraudsters cold-call investors offering them often worthless, overpriced or even non-</u>

	<p><u>existent shares. While they promise high returns, those who invest usually end up losing their money. We have found victims of boiler rooms lose an average of £20,000 to these scams, with as much as £200m lost in the UK each year. Even seasoned investors have been caught out, with the biggest individual loss recorded by the police being £6m. We receive almost 5,000 calls each year from people who think they are victims of boiler room fraud. See: www.fsa.gov.uk/consumerinformation/scamsandswindles/investment_scams/boiler_room</u></p>
...	
<u>third party</u>	<p><u>'Third party' is a term often used to refer to entities that are involved in a business or other transaction but are neither the firm nor its customer. Where a third party acts on a firm's behalf, it might expose the firm to financial crime risk.</u></p>
...	
Wire Transfer Regulation	<p>This EU Regulation is formally titled 'Regulation 1781/2006 on information on the payer accompanying transfers of funds'. It implements FATF's 'Special Recommendation VII' in the EU and requires firms to accompany the transfer of funds with specified information identifying the payer. We were given enforcement powers under this regulation by the Transfer of Funds (Information on the Payer) Regulations 2007. The Wire Transfer Regulation is also known as the Payer Information Regulation or the Payment Regulation and should not be confused with the Payment Services Directive.</p>

...

Annex B

Amendments to Part 2 of Financial crime: a guide for firms

In this Annex, underlining indicates new text, unless otherwise stated.

Contents

...

13 Anti-bribery and corruption systems and controls in investment banks (2012)

Box 13.1 Governance and management information

Box 13.2 Assessing bribery and corruption risk

Box 13.3 Policies and procedures

Box 13.4 Third party relationships and due diligence

Box 13.5 Payment controls

Box 13.6 Gifts and hospitality

Box 13.7 Staff recruitment and vetting

Box 13.8 Training and awareness

Box 13.9 Remuneration structures

Box 13.10 Incident reporting and management

14 Banks' defence against investment fraud

Box 14.1 Governance

Box 14.2 Risk assessment

Box 14.3 Detecting perpetrators

Box 14.4 Automated monitoring

Box 14.5 Protecting victims

Box 14.6 Management reporting and escalation of suspicions

Box 14.7 Staff awareness

Box 14.8 Use of industry intelligence

After Section 12, insert the following new sections. The text is not underlined.

13 Anti-bribery and corruption systems and controls in investment banks (2012)

Who should read this chapter?

This chapter is relevant, and its statements of good and poor practice apply, to:

- **investment banks** and firms carrying on investment banking or similar activities in the UK;
- **all other firms** who are subject to our financial crime rules in SYSC 3.2.6R or 6.1.1R; and
- **electronic money institutions** and **payment institutions** within our supervisory scope.

Box 13.4 and Box 13.5 only apply to **firms or institutions who use third parties to win business.**

Content: This chapter contains sections on:

- Governance and management information (Box 13.1)

- Assessing bribery and corruption risk (Box 13.2)
- Policies and procedures (Box 13.3)
- Third party relationships and due diligence (Box 13.4)
- Payment controls (Box 13.5)
- Gifts and hospitality (Box 13.6)
- Staff recruitment and vetting (Box 13.7)
- Training and awareness (Box 13.8)
- Remuneration structures (Box 13.9)
- Incident reporting and management (Box 13.10)

- 13.1 In March 2012, we published the findings of our review of investment banks' anti-bribery and corruption systems and controls. We visited 15 investment banks and firms carrying on investment banking or similar activities in the UK to assess how they were managing bribery and corruption risk. Although this report focused on investment banking, its findings are relevant to other sectors.
- 13.2 We found that although some investment banks had completed a great deal of work to implement effective anti-bribery and corruption controls in the months preceding our visit, the majority of them had more work to do and some firms' systems and controls fell short of our regulatory requirements. Weaknesses related in particular to: many firms' limited understanding of the applicable legal and regulatory regimes, incomplete or inadequate bribery and corruption risk assessments; lack of senior management oversight; and failure to monitor the effective implementation of, and compliance with, anti-bribery and corruption policies and procedures.
- 13.3 The contents of this report are reflected in Chapter 6 (Bribery and corruption) of Part 1 of this Guide.

Our findings

- 13.4 You can read the findings of the FSA's thematic review here:
<http://www.fsa.gov.uk/pubs/other/anti-bribery-investment-banks.pdf>

Consolidated examples of good and poor practice

Box 13.1: Governance and management information (MI)	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> • Clear, documented responsibility for anti-bribery and corruption apportioned to either a single senior manager or a committee with appropriate terms of reference and senior management membership, reporting ultimately to the Board. • Regular and substantive MI to the Board and other relevant senior management forums, including: an overview of the 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • Failing to establish an effective governance framework to address bribery and corruption risk. • Failing to allocate responsibility for anti-bribery and corruption to a single senior manager or an appropriately formed committee. • Little or no MI sent to the Board about bribery and corruption issues, including legislative or regulatory

<p>bribery and corruption risks faced by the business; systems and controls to mitigate those risks; information about the effectiveness of those systems and controls; and legal and regulatory developments.</p> <ul style="list-style-type: none"> • Where relevant, MI includes information about third parties, including (but not limited to) new third-party accounts, their risk classification, higher risk third-party payments for the preceding period, changes to third-party bank account details and unusually high commission paid to third parties. • MI submitted to the Board ensures they are adequately informed of any external developments relevant to bribery and corruption. • Actions taken or proposed in response to issues highlighted by MI are minuted and acted on appropriately. 	<p>developments, emerging risks and higher risk third-party relationships or payments.</p>
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Box 13.2 Assessing bribery and corruption risk

<p>Examples of good practice:</p> <ul style="list-style-type: none"> • Responsibility for carrying out a risk assessment and keeping it up to date is clearly apportioned to an individual or a group of individuals with sufficient levels of expertise and seniority. • The firm takes adequate steps to identify the bribery and corruption risk. Where internal knowledge and understanding of corruption risk is limited, the firm supplements this with external expertise. • Risk assessment is a continuous process based on qualitative and relevant information available from internal and external sources. • Firms consider the potential conflicts of interest which might lead business units to downplay the level of bribery and corruption risk to which they are exposed. • The bribery and corruption risk 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • The risk assessment is a one-off exercise. • Efforts to understand the risk assessment are piecemeal and lack coordination. • Risk assessments are incomplete and too generic. • Firms do not satisfy themselves that staff involved in risk assessment are sufficiently aware of, or sensitised to, bribery and corruption issues.
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<p>assessment informs the development of monitoring programmes; policies and procedures; training; and operational processes.</p> <ul style="list-style-type: none"> • The risk assessment demonstrates an awareness and understanding of firms' legal and regulatory obligations. • The firm assesses where risks are greater and concentrates its resources accordingly. • The firm considers financial crime risk when designing new products and services. 	
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Box 13.3: Policies and procedures

<p>Examples of good practice:</p> <ul style="list-style-type: none"> • The firm clearly sets out the behaviour expected of those acting on its behalf. • Firms have conducted a gap analysis of existing bribery and corruption procedures against applicable legislation, regulations and guidance and made necessary enhancements. • The firm has a defined process in place for dealing with breaches of policy. • The team responsible for ensuring the firm's compliance with its anti-bribery and corruption obligations engages with the business units about the development and implementation of anti-bribery and corruption systems and controls. • anti-bribery and corruption policies and procedures will vary depending on a firm's exposure to bribery and corruption risk. But in most cases, firms should have policies and procedures which cover expected standards of behaviour; escalation processes; conflicts of interest; expenses, gifts and hospitality; the use of third parties to win business; whistleblowing; monitoring and review mechanisms; and disciplinary sanctions for breaches. These policies need not be in a single 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • The firm has no method in place to monitor and assess staff compliance with anti-bribery and corruption policies and procedures. • Staff responsible for the implementation and monitoring of anti-bribery and corruption policies and procedures have inadequate expertise on bribery and corruption.
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<p>‘ABC policy’ document and may be contained in separate policies.</p> <ul style="list-style-type: none"> • There should be an effective mechanism for reporting issues to the team or committee responsible for ensuring compliance with the firm’s anti-bribery and corruption obligations. 	
---	--

Box 13.4: Third-party relationships and due diligence

<p>Examples of good practice:</p> <ul style="list-style-type: none"> • Where third parties are used to generate business, these relationships are subject to thorough due diligence and management oversight. • Third-party relationships are reviewed regularly and in sufficient detail to confirm that they are still necessary and appropriate to continue. • There are higher, or extra, levels of due diligence and approval for high risk third-party relationships. • There is appropriate scrutiny of, and approval for, relationships with third parties that introduce business to the firm. • The firm’s compliance function has oversight of all third-party relationships and monitors this list to identify risk indicators, e.g. a third party’s political or public service connections. • Evidence that a risk-based approach has been adopted to identify higher risk relationships in order to apply enhanced due diligence. • Enhanced due diligence procedures include a review of the third party’s own anti-bribery and corruption controls. • Consideration, where appropriate, of compliance involvement in interviewing consultants and the provision of anti-bribery and corruption training to consultants. • Inclusion of anti-bribery and corruption- 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • A firm using intermediaries fails to satisfy itself that those businesses have adequate controls to detect and prevent staff using bribery or corruption to generate business. • The firm fails to establish and record an adequate commercial rationale for using the services of third parties. • The firm is unable to produce a list of approved third parties, associated due diligence and details of payments made to them. • There is no checking of compliance’s operational role in approving new third-party relationships and accounts. • A firm assumes that long-standing third-party relationships present no bribery or corruption risk. • A firm relies exclusively on informal means, such as staff’s personal knowledge, to assess the bribery and corruption risk associated with third parties. • No prescribed take-on process for new third-party relationships. • A firm does not keep full records of due diligence on third parties and cannot evidence that it has considered the bribery and corruption risk associated with a third-party relationship. • The firm cannot provide evidence of appropriate checks to identify whether
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<p>specific clauses and appropriate protections in contracts with third parties.</p>	<p>introducers and consultants are PEPs.</p> <ul style="list-style-type: none"> • Failure to demonstrate that due diligence information in another language has been understood by the firm.
--	---

Box 13.5: Payment controls

<h3>Box 13.5: Payment controls</h3>	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> • Ensuring adequate due diligence on and approval of third-party relationships before payments are made to the third party. • Risk-based approval procedures for payments and a clear understanding of the reason for all payments. • Checking third-party payments individually prior to approval, to ensure consistency with the business case for that account. • Regular and thorough monitoring of third-party payments to check, for example, whether a payment is unusual in the context of previous similar payments. • A healthily sceptical approach to approving third-party payments. • Adequate due diligence on new suppliers being added to the Accounts Payable system. • Clear limits on staff expenditure, which are fully documented, communicated to staff and enforced. • Limiting third-party payments from Accounts Payable to reimbursements of genuine business-related costs or reasonable hospitality. • Ensuring the reasons for third-party payments via Accounts Payable are clearly documented and appropriately approved. • The facility to produce accurate MI to assist effective payment monitoring. 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • Failing to check whether third parties to whom payments are due have been subject to appropriate due diligence and approval. • Failing to produce regular third-party payment schedules for review. • Failing to check thoroughly the nature, reasonableness and appropriateness of gifts and hospitality. • No absolute limits on different types of expenditure, combined with inadequate scrutiny during the approvals process.

Box 13.6: Gifts and hospitality (G&H)

Examples of good practice:

- Policies and procedures clearly define the approval process and the limits applicable to G&H.
- Processes for filtering G&H by employee, client and type of hospitality for analysis.
- Processes to identify unusual or unauthorised G&H and deviations from approval limits for G&H.
- Staff are trained on G&H policies to an extent appropriate to their role, in terms of both content and frequency, and regularly reminded to disclose G&H in line with policy.
- Cash or cash-equivalent gifts are prohibited.
- Political and charitable donations are approved at an appropriate level, with input from the appropriate control function, and subject to appropriate due diligence.

Examples of poor practice:

- Senior management do not set a good example to staff on G&H policies.
- Acceptable limits and the approval process are not defined.
- The G&H policy is not kept up to date.
- G&H and levels of staff compliance with related policies are not monitored.
- No steps are taken to minimise the risk of gifts going unrecorded.
- Failure to record a clear rationale for approving gifts that fall outside set thresholds.
- Failure to check whether charities being donated to are linked to **relevant political or administrative decision-makers**.

Box 13.7: Staff recruitment and vetting

Examples of good practice:

- Vetting staff on a risk-based approach, taking into account financial crime risk.
- Enhanced vetting – including checks of credit records, criminal records, financial sanctions lists, commercially-available intelligence databases – for staff in roles with higher bribery and corruption risk.
- Conducting periodic checks to ensure that agencies are complying with agreed vetting standards.

Examples of poor practice:

- Failing to carry out ongoing checks to identify changes that could affect an individual's integrity and suitability.
- No risk-based processes for identifying staff who are PEPs or otherwise connected to **relevant political or administrative decision-makers**.
- Where employment agencies are used to recruit staff, failing to demonstrate a clear understanding of the checks these agencies carry out on prospective staff.
- Temporary or contract staff receiving less rigorous vetting than permanently employed colleagues carrying out

	similar roles.
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Boxes 13.8: Training and awareness	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> • Providing good quality, standard training on anti-bribery and corruption for all staff. • Ensuring training covers relevant and practical examples. • Keeping training material and staff knowledge up to date. • Awareness-raising initiatives, such as special campaigns and events to support routine training, are organised. 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • Failing to provide training on ABC that is targeted at staff with greater exposure to bribery and corruption risks. • Failing to monitor and measure the quality and effectiveness of training.

Box 13.9: Remuneration structures	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> • Remuneration takes account of good compliance behaviour, not simply the amount of business generated. • Identifying higher-risk functions from a bribery and corruption perspective and reviewing remuneration structures to ensure they do not encourage unacceptable risk taking. 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • Failing to reflect poor staff compliance with anti-bribery and corruption policy and procedures in staff appraisals and remuneration.

Box 13.10: Incident reporting and management	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> • Clear procedures for whistleblowing and the reporting of suspicions, which are communicated to staff. • Details about whistleblowing hotlines are visible and accessible to staff. • Where whistleblowing hotlines are not provided, firms should consider measures to allow staff to raise concerns in confidence or, where possible, anonymously, with adequate levels of protection and communicate this clearly 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • Failing to maintain proper records of incidents and complaints.

<p>to staff.</p> <ul style="list-style-type: none"> Firms use information gathered from whistleblowing and internal complaints to assess the effectiveness of their anti-bribery and corruption policies and procedures. 	
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14 Banks' defences against investment fraud (2012)

Who should read this chapter?

This chapter is relevant, and its statements of good and poor practice apply, to **deposit-taking institutions** with retail customers.

Content: This chapter contains sections on:

- Governance (Box 14.1)
- Risk assessment (Box 14.2)
- Detecting perpetrators (Box 14.3)
- Automated monitoring (Box 14.4)
- Protecting victims (Box 14.5)
- Management reporting and escalation of suspicions (Box 14.6)
- Staff awareness (Box 14.7)
- Use of industry intelligence (Box 14.8)

- 14.1 Our thematic review, *Bank's defences against investment fraud*, published in June 2012, set out the findings of our visits to seven retail banks and one building society to assess the systems and controls in place to contain the risks posed by investment fraudsters.
- 14.2 UK consumers are targeted by share-sale frauds and other scams including land-banking frauds, unauthorised collective investment schemes and Ponzi schemes. Customers of UK deposit-takers may fall victim to these frauds, or be complicit in them.
- 14.3 The contents of this report are reflected in new Box 4.5 in Chapter 4 (Fraud) of Part 1 of this Guide.

Our findings

- 14.4 You can read the findings of the FSA's thematic review here:
<http://www.fsa.gov.uk/static/pubs/other/banks-defences-against-investment-fraud.pdf>

Consolidated examples of good and poor practice

Box 14.1: Governance

Examples of good practice:

- A bank can demonstrate senior management ownership and understanding of fraud affecting customers, including investment fraud.
- There is a clear organisational structure for addressing the risk to customers and the bank arising from fraud, including investment fraud. There is evidence of appropriate information moving across this governance structure that demonstrates its effectiveness in use.
- A bank has recognised subject matter experts on investment fraud supporting or leading the investigation process.
- A bank seeks to measure its performance in preventing detriment to customers.
- When assessing the case for measures to prevent financial crime, a bank considers benefits to customers, as well as the financial impact on the bank.

Examples of poor practice:

- A bank lacks a clear structure for the governance of investment fraud or for escalating issues relating to investment fraud. Respective responsibilities are not clear.
- A bank lacks a clear rationale for allocating resources to protecting customers from investment fraud.
- A bank lacks documented policies and procedures relating to investment fraud.
- There a lack of communication between a bank's AML and fraud teams on investment fraud.

Box 14.2: Risk assessment

Examples of good practice:

- A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could suffer losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are also informed by this assessment.
- A bank performs 'horizon scanning' work to identify changes in the fraud

Examples of poor practice:

- A bank has performed no risk assessment that considers the risk to customers from investment fraud.
- A bank's regulatory compliance, risk management and internal audit functions' assurance activities do not effectively challenge the risk assessment framework.

types relevant to the bank and its customers.	
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Box 14.3: Detecting perpetrators

Examples of good practice:

- A bank's procedures for opening commercial accounts include an assessment of the risk of the customer, based on the proposed business type, location and structure.
- Account opening information is used to categorise a customer relationship according to its risk. The bank then applies different levels of transaction monitoring based on this assessment.
- A bank screens new customers to prevent the take-on of possible investment fraud perpetrators.

Examples of poor practice:

- A bank only performs the customer risk assessment at account set up and does not updating this through the course of the relationship.
- A bank does not use account set up information (such as anticipated turnover) in transaction monitoring.
- A bank allocates excessive numbers of commercial accounts to a staff member to monitor, rendering the ongoing monitoring ineffective.
- A bank allocates responsibility for the ongoing monitoring of the customer to customer-facing staff with many other conflicting responsibilities.

Box 14.4: Automated monitoring

Examples of good practice:

- A bank undertakes real-time payment screening against data about investment fraud from credible sources.
- There is clear governance of real time payment screening. The quality of alerts (rather than simply the volume of false positives) is actively considered.
- Investment fraud subject matter experts are involved in the setting of monitoring rules.
- Automated monitoring programmes reflect insights from risk assessments or vulnerable customer initiatives.
- A bank has monitoring rules designed to detect specific types of investment

Examples of poor practice:

- A bank fails to use information about known or suspected perpetrators of investment fraud in its financial crime prevention systems.
- A bank does not consider investment fraud in the development of monitoring rules.
- The design of rules cannot be amended to reflect the changing nature of the risk being monitored.

<p>fraud e.g. boiler room fraud.</p> <ul style="list-style-type: none"> • A bank reviews accounts after risk triggers are tripped (such as the raising of a SAR) in a timely fashion. • When alerts are raised, a bank checks against account-opening information to identify any inconsistencies with expectations. 	
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Box 14.5: Protecting victims	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> • A bank contacts customers in the event they suspect a payment is being made to an investment fraudster. • A bank places material on investment fraud on its website. • A bank adopts alternative customer awareness approaches, such as mailing customers and branch awareness initiatives. • Work to detect and prevent investment fraud is integrated with a bank’s vulnerable customers initiative. 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • Communication with customers on fraud just covers types of fraud for which the bank may be financially liable, rather than fraud the customer might be exposed to. • A bank has no material on investment fraud on its website. • Failing to contact customers they suspect are making payments to investment fraudsters on grounds that this constitutes “investment advice”.

Box 14.6: Management reporting and escalation of suspicions	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> • A specific team focuses on investigating the perpetrators of investment fraud. • A bank’s fraud statistics include figures for losses known or suspected to have been incurred by customers. 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • There is little reporting to senior management on the extent of investment fraud (whether victims or perpetrators) in a bank’s customer base. • A bank is unable to access information on how many of the bank’s customers have become the victims of investment fraud.

Box 14.7: Staff awareness	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> • Making good use of internal 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • Training material only covers boiler

<p>experience of investment fraud to provide rich and engaging training material.</p> <ul style="list-style-type: none"> • A wide-range of materials are available that cover investment fraud. • Awards are given on occasion to frontline staff when a noteworthy fraud is identified. • Training material is tailored to the experience of specific areas such as branch and relationship management teams. 	<p>rooms.</p> <ul style="list-style-type: none"> • A bank's training material is out of date.
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Box 14.8: Use of industry intelligence

<p>Examples of good practice:</p> <ul style="list-style-type: none"> • A bank participates in cross-industry forums on fraud and boiler rooms and makes active use of intelligence gained from these initiatives in, for example, its transaction monitoring and screening efforts. • A bank takes measures to identify new fraud typologies. It joins-up internal intelligence, external intelligence, its own risk assessment and measures to address this risk. 	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> • A bank fails to act on actionable, credible intelligence shared at industry forums or received from other authoritative sources such as the FSA or City of London Police.
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HANDBOOK ADMINISTRATION (NO 28) INSTRUMENT 2012**Powers exercised**

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

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex D (LR) comes into force on 31 December 2012;
 - (2) Part 2 of Annex C (SUP) comes into force on 31 December 2013;
 - (3) the remainder of this instrument comes into force on 1 January 2013.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C
Listing Rules sourcebook (LR)	Annex D
Prospectus Rules sourcebook (PR)	Annex E

Amendments to the material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.
- F. The Unfair Contract Terms Regulatory Guide (UNFCOG) is amended in accordance with Annex G to this instrument.

Citation

- G. This instrument may be cited as the Handbook Administration (No 28) Instrument 2012.

By order of the Board
13 December 2012

Annex A

Amendments to the Glossary of definitions

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

*drawdown
mortgage*

a *lifetime mortgage* contract where:

(a) the amount borrowed is paid by the *mortgage lender* to the *customer* in instalments during the life of the mortgage; and

(b) the size and frequency of the instalments are:

...

(2) set by reference to an index or interest rate (such as the ~~Bank of England repo rate~~ Official Bank Rate).

market maker

(1) (except in COBS and DTR) (in relation to an *investment*) a *person* who (otherwise than in his capacity as the *operator* of a *regulated collective investment scheme*) holds himself out as able and willing to enter into transactions of sale and purchase in *investments* of that description at prices determined by him generally and continuously rather than in respect of each particular transaction.

(2) (in COBS and DTR) a *person* who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling *financial instruments* against his proprietary capital at prices defined by him.

...

(3) [deleted]

Annex B

Amendments to the Fees manual (FEES)

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

Late Payments

2.2.1 R If a *person* does not pay the total amount of a periodic fee, *FOS* levy, or share of the *FSCS* levy or *CFEB* levy, before the end of the date on which it is due, under the relevant provision in *FEES* 4, 5, 6 or 7, that *person* must pay an additional amount as follows:

...

- (2) interest on any unpaid part of the fee at the rate of 5% per annum about the ~~Bank of England's repo rate~~ Official Bank Rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

...

6.3.20 R ...

(3) Recoveries referred to in (1) must be applied in the following order of priority:

(a) (if the *compensation costs* were allocated to the general retail pool (see *FEES* 6.5.2R(2)) to the *classes* and *sub-classes* to which the costs were allocated in accordance with *FEES* 6.5.2R(2) in the same proportion as those *classes* and respective *sub-classes* contributed, up to the total amount of that allocation plus interest at a rate equivalent to the ~~Bank of England's repo rate~~ Official Bank Rate from time to time in force;

...

...

Appendix 1 **Unauthorised Mutuals Registration Fees Rules**

...

App 1.2.9 R If a *registered society* does not pay the total amount of a periodic fee or a fee payable under 1.4.2R on the date on which it is due under the relevant provision of these rules, that *registered society* must pay an additional amount as follows:

...

...

- (2) if the fee is not paid in full before the end of 15 days after the due date, interest on any unpaid part of the fee at the rate of 5% per annum about the ~~Bank of England's repo rate~~ Official Bank Rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

Annex C

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 1 January 2013

Customer function (CF 30)

10.10.7A R The *customer function* is the function of:

...

- (5) *dealing*, as principal or as agent, and *arranging (bringing about) deals in investments* other than a *non-investment insurance contract* with or for, or in connection with ~~customers~~ customers where the *dealing or arranging deals* is governed by COBS 11 (Dealing and managing);

...

...

Regulatory Activity Group 7

...

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>	Frequency				
	Unconsolidated <i>BIPRU</i> <i>investment firm</i>	Solo consolidated <i>BIPRU</i> <i>investment firm</i>	<i>UK</i> <i>Consolidation</i> <i>Group</i> or <i>defined liquidity</i> <i>group</i>	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million
<i>Annual reports and accounts</i>	No standard format <u>Annually</u>			<u>Annually</u>	<u>Annually</u>
Annual accounts of the <i>mixed-activity holding company</i>	No standard format <u>Annually</u>			<u>Annually</u>	<u>Annually</u>
Solvency statement	No standard format <u>Annually</u>				

...					
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Part 2: Comes into force on 31 December 2013

16 Annex 18AR Retail Mediation Activities Return ('RMAR')

...

[see next page]

15	Total assets less current liabilities	<input type="text"/>	<u>has a participating interest where included in debtors.</u> <input type="text"/>
16	Other liabilities falling due after more than one year	<input type="text"/>	
17	Provisions for liabilities and charges	<input type="text"/>	
18	Net assets	<input type="text"/>	30 <u>Memo (2)</u> <u>Value of shares in group undertakings where such investments are held as current assets.</u> <input type="text"/>
19	Memo: guarantees provided by firm	<input type="text"/>	<u>Notes</u> <u>Memos (1) and (2) to be completed, where applicable, by all insurance intermediaries subject to MIPRU.</u>

...

...

SECTION D6: Capital Resources
Personal Investment Firms subject to IPRU(INV) chapter 13

A

1 Base requirement

--

...

Annex D

Amendments to the Listing Rules sourcebook (LR)

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

Part 1: Comes into force on 31 December 2012

Principles for sponsors: identifying and managing conflicts

8.3.7A G The purpose of LR 8.3.7BR to ~~LR 8.3.13G~~ LR 8.3.12AG is to ensure that conflicts of interest do not adversely affect:

...

...

8.3.8 G In identifying conflicts of interest, *sponsors* should also take into account circumstances that could:

- (1) create a perception in the market that a sponsor may not be able to perform its functions properly; ~~and~~ or
- (2) compromise the ability of a *sponsor* to fulfil its obligations to the *FSA* in relation to the provision of a *sponsor service*.

...

Applying for transfer between listed categories

8.4.14 R In relation to a proposed transfer under LR 5.4A, if a *sponsor* is appointed in accordance with LR 8.2.1AR, it must:

- (1) ...
- (2) submit a completed Sponsor's Declaration for a Transfer of Listing 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~~ Transfer of Listing 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~~ Transfer of Listing, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

...

Reverse takeovers

8.4.17 R A *sponsor* acting on a *reverse takeover* where the *issuer* decides to make a disclosure announcement under LR 5.6.15G must:

- (1) submit to the *FSA* under LR 5.6.17R a completed Sponsor's ~~Disclosure Announcement~~ Declaration for a Reverse Takeover Announcement;
- (2) not submit to the *FSA* the Sponsor's ~~Disclosure Announcement~~ Declaration for a Reverse Takeover Announcement unless it has come to a reasonable opinion, after having made due and careful enquiry, that it is reasonable for the *issuer* to provide the declarations described in LR 5.6.15G(3) and LR 5.6.15G(4); and
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering a proposed disclosure announcement under LR 5.6.15G have been disclosed with sufficient prominence in the announcement or otherwise in writing to the *FSA*.

[**Note:** The Sponsor's ~~Disclosure Announcement~~ Declaration for a Reverse Takeover Announcement can be found on the UKLA section of the *FSA* website]

...

General notifications

8.7.8 R A *sponsor* must notify the *FSA* in writing as soon as possible if:

- (1) (a) ...
- (b) the *sponsor* becomes aware of any fact or circumstance relating to the *sponsor* or any of its employees engaged in the provision of *sponsor services* by the *sponsor* which, in its reasonable opinion, would be likely to adversely affect market confidence in the ~~sponsor~~ sponsor regime; or

...

- (11) there is expected to be a change in the financial position of the *sponsor* or any of its *group companies* that would be likely to adversely affect the *sponsor's* ability to perform ~~the sponsor~~

services or otherwise comply with *LR 8*.

Part 2: Comes into force on 1 January 2013

Cross-holdings

- 15.2.5 R (1) No more than 10%, in aggregate, of the value of the total assets of an *applicant* at admission may be invested in other ~~listed~~ listed *closed-ended investment funds*.
- (2) The restriction in (1) does not apply to investments in *closed-ended investment funds* which themselves have published investment policies to invest no more than 15% of their total assets in other ~~listed~~ listed *closed-ended investment funds*.

Annex E**Amendments to the Prospectus Rules sourcebook (PR)**

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

Provisions implementing the prospectus directive

1.1.6 G The following documents need to be considered together to determine the effect of the *prospectus directive*:

...

(4) the ~~CESR~~ ESMA recommendations.

Annex F

Amendments to the Perimeter Guidance manual (PERG)

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

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

15.1 ...

Scope

...

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.

...

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;
- if you are a partnership, an unincorporated association, or a body corporate, you must satisfy us that any persons having a qualifying holding in your business are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution;
- you must satisfy us that your directors (if you are a body corporate), any persons responsible for the management of your business, and where relevant the persons responsible for the management of your payment services, are of good repute and possess appropriate knowledge and

experience to provide payment services;

- if you are a body corporate you must satisfy us that any close links you have with another person are not likely to prevent our effective supervision of you. If it appears to us that you have any close links that are subject to the laws, regulations or administrative provisions of a territory outside of the EEA (“the foreign provisions”) you must satisfy us that neither the foreign provisions, nor any deficiency in their enforcement, would prevent our effective supervision of you;
- 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.

Annex G

Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)

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

2 Statements of Good Practice on fairness of terms in consumer contracts Unfair Contract Terms material published by the FSA

2.1

- 2.1.1 G In ~~Annexes 1 and 2~~ the Unfair Contract Terms Library (<http://www.fsa.gov.uk/Pages/Doing/Regulated/uct/library/index.shtml>) you will find ~~‘Statements of Good Practice’~~ Notices of Undertakings, Statements, Speeches and other publications where we have set out our views on the likely application of the Regulations in relation to certain types of clause in standard form *consumer* contracts. We will add further ~~Statements of Good Practice relating to the Regulations~~ publications to the Unfair Contract Terms Library as and when they are published. ~~Please note that these Statements of Good Practice do not form general guidance on rules under the Act.~~

...

Delete the following two annexes.

- 2 Annex 1 ~~Fairness of terms in consumer contracts: Statement of Good Practice (May 2005)~~ http://www.fsa.gov.uk/pubs/other/good_practice.pdf
- 2 Annex 2 ~~Fairness of terms in consumer contracts: Statement of Good Practice on mortgage exit administration fees (January 2007)~~ http://www.fsa.gov.uk/pubs/other/meaf_goodpractice.pdf

**RETAIL DISTRIBUTION REVIEW (HOLLOWAY SICKNESS POLICIES)
(AMENDMENT) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the power in section 138 (General rule-making power) of the Financial Services and Markets Act 2000 (“the Act”); 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 2012.

Amendments to the Handbook

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

Citation

- F. This instrument may be cited as the Retail Distribution Review (Holloway Sickness Policies) (Amendment) Instrument 2012.

By order of the Board
13 December 2012

Annex A

Amendments to the Glossary of definitions

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

Holloway policy special application conditions

conditions that will be met by a *firm* where:

- (a) in the case of a *firm* which underwrites *Holloway sickness policies*:
 - (i) all of the *Holloway sickness policies* of a particular type underwritten by the *firm* show a projected maturity value of not more than 20% of accumulated *premiums* at the mid-rate projection in the *key features illustrations* prepared for the purposes of *COBS* 13.1.1R(2); except that no more than 5% of the relevant *Holloway sickness policies* underwritten by the *firm* may show a projected maturity value of between 20% and 25% of accumulated *premiums* at the mid-rate projection in the *key features illustrations* prepared for the purposes of *COBS* 13.1.1R(2); ~~and~~
 - (ii) the *firm* conducts a regular assessment to determine whether ~~its~~ the relevant *Holloway sickness policies* meet the conditions in (i) and, if such an assessment indicates that the conditions in (i) may no longer be met, takes any steps necessary to ensure that ~~its~~ the relevant *Holloway sickness policies* will meet the conditions in (i) within three months of the relevant assessment having been carried out; and

...

...

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1B Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration

Application – Who? What?

...

- 6.1B.2A R This section does not apply to a *firm* in circumstances where a *retail client* receives a *personal recommendation* in relation to one of the firm's *Holloway sickness ~~policy~~ policies*, provided that the *Holloway policy special application conditions* are met.

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(REMUNERATION CODE) (NO 5) INSTRUMENT 2012**

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 139A (General rules about remuneration); and
 - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 14 December 2012.

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 (Remuneration Code) (No 5) Instrument 2012.

By order of the Board
13 December 2012

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.

19A.3 Remuneration principles for banks, building societies and investment firms

...

Effect of breaches of the Remuneration Principles

...

- 19A.3.54 R (1) Subject to (1A) to (3), the *rules* in SYSC 19A Annex 1.1R to 1.4R apply in relation to the prohibitions on *Remuneration Code staff* being *remunerated* in the ways specified in:
- (a) SYSC 19A.3.40R (guaranteed variable *remuneration*);
 - (b) SYSC 19A.3.49R (non-deferred variable *remuneration*); and
 - (c) SYSC 19A Annex 1.7R (replacing payments recovered or property transferred).
- (1A) Paragraph (1) applies only to those prohibitions as they apply in relation to a *firm* that satisfies at least one of the conditions set out in (1B) ~~to~~ and (1D).
- (1B) Condition 1 is that the *firm* is a UK bank, or a building society or a relevant BIPRU 730k firm that ~~had capital resources~~ has relevant total assets exceeding 1,000 million £50 billion on its last accounting reference date.
- (1C) ~~Condition 2 is that the firm is a relevant BIPRU 730k firm that had capital resources exceeding 750 million on its last accounting reference date. [deleted]~~
- (1D) Condition ~~3~~ 2 is that the *firm*:
- (a) is a *full credit institution*, a relevant *BIPRU 730k firm* or a relevant *third country BIPRU 730k firm*; and
 - (b) is part of a *group* containing a *firm* that has relevant total assets exceeding £50 billion and that is a UK bank, a building society or a relevant BIPRU 730k firm.:
 - (i) ~~a UK bank or building society that had capital resources exceeding 1,000 million on its last~~

~~accounting reference date; or~~

- (ii) ~~a relevant *BIPRU 730k firm* that had *capital resources* exceeding 750 million on its last *accounting reference date*.~~

(1E) ~~In condition 2 in (1C) and condition 3 in (1D)(a) and (b)(ii) this rule:~~

- (a) a “relevant *BIPRU 730k firm*” is any *BIPRU 730k firm* that is not a *limited activity firm* or a *limited licence firm*;
- (b) a “relevant *third country BIPRU 730k firm*” is any *third country BIPRU 730k firm* that is not a *limited activity firm* or a *limited licence firm*; and
- (c) “relevant total assets” means the arithmetic mean of the *firm’s* total assets as set out in its balance sheet on its last three *accounting reference dates*.

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS
AMENDMENTS NO 7) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 December 2012.

Amendments to the Handbook

- D. The Training and Competence sourcebook (TC) 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 Training and Competence Sourcebook (Qualifications Amendments No 7) Instrument 2012.

By order of the Board
13 December 2012

Annex

Amendments to the Training and Competence sourcebook (TC)

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

Replace Appendix 4E, and the tables in it, with the following.

Appendix 4E Appropriate Qualification tables

Part 1: Activities

Note: The activity numbers in this table relate to the Regulated Activities in TC Appendix 1.1.1R. These tables do not cover activities 1, 5, 13A, 13B, 13C, 24, 25 or 26 as these activities do not have a qualification requirement.

Activity Number	Activity	Key - extent to which qualification meets qualification requirement	
2	Advising on <i>securities</i> which are not <i>stakeholder pension schemes, personal pension schemes or broker funds</i>	(a)	Meets full qualification requirement on and after, 31 December 2012
3	Advising on <i>derivatives</i>		
4 and 6	(4) Advising on <i>retail investment products</i> which are not <i>broker funds</i> and (6) advising on <i>Friendly Society tax-exempt policies (other than Holloway sickness policies where the Holloway policy special application conditions are met)</i>	(b)	Meets full qualification requirement until 31 December 2012. On and after 31 December 2012 this must be combined with qualification gap-fill. This gap-fill constitutes additional structured continuing professional development, which need not be by examination, completed and verified by an <i>accredited body</i>
12	Advising on and dealing in <i>securities</i> which are not <i>stakeholder pension schemes, personal pension schemes or broker funds</i>		
13	Advising on and dealing in <i>derivatives</i>		

Activity Number	Activity	Key - extent to which qualification meets qualification requirement	
7	Advising on <i>long-term care insurance contracts</i>	1 or (2 + 3) or (4 + 5 + 6)	Meets full qualification requirement
8	Advising on <i>investments</i> in the course of <i>corporate finance business</i>		
9	Advising on <i>syndicate participation at Lloyd's</i>		
11	Undertaking the activity of a <i>pension transfer specialist</i>		
14 and 10	Managing <i>investments</i> and/or undertaking the activity of a <i>broker fund adviser</i>		
15	Overseeing on a day to day basis operating a <i>collective investment scheme</i> or undertaking activities of a <i>trustee or depositary of a collective investment scheme</i>		
16	Overseeing on a day to day basis <i>safeguarding and administering investments</i> or holding <i>client money</i>		
17	Overseeing on a day to day basis <i>administrative functions</i> in relation to <i>managing investments</i> : (i) arranging settlement; (ii) monitoring and processing corporate actions;		

	(iii) <i>client</i> account administration, liaison and reporting including valuation and performance measurement; (iv) <i>ISA</i> or <i>CTF</i> administration; (v) <i>Investment trust savings scheme</i> administration.		
18	Overseeing on a day to day basis <i>administrative functions</i> in relation to <i>effecting or carrying out contracts of insurance</i> which are <i>life policies</i> : (i) new business administration; (ii) <i>policy</i> alterations including surrenders and <i>policy</i> loans; (iii) preparing <i>projections</i> ; (iv) processing claims, including pension payments; (v) fund switching	1 or (2 + 3) or (4 + 5 + 6)	Meets full qualification requirement
19	Overseeing on a day to day basis <i>administrative functions</i> in relation to the operation of <i>stakeholder pension schemes</i> : (i) new business administration; (ii) receipt of or alteration to contributions; (iii) preparing <i>projections</i> and annual statements; (iv) administration of transfers; (v) handling claims, including pension payments; (vi) fund allocation and switching.		
20	Advising on a <i>regulated mortgage contract</i> for a non-business purpose		
21	Advising on <i>equity release transactions</i>		
22	Designing scripted questions for non-advised sales of <i>equity release transactions</i>		
23	Overseeing non-advised sales on a day-to-day basis of <i>equity release transactions</i>		

Part 2: Appropriate Qualifications Tables

Qualification provider	Qualification	Activity Number(s)	Key
ACI The Financial Markets Association	ACI Diploma (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	2, 3, 12, 13	a
	ACI Dealing Certificate when combined with Chartered Institute of Securities and Investment (CISI) Introduction to Securities and Investments and one of the Regulatory units of the Investment Operations Certificate (IOC)	15, 17	4
	ACI Operations Certificate when combined with Chartered Institute of Securities and Investment (CISI) Introduction to Securities and Investments and one of the Regulatory units of the Investment Operations Certificate (IOC)		
Association of Accounting Technicians	Member	15, 16, 17, 18, 19	4
Association of Certified International Investment Analysts (ACIIA)	CIIA qualification (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	2, 3, 12, 13	a
	Certified International Investment Analyst (CIIA)	14 and 10	2
Association of Chartered	Member or Affiliate	8	1

Certified Accountants	Fellow or Associate	15, 16, 17, 18, 19	4
Association of Corporate Treasurers	Fellow or Associate	15, 16, 17, 18, 19	4
Association of International Wealth Management (AIWM)	Certified International Wealth Manager Diploma (CIWM)	2, 3, 12, 13	a
		14 and 10	1
Blackburn College – University Centre	Foundation Degree Award in Financial Services	4 and 6	a
Bournemouth University	BA in Financial Services (1995 to 2001)	4 and 6	b
	MA in Financial Services (1995 to 2001)		
	Post Graduate in Financial Services (1995 to 2001)		
Calibrand / Scottish Qualifications Authority	Diploma in Professional Financial Advice	4 and 6	a
	Diploma in Professional Financial Advice (NMBA – Alternative Assessment method)		
CASS Business School	MSC in Banking and International Finance (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	2, 3, 12, 13	a
CFA Institute and the CFA Society of the UK	CFA Program (Level 1) plus Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)	2, 3, 12, 13	a
	CFA Program plus Unit 1 of the Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)		
	Associate	2, 3, 12, 13	b
	CFA Program (Level 1) plus Investment Management Certificate (pre-2010 exam standards)		
	CFA Program plus Unit 1 of the Investment Management Certificate (pre-2010 exam standards)		
	Fellow by examination	14 and 10	2
	CFA Program (Level 1)		
	Fellow or Associate by examination	8	1
		14 and 10	
		15, 16, 17, 18, 19	4
	Investment Management Asset Allocation Qualification	14 and 10	2
	Investment Regulation and Practice Paper of the Associate Examination	15, 16, 17	5
CFA Society of UK (Formerly the UK Society of Investment Professionals/ Institute of Investment Management and Research (IIMR))	Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on securities	2, 12	a
	Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on packaged products	4 and 6	
	Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on derivatives	3, 13	
	Investment Management Certificate (both pre and post 2010 examination standards)	8	1
		15, 16, 17, 18, 19	4

		15, 16, 17	5
		14 and 10	1
	Investment Practice Version of Investment Management Certificate (both pre and post 2010 Appropriate Exam standards)	14 and 10	2
	Investment Practice version of the Investment Management Certificate	8	2
	UK Regulation and Markets version of the Investment Management Certificate	8	3
		15, 16, 17, 19	5
		18	6
	Unit 1 – UK Regulation and Markets	14 and 10	3
Chartered Alternative Investment Analysis Association (CAIA)	CAIA Level 1 (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation)	2, 12	b
Chartered Institute of Bankers in Ireland	Fellow or Associate	15, 16, 17, 18, 19	4
Chartered Institute of Bankers in Scotland	Diploma in Investment Planning (Existing Adviser) Post 2010 examination standards	4 and 6	a
	Diploma in Investment Planning (New Adviser) Post 2010 examination standards		
	Diploma in Investment Planning (Retail Banking) (New Adviser) Post 2010 examination standards		
	Diploma in Investment Planning (Retail Banking) (Existing Adviser) Post 2010 examination standards		
	Diploma in investment planning (work based assessment)		
	Associate (March 1992 to July 1994 syllabus (including top-up test))	4 and 6	b
	Associate (post August 1994 syllabus)		
	Certificate in Investment Planning (Pre 17/09/2004)		
	Chartered Banker (where candidates hold UK Financial Services and Investment modules)		
	Diploma in Investment Planning (current)		
	Associateship - (must include a pass in the Investment Paper)	2, 3, 12, 13	b
	Certificate in Investment Planning – Paper 1	15, 16, 18, 19	4
		15, 16, 17, 18, 19	5
	Certificate in Investment Planning	17	4
	Member or Associate	15, 16, 17, 18, 19	4
	Mortgage Advice and Practice Certificate	20	1
	Certificate in Mortgage Advice and Practice (MAPC) (Pre 16/09/2004)	20, 21, 22	1
	MAPC bridge paper plus entry requirements (Pre 31/10/2004)	20	1
	Certificate in Investment Planning – Paper 1 (Pre 16/09/2004)	20, 21, 22	3
	MAPC – Paper 1 (Pre 16/09/2004)	20	3
Mortgage Advice and Practice Certificate – Paper 1 (Post 17/09/2004)	20, 21	3	
Equity Release Mortgage Advice and Practice	21, 22	1	

	Certificate (ERMAPC)		
	Lifetime Mortgage Advice and Practice Certificate		
	MAPC Bridge paper plus entry requirements (Pre 16/09/2004)		
	Certificate in Mortgage Advice and Practice (MAPC) (Pre 16/09/2004) - Paper 1	21, 22	3
	Equity Release Mortgage Advice and Practice Certificate (ERMAPC)	23	4
		23	5
		23	6
Chartered Institute of Management Accountants	Fellow or Associate	15, 16, 17, 18, 19	4
Chartered Institute of Public Finance and Accountancy	Fellow or Associate	15, 16, 17, 18, 19	4
Chartered Institute for Securities and Investment (CISI) - (Formerly the Securities and Investment Institute (SII); formerly The Securities Association)	Investment Advice Diploma (where candidate holds 3 modules including the private client advice module)	2, 12	a
	Investment Advice Diploma (where candidate holds 3 modules including the derivatives module)	4 and 6	
	Investment Advice Diploma (where candidate holds 3 modules including the securities module)	3, 13	
	Masters in Wealth Management (Post 2010 examination standards)	2, 3, 4 and 6, 12, 13	b
	Certificate in Private Client Investment Advice and Management	2, 3, 4 and 6, 12, 13	
		14 and 10	1
	Certificate in Private Client Investment Advice and Management (attained through a CISI competency interview and presentation only)	2, 3, 4 and 6, 12, 13	b
		14 and 10	1
	Diploma (where candidate holds 3 modules as recommended by the firm)	2, 3, 4 and 6, 12, 13	b
	Investment Advice Certificate		
	Masters in Wealth Management (Pre 2010 examination standards)		
	Member of the Securities Institute (MSI Dip) (where candidate holds 3 modules as recommended by the firm)		
	Certificate in Corporate Finance	8	1
		15, 16, 17, 18, 19	4
	Certificate in Derivatives – Paper 2	15, 16, 17, 18, 19	4
	Certificate in Investment and Financial Advice – Paper 1	21, 22	3
	Certificate in Investment Management	8	1
		15, 16, 17, 19	4
		15, 16, 17	5
14 and 10		1	
Certificate in Investment Management – Paper 2	8	2	
	14 and 10		
Certificate in Securities	8	1	

Certificate in Securities – Paper 2	15, 16, 17, 18, 19	4
Certificate in Securities and Derivatives – Paper 2	19	4
Certificate in Securities and Financial Derivatives	8	1
Certificate in Securities and Financial Derivatives – Paper 2	15, 16, 17, 18	4
Client Services Qualification	15, 16, 17, 18, 19	4
Diploma	15, 16, 17, 18, 19	4
Diploma – Corporate Finance Paper	8	2
Diploma – Global Operations Management Module	15, 16, 17, 18, 19	4
	15, 16, 17	5 6
Diploma – International Operations Management Module	15	4
	15, 16	5 6
		17	4
	5	
	6	
Diploma – International Operations Module	16, 18, 19	4
Diploma – Operations Management Module	15, 16, 17, 18, 19	4
	15, 17	5
	15, 16, 17	6
Diploma – Regulation and Compliance Module	8	3
	14 and 10	
	15, 16, 17, 18, 19	5
Diploma (must include a pass in Regulation and Compliance Paper)	8	1
Diploma (where candidate holds 3 modules as recommended by the firm)	14 and 10	1
Investment Administration Qualification – Asset Servicing Module	15, 16, 17	6
Investment Administration Qualification – Basics of CREST Module	15, 16, 17	6
Investment Administration Qualification – Bond Settlement Module	15, 16, 17	6
Investment Administration Qualification – Collective Investment Schemes Administration Module	15, 16, 17	6
Investment Administration Qualification – CREST Settlement Module	15, 16, 17	6
Investment Administration Qualification – Derivatives Operations Module	15, 16, 17	6
Investment Administration Qualification – Exchange-Traded Derivative Administration Module	15, 16, 17	6
Investment Administration Qualification – FSA Regulatory Environment Module	15, 16, 17	5
Investment Administration Qualification – Global Custody Module	15, 16, 17	6

Investment Administration Qualification – Global Securities Operations Module	16, 17	6
Investment Administration Qualification – Global Settlement Module	15, 16, 17	6
Investment Administration Qualification – IMRO Regulatory Environment Module	8	3
	14 and 10	
	15, 16, 17, 18, 19	5
Investment Administration Qualification – Introduction to Securities and Investment Module	15, 16, 17, 18, 19	4
Investment Administration Qualification – ISA Administration Module	15, 16, 17	6
Investment Administration Qualification – ISA and CTF Administration module	17	6
Investment Administration Qualification – ISA and PEP Administration Module	15, 16, 17	6
Investment Administration Qualification – Life Policy Administration Module	18	6
Investment Administration Qualification – OEIC Administration Module	15, 16, 17	6
Investment Administration Qualification – Operational Risk Module	15, 16, 17	6
Investment Administration Qualification – OTC Derivatives Administration Module	15, 16	6
Investment Administration Qualification – Pensions Administration module	19	6
Investment Administration Qualification - PEP Administration Module	15, 16, 17	6
Investment Administration Qualification – Portfolio Performance Measurement Module	15, 16	6
Investment Administration Qualification – Private Client Administration Module	15, 16, 17	6
Investment Administration Qualification – SFA Regulatory Environment Module	8	3
	14 and 10	
	15, 16, 17, 18	5
Investment Administration Qualification – Unit 2 FSA Regulatory Environment – (Formerly the Investment Administration Qualification – Regulatory Environment Module)	8	3
	14 and 10	
	18, 19	5
Investment Administration Qualification – Unit Trust Administration Module	15, 16, 17	6
Investment Advice Certificate	14 and 10	1
Investment Advice Certificate - Paper 1	15, 16, 17, 18, 19	4
		5
Investment Advice Certificate – Paper 1 (No new registrations)	20, 21, 22	3
Investment Advice Certificate – Paper 2	18, 19	6
Investment Advice Diploma (where candidates hold technical modules as recommended by the firm)	14 and 10	1
Investment Operations Certificate – Asset Servicing Module	15, 16, 17	6
Investment Operations Certificate – Collective Investment Schemes Administration Module	15, 16, 17	6
Investment Operations Certificate – CREST Settlement Module	15, 16, 17	6
Investment Operations Certificate – Exchange –	15, 16, 17	6

Traded Derivative Administration Module		
Investment Operations Certificate – FSA Financial Regulation Module	8	3
	14 and 10	
	15, 16, 17, 18, 19	5
Investment Operations Certificate – Global Securities Module	17	6
Investment Operations Certificate – Global Securities Operation Module	16	6
Investment Operations Certificate – Introduction to Securities and Investment Module	15, 16, 17, 18, 19	4
Investment Operations Certificate – ISA Administration Module	15, 16, 17	6
Investment Operations Certificate – Operational Risk Module	15, 16, 17	6
Investment Operations Certificate – OTC Derivatives Administration Module	15, 16	6
Investment Operations Certificate – Private Client Administration Module	15, 16, 17	6
Level 3 Certificate in Investments (Derivatives) – Unit 3	15, 16, 17, 18, 19	4
Level 3 Certificate in Investments (Investment Management)	14 and 10	1
	15, 16, 17, 18, 19	4
	15, 16, 17	5
Level 3 Certificate in Investments (Investment Management) – Unit 5	8	2
	14 and 10	
Level 3 Certificate in Investments (Securities and Financial Derivatives)	8	1
	15, 16, 17, 18, 19	4
Level 3 Certificate in Investments (Securities)	8	1
Level 3 Certificate in Investments (Securities) – Unit 2	15, 16, 17, 18, 19	4
Level 6 Diploma in Wealth Management	14 and 10	1
Masters in Wealth Management	14 and 10	1
Member of the Securities Institute by examination	15, 17, 19	4
Principles of Financial Regulation	8	3
	18, 19	5
SFA Corporate Finance Representative Examination	8	1
	15, 16, 17, 18, 19	4
SFA Futures and Options Representative Examination	15, 16, 17, 18, 19	4
	15, 16, 17	5
SFA Registered Persons Examination – Section 1 (Regulation)	8	3
	14 and 10	
	15, 16, 17, 18, 19	5
SFA Securities and Financial Derivatives Representative Examination	8	1
	15, 16, 17, 18, 19	4
	15, 16, 17	5
SFA Securities Representative Examination	8	1

		15, 16, 17, 18, 19	4
		16, 17	5
	TSA Registered Representative Examinations	8	1
		15, 16, 17, 18, 19	4
		15, 16	5
	Unit 1 – Financial Regulation	14 and 10	3
	Unit 1 Financial Regulation (Formerly the Securities Institute Regulatory Paper)	8	3
		15, 16, 17, 18, 19	5
	Unit 6 – Principles of Financial Regulation	14 and 10	3
		15, 16, 17	5
Chartered Insurance Institute	Certificate in Securities Advice and Dealing	2, 12	a
	Diploma in Regulated Financial Planning		
	Diploma in Regulated Financial Planning (attained through a CII alternative assessment day)	4 and 6	a
	Fellow or Associate (life and pensions route only)	2, 3, 12, 13	b
	Advanced Financial Planning Certificate	2, 3, 4 and 6, 12, 13	b
	Diploma in Financial Planning		
	Fellow (FCII) (where candidates hold appropriate life and pensions modules)		
	Fellow (FLIA Dip)		
	Advanced Diploma in Financial Planning		
	Associate (ACII) (where candidate holds appropriate life and pension modules)		
	Associate (ALIA Dip)		
	Certificate in Financial Planning plus the Award in Long Term Care Insurance		
	G80 paper of Advanced Financial Planning Certificate (October 2004) plus appropriate exam requirements for TC 2.1.4R(1)(f)	7	1
	G70 Paper of the Advanced Financial Planning Certificate	8	1
	Award in London Market Insurance	9	1
	Fellow or Associate including three pensions-related subjects as confirmed by the examining body		
	G60 paper of Advanced Financial Planning Certificate	11	1
	Unit AF3 of the Advanced Diploma in Financial Planning		
	Certificate of Insurance Practice	18	4
	Certificate of Insurance Practice (life or pensions route)		
	FA1 – Life office administration		
	Fellow or Associate (life and pensions route only)	18	6
	Life assurance paper (735) from the Associateship		
	Certificate of Insurance Practice (Pensions route)		
	Fellow or Associate (Pensions route)	19	6
	Certificate in Mortgage Advice	20	1
Certificate in Equity Release (Formerly known as Certificate in Financial Planning and Lifetime Mortgages)	21	1	
Certificate in Equity Release	22	1	

		23	4
		23	5
		23	6
	Advanced Financial Planning Certificate (must include a pass in G70 paper)	14 and 10	1
	Certificate in Discretionary Investment Management		
	Fellow or Associate	15, 16, 17, 18, 19	4
	Financial Planning Certificate – Paper 1	15, 16, 17, 18, 19	4
		15, 16, 17, 18, 19	5
	CF1 – UK financial services, regulation and ethics	18, 19	4
		18, 19	5
	FA2 – Pensions administration paper		
	Financial Planning Certificate – Paper 2	18, 19	6
	Pensions law, taxation and administration paper (740) from the Associateship		
	Certificate in Mortgage Advice – Paper 1	20, 21	3
	Mortgage Advice Qualification (MAQ) plus entry requirements	20, 21, 22	1
	Financial Planning Certificate – Paper 1 (No new registrations after 17/12/2004)	20, 21, 22	3
EFFAS Societies with accredited examinations	Certified European Financial Analyst	14 and 10	2
Faculty or Institute of Actuaries	Fellow or Associate or where the individual has passed all of the following modules CT1, CT2, CT4, CT5, CT6, CT7 and CT8	2, 3, 4 and 6, 12, 13	a
		14 and 10	1
	Associate – achieved by examination passed before 1 December 2001 (must include a pass in Subject 301 – Investment and Asset Management (syllabus in force from 1998))	14 and 10	1
	Associate – achieved by examination passed after 1 December 2001 (must include a pass in subject 301 – Investment and Asset Management (syllabus in force from 1998))	14 and 10	2
	Fellow or Associate	19	6
	Fellow – achieved by examination (must include a pass in subjects 301 and 401 Investment and Asset Management (syllabus in force from 1998))	14 and 10	1
	Fellow or Associate	11	1
		16, 17, 18, 19	4
		18	6
	Fellow or Associate by examination (must include Investment Paper E (Syllabus in force until 1998))	14 and 10	1
	Fellow or where the individual has passed all of the following modules CA1 and SA2	18	4
Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	Series 7 – General Securities Representatives Examination (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation)	2, 3, 12, 13	b
Financial Skills	FSSC Advanced Apprenticeship in Advising on	7	1

Partnership (formerly the Financial Services Skills Council (FSSC))	Financial Products (Long Term Care Insurance Pathway)		
	FSSC Advanced Apprenticeship in Retail Financial Services (Investment Administration Pathway including either Asset Servicing / CREST Settlement / Global Securities or ISA and CTF Administration)	17	6
	FSSC Advanced Apprenticeship in Retail Financial Services (Investment Administration Pathway including FSA Regulatory Environment or Principles of Financial Regulation)	17	5
	FSSC Advanced Apprenticeship in Retail Financial Services (investment Administration Pathway including the Introduction to Securities and Investment module)	17	4
	FSSC Advanced Apprenticeship in Retail Financial Services (Long Term Insurance Pathway including CF1)	18	4
	FSSC Advanced Apprenticeship in Retail Financial Services (Long Term Insurance Pathway including CF1)	18	5
	FSSC Advanced Apprenticeship in Retail Financial Services (Long Term Insurance Pathway including CF1 and either FA1 or FA2)	18	6
	FSSC Advanced Apprenticeship in Retail Financial Services (Long Term Insurance Pathway including CF1 and FA2)	19	1
	FSSC Advanced Apprenticeship in Advising on Financial Products (Mortgage Advice Pathway)	20	1
ICMA Centre/ University of Reading (Formerly ISMA Centre/ University of Reading)	Diploma in Capital Markets, Regulation and Compliance	17	5
	Operations Certificate Programme (OCP)	16, 17	6
ifs School of Finance (formerly the Chartered Institute of Bankers)	Diploma for Financial Advisers (post 2010 examination standards)	4 and 6	a
	Professional Certificate in Banking (PCertB) (where candidate has passed the Practice of Financial Advice module)		
	Associateship - (must include a pass in the Investment / Investment Management Paper)	2, 3, 4 and 6, 12, 13	b
	Diploma for Financial Advisers (pre 2010 examination standards)	4 and 6	b
	Professional Investment Certificate		
	Certificate for Financial Advisers and Certificate in Long-term Care Insurance	7	1
	Pensions paper of Professional Investment Certificate	11	1
	Certificate for Financial Advisers – Paper 1	15	5
	Fellow or Associate	15, 16, 17, 18, 19	4
	Certificate for Financial Advisers – Paper 1 (Pre 31/10/2004)	15, 16, 17, 18, 19	4
		20, 21, 22	3
	Certificate for Financial Advisers – Paper 1 (Post 01/11/2004)	18, 19	4
			5
Certificate for Financial Advisers – Paper 2 (Pre 31/10/2004)	18, 19	6	
CeMAP Bridge paper plus entry requirements	20	1	
Certificate in Mortgage Advice and Practice (Post	20	1	

	01/11/2004)		
	Diploma for Mortgage Advice and Practice DipMAP (plus entry requirements)	20	1
	CeMAP bridge paper plus entry requirements (Pre 31/10/2004)	21, 22	1
	Certificate in Mortgage Advice and Practice (CeMAP) (Pre 31/10/2004) - Paper 1	20, 21	3
	Certificate in Mortgage Advice and Practice (Post 01/11/2004) - Paper 1	20, 21	3
	Certificate in Mortgage Advice and Practice (CeMAP) (Pre 31/10/2004)	20, 21, 22	1
	Certificate in Regulated Equity Release (Formerly known as Certificate in Lifetime Mortgages)	21, 22	1
		23	4
		23	5
		23	6
Institute of Chartered Accountants in England and Wales	Fellow or Associate	8	1
		15, 16, 17, 18, 19	4
	Initial Test of Competence	18, 19	6
Institute of Chartered Accountants in Ireland	Fellow or Associate	8	1
		15, 16, 17, 18, 19	4
	Initial Test of Competence	19	6
Institute of Chartered Accountants in Scotland	Member	8	1
		15, 16, 17, 18, 19	4
	Initial Test of Competence	19	6
Institute of Chartered Secretaries and Administrators	Certificate in Collective Investment Scheme Administration	15, 16, 17, 18	4
			5
		15, 16	6
		19	4
	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)		4
		15, 16, 17	5
			6
Fellow or Associate	15, 16, 17, 18, 19	4	
Institute of Financial Planning	Certified Financial Planner	4 and 6	b
	Fellowship		
Insurance Sector Education and Training Authority	National Diploma: Financial Services Long-Term Risk Assessment	7	2
Investment Management Association	Investment Administration Management Award	15, 16, 17	6
Investment Property Forum	IPF Certificate in Property Investment	14 and 10	2
Japanese Bankers Association	Registered Representative of Public Securities Examination (pre-April 1990)	8	2
	Representative of Public Securities Qualification – Class 1		
Japanese Securities Dealers Association	Representative of Public Securities Qualification – Type 1 (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	2, 3, 12, 13	b
	Representative of Public Securities Examination (pre April 1990)	8	2

	Representative of Public Securities Qualification – Type 1		
Law Society of England and Wales	Module B(ii), Securities and Portfolio Management	8	2
	Module B(i), Retail Branded/ Packaged Products	18, 19	6
Law Society of England and Wales/ Law Society of Northern Ireland	Solicitor	15	4
Law Society of England and Wales/ Law Society of Scotland/ Law Society of Northern Ireland	Solicitor	17, 18, 19	4
Lloyd's	Lloyd's and London Market Introductory Test (Formerly the Lloyd's Introductory Test)	9	1
Lloyd's/ Chartered Insurance Institute	Lloyd's Market Certificate	9	1
London Stock Exchange (records are now kept by The Chartered Institute for Securities and Investment (CISI); Formerly the Securities and Investment Institute (SII); formerly The Securities Association)	London Stock Exchange Full Membership Exams (and other regional stock exchanges as merged with London Stock Exchange) – where candidate holds three or four papers or holds both the Stock Exchange Practice and Techniques of Investment papers	2, 3, 4 and 6, 12, 13	b
		14 and 10	1
	Stock Exchange Registered Representative Examination	8	1
		15, 16, 17, 18, 19	4
		15, 16	5
Manchester Metropolitan University	BA (Hons) Financial Services, Planning and Management	2, 3, 4 and 6, 12, 13	a
N/A	In-house module (only where the firm can demonstrate that none of the listed examinations are appropriate)	15, 16, 17, 18, 19	6
NIBE SVV the Dutch Institute for the Banking, Insurance and Stockbroking Industry	Examination	8	2
Pensions Management Institute	Diploma in Regulated Retirement Advice	4 and 6	a
	Fellow or Associate by examination	11	1
	Module 201: Providing for Retirement	19	4
	Fellow or Associate	15, 16, 17, 18, 19	4
	Diploma in Member-Directed Pension Scheme Administration	18	6
	Fellow or Associate by examination	18, 19	6
Sheffield Hallam University	BA in Financial Services (1995 to 2001)	4 and 6	b
	MA in Financial Services (1995 to 2001)		
	Post Graduate in Financial Services (1995 to 2001)		
Society of Investment Analysts in Ireland	Certificate in Investment Management (at least 3 papers passed by examination)	14 and 10	2
South African Institute of Financial Markets	Ordinary and Senior Certificates	8, 14 and 10	2
Swiss Finance Institute	Dual degree Executive MBA in Asset and Wealth Management	14 and 10	2
The Securities Analysts Association of Japan	CMA Level 2 (for individuals advising before 30 June 2009)	2, 3, 12, 13	b

(SAAJ)	CMA Level 2 (for individuals not advising before 30 June 2009 – provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)		
	CMA Level 2	8	2
	Secondary Examination		
	Chartered Member	14 and 10	2
University of Stirling	BA in Finance	2, 4 and 6, 12	b
	BA in Finance and Accounting	2, 3, 4 and 6, 12, 13	b
	MSc in Finance	2, 3, 12, 13	b
	MSc in international Accounting and Finance (where candidates hold modules as recommended by the firm)	2, 3, 12, 13	b
		8	2
		14 and 10	1
	MSc in Investment Analysis	2, 3, 12, 13	b
14 and 10		1	
University of the West of England	BA in Financial Services (1995 to 2001)	4 and 6	b
	MA in Financial Services (1995 to 2001)		
	Post Graduate in Financial Services (1995 to 2001)		

FEES (MISCELLANEOUS AMENDMENTS) (NO 5) INSTRUMENT 2012

- 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 (Fees);
 - (2) section 101 (Part 6 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 14 December 2012.

Amendments to the Handbook

- D. The Fees manual (FEES) 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 Fees (Miscellaneous Amendments) (No 5) Instrument 2012.

By order of the Board
13 December 2012

Annex A

Amendments to the Fees manual (FEES)

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

4 Annex 1R 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.12 Advisory <u>Advisors</u> , arrangers, dealers or brokers (holding or controlling client money or assets, or both)	...
A.13 Advisory <u>Advisors</u> , arrangers, dealers or brokers (not holding or controlling client money or assets, or both)	...

...

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.12	APPROVED PERSONS The number of <i>persons</i> approved to perform the <i>customer function</i> (CF 30);

	<p>but excluding those <i>persons</i> who work solely in the <i>firm's MTF</i> operation 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> <p><u>ANNUAL INCOME</u></p> <p><u>Annual income as defined in FEES 4 Annex 11AR.</u></p>
A.13	<p><u>APPROVED PERSONS</u></p> <p>The number of <i>persons</i> approved to perform the <i>customer function (CF 30)</i>, but excluding those <i>persons</i> who work solely in the <i>firm's MTF</i> operation 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> <p><u>ANNUAL INCOME</u></p> <p><u>Annual income as defined in FEES 4 Annex 11AR.</u></p>
A.14	<p><u>APPROVED PERSONS</u></p> <p>The number of <i>persons</i> approved to perform the <i>customer function (CF 30)</i> who advise <i>clients</i> in connection with <i>corporate finance business</i> or perform related functions.</p> <p><u>ANNUAL INCOME</u></p> <p><u>Annual income as defined in FEES 4 Annex 11AR.</u></p>

...

Part 3	This table indicates the valuation date for each fee-block. A <i>firm</i> 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.12	Relevant <i>approved persons</i> as at 31 December. <u>Annual income for the financial year ended in the calendar year ending 31 December.</u>
A.13	Relevant <i>approved persons</i> as at 31 December. <u>Annual income for the financial year ended in the calendar year ending 31 December.</u>
A.14	Relevant <i>approved persons</i> as at 31 December. <u>Annual income for the financial year ended in the calendar year ending 31 December.</u>

...	
-----	--

...

4 Annex 2R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2012 to 31 March 2013

Part 1

This table shows the tariff rates applicable to each fee-block

...		
Activity group	Fee payable	
...		
A.12	<u>Band Width (No. of persons) (£ thousands of annual income (AI))</u>	<u>Fee (£/person) (£/£ thousand or part £ thousand of AI)</u>
	2—5 [tbc]	591.58 [tbc]
	6—35	591.58
	36—175	591.58
	176—1,600	591.58
	>1,600	591.58
	For a <i>professional firm</i> in A.12 the fee is calculated as above less 10%.	
A.13	For class (2) <i>firms</i> :	
	<u>Band Width (No. of persons) (£ thousands of annual income (AI))</u>	<u>Fee (£/person) (£/£ thousand or part £ thousand of AI)</u>
	2—3 [tbc]	1,191.47 [tbc]
	4—30	1,191.47
	31—300	1,191.47
	301—2,000	1,191.47
	>2,000	1,191.47
	For class (1) <i>firms</i> : £1,850 For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.	
A.14	<u>Band Width (No. of persons) (£</u>	<u>Fee (£/person) (£/£ thousand or part £</u>

	<u>thousands of annual income (AI)</u>	<u>thousand of AI</u>
	2—4 [tbc]	1,742.49 [tbc]
	5—25	1,742.49
	26—80	1,742.49
	81—199	1,742.49
	>199	1,742.49
...		

After 4 Annex 11 insert the following new annex. The text is not underlined.

4 Annex 11AR Definition of annual income for the purposes of calculating fees in fee-blocks A.12, A.13 and A.14

Annual Income

“Annual income” is an amount equal to the net amount retained by the *firm* of all income due to the *firm* in respect of, or in relation to, the provision in the *UK* of the *regulated activities* specified in *FEES* 4 Annex 1R, Part 1 as belonging to fee-blocks A.12, A.13 and A.14.

For the purposes of calculating annual income, ‘net amount retained’ means:

(a) all brokerages, *commissions*, *fees*, and other related income (for example, administration *charges*, *overrides*, profit shares etc) due to the *firm* in respect of, or in relation to, the provision in the *UK* of the *regulated activities* specified in *FEES* 4 Annex 1R, Part 1 as belonging to fee-blocks A.12, A.13 or A.14 and which the *firm* has not rebated to *clients* or passed on to other authorised firms (for example, where there is a commission chain).

Plus:

(b) any ongoing *commission* from previous business received by the *firm* during the reporting year.

Plus:

(c) the ‘commission-equivalent’ of any relevant business. In this instance, the ‘commission equivalent’ is an estimate of the amount the *firm* would otherwise have received for any *regulated activity* under (a) above, but for which it has made a business decision not to charge.

Amend the following as shown.

**4 Annex 12G Guidance on the calculation of tariffs set out in FEES 4 Annex 1R
Part 2**

The following ~~table sets~~ tables set out guidance on how a *firm* should calculate relevant tariffs.

Table 1: Fee-block A.4

...

Table 2: Fee-blocks A.12, A.13 and A.14

<u>Calculating and apportioning annual income – FEES 4 Annex 11AR</u>
<u>Calculating annual income</u>
<p><u>(1) Annual income should include all amounts due to the <i>firm</i> arising out of the <i>regulated activities</i> referred to in fee-blocks A.12, A.13 and A.14 for which the <i>firm</i> holds permission, including regular <i>charges</i> and instalments due to the <i>firm</i> during the reporting year.</u></p> <p><u>The <i>firm</i> should refer to the fee-block definitions in FEES 4 Annex 1R, Part 1 to decide which particular income streams should be taken into account when calculating its annual income for the purposes of fee-blocks A.12, A.13 and A.14.</u></p> <p><u>(2) To avoid any doubt, the <i>firm</i> should exclude from the calculation of its annual income any <i>regulated activities</i> belonging to fee-blocks A.12, A.13 and A.14 where the performance of such <i>regulated activities</i> is entirely incidental to the carrying out by the <i>firm</i> of the <i>regulated activity</i> of <i>managing investments</i> belonging to fee-block A.7.</u></p> <p><u>(3) To avoid double-counting, amounts which have been passed on to other <i>firms</i> may be excluded from the calculation of annual income. Transfers of income to other <i>firms</i> may be especially common within <i>groups</i> where, to present a single interface to <i>clients</i>, all amounts due to the <i>group</i> may be collected by one <i>firm</i> for subsequent redistribution to other <i>firms</i> within the <i>group</i>. It is for <i>groups</i> themselves to decide the most convenient way to report such annual income – i.e. whether the <i>firm</i> which receives the full amount should declare that full amount, or whether each <i>firm</i> in the <i>group</i> should report its separate distribution.</u></p> <p><u>(4) The <i>firm</i> should include earnings from those who will become its appointed representatives immediately after authorisation.</u></p> <p><u>(5) If any <i>fee</i> payable by the <i>firm</i> to another party for arranging a transaction with a <i>client</i> exceeds the amount payable by the end <i>client</i>, the <i>firm</i> may not take that excess into account in calculating the net amount retained but must instead net the sum payable by the end <i>client</i> to zero.</u></p> <p><u>(6) The total should include administration charges and any interest from income related to the <i>regulated activities</i>.</u></p> <p><u>(7) Items such as general business expenses (e.g. employees' salaries and overheads) should not be deducted, nor any penalties or fines that have been levied against the <i>firm</i>.</u></p> <p><u>(8) Rebates to <i>clients</i> should be excluded and also <i>fees</i> or <i>commission</i> passed to other authorised <i>firms</i>.</u></p>

(9) Authorised professional firms should exclude income from non-mainstream regulated activities. They may estimate the proportion of their business that is derived from those activities and split the income from individual invoices accordingly.

Apportioning income

Where a firm cannot separate its income on the basis of activities, it may apportion the income on the basis of the proportionate split of business that the firm otherwise undertakes. For instance:

(1) If a firm receives annual income from a platform-based business it may report this in line with a wider breakdown of its activities.

(2) A firm providing corporate finance advice which does not maintain records of the split between regulated activities and non-regulated activities for individual cases may calculate that regulated business accounts for a certain proportion of its business overall and apply that as a multiplier across its income.

(3) A firm may allocate ongoing commission from previous business on the basis of the type of firm it receives the commission from. This avoids tracking back legacy business which may no longer match the provider's current business model.

(4) An authorised professional firm may estimate the proportion of its business that is derived from regulated activity and split its income for individual invoices accordingly.

(5) If a firm has invested income from regulated activities, then any interest received should be reported as income, in proportion to the volume of regulated business it undertakes to avoid tracking back old payments.

(6) Firms' systems ought to be able to distinguish UK from non-UK business to establish which conduct of business regime it was conducted under. If, however, they do not relate the figures back to income streams for the specific regulated activities in a particular fee-block then the firm may make a proportionate split as described above, calculating its regulated UK income on the basis of the overall split between UK and overseas income.

(7) It is for individual firms to determine how they should calculate the appropriate split of income. The FSA is not prescriptive about the methodology. It requires only that:

(a) the approach should be proportionate – the FSA is looking for firms to make their best efforts to estimate the split;

(b) the firm must be able on request to provide a sound and clearly expressed rationale for its approach – for example, if all invoices were analysed over a particular period, the firm should be able to justify the period as representative of its business across the year;

(c) the methodology should be objective – for example, based on random sampling of invoices or random stratified sampling;

(d) the firm must on request be able to provide an audit trail which demonstrates that the choice of methodology was properly considered at an appropriate level or in the appropriate forums within the firm, and the decision periodically reviewed at the same level or in an equivalent forum.

...

**5 Annex 1 Annual General Levy Payable in Relation to the Compulsory
Jurisdiction for 2012/2013**

...

Compulsory jurisdiction – general levy

Industry block	Tariff base	General levy payable by firm
...		
<p>8- <u>Advisory Advisors</u>, <i>arrangers</i>, dealers or brokers holding and controlling <i>client money</i> and/or assets</p>	<p>Number of relevant <i>persons</i> approved to perform the <i>customer function (CF30)</i>, but excluding those <i>persons</i> 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 relating to these.</p> <p><u>Annual income as defined in FEES 4 Annex 11AR relating to <i>firm's relevant business</i>.</u></p>	<p>£15 per relevant <i>approved person</i> subject to a minimum levy of £35</p> <p>[tbc]</p>
<p>9 <u>Advisory Advisors</u>, <i>arrangers</i>, dealers or brokers not holding and controlling <i>client money</i> and/or assets</p>	<p>Number of relevant <i>persons</i> approved to perform the <i>customer function (CF30)</i>, but excluding those <i>persons</i> 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 relating to these.</p> <p><u>Annual income as defined in FEES 4 Annex 11AR relating to <i>firm's relevant business</i>.</u></p>	<p>£10 per relevant <i>approved person</i> subject to a minimum levy of £35</p> <p>[tbc]</p>
...		

Annex B

Amendments to the Supervision manual (SUP)

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

16 Annex 18AR Retail Mediation Activities Return ('RMAR')

...

SECTION J: data required for calculation of fees

...

FSA	FOS	FSCS
Annual <u>Regulated</u> Income	Relevant Annual Income	Annual Eligible Income
<u>(£s)</u>	<u>(£s)</u>	<u>(£s)</u>

...

16 Annex 18BG Notes for completion of the Retail Mediation Activities Return ('RMAR')

...

Section J: data required for calculation of fees

...

Data for fees calculations	<i>Firms</i> will need to report data for the purposes of calculating <i>FSA</i> , <i>FOS</i> , and <i>FSCS</i> levies.
FSA	The relevant information required is the tariff data set out in <i>FEES</i> 4 Annex 1R Part 2 under fee-blocks A.12, A.13, A.18 and A.19 and, in respect of fee blocks A.12 and A.13, the tariff data set out under the definition of “annual income” in Section J of <i>SUP</i> 16 Annex 18AR as read together with the guidance on calculating and apportioning annual income below. Note that <i>firms</i> are required to report tariff data information relating to all business falling within fee-blocks A.12/A.13/A.18/A.19 <u>and not simply that relating to retail investments.</u>
FOS	The relevant information required is the tariff data set out in <i>FEES</i> 5 Annex 1R industry blocks <u>8, 9,</u> 16 and 17 and, in respect of industry blocks 8 and 9, the tariff data set out under the definition of “annual income” in Section J of

...	<i>SUP 16 Annex 18AR</i> as read together with the guidance on calculating and apportioning annual income below. Note that <i>firms</i> are required to report tariff data information relating to all business falling within industry blocks 8/9, 16 and 17.
-----	--

...

The *guidance* in the following table sets out the *rules* which relate to the data required in Section J of *SUP 16 Annex 18AR*.

	<u>FSA</u> <u>Annual Regulated Income</u> (£s)	<u>FOS</u> <u>Relevant Annual Income</u> (£s)	<u>FSCS</u> <u>Annual Eligible Income</u> (£s)
<u>Home finance Mediation</u>	<u>FEES 4 Annex 1R Part 2 fee-block A18</u>	<u>FEES 5 Annex 1R industry block 16</u>	<u>FEES 6 Annex 3R sub-class E2</u>
<u>Non-investment insurance mediation</u>	<u>FEES 4 Annex 1R Part 2 fee-block A19</u>	<u>FEES 5 Annex 1R industry block 17</u>	<u>FEES 6 Annex 3R sub-class B2</u>
<u>Life and pensions mediation</u>	<u>FEES 4 Annex 11AR, 12G</u>	<u>FEES 5 Annex 1R industry block 8, 9</u>	<u>FEES 6 Annex 3R sub-class C2</u>
<u>Investment mediation</u>	<u>FEES 4 Annex 11AR, 12G</u>	<u>FEES 5 Annex 1R industry block 8, 9</u>	<u>FEES 6 Annex 3R sub-class D2</u>

The following table sets out the *guidance* how a *firm* should calculate annual income as defined in Section J of *SUP 16 Annex 18AR*.

Guidance on calculating and apportioning annual income
Calculating annual income
(1) Annual income should include all amounts due to the <i>firm</i> arising out of the <i>regulated activities</i> referred to in fee blocks A.12 and A.13 for which the <i>firm</i> holds permission, including regular <i>charges</i> and instalments due to the <i>firm</i> during the reporting year.

The *firm* should refer to the fee block definitions in FEES 4 Annex 1R, Part 1 to decide which particular income streams should be taken into account when calculating its annual income for the purposes of fee blocks A.12 and A.13.

(2) To avoid any doubt, the *firm* should exclude from the calculation of its annual income any *regulated activities* belonging to fee blocks A.12 and A.13 where the performance of such *regulated activities* is entirely incidental to the carrying out by the *firm* of the *regulated activity of managing investments* belonging to fee block A.7.

(3) To avoid double counting, amounts which have been passed on to other firms may be excluded from the calculation of annual income. Transfers of income to other firms may be especially common within *groups* where, to present a single interface to *clients*, all amounts due to the *group* may be collected by one *firm* for subsequent redistribution to other *firms* within the *group*. It is for *groups* themselves to decide the most convenient way to report such annual income — i.e. whether the *firm* which receives the full amount should declare such full amount, or whether each *firm* in the *group* should report its separate distribution.

(4) The *firm* should include earnings from those who will become its appointed representatives immediately after authorisation.

(5) If any *fee* payable by the *firm* to another party for arranging a transaction with a *client* exceeds the amount payable by the *end client*, the *firm* may not take that excess into account in calculating the net amount retained but must instead net the sum payable by the *end client* to zero.

(6) The total should include administration charges and any interest from income related to the *regulated activities*.

(7) Items such as general business expenses (eg employees' salaries and overheads) should not be deducted, nor any penalties or fines that have been levied against the *firm*.

(8) Rebates to *clients* should be excluded and also *fees* or *commission* passed to other authorised *firms*.

(9) *Authorised professional firms* should exclude income from *non-mainstream regulated activities*. They may estimate the proportion of their business that is derived from such activities and split the income from individual invoices accordingly.

Apportioning income

Where a *firm* cannot separate its income on the basis of activities, it may apportion the income on the basis of the proportionate split of business that the *firm* otherwise undertakes. For instance:

(1) If a *firm* receives annual income from a platform-based business it may report this in line with a wider breakdown of its activities.

(2) A *firm* providing corporate finance advice which does not maintain records of the split between *regulated activities* and non-regulated activities for individual cases may calculate that regulated business accounts for a certain proportion of its business overall and apply that as a multiplier across its income.

(3) A *firm* may allocate ongoing *commission* from previous business on the basis of the type of *firm* it receives the *commission* from. This avoids tracking back legacy business which may no longer match the provider's current business model.

(4) An *authorised professional firm* may estimate the proportion of its business that is derived

from *regulated activity* and split its income for individual invoices accordingly.

(5) If a *firm* has invested income from *regulated activities*, then any interest received should be reported as income, in proportion to the volume of regulated business it undertakes to avoid tracking back old payments.

(6) *Firms'* systems ought to be able to distinguish *UK* from non-*UK* business to establish which conduct of business regime it was conducted under. If, however, they do not relate the figures back to income streams for the specific *regulated activities* in a particular fee block then the *firm* may make a proportionate split as described above, calculating its regulated *UK* income on the basis of the overall split between *UK* and overseas income.

(7) It is for individual *firms* to determine how they should calculate the appropriate split of income. The *FSA* is not prescriptive about the methodology. It requires only that:

(a) the approach should be proportionate—the *FSA* is looking for *firms* to make their best efforts to estimate the split;

(b) the *firm* must be able on request to provide a sound and clearly expressed rationale for its approach—for example, if all invoices were analysed over a particular period, the *firm* should be able to justify the period as representative of its business across the year;

(c) the methodology should be objective—for example, based on random sampling of invoices or random stratified sampling;

(d) the *firm* must on request be able to provide an audit trail which demonstrates that the choice of methodology was properly considered at an appropriate level or in the appropriate forums within the *firm*, and the decision periodically reviewed at the same level or in an equivalent forum.

...

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 6) INSTRUMENT
2012**

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 power listed above is specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 December 2012.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex.

Citation

- E. This instrument may be cited as the Retail Distribution Review (Adviser Charging No 6) Instrument 2012.

By order of the Board
13 December 2012

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

Requirement to be paid through adviser charges

- 6.1A.6 ~~G~~ ~~Services related to the *personal recommendation* may include, but are not~~
R ~~limited to:~~

'Related service(s)' for the purposes of COBS 6.1A includes:

- (1) *arranging or executing* a transaction which has been recommended to a *retail client* by the *firm*, an *associate* or another *firm* in the same *group* or conducting administrative tasks associated with that transaction; or
- (2) managing a relationship between a *retail client* (to whom the *firm* provides *personal recommendations on retail investment products*) and a *discretionary investment manager* or providing a service to such a client in relation to the investments managed by such a manager; or
- (3) recommending a discretionary investment manager to a retail client (to whom the firm provides personal recommendations on retail investment products).

...

Calculation of the cost of adviser services to a client

- 6.1A.16 G In order to meet its responsibilities under the *client's best interests rule* and *Principle 6* (Customers' interests), a *firm* should consider whether the *personal recommendation* or any other related service is likely to be of value to the *retail client* when the total charges the *retail client* is likely to be required to pay are taken into account.

...

PACKAGED BANK ACCOUNTS (AMENDMENT) INSTRUMENT 2012

Powers exercised

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

Commencement

- C. This instrument comes into force as follows:
- (1) the amendments in Part 1 of the Annex come into force on 1 January 2013;
and
 - (2) the amendments in Part 2 of the Annex come into force on 31 March 2013.

Amendments to the Handbook

- D. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Packaged Bank Accounts (Amendment) Instrument 2012.

By order of the Board
13 December 2012

Annex

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

Part 1: Comes into force on 1 January 2013

6 Product information

...

Price disclosure: connected goods or services

- 6.1.13 R (1) If a *policy* is bought by a *consumer* in connection with other goods or services a *firm* must, before conclusion of the contract, disclose its *premium* separately from any other prices and whether buying the *policy* is compulsory.
- (2) In the case of a *distance contract*, disclosure of whether buying the *policy* is compulsory may be made in accordance with the timing requirements under the distance communication *rules* (see *ICOBS* 3.1.8R, *ICOBS* 3.1.14R and *ICOBS* 3.1.15R).
- (3) This rule does not apply to policies bought in connection with other goods or services provided as part of a packaged bank account.

Part 2: Comes into force on 31 March 2013

5 Identifying client needs and advising

...

Eligibility to claim benefits: policies arranged as part of a packaged bank account

...

- 5.1.3C R (1) Throughout the term of a *policy* included in a *packaged bank account*, a *firm* must provide the *customer* with an eligibility statement, in writing, on an annual basis. This statement must set out any qualifying requirements to claim each of the benefits under the *policy* and recommend that the *customer* reviews his circumstances and whether he meets these requirements.
- (2) Where a *customer* has reached an age limit on claiming benefits under a travel insurance *policy* included in a *packaged bank account* (or will reach an age limit before the next annual statement is due), a *firm* must state this clearly and prominently in the statement and on an annual basis thereafter.

- (3) The statement (provided under *ICOBS 5.1.3CR(1)*) must not:
- (a) include any information other than that required under this *rule*; or
 - (b) form part of another *document* provided to the *customer* by the *firm*; or
 - (c) be included in the same mailing as any other *document* provided to the *customer* by the *firm*.

**CLIENT ASSETS SOURCEBOOK (EUROPEAN MARKETS INFRASTRUCTURE
REGULATION) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) section 138 (General rule-making power);
 - (2) section 139 (Miscellaneous ancillary matters);
 - (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 2013.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Client Assets sourcebook (CASS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Client Assets Sourcebook (European Markets Infrastructure Regulation) Instrument 2012.

By order of the Board
13 December 2012

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 order. The text is not underlined.

authorised central counterparty a *CCP* authorised or recognised under *EMIR*.

CCP as defined in article 2(1) of *EMIR*.

EMIR Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, sometimes referred to as the “European Markets Infrastructure Regulation”.

individual client account an account maintained by a *firm* at an *authorised central counterparty* for a *client* of the *firm* in respect of which the *authorised central counterparty* has agreed with the *firm* to provide *individual client segregation*.

individual client segregation as defined in article 39(3) of *EMIR*.

omnibus client account an account maintained by a *firm* at an *authorised central counterparty* for more than one *client* of the *firm* in respect of which the *authorised central counterparty* has agreed with the *firm* to provide *omnibus client segregation*.

omnibus client segregation as defined in article 39(2) of *EMIR*.

port means, in respect of the assets and positions recorded in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty*, action taken by that *authorised central counterparty* to transfer those assets and positions in accordance with article 48 of *EMIR* to another clearing member designated by the *individual client* (in the case of an *individual client account*) or designated by all of the *clients* for whom the account is held (in the case of an *omnibus client account*).

Amend the following as shown.

clearing house a clearing house through which transactions may be cleared and for the purposes of CASS 7 and CASS 7A, includes an *authorised central counterparty*.

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

7 Client money rules

...

7.2 Definition of client money

...

- 7.2.5 G Where a *firm* has received full title or full ownership to *money* under a collateral arrangement, the fact that it has also ~~taken~~ granted a security interest ~~over to its client to secure~~ its obligation to repay that *money* to the *client* would not result in the *money* being *client money*. This can be compared to a situation in which a *firm* takes a charge or other security interest over *money* held in a *client bank account*, where that *money* would still be *client money* as there would be no absolute transfer of title to the *firm*. However, ~~if that~~ where a *firm* has received *client money* under a security interest and the security interest includes a “right to use arrangement”, under which the *client* agrees to transfer all of its rights to *money* in that account to the *firm* upon the exercise of the right to use, the *money* may cease to be *client money*, but only once the right to use is exercised and the *money* is transferred out of the ~~account~~ *client bank account* to the *firm*.

...

Discharge of fiduciary duty

- 7.2.15 R *Money* ceases to be *client money* (having regard to CASS 7.2.17R where applicable) if it is paid:
- (1) it is paid to the *client*, or a duly authorised representative of the *client*; or
 - (2) it is paid to a third party on the instruction of the *client*, unless it is transferred to a third party in the course of effecting a transaction, in accordance with CASS 7.5.2R (Transfer of client money to a third party); or
 - (3) it is paid into a bank account of the *client* (not being an account which is also in the name of the *firm*); or
 - (4) ~~to the *firm* itself, when~~ it is due and payable to the *firm* (see in accordance with CASS 7.2.9R (Money due and payable to the *firm*)); or

- (5) it is paid to the firm itself, when it is as an excess in the client bank account (see CASS 7.6.13R(2) (Reconciliation discrepancies)); or
- (6) it is paid by an authorised central counterparty to a clearing member other than the firm in connection with a porting arrangement in accordance with CASS 7.2.15AR; or
- (7) it is paid by an authorised central counterparty directly to the client in accordance with CASS 7.2.15BR.

7.2.15A R Client money received or held by the firm and placed in a client transaction account that is an individual client account or an omnibus client account at an authorised central counterparty ceases to be client money for that firm if, as part of the default management process of that authorised central counterparty in respect of a default by the firm, it is ported by the authorised central counterparty in accordance with article 48 of EMIR.

7.2.15B R Client money received or held by the firm and placed in a client transaction account that is an individual client account or an omnibus client account at an authorised central counterparty ceases to be client money if, as part of the default management process of that authorised central counterparty in respect of a default by the firm, it is paid directly to the client by the authorised central counterparty in accordance with the procedure described in article 48(7) of EMIR.

...

7.5 Transfer of client money to a third party

...

7.5.3 G A firm should not hold excess client money in its client transaction accounts with intermediate brokers, settlement agents and OTC counterparties; it should be held in a client bank account. This guidance does not apply to client money provided by a firm to an authorised central counterparty in connection with a contingent liability investment undertaken for a client and recorded in a client transaction account that is an individual client account or an omnibus client account at that authorised central counterparty.

...

7.8 Notification and acknowledgement of trust

...

Exchanges, clearing houses, intermediary brokers or OTC 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:

- (a) notify the *person* with whom the account is to be opened that the *firm* is under an obligation to keep *client money* separate from the *firm's* own *money*, placing *client money* in a *client bank account*;
 - (b) instruct the *person* with whom the account is to be opened that any *money* paid to it in respect of that transaction is to be credited to the *firm's client transaction account*; and
 - (c) require the *person* with whom the account is to be opened to acknowledge in writing that the *firm's client transaction account* is not to be combined with any other account, nor is any right of set-off to be exercised by that *person* against *money* credited to the *client transaction account* in respect of any sum owed to that *person* on any other account.
- (2) If the 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*~~ *clearing house*, *intermediate broker* or *OTC* counterparty and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any *money*.

...

7A Client money distribution

...

7A.2 Primary pooling events

...

Pooling and distribution

7A.2.4 R If a *primary pooling event* occurs:

- (1) all *client money* held in ~~each *client money account*~~ a *client bank account* or a *client transaction account* of the *firm* is treated as pooled (forming a notional pool) except for *client money* held in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty*; and
- (2) the *firm* must distribute ~~that~~ *client money* comprising the notional pool in accordance with CASS 7.7.2R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with CASS 7A.2.5R; and

- (3) if client money is remitted directly to the firm from an authorised central counterparty, then:
- (a) any such remittance in respect of a client transaction account that is an individual client account must be distributed to the relevant client subject to CASS 7.7.2R(4);
 - (b) subject to (3)(c), any such remittance in respect of a client transaction account that is an omnibus client account must form part of the notional pool under CASS 7A.2.4R(1) and be subject to distribution in accordance with CASS 7A.2.4R(2); and
 - (c) any such remittance in respect of a client transaction account that is an omnibus client account must be distributed to the clients for whom that omnibus client account is held if:
 - (i) no client money in excess of the amount recorded in that omnibus client account is held by the firm as margin in relation to the positions recorded in that omnibus client account; and
 - (ii) the amount of such remittance attributable to each client of the omnibus client account is readily apparent from information provided to the firm by the authorised central counterparty;

in which case the amount of such remittance must be distributed to each such client in accordance with the information provided by the authorised central counterparty subject to CASS 7.7.2R(4).

- 7A.2.4A G (1) Under EMIR, where a firm that is a clearing member of an authorised central counterparty defaults, the authorised central counterparty may:
- (a) port client positions where possible; and
 - (b) after the completion of the default management process:
 - (i) return any balance due directly to those clients for whom the positions are held, if they are known to the authorised central counterparty; or
 - (ii) remit any balance to the firm for the account of its clients if the clients are not known to the authorised central counterparty.
- (2) Where any balance remitted from an authorised central counterparty to a firm is client money, CASS 7A.2.4R(3) provides for the distribution of remittances from either an individual client account or

an omnibus client account.

- (3) Remittances received by the firm falling within CASS 7A.2.4R(3)(a) and CASS 7A.2.4R(3)(c) should not be pooled with client money held in any client bank account operated by the firm at the time of the primary pooling event. Those remittances should be segregated and promptly distributed to each client on whose behalf the remittance was received.
- (4) For the avoidance of doubt, any client money remitted by the authorised central counterparty to the firm pursuant to CASS 7A.2.4R(3) should not be treated as client money received after the failure of the firm under CASS 7A.2.7R.

7A.2.5 R -(1) Each client's client equity balance must be reduced by:

- (a) any amount paid by an authorised central counterparty to a clearing member other than the firm in connection with a porting arrangement in accordance with CASS 7.2.15R(6) in respect of that client;
- (b) any amount paid by an authorised central counterparty directly to that client, in accordance with CASS 7.2.15R(7); and
- (c) any amount that must be distributed to that client by the firm in accordance with CASS 7A.2.4R (3) (a) or (c).

(1) ...

...

7A.2.6 G A client's main claim is for the return of client money held in a client bank account. A client may be able to claim for any shortfall against money held in a firm's own account. For that claim, the client will be an unsecured creditor of the firm. [deleted]

ARCH CRU FUNDS CONSUMER REDRESS SCHEME INSTRUMENT 2012**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers);
 - (4) section 157(1) (Guidance);
 - (5) section 395(5) (The Authority’s procedures);
 - (6) section 404(3) (Consumer redress schemes);
 - (7) section 404A (Rules under s404: supplementary); and
 - (8) 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 April 2013.

Making the Consumer Redress Schemes sourcebook (CONRED)

- D. The Financial Services Authority makes the rules and gives the guidance in Annex A to this instrument.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex B
Fees manual (FEES)	Annex C
Decision Procedure and Penalties manual (DEPP)	Annex D

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 Arch cru Funds Consumer Redress Scheme Instrument 2012.

- H. The sourcebook in Annex A to this instrument may be cited as the Consumer Redress Schemes sourcebook (or CONRED).

By order of the Board
13 December 2012

Annex A

Consumer Redress Schemes sourcebook (CONRED)

Insert the following new sourcebook in the block of the Handbook titled “Redress”, immediately after DISP. In this Annex, the entire text is new and is not underlined.

1 General

[To follow]

2 Arch cru Consumer Redress Scheme

2.1 Application and subject matter of the scheme

Application to firms which made personal recommendations

- 2.1.1 R (1) The whole of this chapter applies to a *firm* which made a *personal recommendation* in relation to an Arch cru fund, after which a *consumer* made an investment in the Arch cru fund, and to which the suitability requirements (specified at paragraph 5.1R of the instructions in *CONRED 2 Annex 13*) applied.
- (2) The Arch cru funds referred to in *CONRED* are any of the following sub-funds of the CF Arch cru Investment Funds and CF Arch cru Diversified Funds:
- (a) CF Arch cru Investment Portfolio;
 - (b) CF Arch cru Specialist Portfolio;
 - (c) CF Arch cru Income Fund;
 - (d) CF Arch cru Balanced Fund;
 - (e) CF Arch cru Global Growth Fund; or
 - (f) CF Arch cru Finance Fund.

Application to persons who have assumed a firm’s liabilities

- 2.1.2 R (1) The whole of this chapter also applies to a *person* who has assumed a liability (including a contingent one) in respect of a failure by a *firm* to whom this chapter applies.
- (2) A *person* in (1) must either:
- (a) perform such of the obligations as the *firm* is required to perform

under this chapter; or

(b) ensure that those obligations are performed by the *firm*;

and must notify the *FSA*, by 29 April 2013, by email to ArchCruProject@fsa.gov.uk, as to whether that *person* or the *firm*, or both, will be performing those obligations.

(3) References in this chapter to a *firm* are to be interpreted as referring to a *person* in (1) where the context so requires.

Wider application of certain provisions

2.1.3 R *CONRED 2.2, CONRED 2.4.1R(1), CONRED 2.8.1R, CONRED 2.8.2R, CONRED 2.8.3R and CONRED 2.8.4G* also apply to any *firm* which has carried out any of the following *regulated activities* for a *customer* in relation to an Arch cru fund:

- (1) *advising on investments*; or
- (2) *arranging (bringing about) deals in investments*; or
- (3) *making arrangements with a view to transactions in investments*; or
- (4) *managing investments*;

except for a *firm* which, at the relevant time, was a platform service provider; meaning it:

- (5) provided a service which involved *arranging and safeguarding and administering assets*;
- (6) distributed *retail investment products* which were offered to *retail clients* by more than one product provider; and
- (7) did not carry on the *regulated activities* of *advising on investments* or *managing investments*.

Duration of the scheme

2.1.4 R The consumer redress scheme created by this chapter comes into force on 1 April 2013 and has no end date.

Subject matter of the scheme

2.1.5 R The subject matter of the scheme is whether a *firm* complied with the suitability requirements (specified in paragraph 5.1R of *CONRED 2 Annex 13*) in cases where the conditions in *CONRED 2.4.2R* are satisfied (these are referred to in this chapter as “scheme cases”).

2.1.6 R A scheme case ceases to be within the subject matter of the scheme if the *firm*:

- (1) did not have sufficient information to determine the scheme case and has taken the required steps to obtain further information from the *consumer* but still does not have sufficient information (as more fully described in *CONRED 2.5.9R*); or
- (2) has not received an opt-in from the *consumer* by 22 July 2013 (or later, where the provision in *CONRED 2.5.1R(2)* in relation to exceptional circumstances applies); or
- (3) is unable to contact a *consumer* (as more fully described in *CONRED 2.8.3R(2)*).

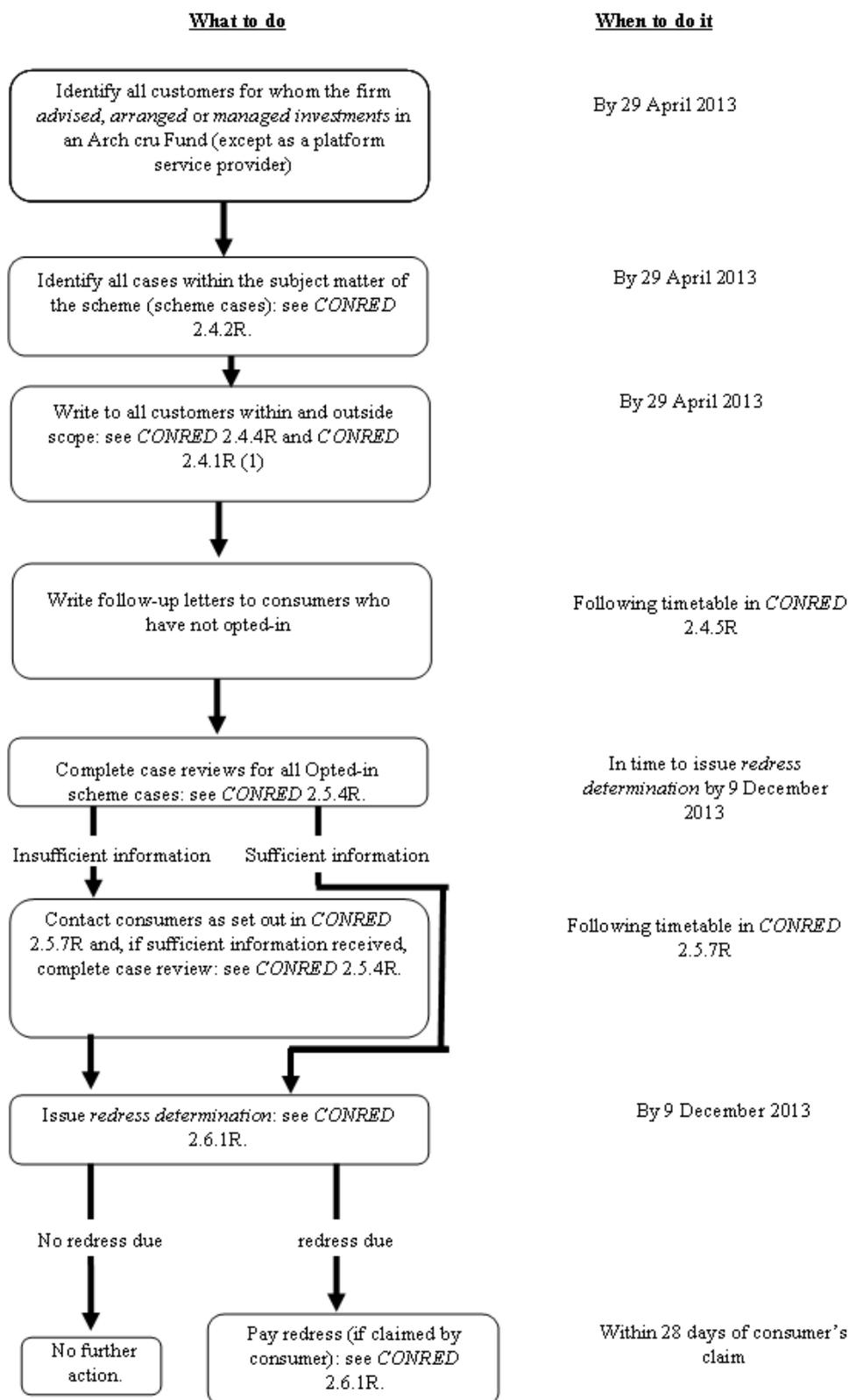
- 2.1.7 G Where the *firm* has not received, by 22 July 2013, a response from the *consumer* to the letter required by *CONRED 2.4.4R* or (where applicable) to the letter required by *CONRED 2.4.5R(1)* or (2), the *firm* should handle any complaint received from a *consumer* after this date in relation to the sale of Arch cru funds in accordance with the *complaint handling rules* in *DISP*, unless *CONRED 2.5.1R(2)* (in relation to exceptional circumstances) applies.

Defined terms

- 2.1.8 R Certain words and phrases specific to *CONRED* are defined in *CONRED Appendix 1* and the *Glossary*. All words in italics are defined in the *Glossary*.

2.2 Summary of the scheme

- 2.2.1 G



2.3 Notifications and reports to the FSA

- 2.3.1 R Notifications and other reports required by these *rules* to the *FSA* must be sent to the email address specified.
- 2.3.2 G If the *firm* is to send an encrypted email to the *FSA* it will need to download the public PGP key from the *FSA* website and import the key into its email client software.

2.4 Consumer redress scheme: identifying scheme cases and inviting consumers to request a review

Deadlines to complete the steps in this section

- 2.4.1 R (1) By 29 April 2013, a *firm* must take the first and second steps set out in this section and send a *redress determination* in the form set out in *CONRED 2 Annex 1R* to any *customer* in *CONRED 2.1.3R* who falls outside the subject matter of the scheme.
- (2) A *firm* must, by the deadlines set out in *CONRED 2.4.5R*, take the third step set out in this section.

First step: identify cases within subject matter of scheme

- 2.4.2 R The first step is to identify all cases within the subject matter of the scheme; ie, where each of the following conditions is satisfied (“scheme cases”):
- (1) the *firm* made a *personal recommendation* to a *consumer* to invest in an *Arch cru fund* specified above at *CONRED 2.1.1R(2)* and after that recommendation the *consumer* did so invest;
 - (2) the suitability requirements (specified at paragraph 5.1R of *CONRED 2 Annex 13*) applied to the recommendation;
 - (3) the law applicable to the obligations of the *firm* arising in connection with the *personal recommendation* is that of a UK territory (that is, England, Wales, Scotland or Northern Ireland) (see *CONRED 2.4.7R*);
 - (4) if the applicable law in (3) is that of England, Wales or Northern Ireland, the *consumer’s* investment in Arch cru funds was on or after 13 December 2006;
 - (5) if the applicable law in (3) is that of Scotland:
 - (a) the *consumer’s* investment in the Arch cru fund was on or after 13 December 2007; or
 - (b) where the *consumer’s* investment in the Arch cru fund was before 13 December 2007, the *consumer* did not know, and could not with reasonable diligence have known, before 13 December 2007,

that he had suffered loss;

- (6) the *consumer* has not, prior to 1 April 2013, accepted an offer of redress from the *firm* or other *person* in full and final settlement of all potential claims arising out of the recommendation in (1); and
- (7) the *consumer* has not, prior to 1 April 2013, asked the *Financial Ombudsman Service* to deal with a complaint against the *firm* arising out of the recommendation in (1).

- 2.4.3 E The adoption by a *firm* of any date earlier than the date of suspension (13 March 2009) as the date when the *consumer* knew, or could with reasonable diligence have known, that he had suffered loss, may be relied upon as tending to show contravention of *CONRED* 2.4.2R.

Second step: send initial letters to consumers

- 2.4.4 R The second step is, for all scheme cases, to send to the *consumer* a letter in the form set out in *CONRED* 2 Annex 2R inviting the *consumer* to opt-in to the scheme.

Third step: send follow-up letters to consumers

- 2.4.5 R The third step is to do the following:
- (1) for all scheme cases where the *firm* has not received an opt-in, by 27 May 2013, the *firm* should send the *consumer* an opt-in reminder (in the form set out in *CONRED* 2 Annex 3R) by 3 June 2013 (unless the *firm* has received an opt-in in the interim);
 - (2) for all scheme cases where the *firm* has not received, by 24 June 2013, an opt-in or (where applicable) by (1), the *firm* should send the *consumer* an opt-in reminder letter (in the form set out in *CONRED* 2 Annex 4R) by 1 July 2013 (unless the *firm* has received an opt-in in the interim); and
 - (3) for all scheme cases where the *firm* has not received, by 22 July 2013 an opt-in or, where applicable by (1) or (2), the *firm* should send the *consumer* a letter in the form set out in *CONRED* 2 Annex 5R by 29 July 2013 (unless the *firm* has received an opt-in in the interim when it must follow the steps in *CONRED* 2.5.1R (2)).

- 2.4.6 R For the purpose of *CONRED* 2.4.5R:
- (1) an ‘opt-in’ is an indication from, or on behalf of, a *consumer* that he wishes the *firm* to carry out a case review (as detailed in *CONRED* 2.5); and
 - (2) if a *firm* receives a *complaint* relating to the subject matter of the scheme from a *consumer* on or after 1 April 2013 and before 23 July 2013 it must treat the *complaint* as an ‘opt in’ to the scheme.

Applicable law

- 2.4.7 R For the purposes of *CONRED* 2.4.2R(3), the applicable law is:
- (1) where, in connection with the *personal recommendation*:
 - (a) the *consumer* has agreed to the *firm's terms of business*; and
 - (b) these include a clause providing for the application of the law of a particular UK territory (that is, England, Wales, Scotland or Northern Ireland);
 that UK territory; or
 - (2) if (1) does not apply: where the *firm* and the *consumer* are habitually resident in the same UK territory, and the *personal recommendation* is made there, that UK territory; or
 - (3) if neither (1) nor (2) applies: where the conditions in *CONRED* 2.4.8R apply, the UK territory in which the *consumer* is habitually resident; or
 - (4) if none of (1), (2) or (3) applies: the UK territory in which the *firm* made the *personal recommendation*.
- 2.4.8 R The conditions referred to in *CONRED* 2.4.7R(3) are that:
- (1) in the UK territory in which the *consumer* has his habitual residence, either:
 - (a) the contract under which the *personal recommendation* was provided was preceded by a specific invitation addressed to the *consumer*, or by advertising, and the *consumer* took all the steps necessary to engage the *firm*; or
 - (b) the *firm* or its agent received the *consumer's* order; and
 - (2) the *personal recommendation* was provided at least in part in that UK territory.

Reporting requirement: opted-in scheme cases

- 2.4.9 R By 29 July 2013, a *firm* must report to the *FSA* by email to archcruereview@fsa.gov.uk; or (if the email is encrypted) archcruereviewpgp@fsa.gov.uk with the following information:
- (1) the total number of scheme cases (cases falling within *CONRED* 2.4.2R);
 - (2) the total number of investments in Arch cru funds resulting from the *regulated activities* for a *customer* in *CONRED* 2.1.3R which fall outside the subject matter of the scheme (see *CONRED* 2.1.5R and *CONRED* 2.4.2R), with a summary explanation of the reason why in

each case; and

- (3) the total number of opted-in scheme cases.

[**Note:** for details of how to obtain an encryption key see *guidance* above at *CONRED 2.3.2G*]

2.5 Consumer redress scheme: case review

Deadline to complete the steps in this section

2.5.1 R A *firm*:

- (1) in respect of any scheme case where the *firm* has received an opt-in by 22 July 2013, must take the steps set out in this section by 9 December 2013; and
- (2) in respect of any scheme case where the *firm* has received an opt-in later than 22 July 2013, must take the steps set out in this section if the *consumer's* failure to comply with that time limit was caused by exceptional circumstances; in such a case, the deadline in (1) is extended according to the length of the delay caused by the *consumer's* failure to comply with the time limit.

2.5.2 G The *guidance* on exceptional circumstances at *CONRED 2.6.3G* is relevant to *CONRED 2.5.1R(2)*.

- ### 2.5.3 R
- (1) For any scheme case where the *firm* has received an opt-in, but the *firm*, does not consider *CONRED 2.5.2R(2)* requires it to take the steps set out in this section, and does not intend to do so, the *firm* must send the *consumer* a *redress determination* in the form set out in *CONRED 2 Annex 6R* within 14 days of receiving the opt-in.
 - (2) For any opted-in scheme case, the *firm* must send the *consumer*, within 14 days of receiving the opt-in, a letter in the form set out in *CONRED 2 Annex 7R*.

First step: case review of each opted-in scheme case

2.5.4 R The first step is to carry out a review (a case review) of each opted-in scheme case, by completing the template at *CONRED 2 Annex 12R*, in accordance with the *rules* set out in the instructions at *CONRED 2 Annex 13*.

2.5.5 E Non-compliance with any of the *evidential provisions* set out in the instructions at *CONRED 2 Annex 13* may be relied upon as tending to show contravention of *CONRED 2.5.4R*.

2.5.6 G In complying with *CONRED 2.5.4R*, *firms* should have regard to the *guidance* set out in the instructions at *CONRED 2 Annex 13*.

Second step: cases of insufficient information

- 2.5.7 R (1) The second step applies only in respect of an opted-in scheme case where a *firm* has attempted to comply with the first step (*CONRED* 2.5.4R) but does not have sufficient information to determine all of the following matters:
- (a) whether it has failed to comply with any of the suitability requirements specified at paragraph 5.1R of *CONRED* 2 Annex 13;
 - (b) if so, whether that failure has caused loss or damage to the *consumer*; and
 - (c) if so, what the redress should be in respect of its failure.
- (2) The second step is to:
- (a) send the *consumer* a letter in the form set out in *CONRED* 2 Annex 8R;
 - (b) if no reply is received by the *firm* within four weeks of a letter in (a) being dispatched, the *firm* must send a letter to the *consumer*, within one further week, in the form set out in *CONRED* 2 Annex 9R, and take all reasonable steps to contact the consumer by other means; and
 - (c) if a reply is received from a *consumer* but the information it contains is insufficient to determine all the matters in (1), the *firm* should take all reasonable steps to obtain further information from the *consumer*.

[**Note:** see also *CONRED* 2.8.7R.]

- 2.5.8 R A *firm* which, having carried out the second step, has acquired sufficient information to determine all of the outstanding matters must then complete the first step (*CONRED* 2.5.4R).
- 2.5.9 R Where a *firm* has carried out the second step in relation to an opted-in scheme case (falling within *CONRED* 2.4.2R) but still does not have sufficient information to determine all of the outstanding matters, the opted-in scheme case no longer falls within the subject matter of the consumer redress scheme created by this chapter. The *firm* must send the *consumer* a letter in the form set out in *CONRED* 2 Annex 10R promptly on completion of the second step.
- 2.5.10 G Opted-in scheme cases to which the second step (*CONRED* 2.5.7R) applies are likely to be exceptional, having regard to the record-keeping requirements applicable to *authorised persons* under *FSA rules* (notably *SYSC*).

Third step: redress determination

- 2.5.11 R The third step is to send the *consumer* a *redress determination* in the form of the letter set out in *CONRED 2 Annex 11R* in respect of each opted-in scheme case.

Taking steps by or on behalf of FSA

- 2.5.12 R The *FSA* may (on giving notice to the *firm*) take any of the steps in *CONRED 2.3* to *CONRED 2.5*, instead of the *firm*, or may appoint one or more competent persons to do so on behalf of the *FSA*, if there is a material failure by the *firm* to take any of the actions required under this chapter, including where the *firm* informs the *FSA* that it is unable or unwilling to take any of those actions because to do so would be in breach of a condition of its professional indemnity insurance. In such a case, the *firm* must:
- (1) not carry out (or, as the case may be, continue) any of the steps to be taken by the *FSA* or competent person, unless so directed by them; and
 - (2) render all reasonable assistance to the *FSA* or competent person (but any assistance, the rendering of which would invalidate the *firm's* professional indemnity insurance, is not reasonable for the purposes of this *rule*).
- 2.5.13 G The *FSA* would expect a *firm* to make reasonable efforts to obtain the consent of its professional indemnity insurer to take the relevant steps, in line with its obligations under *Principle 11* (Relations with regulators).
- 2.5.14 R If, where the *FSA* or a competent person takes any steps under *CONRED 2.5.12R*, the *FSA* proposes to make any determination of:
- (1) whether a failure by a *firm* has caused loss to a *consumer*; or
 - (2) what the redress should be in respect of the failure;
- the *FSA* must give the *firm* a *warning notice* specifying the proposed determination.
- 2.5.15 R
- (1) If the *FSA* decides to make a determination of the matters in *CONRED 2.5.14R*, the *FSA* must give the *firm* a *decision notice* specifying the determination.
 - (2) If the *FSA* decides to make such a determination, the *firm* may refer the matter to the *Tribunal*.
- 2.5.16 R Part XXVI of the *Act* (including the provisions as to final notices) applies in respect of notices given under *CONRED 2.5.14R* and *CONRED 2.5.15R*.
- 2.5.17 G Where, under *CONRED 2.5.12R*, the *FSA* (or a competent person) communicates with a *customer* (or *consumer*) instead of the *firm*, it will do so in its own name, making clear (in the case of a competent person) its authority from the *FSA* to do so.

- 2.5.18 G Where the *FSA* (or a competent person), instead of the *firm*, carries out the third step in *CONRED 2.5.11R*, it will do so no earlier than seven *days* after the issue of a final notice in respect of the *FSA*'s decision to make a determination of the matters in *CONRED 2.5.14R*, and will send the *firm* a copy of the *consumer's* response to the *redress determination*.
- 2.5.19 G A fee is payable by the *firm* (or *person* falling within *CONRED 2.1.2R(1)*) in any case where the *FSA* exercises its powers under *CONRED 2.5.12R*: see the table at *FEES 3.2.7R*.
- 2.5.20 G The completion of the steps in *CONRED 2.3* to *CONRED 2.5* by, or on behalf of, the *FSA*, as provided in *CONRED 2.5.12R*, does not affect the ability of the *Ombudsman* to consider a *complaint*, in particular where the *firm* has not sent a *redress determination* in accordance with the time limits specified under the scheme.

2.6 Consumer redress scheme: paying redress

- 2.6.1 R A *firm* must pay the redress determined to be payable to a *consumer*, calculated in accordance with the requirement in section 10 of the instructions at *CONRED 2 Annex 13*:
- (1) within 28 *days* of receiving a claim from the *consumer* for the redress determined to be payable, following the issue of the *redress determination*; and
 - (2) in accordance with the instructions set out by the *consumer* in his response to the *redress determination* in which he makes the claim
- but a *firm* need not pay redress where the *consumer* did not send a claim for it within six months of the date of the *redress determination*, unless the *consumer's* failure to comply with that time limit was as a result of exceptional circumstances, except where the *consumer* refers a *complaint* in respect of the *redress determination* to the *Financial Ombudsman Service* within the time limits provided in *DISP 2.8.2R* (or *DISP 2.8.2R(3)* applies).
- 2.6.2 R (1) Simple interest is payable on the redress determined to be payable from the end of the 28-*day* period referred to in *CONRED 2.6.1R(1)* until the date of payment, at a rate of 8% per annum.
- (2) After the expiry of 28 *days* following the *consumer's* claim for the redress, the redress, including interest, may be recovered as a debt due to the *consumer* and, in particular, may:
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court; or
 - (b) be enforced in Northern Ireland as a money judgment under the

Judgments Enforcement (Northern Ireland) Order 1981; or

- (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

[**Note:** This *rule* is imposed by the *FSA* using the powers granted to it under section 404A(1)(m) of the *Act* to make *rules* providing for the enforcement of any redress under a consumer redress scheme.]

- 2.6.3 G (1) An example of exceptional circumstances in *CONRED* 2.6.1R might be where the *consumer* has been or is incapacitated.
- (2) In considering whether circumstances are exceptional, *firms* may wish to have regard to the guidance on exceptional circumstances justifying the extension of the time limits, in the online technical resource titled “the six-month time limit” on the website of the *Financial Ombudsman Service*.

2.7 Supervision and delegation of scheme process by firms

- 2.7.1 R A *firm* must ensure that the steps required by this chapter are undertaken or supervised by the individual appointed by the *firm* under *DISP* 1.3.7R where that *rule* applies. In any other case, those steps must be taken or supervised by a person of appropriate experience and seniority.
- 2.7.2 G (1) Any *firm* intending to outsource any of the obligations imposed on it under this chapter should have due regard to the *rules* and *guidance* on outsourcing which are applicable to it, notably in *SYSC*.
- (2) A *firm* which outsources any of the obligations imposed on it under this chapter in respect of communications with *consumers* should ensure that those communications are clear as to the identity of the *firm*.

2.8 Provisions relating to communications with consumers

- 2.8.1 R Whenever a *firm* is required by a provision of this chapter to send a letter in a form set out in an Annex, it must do so enclosing any documents referred to, following the instructions in the standard form set out in the relevant Annex, complying with any instructions in that Annex to insert, delete, select or complete text.
- 2.8.2 R All letters to *consumers* required under this chapter must be printed on the letterhead of the *firm* and dispatched by recorded delivery mail.
- 2.8.3 R (1) Where a *firm* becomes aware that the contact details it holds for a *customer* (or *consumer*) are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where appropriate, resend any

letter and repeat the steps to contact the *customer* (or *consumer*) required by this chapter.

- (2) If, having complied with (1), a *firm* is unable to contact a *customer* (or *consumer*), it need not take any further action pursuant to this chapter in relation to that *customer* (or *consumer*) unless (3) applies.
- (3) If, in reliance on (2), the *firm* has ceased taking action but subsequently becomes aware of up-to-date contact details for that *customer* (or *consumer*), the *firm* must, where appropriate, resend any letter and repeat the steps to contact the *customer* (or *consumer*) required by this chapter. Each applicable deadline for those actions by the *firm* is extended according to the length of the delay incurred by the application of (2).

- 2.8.4 G The reasonable steps in *CONRED* 2.8.3R(1) might include checking public sources of information, but without incurring excessive cost.
- 2.8.5 G The reasonable steps in *CONRED* 2.5.7R(2)(b) might include attempting to contact the *consumer* by telephone (at a reasonable hour when the *consumer* is likely to be available to receive the call) or by email.
- 2.8.6 R A *firm* must not make any communication to a *consumer* which seeks to influence, for the benefit of the *firm*, the outcome of the processes undertaken pursuant to this chapter, either by seeking to influence the content of information provided by the *consumer* in response to the *firm*'s requests made under *CONRED* 2.5.7R or otherwise.
- 2.8.7 R A *firm* must tailor the questionnaire at *CONRED* Annex 8R so that it does not request more information than is sufficient for it to determine all of the outstanding matters.

2.9 Consumer redress scheme: information requirements

Requests for information by the FSA

- 2.9.1 R In relation to any matter concerning or related to the consumer redress scheme created by this chapter, section 165 (FSA's power to require information: authorised persons etc) of the *Act* and any provision of Part XI (Information Gathering and Investigations) of the *Act* which relates to that section, apply to any *firm* (or *person* in *CONRED* 2.1.2R) which is not an *authorised person* as if it were an *authorised person*.

Reporting requirement: by 9 December 2013

- 2.9.2 R A *firm* must, by 9 December 2013, a *firm* must report to the FSA, by email to archcrureview@fsa.gov.uk or (if the email is encrypted) archcrureviewpgp@fsa.gov.uk, the following information:

- (1) the total number of opted-in scheme cases (cases falling within *CONRED 2.5.1R*);
- (2) the total number of completed templates;
- (3) the total number of incomplete templates, with an explanation as to why the templates have not been completed;
- (4) the total number of redress cases;
- (5) the total number of *redress determinations* sent to *consumers*;
- (6) the total number of *consumers* that have been paid redress to date;
- (7) the total amount of redress paid to date; and
- (8) the total amount of redress unpaid to date.

[Note: for details of how to obtain an encryption key see guidance above at *CONRED 2.3.2G*]

2.10 Record-keeping requirements

- 2.10.1 R (1) A *firm* must keep the following records:
- (a) the certificate of posting for each letter sent in accordance with this chapter;
 - (b) a copy of each letter sent in accordance with this chapter;
 - (c) a record of any attempts to contact the *consumer*, or obtain further information, in accordance with *CONRED 2.5.7R(2)(b)* or (c);
 - (d) the completed template (*CONRED 2 Annex 12R*) for each opted-in scheme case; and
 - (e) all information on the *consumer* file and any information received from a *consumer*.
- (2) A *firm* must keep the records required by (1) for a minimum of five years from the date of their creation or (for the records in (1)(e)) the date when the information is located on the *consumer* file or obtained.

2 Annex 1R Redress determination for customers outside subject matter of Arch cru consumer redress scheme

[Firm details]

[Date]

[Customer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

Redress determination in relation to your investment in the CF Arch cru *[insert fund name]*

Dear *[Insert name]*

- **We will not be taking any action to review the way the CF Arch cru *[insert fund name(s)]* was sold to you because specific circumstances exclude you from the scheme.**
- **If you want to query our decision you have to contact the Financial Ombudsman Service (FOS) within six months.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We will not be taking any action to review the way the funds were sold to you to see if you might be entitled to compensation for the following reason(s).

[We did not advise you to invest in the funds so your case does not fall within the scope of this scheme.] OR

[You were not a private customer or retail client at the time of our advice to you so you do not fall within the scope of this scheme.] OR

*[You previously complained about our advice to you to invest in the funds. We responded to this complaint in our letter of *[insert date of final response]* setting out our conclusions and you accepted this response in full and final settlement.] OR*

*[You previously complained about our advice to you to invest in the funds. We responded to this complaint in our letter of *[insert date of final response]* setting out our conclusions. You subsequently referred this complaint to the Financial Ombudsman Service.] OR*

[For England, Wales and Northern Ireland cases:]

*[The consumer redress scheme does not include cases where the investment in the CF Arch cru investment or diversified fund was made before 13 December 2006 (where the case is under the law of England and Wales or Northern Ireland). Your investment in the fund was made on *[insert date of investment]* so in our view does not fall within the scope of the compensation scheme.] OR*

[For Scotland Cases:]

[The consumer redress scheme does not include cases where the consumer should have reasonably become aware of a loss more than five years before the start date of the scheme (where the case is under the law of Scotland). In our view your case does not fall within the scope of the scheme because you should have been aware of a loss on [insert date].]

What you can do next

If you think we should review the way we sold the CF Arch cru *[insert fund name(s)]* to you, you have to contact the Financial Ombudsman Service (FOS) within six months of the date of this letter.

The FOS will decide whether we have applied the rules of the consumer redress scheme correctly in our decision to exclude you.

Enclosed is a leaflet explaining the role of the FOS, which you can contact at:
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Tel: 0800 023 4567 or 0300 123 9 123
Email: complaint.info@financial-ombudsman.org.uk

CF Arch cru payment scheme

You may still be able to apply to the CF Arch cru payment scheme for a payment. The scheme will run until 31 December 2013 and is separate to the consumer redress scheme.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

You should write to us directly if you have any other complaint about our services.

Yours sincerely

<signature>

<name of adviser or customer service>

2 Annex 2R Letter to consumers confirming existence of review and inviting request to opt-in

[Firm details]

[Date]

[Consumer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

You have until 22 July 2013 to respond to this letter

Dear *[Insert name]*

- **You may be entitled to compensation on the basis of how we sold you an investment in the CF Arch cru *[insert fund name(s)]***
- **If you want us to review how your investment was sold you have to complete the enclosed form and return it to us by 22 July 2013.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We now have to ask our customers that invested in the funds whether they want us to review the way we sold the funds to them, to determine if they were mis-sold.

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Response required by 22 July 2013

If you want us to review the way we sold the CF Arch cru *[insert fund name(s)]* to you please complete the enclosed form and return it to us as soon as possible, but not later than 22 July 2013.

If you do not respond by 22 July 2013 we will not take any action to review our sale of the funds to you.

CF Arch cru payment scheme

If we pay you compensation, we will subtract from the final amount the current value of the funds and the money that you could claim from the CF Arch cru payment scheme. You should also consider applying to this scheme which will run until 31 December 2013 and is separate from the review process we are carrying out.

Why the FSA identified problems with advice to invest in certain Arch cru funds

The FSA has said the CF Arch cru investment and diversified funds were high-risk products and should only have been recommended to investors who fully understood, and were willing and able to accept the risks.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

If you have any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

Yours sincerely

<signature>

<name of adviser or customer service>

[I/We] have enclosed two copies of this letter. Please complete both copies below, returning one to [me/us] and keeping the other for your records.

Please tick the box below to confirm that you want us to review how we sold the CF Arch cru [insert fund name(s)] to you.

I want you to review the way you sold the CF Arch cru [insert fund name(s)] to me to see if I am entitled to compensation.

Signed:

Please print name:

Date:

Alternatively, call us on <phone number> or email us at <insert e-mail address> to confirm you want us to review the way we sold the funds to you.

2 Annex 3R First reminder letter to consumers inviting request for review

You have to respond to this letter by 22 July 2013

Dear *[Insert name]*

- **You may be entitled to compensation if you invested in the CF Arch cru investment or diversified funds and they were mis-sold.**
- **You have until 22 July 2013 to complete the enclosed form and return it to us, if you want us to review the way we sold the funds to you.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We now have to ask our customers that invested in the funds whether they want us to review the way we sold the funds to them, to determine if they were mis-sold.

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Response required by 22 July 2013

If you want us to review the way we sold the CF Arch cru *[insert fund name(s)]* to you please complete the enclosed form and return it to us as soon as possible, but not later than 22 July 2013.

If you do not respond by 22 July 2013 we will not take any action to review our sale of the funds to you.

CF Arch cru payment

If we pay you compensation, we will subtract from the final amount the current value of the funds and the money that you could reclaim from the CF Arch cru payment scheme. You should also consider applying to this scheme which will run until 31 December 2013 and is separate from the review process we are carrying out.

Why the FSA identified problems with advice to invest in certain Arch cru funds

The FSA has said the CF Arch cru investment and diversified funds were high-risk products and should only have been recommended to investors who fully understood, and were willing and able to accept the risks.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

If you have any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

Yours sincerely,

<signature>

<name of adviser or customer service>

[I/We] have enclosed two copies of this letter. Please complete both copies below, returning one to *[me/us]* and keeping the other for your records.

Please tick the box below to confirm that you want us to review how we sold the CF Arch cru *[insert fund name(s)]* to you.

I want you to review the way you sold the CF Arch cru *[insert fund name(s)]* to me to see if I am entitled to compensation.

Signed:

Please print name:

Date:

Alternatively, call us on <phone number> or email us at <insert e-mail address> to confirm you want us to review the way we sold the funds to you.

2 Annex 4R Second reminder letter to consumers inviting request for review

Final reminder: We will not take any action to review the way we sold the CF Arch cru [insert fund name(s)] if you do not respond to this letter by 22 July 2013

Dear [Insert name]

- **You have until 22 July 2013 to complete the enclosed form and return it to us, if you want to find out if you are entitled to compensation.**
- **You may be entitled to compensation if you invested in the CF Arch cru investment or diversified funds and they were mis-sold.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We now have to ask our customers that invested in the funds whether they want us to review the way we sold the funds to them, to determine if they were mis-sold.

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Response required by 22 July 2013

If you want us to review the way we sold the CF Arch cru [insert fund name(s)] to you please complete the enclosed form and return it to us as soon as possible, but not later than 22 July 2013.

If you do not respond by 22 July 2013 we will not take any action to review our sale of the funds to you.

CF Arch cru payment scheme

If we pay you compensation, we will subtract from the final amount the current value of the funds and the money that you could claim from the CF Arch cru payment scheme. You should also consider applying to this scheme which will run until 31 December 2013 and is separate from the review process we are carrying out.

Why the FSA identified problems with advice to invest in certain Arch cru funds

The FSA has said the CF Arch cru investment and diversified funds were high-risk products and should only have been recommended to investors who fully understood, and were willing and able to accept the risks.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

If you have any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

Yours sincerely,

<signature>

<name of adviser or customer service>

[I/We] have enclosed two copies of this letter. Please complete both copies below, returning one to [me/us] and keeping the other for your records.

Please tick the box below to confirm that you want us to review how we sold the CF Arch cru [insert fund name(s)] to you.

I want you to review the way you sold the CF Arch cru [insert fund name(s)] to me to see if I am entitled to compensation.

Signed:

Please print name:

Date:

Alternatively, call us on <phone number> or email us at <insert e-mail address> to confirm you want us to review the way we sold the funds to you.

2 Annex 5R Final letter to consumers who have not sent a request for review

We will not be taking any action to review our sale of the CF Arch cru [insert fund name(s)] to you

Dear [Insert name]

- **We will not be reviewing the way we sold the CF Arch cru [insert fund name(s)] to you.**
- **You did not respond to our letters on [insert date of initial letter and subsequent letters] to say you wanted us to review the way we sold the funds to you and find out if you are entitled to compensation.**
- **We will only consider your case if you make a complaint to us or if you tell us you were not able to respond to our letters due to exceptional circumstances which caused the delay (for example if you were incapacitated by illness).**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We have asked our customers that invested in the funds whether they want us to review the way we sold the funds to them, to determine if they were mis-sold.

However, we will not be reviewing the way we sold the funds to you as you did not respond to our letters to say you wanted us to, **unless there are exceptional circumstances which caused the delay (for example if you were incapacitated by illness) or unless you complain to us..**

Exceptional circumstances

If you were not able to respond to our letters due to exceptional circumstances, please write to us and include evidence of the circumstances.

What you can do next

This letter does not affect your ability to complain to us or to take legal action.

CF Arch cru payment scheme

You may still be able to apply to the CF Arch cru payment scheme for a payment. The scheme will run until 31 December 2013 and is separate to the review process we are carrying out.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 6R Redress determination where firm considers opt-in ineffective

Redress determination in relation to advice to invest in Arch cru funds

We will not be taking any action to review our sale of the CF Arch cru [insert fund name(s)] fund to you

Dear [Insert name]

- **We will not be reviewing the way we sold the CF Arch cru [insert fund name(s)] to you as you contacted us after the 22 July 2013.**
- **We wrote to you on [insert date] stating that you had until 22 July 2013 to complete the enclosed form and return it to us, if you wanted us to review the way we sold the funds to you**
- **You contacted us after the 22 July 2013 deadline and we do not consider that the delay was due to exceptional circumstances. If you think the delay was due to exceptional circumstances, you can refer your complaint to the Financial Ombudsman Service.**
- **If you still want us to review the way we sold the funds to you, you can complain to us under our usual complaints procedure, details of which are attached.**

(Insert summary of consumer's explanation for the delay and the reasons why the firm does not consider it to be an exceptional circumstance (see the guidance in CONRED 2.6.3(G))

What you can do next

This letter does not affect your ability to complain to us or to take legal action.

If you think we should review the way we sold the CF Arch cru [insert fund name(s)] to you, you have to contact the Financial Ombudsman Service (FOS) within six months of the date of this letter.

The FOS will decide whether we have applied the rules of the scheme correctly in our decision to exclude you.

Enclosed is a leaflet explaining the role of the FOS, which you can contact at:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Tel: 0800 023 4567 or 0300 123 9 123

Email: complaint.info@financial-ombudsman.org.uk

If you still want us to review the way we sold the funds to you, you can complain to us under our usual complaints procedure, which is attached.

CF Arch cru payment scheme

You may still be able to apply to the CF Arch cru payment scheme for a payment. The scheme will run until 31 December 2013 and is separate to the review process we are carrying out.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 7R Letter to consumers confirming their case will be reviewed

Dear [Insert name]

Sale of the CF Arch cru [insert fund name(s)] to you will be reviewed

- **We will review the way we sold the CF Arch cru [insert fund name(s)] to you to see if you are entitled to compensation.**
- **We will tell you the outcome of our review by [insert date]. You do not have to respond to this letter.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We will review the way we sold the funds to you in line with the FSA requirements. *[We have contracted [Name of firm] to undertake this review on our behalf.]*

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

We will tell you the outcome of our review by *[insert date]*.

If you have any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 8R Initial letter requesting information/enclosing questionnaire

[Firm details]

[Date]

[Consumer details]

Fund name(s): [insert fund name(s)]

Amount(s) invested: [insert amount(s) invested]

Date(s) of advice given: [insert date(s) of advice given]

Further information required to review our sale of the CF Arch cru [insert fund name(s)] to you

Dear [Insert name]

- **You have to provide further information so we can review the way we sold the CF Arch cru [insert fund name(s)] to you.**
- **We wrote to you on [insert date] to confirm we will review our advice to you to invest in the above-named fund.**
- **Please send this information to us as soon as possible.**
- **If we do not hear from you we will not be able to review the way we sold the funds to you and see if you are entitled to compensation.**
- **Please contact us if you have difficulties providing this information.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We wrote to you on [insert date] to confirm we will review the way we sold the CF Arch cru [insert fund name(s)] to you. [We have contracted [Name of firm] to undertake this review on our behalf.]

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Further information required

We now require further information so we can review the way we sold the CF Arch cru [insert fund name(s)] to you.

[Please provide us with [insert information requested] OR Please complete the enclosed questionnaire.]

You have to send this information to us if you want us to continue reviewing the way we sold the funds to you.

If you have any difficulties providing this information or any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

If we do not hear from you we will not take any further action to review the way we sold the funds to you.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

Questionnaire

This questionnaire relates to your investment in the Arch cru [complete fund] based on the advice of [insert adviser name].

Please complete it as accurately as possible using information that reflects your circumstances as at [complete date], when you invested in the above-named fund.

Personal details

Name

Date of birth

Employment status at time of sale (employed/self-employed/retired/not working/other)

Annual income at time of sale £

[Second investor

Name

Date of birth

Employment status at time of sale (employed/self-employed/retired/not working/other)

Annual income at time of sale]

Amount(s) invested £_____

Arch cru fund(s) invested in [investment/specialised/income/balanced/global growth/finance]

Your investment objectives at the time

Were you saving for some specific purpose? Y/N

If yes, what was this? _____

Were you investing for growth (i.e. to accumulate capital to use later) Y/N

Were you investing for income (i.e. to receive regular payments) Y/N

If you were investing for income, what level of income did you require from the investment, per month or year? £_____ per _____

Was your aim to diversify your existing portfolio? Y/N

Was your aim to change the risk profile of your existing portfolio? Y/N

Did you have some other objective for this investment? Y/N

If yes, what was this? _____

Were you prepared to accept that you might get back less than what you originally invested?
Y/N

Your financial situation at the time

Please fill in as much as you can in the boxes below.

Amounts held in:

Cash £

Existing investments in Arch cru funds £

Other investments £

What was the source of the money invested in Arch cru funds on this occasion?

Switch from _____ above.

Your understanding of the investment at the time

What did you understand the risk of capital losses to be at the time you invested?

Please indicate on this line:

Low _____ High

What kind of assets did you understand that the Arch cru funds would invest in?

Tick all that apply:

Cash

Bonds

Listed UK equities

Listed overseas equities

Listed higher risk equities (e.g. emerging markets)

Property

Private (i.e. unlisted) equity

Private (i.e. unlisted) debt

Other assets

Your Arch cru investment

Which fund did you invest in? _____

Which share class? _____

Amount(s) invested £_____

Date(s) of investment

Was this a single investment or did you make regular contributions? If you made regular contributions, please provide details of the dates of these investments and the amounts invested.

Do you still have this investment? Yes
 No

If no, or if you withdrew some of your shares prior to the fund suspension, please list the dates of withdrawal(s) below and the number of shares that you hold now:

Date(s) of withdrawal	Amount of withdrawal (£)	Number of shares held today

Have you received capital distributions since the fund suspension?

If yes, please list the dates of the capital distributions and the amount of the distributions:

Date(s) of distribution	Amount of distribution (£)

2 Annex 9R Reminder letter

[Firm details]
[Date]

[Consumer details]

Fund name(s): [insert fund name(s)]

Amount(s) invested: [insert amount(s) invested]

Date(s) of advice given: [insert date(s) of advice given]

Final reminder: Further information required from you to enable us to review our sale of the CF Arch cru [insert fund name(s)] to you

Dear [Insert name]

- **You have to provide further information so we can review the way we sold the CF Arch cru [insert fund name(s)] to you, as we stated in our letter of [insert date].**
- **Please send us this information within 4 weeks.**
- **If we do not hear from you we will not take any further action to review the way we sold the funds to you to see if you are entitled to compensation.**
- **Please contact us if you have difficulties providing this information.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We wrote to you on [insert date] to confirm we will review the way we sold the CF Arch cru [insert fund name(s)] to you. [We have contracted [Name of firm] to undertake this review on our behalf.]

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Further information required

We now require further information so we can review the way we sold the CF Arch cru [insert fund name(s)] to you.

[Please provide us with [insert information requested] OR Please complete the enclosed questionnaire.]

Please send this information to us within four weeks of the date of this letter if you want us to continue reviewing the way we sold the funds to you.

If you have any difficulties providing this information or any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

If we do not hear from you within four weeks we will not take any further action to review the way we sold the funds to you.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 10R Redress determination where consumer has not provided requested information

Redress determination in respect of advice to invest in the Arch cru *[insert fund name(s)]*

[Firm details]

[Date]

[Consumer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

We will not take any further action to review our sale of the CF Arch cru *[insert fund name(s)]* to you

Dear *[Insert name]*

- **We are not able to complete our review of the way we sold the funds to you as you did not provide the extra information we requested. You confirmed you wanted us to review our advice to you to invest in the above-named fund.**
- **We wrote to you on *[insert dates of initial letter and subsequent letter]* to tell you that we needed additional information from you to complete this review. We also attempted to contact you *[insert details]*.**

What you can do next

This letter does not affect your ability to complain to us or to take legal action.

If you are dissatisfied with this outcome you have to contact the Financial Ombudsman Service (FOS) within six months of the date of this letter.

The FOS will decide whether we have applied the rules of the consumer redress scheme correctly.

Enclosed is a leaflet explaining the role of the FOS, which you can contact at:

Financial Ombudsman Service

South Quay Plaza

183 Marsh Wall

London E14 9SR

Tel: 0800 023 4567 or 0300 123 9 123

Email: complaint.info@financial-ombudsman.org.uk

If you still want us to review the way we sold the funds to you, you can complain to us under our usual complaints procedure, which is attached.

CF Arch cru payment scheme

You may still be able to apply to the CF Arch cru payment scheme for a payment. The scheme will run until 31 December 2013 and is separate to the review process we are carrying out.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 11R Redress determination letter for scheme cases*[Consumer details]**[Firm details]**[Date]*Dear *[Insert name]***Redress determination in respect of advice to invest in the Arch cru *[insert fund name(s)]****[WHERE INFORMATION HAS BEEN SUFFICIENT TO REACH A CONCLUSION:]*

- **Our review found that our advice was suitable/unsuitable.**
- **We have found that you are/are not owed compensation for our advice to you on investing in the Arch cru *[insert fund name(s)]*.**
- ***[if owed compensation]* The amount you are owed is:**
- ***[if owed compensation]* We were required by the FSA to subtract from the total the current value of the funds and the amount you could receive under the separate CF Arch cru payment scheme – you have until 31 December 2013 to apply to that scheme;**

Why did we reach this decision?*[Insert reason: summarise the information in the template which led to the finding]**[If advice unsuitable, but firm believes it did not cause the consumer's loss:]*

Although we have decided the advice to you to invest in the Arch cru funds was unsuitable given your circumstances at the time, based on the evidence available we believe our unsuitable advice did not cause your loss. *[Insert further detail of the evidence.]*

[If advice unsuitable, but no compensation is payable according to calculator:]

Although we have decided the advice to you to invest in the Arch cru funds was unsuitable given your circumstances at the time, the redress calculator provided by the FSA shows that you suffered no financial loss as a result. This calculation is enclosed.

[If advice unsuitable, i.e. firm is applying FSA comparator in calculation, and compensation is payable as a result:]

We have applied the findings of the review to the calculator provided by the FSA. It has found you are owed £_____. This calculation is enclosed.

As part of our calculation, we assessed the position that you would be in now if you had taken out an investment that correctly matched the level of risk you wanted to take with your money. In your case, we estimated that at the time we advised you, the level of risk you were prepared to take was *[Insert explanation of the relevant point on the risk scale, setting out why the customer was rated in this way]* and so a relevant comparator investment for your case was *[insert description of relevant comparator as provided in FSA template instructions]*.

[If advice unsuitable and firm is not applying FSA comparator in calculation:]

As part of our calculation, we assessed the position that you would be in now if you had taken out an investment that correctly matched the level of risk you wanted to take with your money. In your case, we estimated that at the time we advised you, the level of risk you were prepared to take was *[Insert explanation of the relevant point on the risk scale, setting out why the customer was rated in this way]* and so a relevant comparator investment for your case was *[insert details of comparator]* because *[insert reason]*.

[Where compensation is payable]

The FSA has required us to subtract the current value of the funds and the amount you are eligible to receive under the separate CF Arch cru payment scheme, from the compensation payment. This was subtracted whether or not you have made a claim under the payment scheme.

You have until 31 December 2013 to apply to the payment scheme.

You should have already received letters explaining how the payment scheme works and details of how CFM calculated each investor's share of the £54m package.

You can apply to the CF Arch cru payment scheme whether you accept or refuse our offer.

[Firm may include this wording if it wishes:]

If you accept this payment, it will be in full and final settlement of all claims against *[me/us/name of firm which provided the advice]* arising out of the advice given by *[me/us/it]* to you to invest in the above-named fund.

[Where compensation is payable]

If you want to accept this payment please sign below and indicate how you would like to receive the funds. Please also provide a daytime telephone number in case we have to contact you to finalise the payment.

We intend to make payments within 28 days of the date of this letter.

If we do not pay or contact you within 28 days of receiving your acceptance, you can contact the FSA using the contact details below:

You are not obliged to accept this payment but if you want to you must **respond within six months of the date of this letter**, unless there are exceptional circumstances.

The review was completed by *[insert name of reviewing party]*.

Enclosed is a copy of the completed review template used to assess your case.

[In all cases:]

What you can do next

If you are dissatisfied with this outcome you may refer this determination to the Financial Ombudsman Service (FOS) within six months of the date of this letter.

The FOS will decide whether we have applied the rules of the consumer redress scheme correctly in our decision to exclude you.

Enclosed is a leaflet explaining the role of the FOS, which you can contact at:
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Tel: 0800 023 4567 or 0300 123 9 123
Email: complaint.info@financial-ombudsman.org.uk

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

[I/We] have enclosed two copies of this letter. Please complete both copies below, returning one to [me/us] and keeping the other for your records.

Signed:

Please print name:

Please indicate below how you would like to receive the funds:

By cheque

By payment into (non-ISA) bank account

Sort code:

Account number:

By payment into an existing tax wrapper such as an ISA or personal pension (if you select this option, we will contact you to discuss this, as there may be tax consequences that we should discuss.)

Please write your contact telephone number here:

2 Annex 12R Arch cru product advice suitability assessment template

Firm and case details

Assessor name	<i>Free text</i>
Assessment date	<i>Date box</i>
FRN	<i>Free text</i>
Firm name	<i>Free text</i>
Appointed representative (if applicable)	<i>Free text</i>
Adviser name (optional)	<i>Free text</i>
Firm STR reference	<i>Sales transaction review (STR) reference– firm to create and input manually</i>
Are you the firm that sold the investment?	<i>Yes*/No</i>
	<i>[*if no – insert original firm name]</i>

Consumer details

Was this advice given on a joint basis?	<i>[yes / no] *</i>
---	---------------------

	Consumer 1	* Consumer 2 (for joint investments)
Full name	<i>Free text</i>	<i>Free text</i>
Date of birth	<i>Date box</i>	<i>Date box</i>
Age at time of advice	<i>Free text</i>	<i>Free text</i>
Employment status	<i>Drop down</i>	<i>Drop down</i>
Annual income	<i>£</i>	<i>£</i>
Annual expenditure	<i>£</i>	<i>£</i>
Date of advice to consumer	<i>Date box</i>	

Transaction input

Enter transaction details for the Arch cru fund(s) invested in

Transaction date	Fund invested	Transaction type	Amount (£)
<i>Date box</i>	<i>Drop down</i>	<i>Drop down</i>	<i>£</i>
<i>Date box</i>	<i>Drop down</i>	<i>Drop down</i>	<i>£</i>
<i>Etc</i>			

Admission of failure in opted-in scheme case

Only complete this section for those cases where you admit the firm has failed to comply with a suitability requirement

The firm admits that it has failed to comply with a suitability requirement in the opted-in scheme case	<i>Yes*</i>
---	-------------

** A firm admitting a failure is only required to fill out the sections identified in the instructions*

Consumer's investment objectives

** text box on RH side appears if this option is chosen*

What consumer objectives were stated in the consumer file	Priority/ Yes/ No	
General lump sum investment for growth	Priority/ Yes/ No	
General lump sum investment for income	Priority*/ Yes*/ No	<i>* £ amount of income</i>
Tax efficiency	Priority/ Yes/ No	
Retirement planning	Priority/ Yes/ No	
Realignment of portfolio	Priority/ Yes/ No	
Other objective	Priority*/ Yes*/ No	<i>* insert details – free text boxes depending on the number of extra objectives</i>

Comments on consumer investment objectives:

Free text

Consumer attitude to risk

Consumer's attitude to risk

Free text

Firm's description of the consumer's attitude to risk

Free text

Comments on the firm's assessment of the consumer's attitude to risk

Free text

Consumer financial situation

Assess the consumer's portfolio so that you are able to determine the following: -

Consumer's investments (excluding main residence)		Total before investment (£)	Total after investment in Arch cru fund
Cash (including cash ISAs)		£	£
Investments		£	£
Arch cru fund 1	<i>Drop-down of six funds</i>	£	£
Arch cru fund 2 etc	<i>Drop-down of six funds</i>	£	£
Other		£	£
TOTAL		£ [SUM]	£ [SUM]

Comments on portfolio before and after sale

Free text

Comments on the consumer's capacity for loss

Free text

Suitability requirements

Does the available evidence show overall that:		Yes / No
(1)	The <i>consumer</i> was willing to take a high degree of risk with the sum invested	
(2)	The risk profile of the <i>consumer's</i> overall savings and investment portfolio after the sale was suitable for the level of risk he was willing to take to meet his investment objectives	
(3)	The <i>consumer's</i> portfolio was sufficiently diversified after the sale to meet his investment objectives	
(4)	The <i>consumer</i> was reliant on income from this investment	
(5)	The <i>consumer</i> had the capacity to bear the risk of investing [x%] of his savings and investments in the selected Arch cru fund	
(6)	The <i>firm</i> took reasonable steps to ensure the consumer had the experience and knowledge to invest in the selected Arch cru fund	
(7)	The recommendation is <u>not</u> suitable for the <i>consumer's</i> investment objectives or financial situation for some other reason (if 'yes' please explain below)	

Template rating

<i>Non-compliant / Compliant</i>

Firm rating

<i>Non-compliant / Compliant</i>

Describe the evidence and explain your overall conclusion on compliance with the suitability requirements:

<i>Free text</i>

Causation

Where a firm has failed to comply with the suitability requirements:

Based on the available evidence, is it more likely than not that the firm's failure to comply with the suitability requirements caused the consumer's loss?	<i>Yes / No</i>
---	-----------------

<p>Please explain your conclusion on causation with reference to the evidence on file</p>	<p><i>Free text</i></p>
---	-------------------------

Redress

* indicates a field which may not be applicable in all cases. All other fields are mandatory.

Complete for each Arch cru fund invested	Suitable investment benchmark	SI 5 value (£) *	SI selection and justification (SI 4 & SI 5 only) *
Fund 1	<i>1,2,3,4,5</i> <i>4 (Advice suitable)</i> <i>5 (Other)</i>	<i>Enter suitable investment benchmark value (£) for SI 5</i>	<i>Identify the suitable investment and provide reasons for its selection</i>
Fund 2 etc			

2 Annex 13 CF Arch cru funds template instructions

1 Limitations on use of template and instructions

- 1.1 G The Arch cru advice suitability assessment template reproduced at *CONRED 2 Annex 12R* (referred to in these instructions as the “template”) and the instructions in this Annex are only to be used for the purpose of complying with the requirements under *CONRED 2* to assess sales of the Arch cru funds identified at *CONRED 2.1.1R(2)*. They should not be used for any other purpose.

2 Using the template

- 2.1 G The template contains factors to take into account to determine whether there has been a failure to comply with the suitability requirements (specified at 5.1R, below) in an opted-in scheme case.
- 2.2 R The template is divided into sections which must be completed in full, except where indicated in these instructions.
- 2.3 R Before completing the template you must familiarise yourself with the features and risks of the Arch cru funds that a reasonably competent *firm* should have identified, as specified in *CONRED 2 Annex 15R*.
- 2.4 R Answer the questions in the template and complete your assessment by reference to the available evidence (information on the *consumer* file and any information received from a *consumer*), and the features and risks of the Arch cru funds that a reasonably competent *firm* should have identified, as specified in *CONRED 2 Annex 15R*.

3 Admission of failure to comply with suitability requirements

- 3.1 R Where you admit that the *firm* has failed to comply with a suitability requirement (specified at 5.1R, below) in an opted-in scheme case complete the following sections of the template:
- (1) *firm* and case details;
 - (2) *consumer* details;
 - (3) transaction input;
 - (4) admission of failure in an opted-in scheme case;
 - (5) causation; and
 - (6) redress.

4 Completing the template

- 4.1 R Fill in the following sections of the template as follows:
- (1) **Firm and case details:** enter the *firm*-specific information as it appears on the *FSA Register*.
 - (2) **Consumer details:** enter the *consumer* details and the date of the advice to the *consumer*. Advice was given on a joint basis if it was given to two people where the *personal recommendation* relates to a “joint” portfolio. This includes cases where the advice is directed at a couple but where the investment is in one spouse’s name for tax purposes.
 - (3) **Transaction input:** take the following steps:
 - (a) Select the date of investment in the “transaction date” box. If you cannot identify the date of investment from the *consumer* file, insert the date of advice as the approximate date of the investment.
 - (b) Select the Arch cru fund(s) invested in.
 - (c) Select the transaction type from the drop-down menu. The transaction types to select from are:
 - **Investment:** an investment into an Arch cru fund. Enter the amount invested, the share class, and the wrapper (if applicable).
 - **Partial withdrawal:** the sale of part of the *consumer’s* share capital in the *consumer’s* investment, excluding interim hardship withdrawals.
 - **Final withdrawal:** the sale of all of the *consumer’s* share capital in the *consumer’s* investment, excluding final hardship withdrawals.
 - **Income distribution:** any income distribution received by the *consumer* in respect of their shares in the *consumer’s* investment prior to the date of suspension of the Arch cru funds.
 - **Capital distribution:** any capital distribution received by the *consumer* in respect of their shares in the *consumer’s* investment after the date of the suspension.
 - **Capita offer:** the amount offered to the *consumer* under the *CF Arch cru payment scheme*.
 - **Interim hardship withdrawal:** interim distributions received by the *consumer* from the Capita Hardship Scheme (ie, the hardship scheme for investors in Arch

cru funds as set out by Capita Financial Managers Ltd in a letter to investors of 7 December 2009) after the date of the suspension.

- **Final hardship withdrawal:** the amount received by the *consumer* for any full surrender of the investment from the Capita Hardship Scheme (as described above) after the date of the suspension.
- (d) Input the amount corresponding to the transaction type.
- (4) **Admission of failure to comply with a suitability requirement in the opted-in scheme case:** Select “yes” or “no” and proceed with the steps outlined at 3.1R, above.
- (5) **Consumer investment objectives:** take the following steps:
- (a) Identify and select whether any of the objectives listed on the template is recorded (yes/no) and override the “yes” with “priority” if the *consumer* says, or the firm recorded that, this objective was a priority.
 - (b) If a *consumer* was investing a lump sum to obtain an income, identify and record what level of annual income the *consumer* wanted from the recommended Arch cru fund.
 - (c) The objective ‘Realignment of portfolio’ must be used when the *consumer’s* circumstances or overall investment objective has changed.
 - (d) If the *consumer* had other investment objectives not identified in the list above, record these objectives in the box provided and identify whether they were a priority.
 - (e) Complete the “Comments on consumer investment objectives” box where you have further comments on the *consumer’s* investment objectives relevant to your assessment.
- (6) **Consumer attitude to risk (“ATR”):** take the following steps:
- (a) In the “Consumer’s attitude to risk” box record the *firm’s* short description of the *consumer’s* ATR, using the headline description used on their risk scale (eg, “balanced”, “medium”, “5/10”).
 - (b) In the “Firm’s description of the consumer’s ATR” box record the *firm’s* description of the *consumer’s* ATR, using the *firm’s* own wording (eg, “balanced means the *consumer* will invest in x, y types of assets and wants to take x risk with their capital”).

- (c) In the “Comments on the firm’s assessment of the consumer’s ATR” box record any comments you have on the *firm’s* assessment of the *consumer’s* attitude to risk and whether the *firm’s* assessment was, in your view, a reasonable representation of the *consumer’s* ATR. You should also include any information about the *consumer’s* ATR in relation to this particular investment.
- (d) This section does not record information on the *consumer’s* capacity for loss (which is different to a *consumer’s* ATR). This information must be noted in the “Comments on the consumer’s capacity for loss” box in the “Consumer’s financial situation” section of the template.
- (e) Where there is evidence that the *consumer’s* ATR was wrongly assessed by the *firm*, complete the suitability section based on your assessment of the *consumer’s* ATR.
- (7) **Consumer financial situation:** take the following steps:
- (a) Record information on the *consumer’s* savings and investments portfolio before and after the *consumer’s* investment in the Arch cru funds in the boxes provided.
- (b) The template provides the following categories:
- Cash (including cash ISAs)
 - Investments
 - Arch cru funds (this is a drop-down menu).
- (c) When completing the table of the *consumer’s* investments, take into account the following:
- Where advice is being provided on a “joint” basis (see 4.1R(2), above), record the combined total of, for example, a married couple’s investments. Where advice is on a ‘single’ basis but the *consumer* is married or in a relationship include the value of the proportion of investments owned by the *consumer* (these will usually be in the *consumer’s* name). Where the *consumer’s* share of investments is unclear from the file you can assume the proportion owned by the *consumer* is 50%.
 - Only include pension policy values where the fund is held in a pension wrapper (eg a self-invested personal pension (*SIPP*) or a small self-administered scheme (*SASS*)).
 - Where the source of funds is existing investments, use

the surrender value of the investments.

- (d) In the “Comments on portfolio before and after sale” box record your observations about the level of diversification within the portfolio and how the advice to invest in the selected Arch cru fund has met the *consumer’s* investment objectives for their portfolio.

Your comments must include whether the evidence supports an assessment that the risk profile of the *consumer’s* overall portfolio was suitable given the *consumer’s* personal and financial circumstances and objectives before and after the advice to invest in an Arch cru fund. This information will be relevant later in the template.

- (e) In the “Comments on consumer’s capacity for loss” box, record the *firm’s* comments on the *consumer’s* capacity for loss (also referred to as the level of risk the *consumer* is able to take). This is different to the level of risk that the *consumer* was willing or would have preferred to take. In doing so, consider whether, in the light of the available evidence:

- the *consumer* was able to take any risk with the *consumer’s* capital or income;
- there would have been an impact on the *consumer* of a total or partial loss of capital;
- the *consumer* could, considering his personal and financial circumstances, afford to take this level of risk.

- (8) **Suitability requirements:** take the steps set out at 5.1 to 5.4, below.

- (9) **Causation:** take the steps set out at 9.1 to 9.5, below.

- (10) **Redress:** take the steps set out at 10.1 to 10.15, below.

5 Suitability requirements

5.1 R The following requirements are specified:

- (1) for a *personal recommendation* made on or before 31 October 2007, COB 5.3.5R(1);
- (2) for a *personal recommendation* made on or after 1 November 2007, COBS 9.2.1R(1);
- (3) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on investments.

- 5.2 G The contract between the *firm* and the *consumer* may have included a specific term providing that the *firm* would exercise reasonable skill and care in advising the *consumer* on investments. If it did not do so, such a duty is likely to have been implied into the contract.
- 5.3 G The standard of care under the *FSA rules* and the common law is that of a reasonably competent *firm* carrying on a similar business to that of the *firm* assessed.
- 5.4 G *COB 5.2* and *COBS 9.2.1R(2)*, *COBS 9.2.2R* and *COBS 9.2.3R* indicate particular matters of which you should take account when assessing whether the *firm* failed to comply with the suitability requirements at 5.1R, above. In summary, these are the *consumer's*:
- (1) investment objectives;
 - (2) financial situation; and
 - (3) experience and knowledge of investments similar to the recommended Arch cru fund.

6 Assessing opted-in scheme cases

General

- 6.1 G The “Suitability section” in the template and associated additional provisions in these instructions contain examples which tend to show failure to comply or compliance with the suitability requirements (“example”).
- 6.2 G The suitability requirements arise from *FSA rules* and the common law. For the requirements specified, the standards required of the *firm* are broadly the same whether their origin is a *rule* or the common law.
- 6.3 R You must in each opted-in scheme case falling within *CONRED 2.4.2R*:
- (1) fairly consider and give appropriate weight to all information on the *consumer* file and any information received from a *consumer* of the *firm's* compliance or non-compliance with applicable suitability requirements at 5.1R, above; and
 - (2) decide, with reference to the examples in the suitability requirements section of the template, whether it is more likely than not that the *firm* failed to comply with the suitability requirements specified at 5.1R, above.
- 6.4 R In considering the information on the *consumer* file and any information received from a *consumer*, you must:
- (1) not assume that a *firm* complied with a suitability requirement (specified at 5.1R, above) solely on the basis that:

- (a) the *consumer* signed documentation that records his understanding or agreement to matters set out in that documentation;
 - (b) the *personal recommendation* was given to a *consumer* who had already invested in an Arch cru fund or a predecessor of that fund;
- (2) give more weight to evidence of the particular circumstances of a *personal recommendation* than to general evidence of the selling practices of the *firm* or its advisers at the relevant time;
 - (3) determine that an example in the suitability requirements section of the template is present on the “balance of probabilities” when it is more likely than not to have occurred.

Reliance on others

- 6.5 R You must take into account that:
- (1) the duty of a *firm* to advise on the suitability of investments cannot be delegated to, or discharged by reliance on, another;
 - (2) where the *firm* made a *personal recommendation* in reliance on the advice or opinions of *persons* other than the *firm*, a *firm* must not be regarded as complying with the suitability requirements at 5.1R, above, because of that reliance; and
 - (3) the suitability requirements at 5.1R, above, require a *firm* in all cases to form its own view of the suitability of the recommended Arch cru fund for the particular *consumer*, based on the information that the *firm* had, or ought reasonably to have obtained, regarding that Arch cru fund and its suitability for the *consumer's* circumstances.
- 6.6 R If, in relation to any rating, before coming to a view that the *firm* came to a reasonable, albeit erroneous, conclusion on the risks of the recommended Arch cru fund and sold the Arch cru fund on this basis, you must take into account:
- (1) that the *FSA's* guidance on the Responsibilities of Providers and Distributors for the Fair Treatment of Consumers (*RPPD*) says that a *firm* distributing products:
 - (a) should consider, when passing provider materials to *consumers*, whether it understands the information provided;
 - (b) should ask the provider to supply additional information or training where that seems necessary to understand the product or service adequately; and

- (c) should not distribute the product or service if it does not understand it sufficiently, especially if it intends to provide advice;
- (2) any due diligence: a *firm* providing a *personal recommendation* should have formed its own view on the risks of investing in an Arch cru fund, based on the information that it had or ought to have gathered about the fund;
- (3) that the reliance on other *rules* (*COB* 2.3.3R and *COBS* 2.4.6R) enable a *firm* to place reasonable reliance for some purposes on factual (ie, not opinion-based) information provided by an unconnected *authorised person*; but that these *rules* do not absolve a *firm* from forming its own view on the risks of investing in an Arch cru fund;
- (4) the features and risks of the recommended Arch cru fund set out in *CONRED* 2 Annex 15R; and
- (5) that *COBS* 2.4.8G states that “it will generally be reasonable ... for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* ... unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information”. In the absence of those grounds, it will generally have been reasonable for a *firm* to have relied on factual statements provided by Arch or Cru on the Arch cru funds, such as information about the funds’ underlying assets.

7 Assessing compliance with the suitability requirements

- 7.1 R When assessing whether a *firm* complied with the suitability requirements specified at 5.1R, above, you must take into account the following:
- (1) the *consumer’s* investment objectives, including his willingness to bear the risks associated with the recommended Arch cru fund;
 - (2) the *consumer’s* financial situation, including his financial ability to bear the risks associated with the recommended Arch cru fund consistent with his investment objectives;
 - (3) the *consumer’s* ability, in the light of the following, to understand the risks associated with the recommended Arch cru fund:
 - (a) the experience and knowledge of the *consumer* relevant to an investment in the recommended Arch cru fund; and
 - (b) any correspondence between the *firm* and the *consumer* (which may include references to promotional materials, such as fund factsheets or offer documents or prospectuses) regarding the recommended Arch cru fund.

- 7.2 R When assessing the reasonableness of a *firm's* conduct in relation to a *personal recommendation*, you must:
- (1) assess the *firm's* conduct against what was reasonable at the time when the *firm* made the *personal recommendation*; and
 - (2) conclude that the conduct of the *firm* assessed was reasonable only where that *firm* displayed the degree of skill, care and diligence that would at that time have been exercised in the ordinary and proper course of a similar business to that of the *firm*.

Consumer instructions

- 7.3 R In all cases, you must take into account any specific instructions the *consumer* gave the *firm* about the sale.
- 7.4 G Specific instructions include, for example, where the *consumer* asked the *firm* to advise only on the sum to be invested and not on the *consumer's* pension arrangements.
- 7.5 G As the Arch cru funds are high-risk investments, the *firm* should have asked for further information about the *consumer's* wider portfolio, and have taken this into account when making its *personal recommendation* to the *consumer* to invest in an Arch cru fund.
- 7.6 G If there is clear evidence on file that the *consumer* has given specific instructions that the *firm* is not to review the *consumer's* entire portfolio, but to advise on this investment only, the suitability assessment could involve a narrower review, focusing on the *consumer's* objectives in relation to the specific amount to be invested. However, any *personal recommendation* should still have taken into account how the specific investment would fit within the *consumer's* overall savings and investments portfolio.

8 Suitability section

Filling in the suitability requirements section

- 8.1 G The suitability requirements section is used to record your assessment of whether or not the *firm* complied with the suitability requirements specified at 5.1R, above.
- 8.2 R To complete the suitability requirements section you must take the following steps for an opted-in case falling within *CONRED 2.5.1R* (an “opted-in scheme case”):
- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the data section of the template (“the available evidence”);
 - (2) determine whether the available evidence shows overall that any or all of examples (1) to (7) is present or not;

- (3) indicate whether any or all of examples (1) to (7) is present, or not, by selecting “yes” or “no”;
- (4) conclude, taking into account the available evidence, whether the *firm* complied with the suitability requirements specified at 5.1R, above; and
- (5) insert your commentary on whether or not the *firm* complied with the suitability requirements specified at 5.1R, above, with reference to the example(s) that support your conclusion. Your comments can refer to relevant sections of the fund summary in *CONRED 2 Annex 15R*.

8.3 G If an example is present, this will tend to show the *firm’s* compliance or non-compliance with the suitability requirements. The presence of the example is not definitive as to whether a *firm* has complied with the suitability requirements. There may be other factors which mean that the *firm* has, despite the presence of the example, complied, or not complied, with the suitability requirements at 5.1R, above.

8.4 G The template sale rating will automatically default to “Compliant” or “Non-compliant” depending on your answer to the example questions in the template. The “Non-compliant” rating indicates that the *personal recommendation* does not comply with the suitability requirements at 5.1R, above.

8.5 G This table contains *rules, evidential provisions, and guidance* for determining whether the available evidence shows overall that an example is present, or not:

(1)	The consumer was willing to take a high degree of risk with the sum invested	
	R	Compare:
	(1)	the information on the <i>consumer</i> file, and any information received from the <i>consumer</i> and, in particular, the information recorded in the template on the <i>firm’s</i> assessment of the <i>consumer’s</i> attitude to risk (ATR), focusing on the degree of risk the <i>consumer</i> was willing to take with this investment (not, for the purposes of this question, the degree of risk the <i>consumer</i> was able to take); with
	(2)	the high degree of risk a <i>consumer</i> must have been willing to take for a <i>personal recommendation</i> to invest in an Arch cru fund to be suitable.
	E	Answer “no” to this question where:
	(1)	the <i>consumer</i> was not willing to take a high degree of risk with the sum invested (by reference to the risk scale used by the <i>firm</i>); or

	(2)	the <i>consumer</i> was not willing to put his capital at risk for the potential of a higher return and had expressed a preference for lower-risk investments.
	G	This question relates to the level of risk a client is willing to take with the sum invested.
(2)	The risk profile of the consumer's overall savings and investment portfolio after the sale was suitable for the level of risk he was willing to take to meet his investment objectives	
	R	Take the following steps:
	(1)	refer to the information recorded on the <i>consumer's</i> stated attitude to risk in the template;
	(2)	with reference to the firm's risk scale, identify the risk level in the <i>consumer's</i> portfolio after the sale; and
	(3)	compare the level of risk in the <i>consumer's</i> overall portfolio after the sale with the level of risk the <i>consumer</i> was willing to take to meet his investment objectives.
	E	Answer "no" where the risk profile of the <i>consumer's</i> portfolio was higher than the level of risk he was willing to take to meet his investment objectives.
	G	This question relates to how the investment fits into the client's portfolio of investments.
(3)	The consumer's portfolio was sufficiently diversified after the sale to meet his investment objectives	
	R	Take the following steps:
	(1)	refer to the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded on the <i>consumer's</i> investment objectives section of the template;
	(2)	identify the concentration of Arch cru funds in the <i>consumer's</i> portfolio after the sale; and
	(3)	taking into account in particular:
	(a)	the concentration of Arch cru funds;
	(b)	the liquidity in the <i>consumer's</i> portfolio;
	(c)	the exposure to different asset classes; and
	(d)	the level of stability of returns or security of invested

			capital in the portfolio;
			determine whether the <i>consumer's</i> portfolio was sufficiently diversified to meet his investment objectives.
E	(1)		Answer “no” where the <i>consumer</i> has a large portfolio of savings and investments but his preferences regarding risk-taking indicate that he would prefer to diversify and invest in a wide range of assets and he has invested a high concentration of his assets in Arch cru funds and the risk of this investment is not offset by the potential return offered by the Arch cru funds.
	(2)		Answer “yes” where the <i>consumer</i> wanted a significant portion of his capital to be invested in higher-risk or alternative investments and has a low proportion of Arch cru funds. This may be recorded in specific instructions the <i>consumer</i> gave the <i>firm</i> .
(4)	The consumer was reliant on income from this investment		
E	(1)		Answer “yes” where a <i>consumer</i> needed a minimum level of income from this fund (for example, to pay household bills and expenses).
	(2)		Answer “no” where a <i>consumer</i> did not need a specific level of income from the fund, for example, because it was not essential to maintain his standard of living.
G	(1)		Whether a <i>consumer</i> had a need for income from this investment may be reflected in the information on the <i>consumer</i> file and any information received from a <i>consumer</i> about the <i>consumer's</i> household income and whether the income from this investment was necessary for household expenses and personal outlays or whether it was “disposable income” (which is money left over after bills and household expenses are paid).
	(2)		The Arch cru funds that offered income shares are the Investment Portfolio, Specialist Portfolio and Income Fund. These funds aimed to pay income on a half-yearly basis but did not provide a set level of income.
(5)	The consumer had the capacity to bear the risk of investing [x%] of his savings and investments in the selected Arch cru fund		
R	(1)		Take the following steps:
	(a)		refer to the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded on the <i>consumer's</i> financial situation in the data section of the template;

			(b)	identify the concentration of Arch cru funds in the <i>consumer's</i> portfolio after the sale; and
			(c)	taking into account in particular:
			(i)	the concentration of Arch cru funds;
			(ii)	the source and extent of the <i>consumer's</i> assets;
			(iii)	the liquidity in the <i>consumer's</i> portfolio;
			(iv)	the exposure to different asset classes;
			(v)	the level of stability of returns or security of invested capital in the portfolio; and
			(vi)	the impact the loss of the capital invested would have on his standard of living overall;
				determine whether the concentration of Arch cru funds in the <i>consumer's</i> portfolio was suitable for his financial situation.
	E	(1)		Answer “no” where any loss of the investment would have had a materially detrimental effect on the <i>consumer's</i> standard of living.
		(2)		Answer “yes” where the investment was speculative: the <i>consumer</i> had no need for the capital and would not be using it to maintain his standard of living.
(6)	The firm took reasonable steps to ensure the consumer had the necessary experience and knowledge to invest in the selected Arch cru fund			
	R	Take the following steps:		
		(1)		refer to the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded on the template;
		(2)		identify the <i>consumer's</i> level of investment experience and knowledge of investments both:
			(a)	in relation to investments similar to Arch cru funds; and
			(b)	generally;
		(3)		identify the steps that the <i>firm</i> took to establish that the <i>consumer</i> could appreciate the nature of the risks they were taking with his investment in the Arch cru fund;
		(4)		taking into account, in particular:

		(a)	information about the <i>consumer's</i> existing portfolio and the nature, volume, and frequency of the <i>consumer's</i> transactions in investments;
		(b)	how long the <i>consumer</i> had been an investor;
		(c)	the <i>consumer's</i> experience with, and knowledge of, high-risk investments similar to Arch cru funds;
		(d)	the <i>consumer's</i> profession (if any);
		(e)	insofar as it was clear, fair and not misleading, information the <i>firm</i> gave the <i>consumer</i> over and above any Capita Financial Managers Limited, Arch Financial Products LLP or Cru Investment Managers Limited produced documentation (if that was provided);
		(f)	how the <i>firm</i> communicated the risks of investing and the underlying assets in the selected Arch cru fund listed in <i>CONRED 2 Annex 15R</i> ; and
		(g)	the overall impression that the <i>consumer</i> would reasonably have had of those features and risks, particularly in the light of:
		(i)	the entirety of the communications referred to in (1);
		(ii)	the extent to which such communications were consistent in their presentation of those features and risks; and
		(iii)	the <i>consumer's</i> relevant experience and knowledge;
			conclude whether the <i>firm</i> had a reasonable basis for believing that the <i>consumer</i> had the necessary experience and knowledge to understand the risks involved in investing in Arch cru funds.
	E	Answer "no" where:	
		(1)	the <i>firm</i> did not communicate in substance the risks and features of the selected Arch cru fund listed in <i>CONRED 2 Annex 15R</i> ; and
		(2)	one or more of the following is present:
		(a)	prior to the <i>personal recommendation</i> , the <i>consumer</i> had experience and knowledge of investing in capital protected products only;
		(b)	prior to the <i>personal recommendation</i> , the <i>consumer</i> had no experience and knowledge of investments in bonds or shares traded on public markets;

		(c)	prior to the <i>personal recommendation</i> , the <i>consumer</i> had no experience and knowledge of investing in high-risk investments.
	G	A <i>firm</i> may rely on the simplified prospectus to disclose the risks in <i>CONRED 2 Annex 15R</i> , but disclosure will not be “clear” if, in particular:	
		(1)	the information was contradicted by the <i>firm</i> in correspondence between the firm and the consumer (which may include references to promotional materials, such as monthly reports, fund factsheets or offer documents or prospectuses); or
		(2)	given the <i>consumer’s</i> experience and knowledge, it is unlikely that the <i>consumer</i> would have understood the risks as disclosed in the prospectus without further explanation from the <i>firm</i> .
(7)	The recommendation is <u>not</u> suitable for the consumer’s investment objectives or financial situation for some other reason		
	R	Take the following steps:	
		(1)	refer to the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded on the <i>consumer’s</i> financial situation in the template;
		(2)	refer to the risks and features of the Arch cru funds in <i>CONRED 2 Annex 15R</i> ; and
		(3)	consider whether there is any reason, other than the reasons at questions (1) to (6) why the <i>personal recommendation</i> to invest in an Arch cru fund was unsuitable for the <i>consumer’s</i> investment objectives or financial situation.
	E	Answer “yes” where:	
		(1)	the <i>consumer’s</i> financial situation was likely to change in the near future so that he would not be able to bear the risks of this investment; or
		(2)	the <i>consumer</i> had existing debts which it would have been in his best interests to repay before making this investment; or
		(3)	following the <i>personal recommendation</i> , the <i>consumer</i> did not have an adequate emergency fund and cash reserve; or
		(4)	the <i>consumer</i> would need the money invested within five years of investment in the fund; or
		(5)	any of the risks or features of the Arch cru fund set out in <i>CONRED 2 Annex 15R</i> were unsuitable for the <i>consumer’s</i> financial situation;

			or
		(6)	an existing product in the <i>consumer's</i> portfolio could have been changed to meet the <i>consumer's</i> investment objective with less cost or less risk.
	G	(1)	The features and risks of the Arch cru fund may have been unsuitable for the <i>consumer's</i> investment objectives if any of the following applies:
			(a) the <i>consumer</i> did not want to invest through an offshore vehicle or in non-UK assets;
			(b) the <i>consumer</i> did not want an investment that did not have a transparent secondary market for its underlying assets;
			(c) the <i>consumer</i> did not want to invest through <i>collective investment schemes</i> ;
			(d) the <i>consumer</i> was not prepared to put capital at risk in stock markets;
			(e) the <i>consumer</i> did not want to be exposed to risks associated with <i>commodities</i> or <i>derivatives</i> ;
			(f) the <i>consumer</i> did not want an investment that invested in <i>illiquid assets</i> ;
			(g) the <i>consumer</i> did not want an investment that was exposed to non-traditional asset classes;
			(h) the <i>consumer</i> did not want an investment where the investment manager employed investment techniques such as gearing, that would not normally have been used in more commonly encountered <i>UCITS</i> .
		(2)	In relation to whether the <i>consumer's</i> financial situation was likely to change in the near future so that the <i>consumer</i> would not be able to bear the risks of this investment, consider whether the <i>consumer</i> was expecting a change in his personal circumstances, such as the birth of a child, redundancy or retirement and the impact this was likely to have on his financial situation.
		(3)	In relation to whether the <i>consumer</i> had existing debts which it would have been in his best interests to repay before making this investment, consider the particular circumstances of the debt, including:
			(a) the size of the debt (excluding mortgage debt);
			(b) whether the debt had an early repayment penalty or fixed

			repayment schedule;
		(c)	the interest rate on the debt in relation to what they could reasonably expect in relation to the performance of the investment.
		(4)	An adequate emergency fund should be at least three times monthly outgoings but, depending on the <i>consumer's</i> circumstances, this could be more. The <i>consumer</i> should also have held sufficient 'cash reserves' to meet known or reasonably anticipated future expenses, such as the payment of care fees, or spending on home improvements, or a new car or dependents.

Outcome: overall assessment on suitability requirements

- 8.6 R Take the following steps to determine whether the *firm* complied with the suitability requirements:
- (1) review the information on the *consumer* file, any information received from a *consumer* and the features and risks of the Arch cru fund in *CONRED 2 Annex 15R*;
 - (2) determine whether the *firm* took reasonable steps to ensure that the *personal recommendation* was suitable, and select the appropriate outcome in the Firm sale rating box "Compliant" or "Non-Compliant"; and
 - (3) in all cases, insert your commentary on whether or not the *firm* complied with the suitability requirements specified at 5.1R, above, with reference to the example(s) that support your conclusion. Your comments can refer to relevant sections of the fund summary in *CONRED 2 Annex 15R*.
- 8.7 E For the purposes of 8.2R(2) above, in any case where you have answered:
- (1) "no" to any of the questions in sub-paragraphs (1), (2), (3), (5) or (6) of paragraph 8.5; and/or
 - (2) "yes" to either of the questions in sub-paragraphs (4) and (7) of paragraph 8.5;
- this will tend to indicate that the *personal recommendation* was "Non-Compliant".
- 8.8 G The presence of an example in the suitability section of the template is not determinative as to whether a *firm* has complied with the suitability requirements. There may be other factors which mean that the *firm* has, despite the presence of the example, complied, or not complied, with the suitability requirements.

- 8.9 G Where the *personal recommendation* is to invest in more than one Arch cru fund and one investment is suitable but the other is not suitable, the *firm* should conclude overall that the *personal recommendation* does not comply with the suitability requirements. The template will take into account the suitable part of the investment in the redress section.

9 Causation section

- 9.1 G The causation section is used to record your assessment of whether or not the *consumer's* loss was caused by the *firm's* failure to comply with the suitability requirements specified at 5.1R, above. The causation section proceeds on an assumption that the *consumer* suffered a loss. Whether or not there was actually a loss is dealt with in the redress section.
- 9.2 R Complete the causation section where you have concluded that the *firm* has failed to comply with the suitability requirements specified at 5.1R, above.
- 9.3 R To fill in the causation section you must:
- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the template (“available evidence”);
 - (2) determine whether the *firm's* failure to comply with the suitability requirements caused the *consumer's* loss; and
 - (3) explain your conclusion on causation with reference to the available evidence.
- 9.4 R In assessing the available evidence, you must have regard to:
- (1) the impact of the *firm's* failure(s) on the *consumer's* decision to invest in the Arch cru fund(s) in all the circumstances of the *consumer's* case;
 - (2) the position at law that, irrespective of the actions of third parties, the *firm* is responsible for all losses that flow from its failure to comply with the suitability requirements; and
 - (3) the position at law that no actions of Capita Financial Managers Limited; Arch Financial Products LLP; cru Investment Management Limited; HSBC Bank plc and BNY Mellon Trust and Depository (UK) Limited break the chain of causation, so that the *firm* is still responsible for all losses that flow from its failure to comply with the suitability requirements.
- 9.5 E You should conclude “yes” (that the *firm's* failure caused the *consumer's* loss) unless you are satisfied on the basis of the available evidence that the *consumer* did not rely on the *personal recommendation* in making the decision to invest.

10 Redress Section

- 10.1 R Complete the redress section in each opted-in scheme case where you have determined that the *consumer's* loss was caused by the *firm's* failure to comply with any of the suitability requirements at 5.1R, above.
- 10.2 G The redress section is used to identify and record an investment benchmark to compare the position the *consumer* is in with the position they would have been in if the *firm* had complied with the suitability requirements.
- 10.3 R For a redress case where a *personal recommendation* resulted in more than one investment in one or more Arch cru funds, complete the redress section for each of the *consumer's* investments in Arch cru funds.
- 10.4 R Take the following steps in each redress case:
- (1) select the Arch cru fund that the *consumer* invested in;
 - (2) having regard to what investment the *consumer* would have invested if the *firm* had complied with the suitability requirements at 5.1R above, and other requirements applicable to it at the time (referred to in this chapter as a "suitable investment"), either:
 - (a) select investment benchmark "1", "2", or "3"; or
 - (b) select investment benchmark "4" (suitable investment); or
 - (c) select investment benchmark "5" (other);
 - (3) where investment benchmark 4 or 5 is selected:
 - (a) determine what would have been a suitable investment in accordance with the instructions at (for investment benchmark 4) 10.6R, below, and (for investment benchmark 5) 10.7R and 10.8R, below; and
 - (b) record the suitable investment identified and the reasons for selecting it in the 'SI selection justification' box (for investment benchmark 4, this will be the selected Arch cru fund); and
 - (4) submit a redress calculation request to the *FSA* following the instructions at 10.13R, above.
- 10.5 E For the purposes of paragraph 10.4R(2), above:
- (1) have regard to the investment benchmarks in *CONRED 2* Annex 14R;

- (2) consider which investment benchmark best reflects the risks and features of a suitable investment;
- (3) subject to 10.7R, above, select that investment benchmark; and
- (4) record your reasons for the selection of that investment benchmark in the Comments box.
- 10.6 R You may select investment 4 (suitable investment) only if you are satisfied on the basis of the information on the *consumer* file, and information received from the *consumer*, that the *consumer* would have made an investment in the Arch cru fund if the *firm* had complied with the suitability requirements.
- 10.7 R You may select investment benchmark 5 (other) only where you are able to identify a specific investment:
- (1) which would have been a suitable investment; and
- (2) in which a *consumer* could have made an investment at all times from the date on which the *consumer's* investment was made to the date of calculation.
- 10.8 G For the purposes of 10.7R, above, a *firm* might be able to identify a specific investment in circumstances where:
- (1) at the time when the *firm* made the *personal recommendation* to the *consumer* to invest in Arch cru funds, the *firm* also recommended other specific investments which would have been suitable for the *consumer*; or
- (2) the *firm* recommended that a *consumer* disinvest from a specific investment, which was suitable for the Consumer, in order to invest in Arch cru funds.
- 10.9 R In cases where you have selected investment benchmark 5 (other) you must, following the instructions at 10.12R, below, and determine and record the value which sums initially invested by the *consumer* in the *consumer's* investment would have had at the date of calculation if such sums had been invested in investment benchmark 5.
- 10.10 R In a redress case where the *consumer* retained any shares in the *consumer's* investment at the date of suspension, redress is equal to the sum of A – B – C – D where:
- (1) “A” is the value of sums initially invested by the *consumer* at the date of calculation if they had been invested in a suitable investment;
- (2) “B” is the net asset value of the *consumer's* investment in the Arch cru fund at the date of calculation;

- (3) “C” is the value of income distributions received by the *consumer* by the date of suspension; and
- (4) “D” is the value of sums under the *CF Arch cru payment scheme* that the *consumer* is, or was, eligible to receive (whether or not it has been received) where the *consumer* has retained shares in the *consumer’s* investment.
- 10.11 R In a redress case where the *consumer* has sold all of the shares in the *consumer’s* investment prior to the date of suspension, redress is equal to the sum of $A - C - E + I$ where:
- (1) “A” is the value of sums initially invested by the *consumer* at the date of the sale of the *consumer’s* share capital if they had been invested in a suitable investment;
- (2) “C” is the value of income distributions received by the *consumer* prior to the date of sale;
- (3) “E” is the capital realised on the sale of the *consumer’s* share capital; and
- (4) “I” is simple interest on the result of $A - C - E$ at the Bank of England base rate prevailing from time to time over the relevant period + 1%/365 for each day between the date of the sale of the *consumer’s* share capital and the date of the *redress determination*.
- 10.12 R When calculating the value of “A”, “D” and “E” to take into account the net effect of any partial sale of the *consumer’s* share capital during the term of the *consumer’s* investment:
- (1) deduct the amount of any sale of shares or distribution (including interim or final hardship withdrawals) in respect of the *consumer’s* investment at the date that the sale or capital distribution is made; and
- (2) for each sale or capital distribution, account for:
- (a) the growth rate from the time of the original investment, or previous sale or capital distribution, until the time of sale or capital distribution;
- (b) the value of the residual investment after any sale or capital distribution; and
- (c) the growth rate from the time of sale or capital distribution up to the date of calculation.
- 10.13 R To submit a redress calculation request, send a completed copy of the template to the *FSA* by email to archcruereview@fsa.gov.uk or (if the email is encrypted) archcruereviewpgp@fsa.gov.uk.

- 10.14 G If the *firm* is to send an encrypted email to the *FSA* it will need to download the public PGP key from the *FSA* website and import the key into its email client software.
- 10.15 G Following receipt of the redress calculation request the *FSA* will send the firm a summary detailing the redress payable for each *consumer's* investment and the total redress payable to the *consumer* in the redress case.

2 Annex 14R Investment benchmarks

1.1R The following investment benchmarks apply:

Comparator 1:	this comparator is a return equal to the Bank of England official Bank Rate (the 'base rate').
Comparator 2:	this comparator is a return equal to a 50/50 combination of the APCIMS Conservative Index and the IMA Mixed Investment 20-60% Shares sector. This comparator has a listed equity exposure of 20-60% (IMA) and 32.5% (APCIMS).
Comparator 3:	this comparator is a return equal to a 50/50 combination of the APCIMS Balanced Index and the IMA Mixed Investment 40-85% Shares sector. This comparator has a listed equity exposure of 40-85% (IMA) and 67.5% (APCIMS).

1.2G Further details of the sectors and indices referred to in the *rule* above can be found at the websites of the relevant organisations:

<http://www.apcims.co.uk/private-investor-indices/about-the-indices/>

<http://www.investmentfunds.org.uk/fund-sectors/sector-definitions/>

2 Annex 15R Risks and features of Arch cru funds

1	The Arch cru funds consist of two open-ended investment companies, the CF Arch cru Diversified Funds and the CF Arch cru Investment Funds, and their respective sub-funds, sold to consumers during the following periods:													
	<p>Investment funds</p> <p>Diversified funds</p>	<table border="0"> <tr> <td>Investment Portfolio</td> <td>July 2006 to March 2009</td> </tr> <tr> <td>Specialist Portfolio</td> <td>July 2006 to March 2009</td> </tr> <tr> <td>Balanced Fund</td> <td>September 2007 to March 2009</td> </tr> <tr> <td>Global Growth Fund</td> <td>September 2007 to March 2009</td> </tr> <tr> <td>Income Fund</td> <td>September 2007 to March 2009</td> </tr> <tr> <td>Finance Fund</td> <td>October 2008 to March 2009</td> </tr> </table>	Investment Portfolio	July 2006 to March 2009	Specialist Portfolio	July 2006 to March 2009	Balanced Fund	September 2007 to March 2009	Global Growth Fund	September 2007 to March 2009	Income Fund	September 2007 to March 2009	Finance Fund	October 2008 to March 2009
Investment Portfolio	July 2006 to March 2009													
Specialist Portfolio	July 2006 to March 2009													
Balanced Fund	September 2007 to March 2009													
Global Growth Fund	September 2007 to March 2009													
Income Fund	September 2007 to March 2009													
Finance Fund	October 2008 to March 2009													
2	Dealings in the Arch cru funds were suspended by the <i>authorised corporate director</i> , Capita Financial Managers Ltd (“Capita”), on 13 March 2009.													
3	The Arch cru funds aimed to achieve their objectives by investing in a broad range of mainstream and non-mainstream assets.													
4	The Arch cru funds, through transferable securities, ultimately invested in the following asset classes, in various combinations:													
	(a)	unlisted equity;												
	(b)	unlisted debt instruments;												
	(c)	non-UK investments;												
	(d)	venture capital or project finance investments;												
	(e)	private markets, private equity, private finance;												
	(f)	private and structured finance;												
	(g)	asset-backed lending;												
	(h)	investments in developing countries;												
	(i)	collateralised debt and collateralised cash flow financings;												
	(j)	life settlements; and												
	(k)	commodities.												

5	Information about each Arch cru fund and its sub-funds is set out below.	
CF Arch cru Diversified Fund		
6	The Diversified Fund was incorporated in June 2002 and originally named “Insinger de Beaufort Manager Selection ICVC”.	
7	The Diversified Fund was re-named the CF Arch cru Diversified Funds in mid-2007. The firms involved in the diversified fund were:	
	Authorised corporate director (ACD)	Capita
	Investment manager	Arch
	Depository	HSBC Bank PLC
	Marketing and distribution	Cru Investment Management Limited Arch Financial Products LLP
Income fund		
	<u>Promotions</u>	
8	The Income Fund was promoted to advisers as an investment in the IMA “Cautious Managed” sector and “a strong alternative to cash based investments and bond based investments”.	
	<u>Features</u>	
9	The features of the Income Fund as described to advisers are:	
	(a)	its objective is long-term capital and income growth.
	(b)	it offers both net income and net accumulation shares. For income shareholders, net income was to be distributed half-yearly. For net accumulation shareholders, net income was retained and accumulated for the benefit of shareholders and reflected in the price of the shares;
	(c)	from October 2007, its aims were to provide returns of cash + 3% per annum from a diversified pool of assets;
	(d)	it can invest in a range of assets including:
	(i)	<i>collective investment schemes</i> (which invest principally in equities), <i>transferable securities</i> , cash, deposits and money market instruments; and
	(ii)	non-mainstream assets including: private equity; private finance;

		structured finance and commodities;
	(e)	from October 2007, the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity;
	(f)	Transactions in <i>derivatives</i> will only be used for the purposes of hedging and will not affect the risk profile of the fund.
	<u>Risks</u>	
10	It is the <i>FSA</i> 's view that an investment in the income fund is likely to be high risk and, as such, investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.
Balanced fund		
	<u>Promotions</u>	
11	The balanced fund was promoted to advisers as investment in the IMA “Balanced Managed” sector and:	
	(a)	may be suitable for investors with a low-level risk appetite;
	(b)	may be a strong alternative to cash based investments and bond based investments.
	<u>Features</u>	

12	The features of the Balanced Fund, as described to advisers, are:	
	(a)	its objective is long-term capital growth;
	(b)	it offers net accumulation shares;
	(c)	from May 2008, its aims were to provide returns of cash + 4% per annum particularly over the medium term;
	(d)	it can invest in a range of assets including:
	(i)	<i>collective investment schemes</i> (which invest principally in equities), <i>transferable securities</i> , cash, deposits and money market instruments; and
	(ii)	non-mainstream assets including: private equity; private finance; structured finance and commodities;
	(e)	it will have a UK overweight portfolio;
	(f)	transactions in <i>derivatives</i> will only be used for the purposes of hedging and will not affect the risk profile of the fund.
	<u>Risks</u>	
13	It is the FSA's view that an investment in the balanced fund is likely to be high risk and investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.

Global Growth fund	
	<u>Promotions</u>
14	The Global Growth Fund was promoted to advisers as an investment in the IMA “Global Growth” sector and:
	(a) may be suitable for investors with a low-level risk appetite;
	(b) to deliver decent absolute returns through a broad exposure to the major asset classes;
	(c) investing in equity and bond funds and also other assets.
	<u>Features</u>
15	The features of the Global Growth Fund, as described to advisers, are:
	(a) its objective is long-term capital growth;
	(b) it offers net accumulation shares;
	(c) from May 2008, its aims were to provide returns of 6% per annum more than cash returns;
	(d) it can invest in a range of assets including:
	(i) <i>collective investment schemes</i> (which invest principally in equities), <i>transferable securities</i> , cash, deposits and money market instruments; and
	(ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
	(e) from October 2007, the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity;
	(f) transactions in <i>derivatives</i> will only be used for the purposes of hedging and will not affect the risk profile of the fund.
	<u>Risks</u>
16	It is the FSA’s view that an investment in the Global Growth Fund is likely to be high risk and investors must understand and be willing to accept the following investment risks:
	(a) risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b) exchange rate risk – some of the assets are located overseas and would,

		therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.
Finance Fund		
	<u>Promotions</u>	
17	The Finance Fund was promoted to advisers as an investment in the IMA “Cautious Managed” sector and:	
	(a)	providing “steady returns, low risk”;
	(b)	aiming to beat both cash and bond returns;
	(c)	as a superior investment to cash deposits and bonds.
	<u>Features</u>	
18	The features of the finance fund, as described to advisers, are:	
	(a)	its objective is steady capital appreciation over the medium to long-term through exposure to a diversified portfolio of private finance-related instruments;
	(b)	it offers net accumulation shares;
	(c)	from November 2008, its aims were to provide returns of cash + 3% per annum;
	(d)	from November 2008, the investment category is defined as private finance, including bridging finance and term lending;
	(e)	it can invest in a range of assets including:
	(i)	<i>collective investment schemes</i> (which invest principally in equities), <i>transferable securities</i> , cash, deposits and money market instruments;

		and
	(ii)	non-mainstream assets including: private equity; private finance; structured finance and commodities;
	(f)	transactions in <i>derivatives</i> will only be used for the purposes of hedging and will not affect the risk profile of the fund;
	(g)	it will have a UK overweight portfolio.
	<u>Risks</u>	
19	It is the <i>FSA</i> 's view that an investment in the Finance Fund is likely to be high risk, and investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.
CF Arch cru investment fund		
20	The investment fund was incorporated on 29 June 2006. It has two sub-funds: the investment portfolio and specialist portfolio.	
21	The firms involved in the investment fund were:	
	Authorised corporate director (ACD)	Capita Financial Managers Limited
	Investment manager	Arch Financial Products LLP
	Depository	Bank of New York Mellon Trust and

	Depository (UK) Ltd Marketing and distribution	Cru Investment Management Limited Arch Financial Products LLP
Investment Portfolio		
	<u>Promotions</u>	
22	The Investment Portfolio was promoted to advisers as an investment in the IMA “Cautious Managed” sector and “an excellent replacement for cash based and bond based investments.”	
	<u>Features</u>	
23	The features of the Investment Portfolio as described to advisers are:	
	(a)	its objective is to generate consistent returns to provide wealth preservation and capital appreciation;
	(b)	it offers net accumulation and net income shares;
	(c)	in March 2007, its aims were to provide consistent returns of LIBOR + 4% with a significant focus on risk management, this was revised to cash + 4% in August 2007;
	(d)	from March 2007, investment classes are stated as being public market securities and private investments. In September 2007 it is stated that the premise since inception of the fund was that public markets did not represent sufficient future reward for the fund.
	<u>Risks</u>	
24	It is the FSA’s view that an investment in the Investment Portfolio is likely to be high risk and investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing

		countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.
Specialist Portfolio		
	<u>Promotions</u>	
25	The Specialist Portfolio was promoted to advisers as an investment in the IMA “Active Managed” sector and “an excellent replacement for cash based and bond based investments.”	
	<u>Features</u>	
26	The features of the Specialist Portfolio as described to advisers are:	
	(a)	its objective is “to seek capital growth from an aggressively managed portfolio which may take high cash weightings at times when the investment manager lacks confidence in the outlook for equities, bonds and other asset classes. There is a moderate risk to capital”;
	(b)	it offers net accumulation and net income shares;
	(c)	in March 2007, its aims were to provide consistent returns of LIBOR + 6% with a significant focus on risk management; this was revised to cash + 6% in August 2007;
	(d)	from March 2007, investment classes are stated as being public market securities and private investments which are leveraged up to 25%. In September 2007, the fund is described as having a low correlation with traditional public investments such as bonds and equities.
	<u>Risks</u>	
27	It is the FSA’s view that an investment in the Specialist Portfolio is likely to be high risk and investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more

		mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.

Schedule 1 Record keeping requirements

Sch 1.1G

- 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.

Sch 1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>CONRED</i> 2.10.1R(1)(a)	Arch cru consumer redress scheme	Certificate of posting for each letter sent	When letter sent	Five years
<i>CONRED</i> 2.10.1R(1)(b)	Arch cru consumer redress scheme	Copy of each letter sent	When letter sent	Five years
<i>CONRED</i> 2.10.1R(1)(c)	Arch cru consumer redress scheme	Record of attempts to contact consumer or obtain further information	When attempts made	Five years
<i>CONRED</i> 2.10.1R(1)(d)	Arch cru consumer redress scheme	Completed template for each opted-in scheme case	When template completed	Five years
<i>CONRED</i> 2.10.1R(1)(e)	Arch cru consumer redress scheme	All information on the consumer file and information received from the consumer	When located on consumer file or obtained	Five years

Schedule 2 Notification requirements

Sch 2.1G

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
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<p><i>CONRED</i> 2.4.9R</p>	<p>Information on the total number of scheme cases; opted-in scheme cases, and investments in Arch cru funds</p>	<p>(1) total number of scheme cases;</p> <p>(2) The number of such investments resulting from the <i>regulated activities</i> for a <i>customer</i> in <i>CONRED</i> 2.1.3R; and the number of such investments falling outside the scheme with an explanation of the reason why, in each case;</p> <p>(3) the total number of opted-in scheme cases.</p>	<p>None: notification required in all cases</p>	<p>Until 29 July 2013</p>
<p><i>CONRED</i> 2.9.2R</p>	<p>Information on the number of opted-in scheme cases; completed and incomplete templates and the results of such; the total number of redress cases; the total number of <i>redress determinations</i> sent to <i>consumers</i>; the total number of <i>consumers</i> paid redress and the amount of such; and the total amount of redress unpaid to date.</p>	<p>(1) the total number of opted-in scheme cases;</p> <p>(2) the total number of completed templates;</p> <p>(3) the total number of incomplete templates, with an explanation as to why the templates have not been completed;</p> <p>(4) the total number of redress cases;</p> <p>(5) the total number of redress determinations sent to</p>	<p>None: notification required in all cases</p>	<p>Until 9 December 2013</p>

		<p><i>consumers</i>;</p> <p>(6) the total number of <i>consumers</i> paid redress to date;</p> <p>(7) the total amount of redress paid to date; and</p> <p>(8) the total amount of redress unpaid to date.</p>		
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Schedule 3 Fees and other required payments

There are no provisions for fees in *CONRED*. As noted in *CONRED* 2.5.19G, a fee is payable in any case where the *FSA* exercises its powers under *CONRED* 2.5.12R to take steps instead of a firm, or appoint one or more competent persons to do so. This fee is as specified in the table at *FEES* 3.2.7R.

Schedule 4 Powers exercised

Sch 4.1G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *CONRED*:

	Section 138 (General rule-making power)
	Section 149 (Evidential provisions)
	Section 156 (General supplementary powers)
	Section 395(5) (The Authority's procedures)
	Section 404(3) (Consumer redress schemes)
	Section 404A (Rules under s404: supplementary)
	Paragraph 17 (1) (Fees) of Schedule 1 (The Financial Services Authority)

Sch 4.2G

The following powers and related provisions in or under the *Act* have been exercised by the

FSA to give the *guidance* in *CONRED*:

Section 157(1) (Guidance)

Schedule 5 Rights of action for damages

Sch 5.1G The table below sets out the *rules* in *CONRED* 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.

Sch 5.2G 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.

Sch 5.3G 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.

Sch 5.4G

Rule	Right of action under section 150		
	For private person?	Removed?	For other person?
All <i>rules</i> in <i>CONRED</i> with the status letter ‘E’	No	No	No
All other <i>rules</i> in <i>CONRED</i>	Yes	No	No

Schedule 6 Rules that can be waived

Sch 6.1G 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.

Appendix 1 Key definitions

[Note: the following definitions relevant to *CONRED* are extracted from the *Glossary*.]

<i>CF Arch cru payment scheme</i>	the requirements included in the <i>permissions</i> of Capita Financial Managers Limited, BNY Mellon Trust & Depository (UK) Limited and HSBC Bank plc at their request under section 44 of the <i>Act</i> on 31 August 2011.
<i>consumer</i>	<p>(a) <u>where the <i>personal recommendation</i> was made on or before 31 October 2007, a <i>private customer</i> for the purposes of <i>COB 2</i> and <i>COB 5</i>, as defined by the version of the <i>Handbook</i> then in force;</u> or</p> <p>(b) <u>where the <i>personal recommendation</i> was made on or after 1 November 2007, a <i>retail client</i> in accordance with <i>COBS 3.4.1R</i>.</u></p>
<i>firm</i>	<p>(a) <u>an <i>authorised person</i>; or</u></p> <p>(b) <u>a <i>person</i> who was an <i>authorised person</i> when the relevant activity took place but has since ceased to be one.</u></p>
<i>personal recommendation</i>	<p>a recommendation which is <i>advice on investments</i> and:</p> <p>(a) <u>where given on or before 31 October 2007, was given to a <i>specific person</i>; or</u></p> <p>(b) <u>where given on or after 1 November 2007, was presented as suitable for the <i>person</i> to whom the recommendation was made, or was based on a consideration of the circumstances of that <i>person</i>, other than a recommendation issued exclusively through distribution channels or to the public.</u></p>

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 order. The text is not underlined.

CF Arch cru payment scheme the requirements included in the *permissions* of Capita Financial Managers Limited, BNY Mellon Trust & Depository (UK) Limited and HSBC Bank plc at their request under section 44 of the *Act* on 31 August 2011.

Amend the following as shown.

consumer ...

(7) (in CONRED):

- (a) where the *personal recommendation* was made on or before 31 October 2007, a *private customer* for the purposes of *COB 2* and *COB 5*, as defined by the version of the *Handbook* then in force; or
- (b) where the *personal recommendation* was made on or after 1 November 2007, a *retail client* in accordance with *COBS 3.4.1R*.

firm ...

(6) (in CONRED):

- (a) an *authorised person*; or
- (b) a *person* who was an *authorised person* when the relevant activity took place but has since ceased to be one.

personal recommendation (except in CONRED) a recommendation that is *advice on investments*, or *advice on a home finance transaction* and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

[**Note:** article 52 of the *MiFID implementing Directive*]

(in CONRED) a recommendation which is *advice on investments* and:

- (a) where given on or before 31 October 2007, was given to a specific *person*; or
- (b) where given on or after 1 November 2007, was presented as suitable for the *person* to whom the recommendation was made, or was based on a consideration of the circumstances of that *person*, other than a recommendation issued exclusively through distribution channels or to the public.

Annex C

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(zn) An <i>issuer</i> who proposes to make a material change to the contractual terms of a <i>regulated covered bond</i> under <i>RCB 3.5.4D</i>.	...
<p><u>(zo) In the case of persons in respect of which the FSA has given notice of its intention to take, or appoint a competent person to take, any steps under CONRED 2.5.12R, either:</u></p> <p><u>(i) a Firm (as defined in CONRED 2.1.1R(1);</u> <u>or</u></p> <p><u>(ii) a person falling within CONRED 2.1.2R(1).</u></p>	<p><u>An amount equal to:</u></p> <p><u>(1) a sum determined by the number of hours, or part of an hour, taken by the FSA in relation to work conducted in taking steps under CONRED 2.5.12R recorded on the FSA's systems, multiplied by the rate in FEES 3 Annex 9(11)R; or</u></p> <p><u>(2) any amount invoiced to the FSA by a competent person in relation to any work carried out by that competent person in connection with its appointment by the FSA under CONRED 2.5.12R.</u></p>	<p><u>Within 30 days of the date of the invoice.</u></p>
...		

Annex D

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Statutory notices and the allocation of decision making

...

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

...

Section of the Act	Description	Handbook reference	Decision maker
...			
385(1)/386(1)	...		
<u>404A(8)(a)</u>	<u>In connection with a consumer redress scheme, when the FSA is proposing to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a consumer, or what the redress should be in respect of the failure</u>	<u>CONRED</u>	<u>Executive procedures</u>
<u>404A(8)(a)</u>	<u>In connection with a consumer redress scheme, when the FSA is deciding to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a</u>	<u>CONRED</u>	<u>Executive procedures</u>

	<u>consumer, or what the redress should be in respect of the failure</u>		
...			

4 Decisions by FSA staff under executive procedures

...

4.1.7 G *Statutory notice decisions* to be taken under *executive procedures*, and not falling within the responsibility of a *senior staff committee*, will be taken by an individual *FSA* staff member. The decision will be:

- (1) made by an executive director of the *FSA* Board or his delegate (who will be of at least the level of associate);
- (2) on the recommendation of an *FSA* staff member of at least the level of associate; and
- (3) with the benefit of legal advice from an *FSA* staff member of at least the level of associate;

except for decisions made in relation to consumer redress schemes pursuant to provisions of the Consumer Redress Schemes sourcebook (*CONRED*), where (1) will apply, but not (2) or (3).

...